

Neutral Citation No: [2022] NIFam 41

Ref: SIM12019

ICOS No: 19/073660

*Judgment: approved by the court for handing down
(subject to editorial corrections)**

Delivered: 19/12/2022

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

IN THE MATTER OF ALEKSANDER (A CHILD) (APPLICATION FOR
INTERNATIONAL RELOCATION)

Suzanne Simpson KC with Patrick Gillen, of counsel (instructed Judith Gibson,
Terence McCourt Solicitors) for the Mother
Noelle McGreenera KC with Melanie Rice, of counsel (instructed by Nicola McWilliams,
Bernard Campbell & Co.) for the Father
Moira Smyth KC with Sinead O’Flaherty, of counsel (instructed by Rosemary Carson) for
the Child

SIMPSON J

Nothing must be published which would identify the child or his family.

Introduction

[1] In order to ensure that nothing in this judgment will identify the child or the family I have given the child the fictitious name, “Aleksander”, which is not his real name, nor does his real name begin with ‘A.’ Because the participants are all Polish, I have used the Polish spelling of the pseudonym. Where I refer to his mother and father, I will call them “the Mother” and “the Father.” The Mother has now married, and I will call her husband “the Husband.” Other individuals within the extended families will be designated appropriately in the same vein. While this may seem disrespectful to all the participants, it is not intended to be. The sole purpose is to ensure anonymity of the family, and therefore the child.

[2] This is the hearing of the Mother’s C1 application dated 9 July 2019 pursuant to Article 8(1) of the Children (Northern Ireland) Order 1995 for a specific issue order to permit her to relocate to Poland with her son, Aleksander, who is now 6 years 5 months old, and for a residence order in her favour. Relocation cases have variously been described as “an extremely difficult exercise for any family judge” and the “hardest of dilemmas” involving, as they do, a binary decision whereby

either the application fails, or it succeeds; there is no halfway house and one of the parents – and that parent’s extended family – will inevitably feel that they have lost and will understandably be utterly distraught at the result.

[3] The Mother and the Father are originally from Poland but were brought to Northern Ireland by their respective families when they were children. They attended the same school. A relationship between them began around 2008/2009. Aleksander was born in 2016. The precise date of the commencement of their relationship, and the circumstances and date of the ending of the relationship are disputed, as are many other historical matters.

[4] After the ending of the relationship Aleksander has lived with the Mother, although the Father has continued to have contact with his son. It is common case that the Mother is Aleksander’s primary carer.

[5] Subsequently, the Mother began a relationship with her present husband, also Polish. Again, the precise date of the commencement of that relationship is in dispute between the Mother and the Father. The Husband lives in Poland and the Mother has known him, on and off, since childhood. In February 2020 the Mother had another son – to the Husband – and they were married in August 2020. It would be her intention to live with the Husband in Poland if the court was to grant her application.

[6] In November 2019 the Mother returned to Poland with Aleksander, and with the consent of the Father, for a holiday. Initially, she says, it was her intention to stay only for a short period, but some issues with her pregnancy, and then Polish Covid-19 measures intervened. She did not return. Proceedings were commenced in Poland by the Father with relation to Aleksander. The Mother appealed against the decision of the District Court, and the Regional Court, dismissing her appeal, deciding that Aleksander was habitually resident in Northern Ireland. The Mother returned to Northern Ireland with Aleksander on 1 December 2020.

The Legal Principles

[7] First, I set out the provisions of Article 3 of the Children (Northern Ireland) Order 1995 (‘the 1995 Order’).

“3.–(1) Where a court determines any question with respect to –

- (a) the upbringing of a child; or
- (b) the administration of a child’s property or the application of any income arising from it,

the child's welfare shall be the court's paramount consideration.

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

(3) In the circumstances mentioned in paragraph (4), a court shall have regard in particular to—

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

(4) The circumstances are that—

- (a) the court is considering whether to make, vary or discharge an Article 8 order, and the making, variation or discharge of the order is opposed by any party to the proceedings; or
- (b) the court is considering whether to make, vary or discharge an order under Part V.

(5) Where a court is considering whether or not to make one or more orders under this Order with respect to

a child, it shall not make the order or any of the orders unless it considers that doing so would be better for the child than making no order at all.”

[8] The relevant legal principles were recently considered and articulated succinctly by Humphreys J in his decision in the case of *In the Matter of Tom (A Child) (Application for International Relocation)* [2021] NIFam 13:

“[7] Article 3 of the 1995 Order requires the court, when considering any application relating to the upbringing of a child, to treat the child’s welfare as the paramount consideration. Article 3(3) contains the ‘welfare checklist’, a list of circumstances to which the court is to have particular regard when considering any application under, inter alia, article 8.

[8] The Court of Appeal reviewed many of the relevant authorities in *SH v RD* [2013] NICA 44. It is clear from this analysis that the only legal principle in play is that of welfare paramountcy.

[9] Distinctions have been drawn in some cases where the applicant for relocation is a primary carer and those where the care of a child had been shared. Such distinctions derive principally from the English authorities of *Payne v Payne* [2001] EWCA Civ 166 and *MK v CK* [2011] EWCA Civ 793. However, Morgan LCJ commented in *SH*:

‘The effect of the guidance should not be overstated even where the case concerned a true primary carer. There was no presumption that the reasonable relocation plans of the carer will be facilitated unless there is some compelling reason to the contrary.’

[10] Having considered the nature of the guidance available from other cases, the court stated:

‘In this jurisdiction we agree with the learned trial judge that in relocation cases the court should focus on the welfare of the child as the paramount consideration.’

