[2016 Gib LR 147]

U v. U

SUPREME COURT (Ramagge Prescott, J.): April 29th, 2016

Family Law—children—removal from jurisdiction—child's interests of paramount importance—factors to be considered

Family Law—children—removal from jurisdiction—relocation with mother and new partner to overseas jurisdiction in children's best interests despite possible loss of entitlement to university grant from Gibraltar Government

The applicant applied for leave to remove two of her children from Gibraltar.

The applicant ("the mother") and the respondent ("the father") had divorced in 2012. They had three children, the oldest of whom was over 16. The children lived with the mother pursuant to a residence order. The two older children had had no contact with the father for an extended period, and did not wish to have contact, but the younger child had a close relationship with him.

The mother was in a committed, long-term relationship with her partner and wished to move with the two younger children to live with him in an overseas jurisdiction. The children supported the move. The older child wished to remain in Gibraltar to finish her A-levels and arrangements had been made to accommodate this.

The mother's partner was financially secure, the mother had found a job in the overseas jurisdiction, and accommodation, education and health care had all been arranged.

The father opposed the application on the ground that the relocation could impede the children's pursuit of higher education. He submitted that (a) if the children moved overseas they would not qualify for a grant from the Gibraltar Government for their university tuition fees and maintenance; (b) the grants available in the overseas jurisdiction were less generous and it was unclear whether the children would qualify for them; (c) although the mother, her new partner and his parents had promised to make money available for higher education, those promises were unreliable and unenforceable; and (d) the children might therefore be unable to afford to go to university as a result of the relocation.

Held, allowing the application:

(1) Under s.4(1) of the Children Act 2009, the children's welfare should be the court's first and paramount consideration. The court had to have regard to the welfare checklist in s.4(3). When considering a parent's application to remove children from a jurisdiction, the court should consider the following principles: (a) the welfare of the child was always paramount; (b) there was no presumption in favour of the applicant; (c) the reasonable proposals of an applicant with a residence order carried great weight; (d) those proposals had to be scrutinized with care and the court had to be satisfied that there was a genuine motivation for the relocation, rather than an intention to end contact between the children and the remaining parent; (e) the effect on the applicant and the children's new family of a refusal of leave to relocate was very important; (f) the effect on the children of the denial of contact with the remaining parent and in some cases his family was very important; and (g) the opportunity for continuing contact between the children and the remaining parent might be very significant (paras. 15–17).

(2) Relocation to the overseas jurisdiction would be in the best interests of the two younger children and the mother's application would therefore be allowed. The children genuinely wished to move and, although their wishes could not be decisive since they could not comprehend the full complexities of the move, they were an important consideration. The children's accommodation, education and health care would be satisfactorily provided for in the overseas jurisdiction. Their emotional needs would be more effectively met in the overseas jurisdiction as the addition of the mother's new partner would create a sound and secure family unit; the family would be in a stronger financial position; refusal of permission to relocate would have a detrimental effect on the mother's wellbeing, which could negatively impact upon the children; and sensible contact arrangements would ensure that the younger child's relationship with her father would be maintained. The court considered the mother's application to be genuine and not motivated by a desire to exclude the father from the children's lives. Relocation was in the children's best interests notwithstanding the father's concerns as to the impact on their pursuit of higher education. Relocation would create a degree of uncertainty as to whether the children would receive a grant for higher education study from the Government of Gibraltar or from the overseas jurisdiction. It was, however, also uncertain whether the Government of Gibraltar would still be offering grants at the relevant time and, indeed, whether the children would apply to university. Even if, in the worst case scenario, the children were unable to obtain government grants or funding from family members, they would be no worse off in the overseas jurisdiction than students in the United Kingdom who obtain loans for university. Notwithstanding the possibility that the children might not qualify for grants for further education, the relocation was in their best interests (para. 20; paras. 23–36; paras. 39–52).

(3) No order would be made in respect of the oldest child. Section 26(6) of the 2009 Act provided that no order (other than an order varying or discharging an order) should be made in respect of a child over 16 years old unless the circumstances were exceptional, and there were no such circumstances in the present case (para. 18).

