Neutral Citation No. [2006] NIFam 1 | *Ref:* **GILF5444**

Judgment: approved by the Court for handing down | *Delivered:* **10/01/2006**

(subject to editorial corrections)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

_____

FAMILY DIVISION

_____

IN THE MATTER OF C AND B (JOINT RESIDENCE ORDER)

_____

GILLEN J

[1] I direct nothing must be reported in this case which would serve to identify the children or members of their family.

[2] At the outset of this case there were four proceedings before the court in relation to two children C (who is now 11 years of age) and B (who is now 8 years of age) brought by their father (T) and their mother (S). The proceedings initially were as follows:

(i) An application dated 2 May 2003 by T for a joint residency order in respect of both children. In the event this was the only application that was processed to its full conclusion before me.

(ii) An application by T "to remove the interim order made by Judge Markey that permits C to participate in contact only when he wishes to do so". Upon perusal of the papers the only document to that effect was a direction made by Judge Markey on 28 January 2005 which read:

> "Pending advises (sic) from the experts in the case, if the child is firmly refusing to go to contact the mother may choose not to send the child to contact."

Although it does not expressly say so, this clearly referred to certain contact orders which have been made in the past. The first contact order appears to be made on 22 December 2000 by Mr Perry RM which was varied and extended until a final order on 11 December 2001 by Mr Nixon RM. Under those orders the father had both overnight and holiday contact. The mother had sought to reduce downwards that contact but at a hearing on 11 January

2002 an order was made by consent. Although there clearly has been dispute and acrimony in the ensuing period about the issue of contact, it would appear that the contact arrangements evolved so that the mother, with whom the children were residing pursuant to a residence order made by Mr Nixon RM in December 2001, was required to permit the children to visit or stay with the father every Wednesday overnight and throughout alternate weekends. Arrangements generally differed over holiday weekends and the position appears to have been that the father was to be offered a fortnight in July and one week in August. Before me it was agreed by the parties that the making of an Article 8 contact order by its very nature did not require a child to be forced to attend contact against his will .To that extent the direction made by the court on 28 January 2005 was superfluous and should not form any part of an order with reference to the contact.However I hasten to add that this must not be seen as a carte blanche for one spouse to frustrate contact on the pretext that a chid is reluctant to attend.Every encouragement must be given to such a child to attend contact and if the refusal becomes regular a return to the court must occur for appropriate remedies to be considered by the court .

(iii) A third application was for a prohibited steps order sought by T in relation to the prescription of medication Ritalin for the child C. That was also resolved prior to the hearing in that the application was withdrawn on terms of an agreement signed and presented to me which I intend to attach to this judgment as Appendix 1. The resolution of this matter masked a protracted dispute between mother and father about the need for C, who as a child affected by Asperger's Syndrome was to be treated with a stimulant medication ritalin. There was a report to this effect from Dr Kenneth Aitken independent consultant child clinical neurophysiologist before me. The application had arisen out of a dispute between the parents as to how often the ritalin should be administered but happily that matter has been resolved in the terms of the agreement now exhibited to this judgment. I therefore order that the application for a prohibited steps order be withdrawn.

(iv) The third application was by S for an order varying the contact order of 11 January 2002 to remove overnight contact on Wednesday of each week in respect of C and B. This is also not being proceeded with on the basis that the precise periods of contact have been agreed. I therefore give leave for that application to be withdrawn.

(v) There was a further application by S for the removal of all photographs of the children from the internet.It was the mother's case that the father had placed the photographs of the children on a site which was available to the general public and she was concerned that these photographs would be easily available in the public domain without the consent of the children. Happily that matter has also been resolved in that the applicant has accepted that he will remove the photographs of C and B from the website and undertake not

to put any other photographs onto the site without S's prior approval and without introducing a password for the website. Accordingly I also gave leave for that application to be withdrawn.

(vi) There was an application by the father that the court make an order pursuant to Article 179(14) to prevent further applications being brought before the court without the leave of the court. Both parties agreed that they would be bound by such an order and I will deal with that later in this judgment.

In effect the one matter to be determined by me, apart from the application under Article 179(14) of the 1995 Order was the issue as to whether a shared residence was now appropriate.

Background

[3] This is yet another of the poignant and unhappy cases to come before this court where over the years parents have proved unable to resolve disputes concerning their children in the wake of marriage break up. In the course of literally hundreds of pages of statements, report, court orders, and other documentation before me, it emerged that these parties appear not to have lived together since 1997 and each has another partner now. The eight year odyssey since their parting has been littered with allegation and counter allegation about the upbringing of these two children and in particular C who is, as I have indicated, a child suffering from asperger's syndrome. Numerous appearances before the courts have occurred since in or about 2000 with several magistrates and two County Court judges each having had prolonged involvement with the case. To illustrate this I have appended to this judgment a chronology of events drafted by counsel on behalf of the applicant, not to illustrate the precise accuracy of the contents which may not be fully accepted by the respondent, but rather to draw attention to the protracted and intractable nature of the proceedings which have predated this determination. Eventually on 23 May 2005, Judge Lockie exercised his powers under the Children (Allocation of Proceedings) (Northern Ireland) Order 1995 to transfer the outstanding proceedings to this court. The order made by Judge Lockie on 23 May 2005, although recorded as directions, are revealing:

> "1. Both senior counsel and Mrs Pauley BL indicated that this long running and very acrimonious case now warranted transfer to the High Court.
>
> 2. I referred counsel to the decision of Mr Justice Gillen in the matter of T, C, P, M and B (Children Allocation of Proceedings) Order (NI) 1996 –

GILC3926 delivered 21 May 2003 and in particular paragraphs 5 and 6 thereof. Ms McGrenera QC asserted that this case passed all of the criteria listed in paragraph 6 and Mr Toner QC did not dissent."

In that a case of T and Others referred to, I set out examples of appropriate criteria which should be considered when the discretion under Article 10 of the Children (Allocation of Proceedings) Order (Northern Ireland) 1996 was to be invoked. These included cases which possessed one or more of the following features:

"(a) Voluminous and/or complex issues of law.

(b) Unusual complex psychological or emotional issues.

(c) Considerable expenditure of public monies.

(d) Particularly vulnerable parties and/or unusually unco-operative litigants.

(e) An unusually long defended case."

Given the history of this case it did not surprise me that both counsel and judge considered that all of the criteria I have outlined were involved in this case.