[11] I therefore propose to focus on Tom’s welfare as the paramount consideration in this case and I will apply

the welfare checklist to assist in this regard. I bear in mind the words of Keegan J in *WA v KA* [2019] NIFam 2 where she described the task in hand as “reaching a holistic overall view” and that is the approach I intend to take.”

[9] I also note that McFarlane LJ, in *F (A Child) (International Relocation Cases)* [2015] EWCA 882 said (paragraph 47) that he apprehended that there was a danger that the use of the adjective holistic “and its purpose within my judgment in *Re G*, may become elevated into a free-standing term of art in a way which is entirely at odds with my original meaning.” At paragraph 48 he said:

“In the judgment in *Re G* my purpose in using the word ‘holistic’ was simply to adopt a single word designed to encapsulate what seasoned Family Lawyers would call ‘the old-fashioned welfare balancing exercise’, in which each and every relevant factor relating to a child's welfare is weighed, one against the other, to determine which of a range of options best meets the requirement to afford paramount consideration to the welfare of the child. The overall balancing exercise is ‘holistic’ in that it requires the court to look at the factors relating to a child's welfare as a whole; as opposed to a ‘linear’ approach which only considers individual components in isolation.”

[10] At paragraph 51 he reiterated the point:

“The application of a holistic approach to relocation cases is not in some way to be seen as a new development. For the reasons I have given, it is not. It is, in fact, ‘as old as the hills.’ The consistent theme through all the authorities for over 40 years is that the child's welfare is the paramount consideration. In order to afford paramount consideration, the court has always sought to balance the relevant factors one against another with the aim of forming a conclusion as to the child's welfare as a whole, or, to use the ‘h’ word, holistically.”

[11] In *Re L, Relocation Application* [2013] NICA 45 Morgan LCJ said (paragraph 18):

“... we consider that in relocation applications in this jurisdiction the guiding principle is that the welfare of the child is paramount and that the welfare checklist is an appropriate basis upon which to commence that evaluation.”

In *WA v KA* (op cit) Keegan J said:

“In a case such as this the court is enjoined to look at the welfare checklist which assists in reaching a welfare determination.”

[12] In *F (A Child) (International Relocation Cases)* (op cit) the court said at paragraph 31:

“It is a proposition that has already been decided that international relocation cases engage articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 [ECHR]. Whatever earlier *obiter* observations on and doubts about the applicability of the Convention to these cases that there had been were settled by the Strasbourg court’s decision in *Glaser v United Kingdom* (Case No 32346/96), [2001] 1 FLR 153 at (57) to (65):

‘(57) [...] It is not disputed that these matters concern ‘family life’ within the meaning of art 8 of the Convention and that this provision is applicable.

(63) The essential object of art 8 is to protect the individual against arbitrary interference by public authorities.’”

[13] With all of the above guidance in mind, I turn to consider the evidence. I make it clear that I do not intend to rehearse in this judgment all the evidence which was given and the content of all the documentary evidence (contained in three trial bundles) – otherwise the judgment, already lengthy, would be impossibly long – but I have taken all the evidence into account in coming to my decision. There were many factual disputes about historical matters, but I do not intend to seek to resolve those as I do not find it helpful in dealing with the principal issue in the case. I have concentrated on those matters which I consider to be of assistance in identifying, as the paramount consideration, the welfare of Aleksander.

The Mother’s evidence

[14] For the purposes of these proceedings the Mother made three written statements, dated 18 May 2021, 27 February 2022 and 3 August 2022. She gave evidence to the court over a protracted period, caused by the somewhat intermittent nature of the first two days of the hearing. All in all, she was cross-examined for some hours, and between her evidence in chief and in cross-examination I had the opportunity to observe her over three different days.

[15] A significant thrust of the cross-examination was to the effect that she was not a witness who could be believed, and therefore she would be unlikely to abide by any contact arrangements to allow the Father to see Aleksander if the court was to grant her application and Aleksander moved to Poland.

[16] The Mother was challenged at length and in detail about many historical matters and discrepancies between earlier assertions made by her or recorded as being made by her and statements made by her in these proceedings. Frankly, I found much of this aspect of the cross-examination to be unhelpful in the search for the answer to the real issue in this case.

[17] It was also suggested to her that she did not really need the services of an interpreter, that her English was sufficiently good for this not to be necessary and that she only used the interpreter to give her more time to think of an answer to the questions and that the use of the interpreter was designed to 'emphasise her Polishness.'

[18] In fact, I was impressed with her answer about this issue, which was that she faced a high stress level giving evidence and that because these matters were very important to her she wanted to be sure that she both understood what she was being asked and that her answers would be understood.

[19] There was a significant challenge to her motivations in 2019 when she went on holiday to Poland with Aleksander, it being suggested that she intended not to come back in a few weeks, as she stated, but always intended to stay there. I find as a fact that her intentions were to return, as she said, after a short period, but that there was an issue with her pregnancy resulting in a doctor advising her not to travel on a plane. I reject the implied suggestion that somehow she persuaded a professional man to provide misleading medical information. I find as a fact, further, that Covid-19 was a significant factor in her not returning home after the birth of her second child (to her present husband) and that the child had some medical issues shortly after his birth, resulting in hospitalisation for a short period. I note that she had booked return tickets and both she and Aleksander had only small amounts of luggage, more appropriate to a short holiday than a permanent move. Other than that luggage, all of her clothing remained in Northern Ireland.

[20] She was challenged as to her attitude to contact and it was put to her that if her application was granted she would not support contact. It was put to her that the Father had to bring an application to the court in this jurisdiction because she was not complying with a recommendation as to overnight contact in 2021.