Cases cited:
(1) *Chamberlain* v. *de la Mare* (1983), 4 FLR 434; 13 Fam. Law 15, referred to.
(2) *Payne* v. *Payne*, [2001] Fam. 473; [2001] 2 W.L.R. 1826; [2001] 1 F.C.R. 425; [2001] 1 FLR 1052; [2001] Fam. Law 346; [2001] H.R.L.R. 28; [2001] U.K.H.R.R. 484; [2001] EWCA Civ 166, applied.
(3) *Tyler* v. *Tyler*, [1990] F.C.R. 22; [1989] 2 FLR 158; [1989] Fam. Law 316, applied.

Legislation construed:
Children Act 2009, s.4(1): The relevant terms of this sub-section are set out at para. 15.
s.4(2): The relevant terms of this sub-section are set out at para. 24.
s.4(3): The relevant terms of this sub-section are set out at para. 16.
s.26(6): The relevant terms of this sub-section are set out at para. 18.

T. Hillman for the applicant;
The respondent appeared in person.

1 **RAMAGGE PRESCOTT, J.:** This is an application by the applicant for leave to remove two of the children of the family from the jurisdiction and relocate with them and her partner to an overseas jurisdiction. The application is opposed by the respondent.

Background

2 The applicant ("the mother") and the respondent ("the father") separated in February 2009 after an 11-year marriage. The divorce decree absolute was issued on June 21st, 2012. There is a residence order in force in favour of the mother, who resides in the former matrimonial home with the three children of the family, namely A, who is over 16, B, who is under 16, and C, who is under 13.

3 There are documented bitter disputes between the parties concerning the children; however, on September 22nd, 2014, they were able to agree the terms of a consent order with regards to contact. Notwithstanding, A, through choice, has not had contact with her father for the past five years and refuses to communicate with him. B had some contact with her father until the summer of 2015 when, also through choice, she stopped contact. C has a close relationship with her father and enjoys regular contact.

4 The father is remarried and lives in Spain. Some four years ago, the mother met her current partner, D, and it is their intention to marry in the overseas jurisdiction in the near future. The mother would like to relocate there with D and the two youngest children.

5 On May 10th, 2015, the mother sent the father a written communication setting out her proposal to relocate to the overseas jurisdiction, her intention to marry D, her employment prospects and the opportunities which would be available for the girls. On June 1st, 2015, the father communicated his opposition to the relocation, expressing concern over the impact upon the children that a move to a new country would involve, and suggesting that the mother move away without the children, they move in with him, and in the future they could discuss the possibility of the children joining her at a later date.

6 On June 25th, 2015, the mother's solicitors wrote to the father setting out detailed relocation proposals and putting him on notice of their intention to apply to court for permission to leave the jurisdiction if no agreement were reached. On July 8th, 2015, the father responded, reiterating his opposition. On July 16th, 2015, the parties met to attempt to reach an agreement but no resolution was settled upon. However, during that meeting it was suggested that a further meeting, this time with the mother's solicitors, might be of benefit. On July 17th, the father was invited to meet with the mother and her solicitors on Wednesday, July 22nd, 2015. The father responded on July 20th, 2015 saying "Unfortunately I will be away from Gibraltar the next few days and will not be able to attend a meeting with you until the week commencing July 27th, 2015. Any day after 2.30 p.m." It is somewhat surprising that the father's next move, three days after he wrote saying he would be out of the jurisdiction for a few days, and having engaged in discussions over relocation, should be to issue an application for a prohibited steps order pursuant to s.25 of the Children Act 2009.

7 On July 23rd, 2015, the father filed such an application in the Supreme Court for a prohibited steps order, seeking the prevention of the removal from the jurisdiction of the children of the family.

8 The matter came before me for hearing on July 30th, 2015. The application was refused on the basis that there was insufficient evidence to indicate that the mother would remove the children from the jurisdiction without their father's consent. The mother readily gave an undertaking not to remove the children overseas without first having obtained the father's consent and indicated her intention to apply to the court for permission to relocate with the children in the absence of paternal consent.

9 Since the hearing of July 30th, 2015, there has been some further communication between the parties.

10 On October 22nd, 2015, the Care Agency filed a family court welfare report which comprehensively discussed the issue of relocation. The recommendation of that report was that "providing the relocation date is child focused and planned with due consideration of the children's emotional needs with a clear direct and indirect contact schedule, this application for removal from the jurisdiction is granted."