[4] I also had the benefit of hearing the evidence of both mother and father together with a social worker who had prepared reports in this matter pursuant to Article 4 of the 1995 Order. The reading of the myriad of statements, together with the evidence of these parents, convinces me that this is without doubt a case where two loving and committed parents have completely lost sight of that which they both purport to value most, namely the best interest of these children and C in particular. Such is their mutual distaste for each other that they have allowed court proceedings to dominate their lives amidst a welter of allegation and cross-allegation. These children are entitled to the joint care and affection of both these parents, but I doubt very much if the heart of either is sufficiently attuned to that concept to realise the damage that their private battle is causing to these children and particularly C. Very properly these children were represented in these proceedings by the Official Solicitor. This was a classic case where separate representation was needed for children to ensure that their interests were fully represented to the court above the heat and dust of the parental battle. I found the most poignant moment in this case to be when I read a report of the Deputy Official Solicitor (DOS) of 25 September 2005 when she noted the following during a conversation with C:

> "C stated that he has found the lengthy court proceedings distressing. He stated 'I don't want to take sides – I hate it when they (his parents) are fighting'."

I formed the clear impression that DOS was absolutely accurate when she said she did not encounter any particular difficulties in communicating with C and felt that he was articulate and entirely capable of expressing his wishes and feelings. The saddest aspect of this case is that whilst these parents hear this child, I am not convinced that they are listening. Marital conflict is stressful and emotionally arousing for children producing a number of internalised problems such as anxiety, depression and withdrawal. I take judicial notice of the fact that countless studies have shown that in general a close relationship with both parents is associated with positive adjustment in children after separation and divorce. Acrimonious dispute between adults is calculated to cause profound and lasting emotional damage to children and I am completely convinced that there is a real danger of this occurring in this instance unless both these parties step back and readdress their conduct in this case.

[5] I do not intend to tortuously rehearse the litany of problems which have beset this couple in relation to their children since the break up. Such is their mindset that I am sure they would be only too anxious to pore over a detailed list of determinations by a court concerning the historical differences between them, searching endlessly to find justification for their own position in any court determination. If this hearing is to herald a new start then I consider that the past should as far as possible be consigned to history particularly in light of the agreements that have been made in this case and which have reduced my task to determining one and at most two issues.Indeed I delayed handing down my judgment in this case to allow time for the parties to draw up a list of areas of shared and individual responsibilities which happily has now been agreed and is appended to this judgment. I believe both these parents must attempt to extract themselves from the mire of unfinished historical business and the future will offer no closure if this court fuels a further self-indulgent reply of old enmities by settling the various allegations between them other than to the limited extent necessary to make a determination on the outstanding issues. Family Court proceedings are not to be conducted in the traditional adversarial sense. They are and should remain a simple enquiry into what solution to the particular problem which the court is facing best meets the welfare needs of the child or children concerned.

<u>The Deputy Official Solicitor</u>

[6] As I have indicated, the DOS had been appointed by the court to appear on behalf of both children. There were a number of reports before me from the DOS and in addition during the course of the hearing, the court was obliged to rise for one day because the boy C had contacted the Official Solicitor by telephone during his lunch break at school on 8 November 2005. I shall return to the significance of that telephone call shortly.

[7] The DOS interviewed C and B at their school on 20 September 2005. She explained to C the nature of the application for a shared residence order. He was aware of the nature of the contact order. Apart from indicating his distress about the lengthy court proceedings, he stated he had stopped going for contact with his father in the earlier part of the year due to an incident which had occurred on New Year's Eve when his father became angry with him and the incident had resulted in C banging his head on the car door. However he had resumed contact and had been attending throughout the summer. This particular incident was a source of dispute in the case. When he gave evidence before me the father asserted that this incident had occurred during a particularly hostile period. The boy had telephoned indicating that whilst he and B were coming up to contact with the father, he needed to go home that evening. He told his father that a party had been arranged. The boy had attended in an agitated state and when New Year's Eve came, he was withdrawn and highly emotional. In the car he had allegedly misbehaved, kicking the seat and when T and his female partner remonstrated with him, he had grabbed her by the hair. T went on to relate that he had then reached into the back of the car and pushed the boy back but that he did not hit his head on anything. He admitted calling him "a little shit". T asserted to me that "he was completely shocked" when C gave a different version. It is not without significance that C told the Official Solicitor that he has a difficult relationship at times with his father's new partner and has stated that she also has shouted at him and said nasty things to him and about his mother.

[8] C then went on to discuss with the Deputy Official Solicitor an incident on the weekend prior to their discussion when he had been very upset at the way his father had spoken to him. He stated he had become angry with a friend of his brother who had broken B's toy gun. His father then allegedly shouted at him "you need professional psychiatric help". C said that his father often makes nasty comments to him and calls him "a disgrace" and other awful names. C finds these comments very hurtful. On these occasions he did not have a good time at his father's house. He alleged his father shouted and swore obscenities at him calling him "spastic", "dog child", and "fucking eegit". The boy recognised that he had been behaving in a silly way but he ascribed this due to his lack of medication. He also alleged there were two occasions on which T attacked him namely an incident in the cinema when T stuck his car keys into C's side, and the incident in the car when T's partner was there. C became visibly upset on several occasions whilst discussing this information and he said that he gets angry and hurt

when words such as "spastic" are used to describe him. The boy went on to relate that during telephone contact with T, T hangs up the telephone when C says he is not coming to visit but his dad would then say sorry to him for this and the bad things he has done to him. Interestingly when the witness spoke to B, B said that his father and her partner only shouted at C although C sometimes gets him into trouble. B also said that T called C "dog child" and "a bad word eegit" saying to the witness that he was not allowed to use the "f" word.

[9] In the course of his evidence T denied that he had ever told the boy that he needed psychiatric help or that he belonged to a mental home but he may have said that his behaviour was completely out of order and that he should try and behave like B. He admitted that there were occasions he would have called C a liar because, according to T, he needed to know that some who tells lies is a liar. He did admit that he would have said to him that he needed professional help.