[21] I was able to watch carefully her demeanor and make an assessment of her by the way in which she gave her evidence over several days, because of the extent of her time in the witness box. I had, therefore, a good opportunity to assess her credibility. Taking everything into consideration, I have to say that I found her to be a credible witness. I thought that she answered the questions truthfully and to the

best of her ability, and I noted that, where sometimes a concession might be seen by her not to be in her best interests, nevertheless she was willing to make the concession.

[22] The Mother said, and it is common case, that during their relationship she expressed, from time to time, the view to the Father that she wanted to return to live in Poland. In evidence she said that Northern Ireland “is not my country and will never be.” Her assertion that the Father agreed to this, and agreed to her taking Aleksander to live in Poland with her, was hotly disputed by the Father. In the circumstances, however, I do not find it necessary to resolve this dispute.

[23] The Mother’s desire is to live as a family with the Husband and her two sons, Aleksander and his half-sibling, who is now approaching his third birthday, and with whom Aleksander has, she said, a “big” bond. Since December 2020 she has been living apart from her husband, a state of affairs she describes as emotionally very difficult. Their intention would be to live in the village of X (I have given ciphers to some of the locations in Poland to ensure that the family, and therefore the child, will not be identified by means of jigsaw identification). They would live in the Husband’s house – a three bedroom house with a living room, bathroom, kitchen, basement and attic. She is keen to train as a dental nurse. She would like to attend a weekend school for such training in Z, some 15 minutes away. As to her income, if the application was granted, she would receive 500 zlotys per month per child by way of Polish State benefit, an income of 1,000 zlotys per month, with an extra 300 zlotys per child for the summer holiday period. [At the date of writing this judgment 1,000 zlotys was approximately £183.]

[24] The Mother’s parents, both Polish, live in Northern Ireland at the moment. However, they have indicated that they will sell their house here and return to the village of X, if the court grants the application. They have a house in X, some 2 minutes from the Husband’s farm, and the Maternal Grandmother wants (if the application is successful) to give up her work and retire early, which can be done in Poland. She would intend to return to Poland immediately and the Maternal Grandfather would follow later, when he sells their house in Northern Ireland.

[25] There is other family nearby. The Maternal Grandmother’s sister lives opposite the Maternal Grandmother’s house and there is a cousin of the Mother (and children) about 20 minutes away.

[26] The Mother described X as a village of some 200/250 people surrounded by forest. There is a library 15 minutes away by car, and the nearest shops are five minutes away by car. A shopping bus comes to the village “a few times a day.” She denied that the area is isolated. When questioned about what the Father could do with Aleksander if he visited, and where he could stay, she said there was a cinema locally, a playground in X, a bowling hall and go-karting about 15 minutes away by car, or 20/25 minutes by bus, and that there was bed and breakfast accommodation in the area. One of the documents in the papers shows that there is holiday

accommodation at a farm in X costing 40 zlotys per night and another document contains advertisements for other holiday accommodation in the immediate area. There are flights to either Kraków or Rzeszów – both about the same travel time to X – from either Belfast or Dublin.

The Husband's evidence

[27] For the purposes of these proceedings the Husband made a written statement, dated 27 February 2022. He gave evidence with the use of an interpreter. I found him a very straightforward witness who appeared to me, as I observed him, to be telling the truth.

[28] The Husband was born and has lived all his life in X. He is now 35, so is around 6 years older than the Mother. He describes X as a village of approximately 300 people, although he accepted it might be around 250. There is another village close by. The nearest two towns would be Y, some 8 kilometers and Z, some 15 kilometers away.

[29] The Husband is employed in forestry work. As I understand it from him, he owns his own saw machine, and operates it alone. His work seems to be largely contract work for the government-run forestry service for which, at least in or around February 2022, he billed the forestry service at the rate of 30 zlotys per hour for his time and the use of the saw machine. He says that his hourly rate has since increased. The work is overseen or supervised by employees of the government forestry service. He earns around 6,000 zlotys per month, which can increase to around 8,000 per month when he does overtime. He does this work from about 7.00 in the morning to about 3.00 in the afternoon on weekdays; thereafter he works on the family farm.

[30] He owns the family farm, which has been passed down through the generations. It is around 29 hectares (some 71.6 acres) in area. The house in which he lives is on the farm. He lives there with his father, in respect of whom he has caring duties. It is a 3-bedroom house; it has a kitchen, bathroom and a veranda. There is a room which he calls Aleksander's room. I have seen photographs of the house, and it looks perfectly clean, well-kept and comfortable. In answer to a question as to whether he had a car, he told me he had three cars.

[31] His main outgoings are for gas, electricity and internet. Water is plumbed into the house from the farm's own well. He grows his own vegetables and seasonal fruit. Meat, eggs, cheese and milk come from the livestock kept on the farm. They bake their own bread, buying only flour. His occupation gives him access to sufficient logs to provide heating for the house and water.

[32] The farm and house are not subject to any mortgage. I have seen a schedule of payments from the EU which over about a 13 month period show income of some

16,000 zlotys. His bank account currently has a credit of some 125,000 zlotys. He has no outstanding debts.

[33] Part of the Father's case is that the Husband could come to Northern Ireland and live and work, so that the entirety of Aleksander's extended families would be in this jurisdiction. The Husband's response to that is that he speaks no English and has no qualifications and would not be able to find any suitable employment. He has existing contracts for forestry work and if he reneges on these he would face penalties. Further, not only is he responsible for the running of the family farm, but he has to care for his own father, who is 74 and has health problems – he has problems with his hip, which require him to use a stick or crutch, he has sciatica, he has undergone one eye operation (whether because of cataract or glaucoma is not clear) and is on the waiting list for a procedure on the other eye. He is unable to lift anything heavy and would be unable to run the farm on his own if the Husband left it to come to Northern Ireland.