11 On November 17th, 2015, the father made the interesting statement in writing that he had been "in complete support" of the relocation "with the children to [the overseas jurisdiction] from the outset, I have merely questioned the timing of it." I describe the statement as "interesting" because the sense one gets from consideration of the evidence is that the father may have been in complete support of the mother moving overseas with her partner but, crucially, without the children. Given the absence of a relationship between the father and the two eldest girls, his suggestion that the children live with him whilst the mother moved away was wholly unrealistic and fanciful. It is not realistic to contemplate that now or in the foreseeable future the girls, even C, make their primary home with their father. The girls have always been cared for by the mother, who has cared for them very well.

12 Be that as it may, there was a case management conference on December 3rd, 2016 and by that time the father indicated that, whilst he had no objection to the children relocating in principle, he was concerned that a move away from Gibraltar might signify a loss of entitlement to university fees and this in turn might result in a possible negative impact on the children's education.

13 The court requested an addendum family court welfare report specifically to address the impact on the children's educational needs that a possible loss of entitlement to university fees might entail. The report, which I shall deal with in more detail anon, concluded that, notwithstanding the possibility of loss of entitlement to university fees, the family ought to be allowed to relocate.

The law

14 The mother has a residence order in her favour. It is not in dispute that, pursuant to s.30(1) of the Children Act 2009, where there is a residence order in force, no person may remove a child from the jurisdiction without either the written consent of every person who has parental responsibility for the child or leave of the court.

15 Pursuant to s.4(1), "when a court determines any question with respect to—(a) upbringing of a child . . . the child's welfare shall be the court's first and paramount consideration."

16 In circumstances such as these where the court is considering, pursuant to s.4(4), "whether to make, vary or discharge a an [*sic*] order made under section 25, and the making, variation or discharge of the order is opposed by any party to the proceedings," it is incumbent upon the court to have regard to the considerations listed in s.4(3) (the welfare checklist) which, for ease of reference, I list below:

> "(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;
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> (c) the likely effect on him of any change in his circumstances;
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> (d) his age, sex, background and any characteristics of his which the court considers relevant;
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> (e) any harm which he has suffered or is at risk of suffering;
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> (f) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs; and
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> (g) the range of powers available to the court under this Act in the proceedings in question."

17 Although *Payne* v. *Payne* (2) has become a little diluted by more recent case law, I find the principles enunciated therein by Butler-Sloss, P. useful as a framework within which to structure an approach, whilst always bearing in mind that they are not exclusive of other matters which might be relevant, that each case is fact specific, and that they must be considered in conjunction with the welfare checklist. Butler-Sloss, P. suggested the following considerations should be in the forefront of the mind of a judge trying one of these difficult cases ([2001] Fam. 473, at para. 85):

> "(a) The welfare of the child is always paramount.
>
> (b) There is no presumption created by section 13(1)(b) of the Children Act 1989 in favour of the applicant parent.
>
> (c) The reasonable proposals of the parent with a residence order wishing to live abroad carry great weight.
>
> (d) Consequently the proposals have to be scrutinised with care and the court needs to be satisfied that there is a genuine motivation for the move and not the intention to bring contact between the child and the other parent to an end.
>
> (e) The effect upon the applicant parent and the new family of the child of a refusal of leave is very important.

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

(g) The opportunity for continuing contact between the child and the parent left behind may be very significant."

Application of relevant principles

18 In relation to A, she has begun her A-level studies. It is her wish to remain in Gibraltar and finish her A-levels here before going to university in the United Kingdom to read law. She is enthusiastic and supportive of her mother and sisters relocating overseas and she has the support of extended family and friends to help her remain in Gibraltar. Her academic performance at school is good and she is described as a responsible and committed student. A has had no contact with her father for the past five years and continues to refuse to communicate with him. I have seen the letter which A has written to her father explaining her feelings towards him and her reasons for not wishing to have any contact with him. The letter is cogent and articulate and I would urge the father to pay heed to A's wishes and not attempt to force contact in the future. A is over 16 and, pursuant to s.26(6) for the Children Act 2009, "no court shall make any order under section 25, other than one varying or discharging such an order, with respect to a child who has reached the age of sixteen unless it is satisfied that the circumstances of the case are exceptional." There are no submissions before me that this case presents exceptional circumstances and, in my view, such circumstances are absent, therefore I make no order in respect of A.