[10] In this meeting with the Official Solicitor the boy went on to say that he has enjoyed some contact visits during the summer with his father and that when his father "really tries" then it is good to be with him. He also stated his father is good at helping him with his school work and he would welcome more input from his father in that regard. However the boy went on to state that he felt rejected by his father as on occasions his father has refused to let him come up for contact when he wanted to and he feels that this is his father's way of punishing him for telling his mother and the social worker about some of the things which have happened with his father and "to teach him a lesson" for exercising his choice not to have contact on some occasions. He also feels that his father doesn't always put him and B first as he has changed holiday arrangements at the last minute and cancels contact when it is inconvenient for him in terms of his University work. In the course of his evidence before me T stressed on a number of occasions that he felt C is self-serving and that when he has the opportunity to tell lies he does so. T did admit that he had become angry at the boy refusing to avail of contact. It was his view that in the aftermath of Judge Markey's Order ,which he deemed to be to the effect that the boy could choose when he wanted to come to contact, C's attitude changed. If he did not get his way then he was liable to telephone the Official Solicitor or for example if he was not allowed to get into the front seat instead of M, T's partner, he would threaten to take the matter to the Official Solicitor. The boy was constantly referring allegedly to the fact that Judge Markey let him choose. T said he felt that if he allowed C to decide what to do they would never get on. He admitted saying to the boy that if he was not going to come to contact, then he would refuse to let him come. T steadfastly denied that the boy has any right to feel rejected by him. By refusing to allow him to come to contact, T asserted that he felt this would have the effect of making C think about why he was not coming to contact.

He rejected any suggestion that he was trying to teach the boy a lesson or controlling him by his action.

[11] The boy also told the Deputy Official Solicitor that he was well aware of the existence of his photographs on the website and stated that he found that quite worrying and would prefer they were not there. He added that his mother feels that it is wrong to have his photograph on a website which can be accessed by anyone. Happily that matter has now been resolved but I pause to observe that I can well understand this boy's feelings and I am certain that he ought to have been consulted about this before it happened.

[12] The Deputy Official Solicitor properly raised with C the whole issue of shared residence. C informed her that he was aware that his parents are equal in law in status and share parental responsibility for him and his brother. The Deputy Official Solicitor felt that C had a fair degree of understanding of the concepts of parental responsibility, residence and contact. When it was explained to him that one of the reasons his father was applying for a shared residence order rather than a contact order was the fact that the father perceives he is not always recognised by others as being an equal parent, C stated that he felt his father was treated equally by the school and he was not sure if there was anyone else who treated his father as being less equal to his mother. He indicated that he did not see how a shared residence order would change anything for him and very much viewed the situation in practical terms. He did not feel that having a shared residence order would improve the relationship between his parents or stop the arguments.

[13] I shall return to the reasons why T seeks a shared residence order in this judgment but I note at this time that I am satisfied that the Deputy Official Solicitor is correct in saying that the boy does understand the concept and that it has a fairly low priority in his concerns, the primary matter being, in my view, the fractious relationship between his parents and the arguments that are a consequence thereof.

[14] On this occasion the Deputy Official Solicitor spoke to B who of course is only 7 years of age. B was content with the present arrangements although he stated he would actually like quite a bit of extra time with his father and suggested another day during the week when he would be able to go to his father after school. Tellingly I believe B told the Deputy Official Solicitor, when asked why C did not go sometimes to his father, it was "because he thinks C does not like his father's partner, because she annoys C and sometimes does not let them play." When the boy was asked where he lived he said "well when I with my mummy I live in ……. and when I am with my daddy I live in ……." He too expressed unhappiness about his picture being on the website. It was clear that B has a very positive relationship with his father and obviously has not been so affected by the court proceedings as I

believe C has been. He believes his parents are equal and does not seem to have any sense that his mother has the upper hand.

[15] C contacted the Deputy Official Solicitor again on 17 October 2005 and she provided a report on this matter for me dated 4 November 2005. He had spent the weekend at his father's home and was upset at his father not being present to take him to school on the morning of 17 October 2005 as would be the normal practice. His father had been required to catch an early flight to England and therefore M had taken him to school. He asserted that the partner did not give him his tablet at the right time before he started school. Consequently he said he behaved badly at school. He raised concern that it was becoming normal for the partner to take him to school rather than his father although it only had happened three times. He contacted the Deputy Official Solicitor again by telephone on 19 October to say that he had telephoned his father to say that he did not wish to attend for contact on 19 October 2005. He claimed that when he tried to explain to his father how upset he had been about him not being there on Monday morning, he was upset by the way his father spoke to him and felt that his father had not really listened to him or taken on board his concerns. The boy asserted that his father's reaction to him saying that he did not wish to come for contact on Wednesday was to say that T would not take him for contact anyway and he threatened to stop C's contact with him altogether. He alleged the father also made some reference to the fact that he would choose the partner over C if he was forced to make a choice between them. C stated that he wanted to make his father accept that the children should come first but his father merely said that that attitude must be coming from C's mother and maternal grandmother. C was annoyed that his father blamed his mother and grandmother for how C was feeling and did not appreciate that was how C himself was feeling. T's account of this incident before me was to the effect that the boy was very highly strung from the moment he got up that day. He asserted that the boy was dropped off at school by his partner and that he had received his tablet at the normal time. He felt that C was looking for someone else to blame for what had happened at school. He had been sent home from his schooling. In the telephone call referred to by C, T asserted that the boy had stated that he was not coming up for contact, because of his father not taking him to school. He had said "you've to take me to school. It's your parental responsibility." T asserted that these were phrases which his wife used and the boy was simply borrowing them from his mother. The boy had insisted on T's disabled mother taking him to school if he could not. It was T's view that the child was antagonistic to anyone who took up his attention including his partner, to whom he is to be married, and even B his younger son.

[16] The Deputy Official Solicitor's view was that whilst it was not at all unreasonable for T to have to make some alternative arrangements for C and B to be taken to school due to his travel commitments, the boy in the

subsequent phonecall had been seeking the reassurance and security of knowing that his father would be present to take him to school in the next contact. Instead of that, C felt his father was confrontational and made him feel even worse about the situation.

[17] As I have already indicated, the court was interrupted as a result of the boy insisting on telephoning the Deputy Official Solicitor from school during his lunch break on 8 November 2005. He indicated to the Deputy Official Solicitor that he had wanted to tell her some of the things his father had said to him over the weekend contact. Revealingly the Deputy Official Solicitor records:

> "He had told his mother on Monday evening that he wanted to contact me and she had simply replied that if he really wanted to then he could telephone."

He alleged that over the course of the weekend contact when he was in the car with his father on the Friday evening, he had been behaving in a silly way. He apologised to his father and then this lead to a conversation with his father in which T said to him "nobody believes you – everyone thinks you are a wee liar." C was concerned that the matters contained in my report dealing with his conversation with the father on 19 October 2005 would be denied by T. When the Deputy Official Solicitor asked C why he was concerned about that he said "that is usually what he does." C went on to say that over the weekend his father had asked him to sort things out with his partner and had repeated that "if it came to a choice between (the partner) and you, you will lose." The boy expressed to the Deputy Official Solicitor a feeling of responsibility for the case being in court , stating that his father had told him that he had to be in court the next day because of him. C interpreted this as meaning that his father blamed him for the fact he had to attend court. The Deputy Official Solicitor took the opportunity to reassure him about these matters and discussed with him when it was appropriate to be contacted.