[34] There was cross-examination of him designed to show that his father did not need as much help as he, the Husband, was making out. He was cross-examined also at some length about how long he had known the Mother and about when their relationship actually began. Again, the thrust of this cross-examination was designed to show that he was not a witness who could be believed, particularly when he says that his circumstances are such that he could not come to live in Northern Ireland and when he says that he would do his best to promote the relationship between the child and the Father.

[35] He gave evidence that he has a good relationship – which he described in some detail – with Aleksander. He speaks on a very regular basis to Aleksander by video while they are separated. He also accepted without reservation that the Father would miss Aleksander if the application was granted.

[36] I consider that he was a truthful witness. I find as a fact that it would be wholly unviable for him, and it is unrealistic to expect him, to come to live in Northern Ireland in light of his limited ability to find suitable work here, his absence of English and his need to run the family farm and carry out his own business. I find that he has caring responsibilities for his father and I find the suggestions that there are other people who could carry out these responsibilities for him to be unrealistic. I also find that if the application was to be granted, he would do what he can to promote the relationship between Aleksander and the Father.

The Father's evidence

[37] The Father made two written statements, dated 9 June 2021 and March 2022. He gave evidence to the court. I found him also to be a straightforward witness. He, too, was prepared to make concessions in his evidence when it would have been obvious to him that they might have been against his interests.

[38] In both his evidence in chief and cross-examination historical matters were dealt with, and again I found little of this helpful in coming to my decision on the principal issue. However, stripping away historical issues I consider, as did the Official Solicitor, that his objections to relocation are essentially because he considers that the reduction of his contact with his son will result in their relationship being significantly adversely affected. To Ms Brown, one of the Court Children's Officers, he said "why should I suffer from not having my son here...?" He also told her that "his son is his priority and he wants to care for his son." He says that when he found out about Aleksander calling the Husband "dad in Poland" he felt terrible, and that it was a deep shock when he heard that Aleksander was calling another man "dad." As he said in cross-examination, if the application is granted Aleksander will "lose his dad."

[39] Relocation will, he says, also damage the relationship with the extended paternal family, describing Aleksander as being the Paternal Grandmother's "big love; she loves him to bits." That also includes the relationship with his own sister (Aleksander's aunt) who is 13 and with whom Aleksander has a very good relationship – of which he says it is "amazing; the way they play and spend time together, they are like siblings." He says Aleksander will "lose the bigger part of his family and have to start from scratch in Poland."

[40] In addition, he was wholly sceptical of the Mother's bona fides in relation to future contact, describing her proposals for contact as "too good to be true." He points to the fact that the Mother stayed with Aleksander in Poland for a year, that he had to instigate Hague Convention proceedings in Poland to have the Mother bring Aleksander back to Northern Ireland – and even then the Mother appealed the first instance order – and to the fact that even after an agreement was reached about contact in March 2021, the Mother did not comply for some 7 weeks.

[41] While he felt that the Maternal Grandmother might move to Poland, he was more doubtful that the Maternal Grandfather would do so, at least immediately.

[42] He told me that Aleksander is in his second year at the primary school which he attends and is doing well. He is speaking more English as time goes on, and speaks English when he plays.

[43] The Father clearly loves Aleksander, his only child, and is desperately keen that his son should remain in Northern Ireland where the Father would be able to have appropriate contact with him. He described as a happy time the contact at Halloween of this year when Aleksander stayed with him from Saturday until Tuesday and said that Aleksander "settled brilliantly."

[44] He denied that computer gaming, which he called his "hobby" was a problem. He considered the village of X to be very rural, far from a main city – "It's like back in the 19th century" – was his assessment of it. Getting there from Kraków would take a long time.

[45] He told me that in June 2021 he sustained a back injury in his home, as a result of which he is no longer in employment, and has no real idea of when he might be able to return to work. He is presently in receipt of just short of £1,000 in benefits for each 4-week period.

[46] In cross-examination he agreed that all his family and his extended family were Polish, that all spoke Polish, some as their first language, that the Husband was Polish, that Aleksander has a Polish passport and that his first language is Polish (although on another occasion he resiled from this), that Aleksander has visited Poland on occasions, that he lived there from November 2019 to 1 December 2020 and that he is exposed to Polish culture and tradition. He agreed that in the 11 years during which he and the Mother were together he rarely heard her use English; she preferred to use Polish as her “go to” language. He agreed that if he visited Poland, to see Aleksander, he would have no difficulty with the language or the culture, he would be able to converse freely there and that he can read, write and speak Polish.

[47] He agreed that he was very committed to his son and that he “would move heaven and earth to see him”, and that he would visit him and keep in contact (if the application was granted).

[48] Both the Father and the Mother, in cross-examination, were criticised about the content of some text and WhatsApp messages passing between them. However, in my view this does not help me in coming to a decision; sadly, such messages are not uncommon in communication between parents when there are issues with children.

Other family witnesses' evidence

[49] The parties agreed that statements from other family witnesses could be used as those witnesses' evidence without the necessity of calling the witness. I have available to me the following:

- (i) a statement from the Paternal Grandmother, dated June 2022;
- (ii) a statement from the Maternal Grandmother, dated 27 February 2022;
- (iii) a statement from the Maternal Grandfather, dated 27 February 2022.