19 I now turn to consider B and C.

Ascertainable wishes

20 I note the ascertainable wishes and feelings which, in respect of both girls, are that they wish to move. Both come across as intelligent, sensible girls and both have expressed this wish clearly and unequivocally. There is no indication that their wishes and feelings are anything but genuinely held. Of course, the impact of a move with regard to advantages and disadvantages is far too complex and sophisticated for either child to grasp or to evaluate fully. In my view, their views cannot be decisive but, when genuinely held, they are an important consideration and account should be taken of them within the context of the overall considerations.

21 C enjoys regular contact with her father. The family welfare report describes the relationship as close "with lots of warmth and affection evident between the two." C is described as a "lively confident [child] who was happy to engage with the social worker." C is of the view that "moving to [the overseas jurisdiction] is great because I really like it there." She expresses the view that she would maintain contact with the

father via telephone and social media and would see him and her older sister when she visited Gibraltar.

22 B, through choice, has had no contact with the father since last summer. She told the social worker that her relationship with the father was difficult, and she expressed the wish that the father not be obstructive in relation to the relocation, but understand how much she wants to move away. B expressed a desire for change and was looking forward to the opportunity to meet new people and have new experiences. In her letter to me, B expresses the opinion that she will have a better future in the overseas jurisdiction.

Physical needs

23 The family welfare report of October 22nd, 2015 succinctly addresses the issue of the children's physical needs as follows:

> **"7. The party's proposals for the practical arrangements for relocation including accommodation, schooling, health and employment.**
>
> The practical arrangements regarding health care will be put in place after the three months' probationary period, when [the mother] will be given private medical care from her employers for herself and the children. Prior to that, [D] has suggested that he has previously proved his commitment to the children and would continue to do so in the future. His father has also offered financial support if necessary. The reciprocal E111 arrangements between [the overseas jurisdiction] and the United Kingdom no longer apply, so for the first three months, any medical needs which are not emergency would need to be paid for. In terms of [B's] asthma, the health authority in [the overseas jurisdiction] could only state that [it] offers excellent asthma treatment. [D] has indicated that, as managing director of the firm and a shareholder of the company, [the mother's] probation period is not a great risk. After six months' residency in [the overseas jurisdiction], the family will become eligible for full state health care.
>
> In terms of education, applications are in place for the children to attend secondary schools and a school place is guaranteed once the children are resident in [the overseas jurisdiction]. Although there are no equivalent scholarship/grant facilities available in [the overseas jurisdiction] as there are in Gibraltar, there are companies which offer internships to young people to obtain employment and further training. [D's] firm specializes in media and has useful contacts which may be followed to enable [B] to follow her areas of interest. There are six choices for further education providing they live with a

resident parent. In terms of [A], [the mother] is clear that she would prefer [A] to relocate as part of the family.

In terms of accommodation, [the mother] was offered a 3/4 bedroomed property at a competitive rent as part of her job offer as Business Development Manager for [the company]. The couple has also looked at a number of rental properties but cannot make this more detailed until they are clear on the outcome of the court hearing."

24 In addition, the mother, in her second affidavit of November 30th, 2015, under the heading "Proposed Relocation Plan," dedicates 32 paragraphs to setting out in considerable detail practical aspects of their proposed move, detailing everything from healthcare, social clubs, accommodation, travel between the overseas jurisdiction and Gibraltar, and career prospects for both herself and her partner (D). There is even a section dealing with suggestions as to where the father could stay during visits to the overseas jurisdiction. I do not propose to rehearse the contents of those 32 paragraphs save to say that it is abundantly evident from their content that the mother has thoroughly researched the proposed move, and been meticulous about providing the father with copious amounts of information with regard to every aspect of the move.

Emotional needs

25 In so far as their emotional needs are concerned, I remind myself of the provisions of s.4(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 . . . a child's welfare is best promoted by a continuing relationship with both parents, as long as it is safe to do so."

26 The social worker is of the view that—

". . . the children have the right to maintain a positive relationship with both parents without conflict . . . attachment, which can be defined as a special emotional relationship that involves an exchange of comfort, care and pleasure . . . is formed through a consistent caring relationship between adult and child . . . it requires reciprocity and continuity."

27 Despite the close geographical situation, the father has lost attachment with B and I find it highly improbable that the move will of itself have any more of a detrimental effect on the father–daughter relationship than it has suffered already. In fact, it may be that the distance created by the move will ease tensions between B and her father, but that is a matter for speculation into which I am not drawn.