<u>Ms McG</u>

[18] This witness was a social worker with the Trust and had been involved pursuant to Article 4 of the 1995 Order for some time now having provided reports in December 2003, August 2004, February 2005 and September 2005. She was closely involved throughout the proceedings with His Honour Judge Markey and I consider has not only a lengthy historical involvement in this case but has exhibited substantial insight. She accepted that she had not interviewed the children with their father since December 2003 in his home. It was her view that B has grasped the notion of joint residence. She considers that he believes he lives at both parents' houses whenever he is there. She felt that C had more to say about the issues but she was conscious not to cause distress to either of the children by discussing the

matter in legal terms. She indicated in September 2005 she had left messages with T and he had indicated he did not want to engage with her. If he had been prepared to engage with her she would have seen the children in his house.

[19] The witness indicated that her greatest concern was the acrimony between the parties for which there was no magical solution. She described C as an articulate child who has no difficulty in expressing his views. He was glad "the big judge" had sent her to talk to him. He stated emphatically on the last occasion that she saw him that he did not want clearly defined regular contact with T but only wanted to go when he felt like it.

[20] It was the witness's view, as recorded in her report of September 2005, that C does show insight into his behaviour and his inability to control it without medication. It was her view T does need support and advice to adopt new managing strategies with this child. She recognises that C finds it difficult to make sense of how he is managed by the adults. He is being given frequent inconsistent messages about his behaviour and is confused. This witness found no reason to disbelieve C about his disclosures in relation to his father and these were confirmed to her by B. It was her view that T needs to give careful consideration to the merit of developing a more appropriate and child centred approach to time spent with C in light of his specific needs.

[21] Her report of September 2005 refers to the heated debate between herself and T regarding his allegation of her "mismanagement of the case" and his refusal to meet her. A principal officer had arranged to meet T to discuss the matter with her and another senior social worker. Her report made reference to T's suggestion that the Trust did not have sufficient knowledge of the law and court proceedings.

[22] It is significant in the report of September 2005 that B stated that he likes going to stay at his father's house and refers to his father taking them ten pin bowling and to McDonald's. He reminded the witness that when he went back to school he would stay with his dad every Wednesday night, that his dad collected him after school and that he was looking forward to this. I find therefore nothing to suggest that B has any reason to make up lies about his father and reinforces my view that this witness is correct in finding corroboration for C's allegations in what B has said.

[23] When she interviewed C on this occasion i.e.September 2005 she again found great insight into the acrimonious relationship that exists between his parents. C stated that he likes it better when his mum and dad get along and said that "it makes life hard for me as I don't want to take sides". He also said that his father had told him that "he is going to stop all this court stuff". He went on to say that he had had a good time with his dad over the summer and especially enjoyed going to the cinema. He stated his father had stopped

calling him bad names and they get on better. His attitude towards contact appeared more positive than previously and he talks about going to stay with his dad on Wednesdays again when he went back to school. He stated he wants contact to revert back to what it was because he and his dad are getting along better. He stated that he hopes his dad will put an end to all the "court stuff" as this would be good. However he did state that he wished to continue to have the choice whether he has contact with is father or not. It was the witness's view that the agreed contact between C and his father should remain flexible but if the boy did refuse on an ongoing basis then the matter should be referred back to the Family Centre to explore relationships and identify possible solutions.

[24] In the context of a shared residence order, the witness recognised that T presents as a caring and committed father and he stated that he would not use a shared residence order to endeavour to implement duplication of and accessing services in respect of the children. She referred to an incident recently where T had attempted to register his children on a temporary basis with a GP. He reasoning was that the children's GP as fixed by the mother was too far to travel to and it was difficult to get an appointment. Happily this matter has now been resolved.

[25] However this witness felt that it was not in the best interests of C or B to be subject to a joint residence order because she still has concerns as to how joint residence would be carried out without undue acrimony. This remained her view even though in cross-examination she was pressed by Ms McGrenera on behalf of the father that the situation would be different so long as clear boundaries were drawn up and both mother and father underwent some counselling as to the future relationship between themselves and the boy. It was the witness's view that a joint residence order would serve to entrench further the acrimony in this case and could make matters worse. The witness did recognise the possible advantages of a shared residence order in that there would be equality in the minds of both boys and it might recognise the reality of current living conditions whereby approximately one third of the time the children do reside with the father. It remains her view that T still thinks that the residence order in favour of S is her trump card and they both seem fixated on certain matters. She also expressed a concern that if a residence order settled arrangements with whom the child was to live, and the order was to the effect that he had to live part of the time with his father, the child would feel he didn't have the flexibility of refusing to attend. She felt that the effect of a residence order being made in favour of his father might lead him to believe that he was not being listened to on the basis that despite his perception of how his father treated him, the courts still granted a shared residence order.

<u>The applicant father</u>

[26] T gave evidence before me and in the course of that evidence, together with a large number of statements made throughout the hearing, the following salient issues relevant to this application emerged:

> He believes that a shared residence order should be made to reduce hostility with the child C, to reflect the amount of residence that the child has with him, and for medical care reasons which now seem to have been resolved between mother and father. It was his view that whether dealing with the statutory agencies, school, the child or S, the residence order in favour of S was being used to trump his role and his opinion. He felt that the children considered that she was better able than him even though they shared parental duties. It interfered he felt with his ability to perform his duties and illustrated this by indicating that when he sought disability allowance from Castle Street in Belfast, he was told he could not receive it. He asserted that he was now living in the former matrimonial home, that his intention was to stay there having reached an agreement with S but that otherwise he would have been deemed less suitable to obtain accommodation from Northern Ireland Housing Executive because he does not have a residence order. It was his view that he and S share parental responsibilities as they are the two main decision makers. He acknowledged that it was foolish to adopt anything other than a collaborative approach to the children. He referred to the climate of discord and acrimony between himself and S where in his view S saw court proceedings as a victory in such matters as administering ritalin to C. Para. 7 of his affidavit of 7 February 2005 records:
>
> "Following the October 2004 hearing (S) represented to C that my agreement to give him ritalin for a short period was a victory for her. He recounted to me that how both his mother and his maternal grandmother referred to me as an 'auld blow', 'loser', 'failure' and that I was a 'bastard.'"