[50] I have read all of those statements and have taken their content into account in arriving at my decision. The statement from the Paternal Grandmother urges the court not to permit relocation, stating that such a move would be detrimental to Aleksander. She describes what is clearly a close relationship between her, her husband and Aleksander, and also between Aleksander and their 13 year old daughter, Aleksander's aunt. She, like the Father, expresses a fear of the relationship being damaged if relocation is granted and she, too, is sceptical as to whether they would ever see Aleksander again.

[51] Both the Maternal Grandmother and Grandfather support the application for relocation. They, too, describe their close relationship with Aleksander. Both indicate that they will return to live in Poland to support the Mother. They have a house in X, and the Mother's sister lives in the area. There are also cousins and nieces. The Maternal Grandmother says that they have known the Husband since he was a young boy and are happy to see the Mother married "to such a good man." The Maternal Grandfather works for a major car company and states that he would be able to easily obtain work for that same company in the Polish factory, which is some 30 kilometers from X.

[52] It is clear that all three love Aleksander dearly and all three want what they consider to be the best for him.

The Court Children's Officers' evidence

[53] There are two reports from Court Children's Officers ('CCO'). The first, dated 16 January 2020, was prepared by Ms Alex Brown, when Aleksander was 3½. It is now almost 3 years old, and some of the information gathered for its preparation is, itself, more than 3 years old. At paragraph 9.1 Ms Brown concluded that she did not support the Mother's application to relocate to Poland.

[54] Ms Brown is an experienced social worker having graduated initially in 2012. Since 2017 she has been employed with the Court Children's Service.

[55] The second report is more recent. It was prepared by Mr Gerard Donnelly and is dated 29 January 2022. At paragraph 6.8 of his report he concludes that "the overall benefits for [Aleksander] will outweigh any perceived losses if the relocation is permitted by the court."

[56] Mr Donnelly is also a qualified social worker, with 20 years' experience. He has worked for the Court Children's Service for the past 12 years.

[57] Both were challenged in cross-examination: Ms Brown, essentially on the basis that her report was so long ago and with a young child, matters would change in the space of some three years; Mr Donnelly, essentially on the basis that his report was one-sided and unfair to the Father.

[58] Ms Brown made clear in her report that there was an "absence of any documents to evidence the necessary requirements for relocation to be fully considered" and expressed her concern at the "lack of concrete information." At internal page 13 of her report she said that "given this lack of clarity [she] would question how a move to Poland would advance [Aleksander's] quality of life." Her conclusion not to support the Mother's application for relocation was also informed by her view that the consequential "significant reduction in ... contact with [the Father]" was not in Aleksander's best interests. She indicated that forms of indirect

contact, such as Skype or FaceTime do not afford the same quality of “hands on time” for the Father and that if Aleksander remains in the Belfast area his relationship and time with the Father would not be reduced. In cross-examination she maintained that her conclusion was correct and confirmed that her recommendation was made on the information available to her at the time of her report.

[59] She noted that there was no evidence regarding the viability of the Husband moving to Northern Ireland and that this option should be given more consideration.

[60] I note that on internal page 13 of her report she states that she “has considered the effect upon [the Mother] if she is not able to relocate to Poland and it is accepted that she is likely to be impacted upon emotionally ...” However, she does not at any stage of her report consider what, if any, may be the consequent emotional impact upon Aleksander. The closest she comes is to acknowledge (page 14) that “whatever the outcome of the court process, it has the potential to have long lasting effects for [Aleksander].” Thus, she provides no assessment of whether the emotional impact on the Mother might adversely affect Aleksander’s welfare.

[61] By the time of Mr Donnelly’s report more evidence, unavailable to Ms Brown, was available to him.

[62] Although Aleksander was only five at the time of the preparation of his report, Mr Donnelly felt it appropriate to speak to the child, not – he emphasised to me – for the purposes of ascertaining the child’s wishes, but to have some interaction with him and “in an effort to acquire some insight into his understanding of the circumstances.” Aleksander became distressed if the Mother tried to leave the room, so Mr Donnelly’s interaction with the child was done with the Mother in the room but sitting some distance behind Aleksander, so that although she was in the room, she was not in a position to prompt the child or influence his answers. The interview was carried out with the assistance of an interpreter, as Aleksander spoke in Polish.

[63] In his report Mr Donnelly described Aleksander as “a bright, pleasant, confident child and articulate for his age.” In evidence he describes how, when asked a question, Aleksander was very chatty, gave long answers (which he described as “free narrative”). He noted that Aleksander did not look to the Mother for any reassurance. Because of the flowing way in which the child answered, he was satisfied that there was no evidence of coaching or undue influence on the part of the Mother, his experience being that if there is coaching of a child the child tends “to stick to one word answers.” He stated that Aleksander “expressed a liking for Poland” and that he would like to go back to Poland, he enjoyed his time in Poland and going to Poland was “his preferred option.” He also stated the Aleksander had a good understanding about what was involved and drew attention to what he had reported at paragraph 5.11 of his report about Aleksander’s confidence about

making friends. At paragraph 5.16 he stated that Aleksander's attitude to relocation is influenced by the fact that he is confident that he will be able to see family and friends in Northern Ireland when he comes to visit.

[64] There had been some discussion during the hearing of the fact that Aleksander refers to the Husband as "dad in Poland" and the Father as "dad in Ireland", and there had been a suggestion that the Mother had caused this to come about, a matter which she denied. Mr Donnelly's evidence about this was that Aleksander was "very clear" who his father was, that this was not an uncommon matter and often was more of an issue for the parents than for the child. He considered that there was no reason to believe that there was any attempt to undermine the parent. In passing, I note that the Official Solicitor expressed concern about these references to the Father and the Husband.