28 In relation to C, there is no doubt that the move will have a direct impact upon reducing the regularity of the physical contact between her and her father. However, from the information before me, I am satisfied that the separation is unlikely to occasion C any trauma. The important need for continuing a loving attachment with the father can be met by a sensible contact regime, via social media, holidays and short breaks. C is determined to keep up contact with her father and, in my view, there would be no question of future contact being denied by the mother. According to the social worker, "[C] has a secure attachment with her father and it is unlikely that this special bond can be broken at this stage of her development."

29 The move is likely to be more difficult for the father than for C and, whilst I am not insensitive to the pain this might cause, I remind myself that, in cases such as these, my paramount consideration must be the welfare of the child. As Thorpe, L.J. said in *Payne* v. *Payne* (2) ([2001] Fam. 473, at para. 22):

> "In *Belton* v. *Belton* [1987] 2 FLR 343, 349 Purchas, L.J., in allowing a mother's appeal against the refusal of her application to emigrate to New Zealand, said:
>
> > 'I sympathise and understand, where a lay person such as a father is concerned, the difficulty of reconciliation with the concept of such a separation being in the paramount interests of the child in the long term, but the long term interests of the child revolve around establishing, as Griffiths, L.J. said in *Chamberlain* v. *de la Mare* 4 FLR 434, a sound, secure family unit in which the child should go forward and develop. If that can be supported by contact with the father, that is an immense advantage, but, if it cannot, then that is no reason for diverting one's concentration from the central and paramount issue in the case.'"

Indeed, this move is premised upon the creation of a "sound, secure family unit" which the children will not have if they remain in Gibraltar.

30 The mother has, for the past four years, been in a long-term and committed relationship with D. D is a national of the overseas jurisdiction and a chartered wealth manager by profession. For some time, he lived with the mother and the girls at their home in Gibraltar. He then returned home to further his career, and has flown over as often as possible to see the family. The intention is for the couple to marry in the near future once this application is resolved. Since September 2014, D has been a warehouse manager and my understanding is that he is now, or shortly will be, promoted to managing director. His expected salary will be c.£24,000–£30,000 per annum. He is financially secure and willing and able to contribute towards the family's upkeep, as indeed he has done in the past.

The mother, who in Gibraltar is employed as a lunchtime school monitor and a supply cleaner, earns c.£7,200 per annum. She has been offered a position with the company in the overseas jurisdiction with a starting salary of £24,000 per annum. Thus, if the mother and the children relocate overseas, the family, with D in the equation, will be in a far stronger financial position than if they remained in Gibraltar and, given the mother's and D's dedication to the girls, this can only be of benefit to them.

31 Leaving finances aside, I turn to consider the family unit. From the evidence before me it is apparent that the bond between the mother and D is strong and loving; they present as a committed, happy couple attempting to build a future together. The warm and close relationship that D enjoys with the girls is evident and not disputed. The proposed relocation will place B and C in a loving and stable family environment. I am cognizant of the fact that, since separation from the father, the mother has essentially provided that on her own, but this move will allow the family unit to be extended in a way which will afford greater cohesion, expansion of family life and financial security. Whilst I make no presumption in favour of the parent wishing to relocate, I find the mother's relocation proposals to be realistic and reasonable. She has carefully thought out every aspect of the move and gone to some length to provide extensive details. This reasoned and practical approach coupled with the improved standard and quality of family life that the relocation would necessarily entail persuades me to attach great weight to the proposal for relocation.

32 Having read and considered his statements, it is evident that the father is suspicious with regard to the career prospects as detailed by the mother and D, he considers the mother to be dishonest and manipulative, and he is disparaging with regard to the mother's motivation behind the move and her conduct in relation to it. That said, it is to his credit that, notwithstanding his misgivings, he has been able to refocus on the children's best interests and, but for the issue of education which I shall deal with presently, now supports the move.

33 It is incumbent upon me to explore the motivation behind the reason for the mother's wishing to relocate. I have carefully perused and analysed the mother's reasons for wishing to relocate. I am entirely satisfied that the mother's application is genuine and is not motivated by any selfish or sinister desire to exclude the father from the children's lives. As Kerr, L.J. said in *Tyler* v. *Tyler* (3) ([1990] F.C.R. at 25), where it has been established that the mother "has a genuine and reasonable desire to emigrate then the court should hesitate long before refusing permission to take the children."