At para. 8 he recorded:

> "The above derogatory remarks and others too numerous to recall are a re-emergence of the denigrating behaviour that had previously been a

> persistent and damaging part of the parental alienation engaged in by S (and her mother) since (S) and I separated."

It was his view over the years the children regarded him as a lesser person than their mother. He asserted that it was dangerous for them to think that their father was a less trusted person. In his view they realise the power imbalance even though they did see his ironing, washing clothes, cooking etc. for them. He reiterated before me, as he did in his statement of 10 September 2005, that in his opinion the social services had not treated him on an equal footing and he expressly criticised named social workers for not speaking to the children about their proposed reports. He considered that his children's rights to be involved in judicial proceedings had been breached under Article 12 of the UN Convention on the rights of the child. He indicated that Mrs L McG, a social worker who has played a significant role in this matter, openly admitted to him at the time of interviewing in 2003 that despite being asked to report on the issue of his shared residence order under the 1995 Order, she was not aware that such an order existed and saw the issue "within a paradigm" that only encompassed contact and residence.

[27] 11C of his affidavit continued:

> When I enquired of her what she knew about current case law and judicial thinking around shared residence she stated that this was purely a matter for the court and that it was not her responsibility to keep up to date with current case law in the area. Her ideas were that a shared residence order is not appropriate while there are unresolved issues between the parents. This conflicts directly with ratio of the seminal Court of Appeal case in D v D which was decided in 2001. I am forced to conclude that such a seminal case on the subject of shared residence either has not been communicated to Mrs L McG or alternatively was communicated but not embraced by her. I am aware that after speaking with (another senior social worker) that this potential lack of awareness reaches up the chain of command."

He went on assert that when he asked C if he had seen the social worker and if he understood all that had been discussed with her, the child said that it was "gobbly gook". In essence his case was that the children do in fact live with him and he does carry out all domestic duties for them without complaint. It was his view that the failure of the social workers to interview these children in his home was an important factor in them failing to pick up this aspect of this case. He denied that he had been in anyway disruptive or

that he had attempted to interfere with any other major decisions taken by the mother. It was his view that his status as a father was reduced in the eyes of C by virtue of him not having a joint residence order. In his view a joint residence order might lead the children to view him with the same respect as they have for their mother. It was his opinion that if there was no shared residence order, the mother would regard this as another victory. He considered that she would tell the child about the proceedings and C himself would see this in terms of victory or defeat. All he wished to do was show the children that he was an equal parent with the mother.

[28] In the course of his evidence he touched on a number of incidents several of which I have already adverted to in the context of C's discussions with the Deputy Official Solicitor. I have already indicated that the last thing that is needed in this case is a self indulgent replay of old arguments reflecting the fact that these parents remain mired in unfinished historical business with constant replay of allegation and counter-allegation. However it is necessary to refer to the following additional incidents.

(a) In December 2004 T had remonstrated with B over his behaviour and as a result B had indicated that he would only visit his father at Christmas to get his Christmas presents. T had sent an e-mail to S which included the following:

> "Far from pointing the finger at you (as I understand from C that you encouraged him to come up) B has declared that he is only coming up as he doesn't want to lose out on his Christmas presents. At this juncture I am seriously considering giving these to a child in the area who will appreciate them, so he will be sorely disappointed if that is all he is coming for. Unaided he is turning into a self-servicing, manipulative child, and if he continues in this vein I will have to consider asking you to work with me by not sending him up for a short period. I would be happy if you made arrangements to come and get him tomorrow but will understand if you have other things arranged. He is of an age to make his own mind up now, and if he is adamant that he doesn't want to come up then his voice needs to be heard and action taken. If that is how he is minded then he can stay with 24/7. Either way I am not going to be dictated to by B or anyone else."

(b) The incident at New Year 2004 received extensive coverage in the course of the evidence of both mother and father. T denied the assertion of S

(contained in her statement of 17 February 2005 at para. 7)which averred that C had alleged that T had:

(i) grabbed his head and banged his head of the car door;
(ii) called C a spastic, a fucking idiot and a frigging idiot;
(iii) that the child had to go and see a psychiatrist before he ever came back for contact again;
(iv) that B was not to discuss anything that happened with his mother;
(v) that during a visit to the cinema C had behaved in a silly way and A had stuck his car keys in his leg.

T alleged that C had ascertained the word spastic from an incident which had occurred in a snooker room when he had been waving his arms widely and another boy had been calling him a spastic. T alleged that he had never called him that. He accepted he may have called him an idiot but had not used any expletives. He denied sticking the car key into his leg but when he had remonstrated with the boy in the cinema for kicking a seat in front, he could have had his car keys in his possession when doing this. T asserted that because of the boy's condition his recollection is poor and whilst he would have remonstrated with him over his behaviour he denied the further assertions in S's affidavit that he had told C that he belonged in a mental home, that he was going to court to say he did not want to see him again or that he was a messed up little boy because his mother brain-washed him.

(c) T referred to a further incident where C had struck another child N and told lies about the incident to T. In this context T described C's challenging behaviour, indicating he had problems in school, that he craves help and attention. T frankly admitted that there were occasions when he may not have dealt with the boy's behaviour in the best way indicating that he would not find it surprising if C did find his criticism from time to time hurtful. However he felt that such criticism was very infrequent on his part. In this context T accepted that he had disciplined C by indicating to him that if he was not going to come to contact then T would refuse to let him come on other occasions. He denied that the boy had any reason to feel rejected and that what the boy was saying was in fact influenced largely by his mother S, the child often borrowing her phrases such as "parental responsibility," "auld blow" etc.

[29] T expressly denied ever having said to C that he would choose his partner over him but did admit that he had said to C "if push came to shove he would choose his partner's account to his over these events such as the school incident." T asserted however that he was constantly trying to build up the child's sense of self-worth and self-esteem and that he felt that he and C were very close.

[30] T accepted that he himself required assistance to engage with the child and that he was more than willing to avail of assistance from someone such as Sam Allison at the local family centre to help him deal with these problems.

S the mother of C and B

[31] S had also made a number of statements in this matter and gave evidence before me. In the course of these statements and evidence, the following salient matters emerged:

(i) She stated that C was an exceptionally bright perceptive boy with immense insight into personalities and behaviour. She described him as having many interests with a strong sense of humour. At school he liked science and history but struggles with maths and English. She felt that he does struggle to control his behaviour but he does have a strong sense of justice and that in her view "he could not tell a lie to save his life." She said that she did not believe everything that he said as gospel but she does believe him "a lot of the time." While she did recognise that he is likely to relate to matters with a bent in his favour, she feels that in the main he finds it difficult to tell lies. She accepted that he can be silly, hyperactive, hard to control and argumentative.