[65] Mr Donnelly noted that Aleksander was "very positive" towards all the main figures in his life, which includes the extended maternal and paternal families and that he enjoyed contact with all of them. Mr Donnelly felt that this positive attitude suggested to him that there had been no attempt by the Mother to undermine Aleksander's relationship with the Father or the paternal family. He also reported a positive relationship between Aleksander and the Husband, with whom (paragraph 5.29) Aleksander has "formed a significant attachment."

[66] Mr Donnelly also spoke to staff at the school which Aleksander currently attends. They indicate no concern with his education. They said he is friendly, interacts well with others and makes friends easily. They noted that his English is "quite limited" but that he "understands more than he speaks, usually responding with one word answers." He is in the top group of his class. The staff described the Mother "as proactive in terms of her engagement with the school and in support of [Aleksander's] education" and also informed him that the school had had "limited contact with the father since the beginning of term."

[67] Mr Donnelly felt that Aleksander's personality was such that he is "likely to adapt to the situation and make new friends without much difficulty should the relocation proceed."

[68] A factor which was important in Mr Donnelly's views was the effect on the Mother's emotional wellbeing – and, therefore, the "knock-on" effect on Aleksander – if the application was refused. At paragraph 5.18 of his report, he stated:

"I think it is quite likely that if the relocation does not proceed this will place an immense strain on the marriage relationship and on the mother's well-being which is inevitably going to have a negative impact upon [Aleksander]. I say this in the sense that as his primary attachment, [Aleksander] draws his sense of emotional

security and stability from this relationship and where his mother's well-being is significantly impacted he is also likely to be impacted."

[69] At paragraphs 5.31 and 5.32 Mr Donnelly considered that the emotional dependence of Aleksander on the Mother was "much greater" than on the Father. He drew a distinction between emotional attachment and emotional dependence. He considered that Aleksander's need to draw his own emotional and psychological security from the dependency led him to conclude that his emotional development would be adversely impacted if access to the dependency was to be restricted.

[70] In cross-examination he agreed that it was a good maxim to view the future through the prism of past conduct, but taking all things into consideration he was of the opinion that the Mother would comply with the contact arrangements in the event of relocation. When pressed, he said he was clear about that. When specifically asked whether it was in Aleksander's best interests to remain in Northern Ireland he said, "No, I don't think so." When asked why it was appropriate to disrupt Aleksander to move to Poland, he said that to stay in Northern Ireland would have a "huge impact on his primary family unit and on stable family life", and that there was highly unlikely to be a stable family life in Northern Ireland, all of which he considered was not in Aleksander's best interests. He felt that the relationship between Aleksander and the Father could be maintained by the suggested contact. Pressed further, he said that if the application is granted the Mother would be happy and stable emotionally, therefore Aleksander would have emotional support. He denied looking at this case through the prism of the Mother's needs.

[71] Mr Donnelly was also briefly cross-examined in relation to two issues on behalf of the Official Solicitor. First, whether he thought the Mother would support contact, to which he had indicated that he considered that she would. The second issue was whether he thought that Aleksander could cope with the suggested periods of contact. Noting that the Mother would accompany Aleksander to Northern Ireland, and stay with a relative while the Father had contact, he considered that Aleksander would be "OK." He considered also that if the parents made the effort to make contact positive, he would look forward to coming to Northern Ireland.

[72] I make a couple of general points about which there is agreement between the CCOs. Ms Brown was satisfied that "both parents present as capable of meeting [Aleksander's] needs" (paragraph 8.0). She was satisfied also (same paragraph) that the Mother's application "is not an attempt to exclude the Father from [Aleksander's] life." In cross-examination she said that the Mother's motivation was "to return to her home, not to cut [the Father] out of contact." Mr Donnelly says (paragraph 5.31) that "there is no evidence to suggest that either parent would not be capable of appropriately meeting the welfare needs" of the child. He, too, says (paragraph 5.33) that there is "no clear evidence ... to suggest that the mother has in

the past sought to exclude the father from [Aleksander's] life or undermine his relationship with [Aleksander]."

[73] The Father has on different occasions said that Aleksander is "more connected with his mother" and "would be a bit more after his mummy" (to Ms Brown) and that Aleksander has "a greater emotional attachment to his mother" (Mr Donnelly).

The Official Solicitor's evidence

[74] The Official Solicitor, Ms Rosemary Carson, representing Aleksander, has provided two reports to the court; the first dated 21 April 2022, the second 28 September 2022. Both of Ms Carson's reports post-date the two CCO reports.

[75] At the date of her first report, she took the decision not to interview Aleksander because (a) of his very young age and (b) the fact that his reaction to relocation is before the court (from Mr Donnelly).

[76] In this report she expressed her concern at the Mother's travel to Poland and the fact that she was there for about one year, necessitating Hague Convention proceedings to ensure the return of Aleksander to Northern Ireland. She considers that this raises a concern about the Mother's commitment to maintaining contact between Aleksander and the Father. She, like Ms Brown, was concerned about the lack of evidence about certain matters.

[77] At paragraph 71 of this report she says:

"I am concerned and agree with [Mr Donnelly's] line of thinking as set out in paragraph 5.27 of his report that 'a deterioration in the mother's emotional well-being as the primary care giver due to permission to relocate being denied would inevitably impact upon the subject child.' I am concerned about the impact a refusal will have on the mother's wellbeing and how this would filter down to [Aleksander] both in the short term and long term."