34 I am cautious as to the effect which a refusal of leave to relocate might have upon the children. The mother has been the primary and

dedicated carer for some years and, although for the most part the father has paid maintenance, she has evidently struggled as a single parent on a limited income. I am in no doubt that the mother will be emotionally happier in a loving and stable partnership with D in the overseas jurisdiction, and that she, and by extension the girls, will be financially better off. I am concerned that a refusal to give permission for relocation is likely to have a detrimental effect on the mother's wellbeing and happiness, and this of itself could negatively impact upon the children.

35 Butler-Sloss, P. in *Payne* v. *Payne* (2), referring to *Chamberlain* v. *de la Mare* (1) and the Court of Appeal's reversal of the decision of Balcombe, J. at first instance in refusing the mother therein leave to relocate, said this ([2001] Fam. 473, at para. 71):

> "Ormrod, L.J. considered that the judge had misunderstood the judgement of Sachs, L.J. in *Poel* v. *Poel* and said 4 FLR 434, 442–443:
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> > 'What Sachs, L.J. was saying, I think, is that if the court interferes with the way of life which the custodial parent is proposing to adopt so that he or she and the new spouse are compelled to adopt a manner of life which they do not want, and reasonably do not want, the likelihood is that the frustrations and bitterness which would result from such an interference with any adult whose career is at stake would be bound to overflow on to the children . . . In the present type of case I believe that the true balancing exercise must take into account the effect on the children of seriously interfering with the life of the custodial parent . . .'"

36 Thus far, the law and authorities, as they apply to the facts of this case, would point to the mother's application meeting with success. However, the father raises one narrow and specific objection to the move which, although he does not say so, I presume is made pursuant to s.4(3)(b) of the Children Act 2009 and would therefore relate to the educational needs of the children. The father says this:

> "I have very deep concerns about the opportunities my children will have when they reach the age for university studies and I fear that, as a result of pulling them out of an extremely advantageous school system in Gibraltar where university tuition and maintenance is fully funded by the Gibraltar Government, they may suffer in years to come of a lesser education because, for instance, they did not qualify for government financial aid in whatever jurisdiction they might be in."

37 The father has provided a myriad of literature in relation to the systems in place governing the allocation of student grants both in

Gibraltar and in the overseas jurisdiction. I do not propose to list all the documents he has exhibited to his statement, but he may rest assured I have considered them all. For the sake of expediency, his submissions may be summarized thus.

38 In Gibraltar, the allocation of grants for study at UK higher education establishments is largely governed by the Educational Awards Regulations 1990 issued pursuant to s.82 of the Education and Training Act 1974. The Regulations provide that an award shall be granted to any person who has applied for one and who is ordinarily resident in Gibraltar, is attending a school in Gibraltar or in the United Kingdom, has been accepted at an establishment for a designated course, and possesses a prescribed qualification in respect of that designated course. The father submits that, if they moved overseas, the girls would not be awarded a grant from Gibraltar because, whilst the Regulations make provision for the allocation of a grant to someone attending school in the United Kingdom, the overseas jurisdiction is not part of the United Kingdom. He submits the United Kingdom comprises England, Scotland and Wales, and therefore there would therefore be no entitlement. The father goes on to define the status of the overseas jurisdiction as a Crown Dependency from information he has downloaded from the internet, and then proceeds to define a Crown Dependency by exhibiting the Wikipedia page on the subject. I do not propose to be drawn into a political discussion on the territorial status of the overseas jurisdiction, or the ramifications attached to such a status. It seems to me, however, that the more relevant part of the Regulations which might frustrate a claim for a Gibraltar grant is the reference to the prerequisite that the applicants be ordinarily resident in Gibraltar. This might be a subject for future consideration, but it seems to me that, if they relocate overseas, they may no longer be ordinarily resident in Gibraltar and therefore not entitled to a grant as a matter of right.