(ii) The witness insisted that she encourages C to have contact with his father as she does with B. It was her view that the boy was crying out for someone to listen to him and that was the benefit of the Deputy Official Solicitor. He had wanted to speak to someone who would tell him the truth. On the occasion when C had caused an interruption in the court proceedings with a message from school demanding to see the Deputy Official Solicitor she said that the previous evening she had told him that if he felt there was something to relate, he should telephone the Deputy Official Solicitor. She felt he needed to be listened to.

(iii) In cross-examination she did accept that the boy may be "working" the two of them but she was concerned about C being distressed when taken out of his routine for example on the occasion of the school incident.

(iv) The witness was opposed to the joint residence application for a number of reasons. First she felt that it would bring about a change in C's mind and he would not be able to cope with it. On a personal level, she felt that this was T's "ticket to interference." She felt that he would go out of his way to make it difficult. She related that in the past he had interfered in a number of matters including schooling. She recorded that in her opinion T was still attempting to dictate her life. She asserted that C knows that he lives at home with her and that his father is somebody he lives with on Wednesday

and the weekends. It was her view that if a joint residence order was made, he will think that he is not being listened to. He knows that he has difficulties in the relationship with his father and he will conclude that he is not being believed. In her view the boy feels rejected and that the incident over contact where his father told him that he would stop him coming to contact was an instance of him being punished. It was her view that a shared residence order would make no difference to B and it would not change his relationship in any way. On the other hand she felt that C believed that living with his mother is where his home is, that he is emotionally secure there and that is where receives unconditional love. He needs to be reassured unconditionally. It was S's view that T "despises C a lot of the time." It was her view that C has an insight into this. When it was put to her by Mrs McGrenera QC that C had told the Deputy Official Solicitor that he did not see how a shared residence order would change anything for him and very much viewed the situation in practical terms, she retorted that she still felt that a change now would be too burdensome for him and that he had asked her what shared residence was in circumstances where she was loathe to discuss it in detail.

Legal principles

[32] I commence my conclusions by indicating that during the course of this case I suggested that the parties should draw up a schedule in relation to the exercise of parental responsibility so that both mother and father knew exactly what the agreed boundaries were with reference to exercise of their parental responsibility rights delineating what areas each could exercise independently and what areas required a joint decision. I considered that these practical issues relating to the parenting of these children merited drawing up a schedule of items relating to the exercise of the parental responsibility if it could be agreed. This was an approach adopted in A v A (Shared Residence) (2004) 1 FLR 1195 and also in a case reported in Family Law August (2005) P 654 in the Western Circuit in England. I advocate that approach as a useful means of removing areas for dispute between parties who have hitherto engaged in rancorous exchanges about areas of parental responsibility.As indicated earlier in this judgment I deliberately delayed final determination to permit this to be done . I shall exhibit this agreement in an appendix to this judgment headed "Schedule of Items in Relation to the Exercise of Parental Responsibility".

[33] Before turning to the issue of a shared residence order, it is appropriate that I set out the terms of the 1995 Order with reference to contact orders and residence orders because in my view some of the problems in this case arise from the failure of both parents to understand the terms of the 1995 statute in these contexts. Article 8(1) defines contact order as follows:

> "'Contact order' means an order requiring the person with whom a child lives, or is to live, to allow the child to visit or stay with the person named in the order, or for that person and the child otherwise to have contact with each other."

It is important to appreciate that this is not an order forcing a child to attend contact. All it does is require the person with whom the child lives to allow the child to visit or stay. Accordingly any suggestion therefore that the child is permitted to refuse to attend is redundant because the order makes no such imposition upon a child.

[34] A residence order is defined as:

> "'Residence order' means an order settling the arrangements to be made as to the person with whom a child is to live."

Article 11(4) of the 1995 Order declares:

> "(4) Where a residence order is made in favour of two or more persons who do not themselves all live together, the order may specify the periods during which the child is to live in the different households concerned."

[35] In D v D (Shared residence order) 2001 1 FLR 495, Hale LJ (as she then was) cited the Law Commission's Report (LA Com No. 172 published in 1988) on which the Children Act 1989 is based and which is of significance in the present context:

> "Apart from the effect on the other parent, which has already been mentioned, the main difference between a residence order and a custody order is that the new order should be flexible enough to accommodate a much wider range of situations. In some cases, the child may live with both parents even though they do not share the same household. It was never our intention to suggest that children should share their time more or less equally between their parents. Such arrangements will rarely be practicable, let alone for the children's benefit. However, the evidence from the United States is that where they are practicable they can work well and we see no reason why they should be actively discouraged. None of our respondents shared the view expressed in a recent

> case (Riley's case) that such an arrangement, which had been working well for some years, should never have been made. More commonly, however, the child will live with both parents but spend more time with one than the other. Examples might be where he spends time with one and holidays with the other, or two out of three holidays from boarding school with one and a third with the other. It is a far more realistic description of the responsibilities involved in that sort of arrangement to make a residence order covering both parents rather than a residence order for one and a contact order for the other. Hence we recommend that where the child is to live with two (or more) people who do not live together, the order may specify the periods during which the child is to live in each household. The specification may be general rather than detailed and in some cases may not be necessary at all."

[36] In my view it is this rationale which provides the reason why a residence order is simply a matter which "settles the arrangements to be made as to the person with whom a child is to live".

[37] In Av A (supra) at para. 118 Wall J (as he then was) said:

> "118. The essence of the decision in D v D seems to me to be as follows. It is a basic principle that post separation, each parent with parental responsibility retains an equal and independent right and responsibility to be informed and make appropriate decisions about their children. However, where children are being looked after by one parent, that parent needs to be in a position to take the day to day decisions that have to be taken while that parent is caring for the child. Parents should not be seeking to interfere with one another in matters, which are taking place while they do not have the care of their children. Subject to any questions which are regulated by a court order, the object of the exercise should be to maintain flexible and practical arrangements whenever possible.
>
> 119. D v D makes it clear that a shared residence order is an order that children live with both parents. It must therefore reflect the reality of the children's lives. Where children are living with one parent and

> are either not seeing the other parent or the amount of time to be spent with the other parent is limited or undecided, there cannot be a shared residence order. However, where children are spending a substantial amount of time with both their parents, a shared residence order reflects the reality of the children's lives. It is not necessarily to be considered an exceptional order and should be made if it is in the best interests of the children concerned."