[78] By the date of her second report, Ms Carson had a significant amount of further information. She also took the opportunity to have a meeting with Aleksander, although since the Mother was present she considered the circumstances far from ideal. She reports that conversation with Aleksander "did not flow" and that he did not appear confident speaking in English. He told her that he found speaking Polish easier.

[79] At paragraph 18 Ms Carson considers that "it can be safely presumed that [Aleksander] would settle in Northern Ireland or Poland and in practical terms his needs would be met in either country."

[80] At paragraph 31 she states that,

“... if the Mother’s commitment to the father/son relationship was not of concern, and extensive contact could be supported emotionally and practically, and [Aleksander] could cope with same, then [she] would be persuaded that relocation is in [his] best interests.”

[81] She states that the court “will wish to consider whether these issues have been tested or whether in evidence commitment and support is sufficiently demonstrated” as any “interference with contact could deny this child the right to build his relationship with his father, a relationship he is still too young to navigate himself.”

Information about the village of X

[82] Included in the papers are two statements providing information about X. The first is from the Administrator of the Village of X and certifies:

- that the village has road infrastructure; the roads are being modernised; and the roads are kept clear of snow in winter;
- that there are convenient public transport facilities;
- that there is a school bus service for children, which takes them to and from school and their home;
- that there is a village club which can be accessed by children;
- that there is a football pitch and volleyball court;
- that in June 2022 a playground will be opened, designed for younger children to play in;
- that almost every house in the village has fibre-optic internet and television;
- that there are cycle lanes and other tourist attractions for those who enjoy outdoor activities;
- that there is a lot of agri-tourism providers in the village;
- that a door-to-door mobile shop comes to the village;

[83] The second deals with the school which would be available for Aleksander to attend. From that document I note:

- that the pre-school comes under the supervision of the Association for Development of the Villages of X (and another associated village);
- that it follows the core curriculum for pre-school education for children from 2½ to 7 and that the class of 6 year old children has a maximum of 15 pupils;
- that the primary school follows the core curriculum for Stage 1 of education, providing education for children aged 7 to 10;
- that teaching is provided in classes of 3 to 10 pupils, depending on the subject and topic

[84] Photographs of the school have been provided, and it looks very much like any such school in this jurisdiction.

Consideration

[85] I have considered this matter both from the perspective of the statutory welfare checklist in the 1995 Order (see above) and also taking the holistic approach in the way in which it has been described (above paragraphs [7] to [11]). I will deal first with the factors identified in Article 3(3) of the 1995 Order.

(a) The ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding)

[86] Aleksander is really too young for the court to take into account his wishes and feelings. The parents each attributed views to him, but I am not prepared to base any decision on those views. I have the evidence of Mr Donnelly and Ms Carson, the material parts of which I have rehearsed above and have taken into consideration.

[87] I have also taken into account the fact that at no time has the child been seen in the absence of either parent or in the presence only of the father.

[88] In the circumstances, I consider that it would not be appropriate for me to attach any weight to what Aleksander is reported as saying about his future.

(b) Aleksander's physical, emotional and educational needs

[89] There was some issue about a heart murmur, but the medical evidence does not suggest any serious concerns. In my view the evidence as to his physical needs is such that they can equally be met whether he resides in Northern Ireland or in Poland. There is nothing in the evidence to suggest that any future medical needs which Aleksander may have cannot be appropriately met either in Northern Ireland or in Poland. Neither system is better or worse than the other.

[90] As to educational needs, the school in Poland which he would attend appears to be wholly suitable, as is his present school in Northern Ireland. As noted above, from the staff at his present school, Aleksander's English is limited, although he is in the top group in class. On balance, I think that his education will be enhanced by being taught in his first language.

[91] The Husband's house is entirely suitable. I have no reason to suppose that the accommodation in Northern Ireland is not or would not, equally, be suitable. In the event, I see no reason to consider that accommodation would be better or worse in Northern Ireland or Poland.

[92] As to his emotional needs I consider that it would be better for Aleksander to live in the family atmosphere and setting of his mother, stepfather and half-brother, rather than with his father and his new partner.

[93] The Mother told the court, and I accept her evidence, that Aleksander loves animals and tractors, and therefore living on a farm may well be an additional factor conducive to his emotional needs. He loves horse riding and was signed up for lessons. He enjoys helping the Husband around the farm.

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

[94] As I have set out above, it is common case that the Mother has been Aleksander's primary carer for the majority of his life.

[95] Aleksander's first language is Polish. It is common case that his heritage and culture is Polish and the entirety of his extended family is Polish. The Husband is Polish and his extended family is Polish.

[96] While initially Aleksander might be somewhat confused by the sudden change of circumstances, I consider that he will be able to settle down with his half-brother and his Mother and her husband in the environment of a family home. Mr Donnelly's evidence is that he "has an ongoing personality which is likely to adapt to the situation and make new friends without much difficulty." It is not unknown that, for a variety of reasons, many young children have to move school. Experience, and common sense, suggests that what Mr Donnelly says about making new friends and adapting to change is likely to be the case for Aleksander.

[97] Everyone recognises that the major upheaval will be the alteration to the contact, and opportunities for contact, with, most importantly, the Father, but also the extended paternal family. Accordingly, and as identified by the Official Solicitor, it is necessary for me to make a finding in relation to the Mother's future attitude to contact.