[38] The importance of both carers in the lives of children is now being increasingly recognised by the courts. In an era when marital breakdown is sadly a common feature, the concept of shared residence orders where the children stay with one parent for a substantial part of the time and with the other for only a marginally lesser period is no longer an infrequent occurrence. The value to children of both parents cannot be over estimated. Whilst this will not make shared residence orders common, they are no longer reserved for exceptional cases. Wall LJ in A v A at para. 121 went on to say:

> "A shared residence order had to reflect the underlying reality of where the children lived their lives and was not made to deal with parental status. Any lingering idea that a shared residence order was apt only where the children alternated between the two homes evenly was erroneous. If the home offered by each parent was of equal status and importance to the children an order for shared residence would be valuable."

Re F (Shared residence order) (2003) 2 FLR 397 is another illustration of this principle.

[39] Moreover it is quite clear that shared residence orders are not precluded where parents are unable to co-operate. In A v A the parents were described by Wall LJ as being in "a virtual state of war" and yet a shared residence order was made. More recently in Re G (residence: same sex partner) (2005)2 FLR957 ("Re G") where there was an acrimonious post separation situation in a same sex relationship, the Court of Appeal also made a shared residence order in reversing the decision of the lower court.

[40] An interesting commentary by Lee Arnot, barrister appearing in Family Law September 2005 p. 718 argues that Re G marks a significant shift of emphasis from earlier case law to a point where a shared residence order will now be made in circumstances such as a same sex relationship primarily

to confer parental responsibility on one party. At para 27 of the judgment, Thorpe LJ stated:

> "But perhaps more crucial for me was the judge's finding that between the first and second days of the hearing the mother had been developing plans to marginalise Miss W. In that context it is relevant to refer to the publication in July 2004 of the Government's Green Paper in relation to contact difficulties. That Green Paper has led to the relatively recent publication of the draft Children (Contact) and Adoption Bill. The Government has, by its consultation paper and its subsequent proposed Bill, highlighted the very great social problems that have been developing over the last few years as a consequence of an increased tendency for primary carers to ignore, or to observe only in the letter, court orders designed to guarantee contact to the absent parent. The whole purpose of the Bill is to introduce new powers and management techniques for judges to combat such adult manipulation. The CAFCASS officer had expressed a clear fear that, unless a parental responsibility order was made, there was a real danger that Miss W would be marginalised in the children's future. I am in no doubt at all that, on the judge's finding, the logical consequence was a conclusion that the children required firm measures to safeguard them from diminution in, or loss of, a vital side of family life – not only the relationship with Miss W but also with her son. The parental responsibility order was correctly identified by the CAFCASS officer as the appropriate safeguard. The judge's finding required a clear and strong message to the mother that she could not achieve the elimination of Miss W or even the reduction of Miss W from the other parent into some undefined family connection."

[41] I do not go as far as to say that this case can be used as a precedent for identifying a perceived statutory lacuna which can be circumvented by a parental responsibility order, but I am of the view that whilst a shared residence order is not statutorily intended to deal with issues of parental status, nonetheless a factor in considering such an order can be the need to reflect the fact that parents are equal in the eyes of the law and have equal duties and responsibilities towards their children (see Wall LJ in A v A at para. 124).

[42] Whilst the factors which I have set out above will need to be considered by every court in determining whether or not a shared residence order is appropriate, nonetheless it must not be overlooked in applying these principles that a shared residence order is made in the context of the 1995 Order. Consequently it is necessary to apply the welfare check list contained in Article 3(3) and the paramountcy of the child's welfare overarches all. I must also recognise the presumption against making an order unless to do so would be better for the child than making no order at all. This approach I find to be consistent with a proper appraisal of the right to family life to which each parent is entitled under Article 8 of the European Convention on Human Rights and Fundamental Freedoms and which I have considered carefully in this case.

[43] On one view, this might have been seen as a classic case for a shared residence order. The children know two homes, the division of time between them was approximately two thirds/one third, both parents had and exercised parental responsibility and thus arguably a shared residence order would merely reflect the reality of the situation. Moreover the father argued that such an order was necessary to instil in the children, particularly C, that the parents were equal in the eyes of the law, had equal duties and responsibilities towards both children. In other words he felt it necessary to confer the status of an equal parent upon him. A very recent case of Re P (Children) (Share Residence Order) (2005) AER (d) 116 (Nov) was called in aid by the applicant where the Court of Appeal held that in circumstances where there was no evidence of either parent having interfered with the exercise of responsibility and judgment of the parent in possession of the child it was a plain case for a shared residence order reflecting the reality that the parents had established to their credit and to the children's advantage two homes. I have found this an extremely difficult decision to make, but having watched the witnesses closely I have come to the conclusion that the factor that distinguishes this case from the authorities to which I have referred is my determination that a shared residence order at this time would not be in the interests of C. Under Article 3(1) of the 1995 Order the child's welfare must be my paramount consideration and I must be wary of allowing the concept of a shared residence order to be dominated by an adult led agenda. I have come to this conclusion for the following reasons:

C is a very challenging child affected by asperger syndrome. I believe that he is both insecure and troubled. He is extremely fortunate to have two parents who in my view clearly love him and are committed to him . Sadly however they do not seem to appreciate how deeply he is being affected by these lengthy court proceedings and the stress occasioned by their rancorous disputes. This case demonstrates the value and importance of children having their own separate representation in cases such as this where the danger exists that the parents have allowed their own internal dispute to mask the detrimental effect on the child. The DOS has approached this

matter in a skilled and insightful manner throughout. The report of September 2005 which records:

> "C stated that he found the lengthy court proceedings distressing. He stated 'I don't want to take sides – I hate when they (his parents) are fighting'."

echoes the refrains found in the reports of Ms McG

As I have indicated above parental dispute by itself is not a reason for refusing a shared residence order. But it does serve to highlight the lack of insight these parents have into how troubled this child is by their failure to lift him above their own personal battle. Both parents have allowed this child to become embroiled into their personal dispute and the result is that the endless court proceedings have prevented him leading a normal life as a child and placed an insuperable burden upon him. The mother is far too ready to permit him to take sides in the disputes with T and to at least tacitly encourage him to explore the issues in the case with the Official Solicitor at the slightest suggestion on his part.She fails to see that this is happening because neither she nor T are sufficiently prepared to address his real concerns about this seemingly endless litigation A classic example of this was the child telephoning the Official Solicitor during the court proceedings at a time when he should have been in school concentrating on his scholastic lessons as would be normal for a boy of only ten.It looks as if his mother had approved this course of action the night before. I believe that she was more than happy to allow him to confide in the DOS some further complaints about his father. Equally so, the father is far too ready to question him about what discussions have taken place with the social workers, for example in the week before the trial and to raise regularly the court proceedings with him. I fear that both these parents seem to have forgotten that this child is only ten years of age. The mother in my view is clearly speaking in a derogatory manner about T in the hearing ofC and I believe T's account that the boy has referred to him as "an old blow", "a failure" and a "bastard". She either deliberately lets the boy hear these remarks or else she is far too indiscreet in discussing T within the hearing of C. In asserting that she does not believe the boy tells lies, I am satisfied that this is an indication that she is prepared to accept any criticism whatsoever of T voiced by C and the danger is that C, in order to please her, is more than anxious to criticise his father in front of her. It was a telling remark that she made to me that she believes that T despises the boy at times. I reject that completely. T is a loving father who may be misguided in a number of areas but S must come to realise that he loves this boy deeply and that C desperately needs to be reassured by her that this is the case.This child craves the unconditional love of each of these parents and it is about time that both gave him the necessary reassurance about the other. Equally, T is prepared to think the worst of S on virtually every single occasion. He is at times self opinionated and on occasions ,perhaps unwittingly, far too insensitive to the needs of this child. This is a little boy

who is troubled and insecure. T fails to recognise that the boy does feel rejected and is testing the boundaries of his father's love for him. Any ten year old, much less this troubled little boy would find it difficult to reconcile himself to P's new partner and will be very prone to misconstruing statements such as those made by T that he would choose his partner's version over his into a belief that his father would choose his partner over him.This is not an occasion for castigating him as a liar but a time for adult understanding. T fails to recognise how wounding it is for this child to be told, however angry he may have made T, that T will stop him coming for contact or that he needs psychiatric help (which I believe he did say to the boy) or that he is regularly a liar. I formed the view that at times this father is far too wedded to a legalistic and censorious approach to his child and insufficiently aware of his cries for help and reassurance. T needs to rebuild his relationship with this child with more patience, less criticism and more understanding. He is far too confrontational not only with the boy, but with anyone who takes a different view from him. I reject entirely his criticisms of the social worker in this case who I believe has worked tirelessly in the interests of these children and whose view is essentially echoed by the DOS. T is ever anxious to confront social workers with legal points denigrating their apparent lack of knowledge of legal developments and accusing them of mismanagement. My attention has been drawn by counsel to Re R (a minor) (court welfare report) CA 5 April 1993 (December (1993) Fam Law 722) which dealt with a case where a social worker's report did not deal with the relationship between mother and child based on observations. I recognise entirely the duty of a social worker to see all the relevant people and to see the child with each of those people wherever possible. That case is clearly distinguishable from the present instance where T has been confrontational with social workers. Ms McG attempted to interview T prior to going on annual leave for the purpose of the report of September 2005 but was met with a heated debate regarding her "mismanagement of the case" and an abject refusal to engage meaningfully with her. When two other social workers did make contact with him, it was evident that the issues that he raised were in relation to legislation and his opinion that the social worker and the Trust did not have sufficient knowledge of the law in court proceedings. Whilst it is obvious it would have been preferable if the social worker had met with the children in T's own home, I am satisfied that T's behaviour created an impediment to this eventuality and in any event has not deflected me from discovering the true views of these children

[44] Whilst I am satisfied that C is prone to exaggeration and does embellish his account of his father's behaviour from time to time, the thrust of what he has revealed to the DOS and the social worker is the truth in my view.. I find reassurance in this conclusion by B's interview with the Official Solicitor. B is a child who is well disposed to his father and who indicated that he felt C should go to his father's whenever he is supposed to and that he should not be able not be able to decide not to go. Whilst thinking that his

mother and father were equal, he felt it was unfair to his father not to see the boys as much as their mother does. Yet this was the same child who said that T calls C "a dog child" a "bad word eegit" saying he is not allowed to use the "f" word, that he shouts at him, and that his partner also shouts at C but not at him.

[45] In my view C is insecure about his relationship with his father and that is the reason why he wants to have the flexibility to turn up to contact when he wishes. I believe that if this boy was now informed that a Joint Residence Order was being made in the face of all the concerns which he has expressed to the court through his own solicitor the DOS, it would give all the wrong messages to C. I feel it would fuel his insecurity, lead him to believe that his father was receiving the approval of this court for his current attitude towards the boy and represent an inadequate translation of the view of this court that T needs to change and rebuild his relationship with C. I fear it would be used by this father ,perhaps subconsciously, to restrict this child's freedom at a time when C needs the time and space to adjust to his parents relationship and their new relationships with others at his own pace . It is clear from the evidence before me from the DOS and Ms McG that neither child believes T is in any way of inferior status to their mother.To that end neither child thinks a joint residence order would make any difference . Consequently a joint residence order is quite unnecessary to achieve an appropriate status for this father. I am satisfied that T is erroneously fixated with the concept of inferiority and the time has come for him to transfer his attention to more child centred matters at the expense of his current adult agenda.I recognise that he is a busy man with commitments to academic and campaign focused pursuits but both he and S would be well advised to make time for the counselling and assistance which I understand the Trust is willing to provide for both . I believe that both children should be treated the same and to make a joint Residence Order in the case of B and not C, would only serve to emphasise to C that he is being treated differently. Both mother and father need to repair their relationship with C. To continue along the path that they are present following will in my view lead to irreparable damage to C. They both require counselling and assistance in order to deal with the difficulties that are arising in the relationship in the context of C. There must be an end to these court proceedings and this child must be permitted to live a normal life free of dispute, acrimony and litigation. It may be that the schedule of agreement which has been drawn up is the first step towards both of them realising that changes have to be made. This decision must not be seen as a victory or defeat for either party but simply a rationalisation of my profound concern for the future of C.

[46] I therefore dismiss the application for a joint Residence Order because I do not believe it is in the best interests of this child C. I have also come to the conclusion that in order to ensure that this child now can face the future without yet more litigation to trouble him, I must make an order under

Article 179(14) of the 1995 Order. This Article is a very flexible tool. The scope of circumstances in which it can be used is extremely wide. A leading case is the decision of the Court of Appeal in Re P Section 91(14) Guidelines (1991) 2 FLR 573. I believe such an order will be a recognition of, and will underline, the fact that far too much litigation has gone on in this case over the last number of years and that both parties should now desist from any further litigation. I therefore order that no application for an order under this Order of any specified kind may be made with respect to either of these children by any person named in this Order namely T and S without leave of the court for period of two years.