[98] Taking into account all of the evidence which I have set out above, and my assessment of the credibility of the Mother, I am satisfied that if relocation is granted

she will facilitate and support appropriate contact with the Father. I was, rightly, urged to take into account that it took two court cases in Poland before she returned to Northern Ireland in December 2020, demonstrating, says the Father, that she is unlikely to support contact. However reprehensible it was of her not to return promptly to Northern Ireland, I consider it likely that with the passage of time following her arrival in Poland she became resistant to returning to Northern Ireland, her preference then to remain in Poland with her Husband and both her sons; hence the court case in Poland and her appeal from the first instance decision. However, in my view these actions do not render her a witness whose credibility is undermined when it comes to my consideration of her attitude to future contact.

[99] I draw some comfort from the views of both CCOs, set out at paragraph [72] above that “the Mother’s application “is not an attempt to exclude the Father from [Aleksander’s] life” (Ms Brown) and there is “no clear evidence ... to suggest that the mother has in the past sought to exclude the father from [Aleksander’s] life or undermine his relationship with [Aleksander]” (Mr Donnelly).

[100] In this regard I also draw some support from the fact that the Mother was permitted to take Aleksander to Poland for a holiday in the summer of 2022, from mid-July to early August. Prior to this holiday the Mother gave undertakings to the court and provided a cash surety. The Official Solicitor, in her second report, notes that there were no problems with contact during the holiday, all relevant directions were complied with by the Mother, there were no internet problems with video contact with the Father, and the Mother returned to Northern Ireland with Aleksander on the previously planned date.

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

[101] I consider his Polish background and culture to be important characteristics in the case. Relocation in this case will not involve Aleksander travelling to a country whose language and culture are alien to him. It is also a country in which he lived for a year with no apparent adverse issues for him.

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

[102] Neither of the CCOs, having carried out their various multi-disciplinary checks, have identified any evidence to suggest that Aleksander has suffered, or is at risk of suffering, any physical harm – whether or not the court grants the Mother’s application.

[103] I find it to be a significant fact in reaching my decision – and one which finds echoes in views expressed by both Mr Donnelly and Ms Carson – that if relocation is refused the Mother is likely to suffer emotionally and psychologically from the fact she will either be separated from the Husband (I have found that it is unviable and unrealistic for him to come to live in Northern Ireland) or, if she should choose

to go back to Poland without Aleksander, separated from him. There is likely to be a consequential adverse emotional affect on Aleksander and I consider that this amounts to a risk of harm in the future. For the avoidance of any doubt I make it clear that I have arrived at this view on the evidence in this case and not because of any, now discredited, “presumption that the reasonable relocation plans of the carer will be facilitated unless there is some compelling reason to the contrary.” (See the quotation in paragraph [8] of this judgment from Morgan LCJ at paragraph [32] of the judgment in *SH*.)

[104] I find that such adverse emotional consequences will be avoided if relocation is granted and Aleksander goes to live in a stable, family atmosphere where his Mother, his primary carer, is emotionally stable and secure. As noted by Mr Donnelly, Aleksander has formed a significant attachment to the Husband, so this is likely to enhance the positivity for Aleksander within the family atmosphere and setting.

[105] Based on the evidence, I find that the risk of future harm to Aleksander if the application for relocation is granted, with the inevitable adverse effects on the Father/son/paternal extended family relationship, is much less than the risk of future harm to Aleksander if relocation is refused.

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

[106] Both parents are assessed by the professional witnesses to be capable of meeting Aleksander’s needs, and there are no identified welfare concerns in relation to the extended family of either parent. Nor are there any identified welfare concerns in relation to the Husband, or to the Father’s present partner.

[107] The financial situation of each parent is such that, in my view, each is capable of meeting any material needs which Aleksander may have.

[108] I agree with Mr Donnelly’s sentiments (paragraph 5.31) that Aleksander’s need to draw emotional and psychological security from his emotional dependency on the Mother is such that “it would have an adverse impact on his emotional development if this access were restricted” and that (paragraph 5.32) “this could not be adequately substituted or replaced if he were to reside” with the Father.

(g) the range of powers available to the court under this Order in the proceedings in question

[109] While the court has available to it a range of other powers provided in the 1995 Order, in the particular circumstances of this case I do not consider that there is any option but either to grant or to refuse the application for relocation.

Conclusion

[110] Having discussed the various matters arising from the welfare checklist, I have found it helpful to stand back from that analysis and to consider Aleksander's welfare as a whole, "as opposed to a 'linear' approach which only considers individual components in isolation." Having done so, I have concluded that relocation is in Aleksander's best interests.

[111] Considering the competing proposals of the Mother – if relocation is granted – and the Father – should the application be refused – I am satisfied that relocation is a proportionate outcome in all the circumstances of this case, bearing at the forefront of my mind Aleksander's best interests.

[112] Orders made pursuant to the 1995 Order ought to reflect the reality of the situation. Accordingly, pursuant to Article 8 of the 1995 Order, I make a residence order in the Mother's favour. I also grant the Mother's application for a specific issue order to permit relocation to Poland.

[113] After relocation contact should be as is proposed in the parties' joint position paper, those proposals – for both direct contact and indirect contact – being found at pages 78 and 79 of trial bundle 3. Those proposals for contact should prevail, unless the parties agree other proposals.

[114] The parties should prepare the appropriate Article 8 order for the consideration of the court consequential on this decision. At the moment I am minded to make it an order of the court that the Mother register this court's order with the appropriate Polish court or to obtain from the Mother an undertaking to this court that she will do so, but I will hear the parties in relation to the precise content of the order.

[115] I will hear the parties on the issue of costs.

[116] Finally, I express my appreciation to all counsel for the collaborative and expeditious way in which this case was progressed after what was a somewhat stuttering start.