39 The father is critical of the assertion made by the social worker in the addendum report of January 21st, 2016 that one or both girls may trigger entitlement to a scholarship from Gibraltar because the major part of their education has been completed in Gibraltar. He describes this assertion as flawed. In my view, there is insufficient basis for this conclusion. The evidence that the social worker gave in court was that, according to the education advisor from the Gibraltar Department of Education with whom she had spoken, in respect of those candidates who did not automatically qualify for a grant, each application from Gibraltarians is considered on a case-by-case basis and the committee would decide, upon the specific facts of each of those cases, whether a grant would be allocated, notwithstanding a move away from the jurisdiction. In my view, this means that there is necessarily a degree of uncertainty in relation to future entitlement.

40 In the event that the girls were unsuccessful in securing a Gibraltar grant, they would have to look elsewhere for funds. According to the information provided by the father, the allocation of grants in the overseas jurisdiction is less straightforward than in Gibraltar and considerably less generous. As I understand it, the position by way of summary is that, to be sure of the allocation of an award, the girls would have to have been resident in the overseas jurisdiction for 5 years preceding the August of the first year of the course. The younger child might meet these requirements but the older child would not. In the event that they were not so resident, they might qualify for entitlement if they had lived in the overseas jurisdiction for at least 12 months before the August of the first year of the course and if they possess "entitlement status." I must confess that I labour under some confusion with regard to the definition of "entitlement status" for the purposes of application for grants by students. For the definition of "entitled status," the father relies upon an extract from an article by a local law firm. This article identifies and defines various categories of status as "entitled status," "licensed status," "entitled for work status," and "registered status." The article discusses the introduction of a new local Law and states: "The intention behind the Law is to create one law to deal with all aspects of housing and business set up and for that law to be easier to interpret than the existing legislation . . . Four categories of residential status are created by the new law . . ."

41 It is apparent that the four categories of residential status are created by the new Law and are applicable to housing and business set up, but it is less apparent whether they are also applicable to the application for higher education awards. There is nothing before me to suggest that these categories created and defined in a Law relating to housing and business set up can be or are transposed into the sphere of education. Therefore, the only conclusion I can reach at this stage is that I am uncertain whether, having resided in the overseas jurisdiction for 12 months, these applicants would qualify as having entitled status.

42 According to the overseas jurisdiction's guide to higher education awards, "there are educational trusts and charities that can offer financial assistance both locally and in the United Kingdom to students in further and higher education." In the event that the girls secure neither a Gibraltar grant, nor a grant from the overseas jurisdiction, nor a bursary, trust or gift fund, the mother has said that she and D will pool their resources together for the benefit of the children's education. She states that: "[D], having put aside funds for his son to go to university which were not required, has these available now for any of the girls to attend university."

43 In addition, they have the promise of two interest-free loans for the purpose of funding the higher education of the girls from D's parents totalling £70,000. There are letters from D's father and mother, dated

December 16th, 2015 and December 30th, 2015 respectively, which I have seen.

44 I take the father's point that the promise of future funding by D's parents is unreliable no doubt because it is unenforceable. That may be true, but also true is that the whole subject of higher education is riddled with uncertainties. Would the girls in fact continue on to higher education after A-levels or equivalent? Would they secure funding from Gibraltar? Would they qualify for funding from the overseas jurisdiction? Would they secure a bursary or equivalent? What if they stayed in Gibraltar and there were a change of government which restricted university funding in Gibraltar for Gibraltar residents? What if there were simply a change of government policy restricting funding in the future? If I conclude that overall it is in the best interests of the children to relocate, should that conclusion be adversely affected by the issue of funding for higher education when it is laden with unknowns?

45 I am satisfied upon the evidence before me that the overseas jurisdiction has numerous schools and higher education establishments which would provide commensurate education to that which the girls are receiving in Gibraltar. I am satisfied that the mother, as indeed does the father, takes the issue of higher education very seriously and that the mother will use her best endeavours to provide financial support for the future education of the girls to the best of her ability. I am satisfied that, if they want it, the girls will have the opportunity in the overseas jurisdiction to continue with education beyond A-levels.

46 The father proposes what he describes as "an effective solution" and this, he suggests—

> ". . . would be for the respondent [the mother] to set up a trust fund for [B's] future university fees and study allowances with a sum of money deposited which would equate to what would have been paid by the Government of Gibraltar for the duration of her university studies, from bachelor degree to PhD level and another similar fund for [C] to cover the shortfall between an income means tested grant in [the overseas jurisdiction] and a full Gibraltar scholarship."

47 He proposes that the mother furnish the trust with £112,000 per child, a total of £224,000, to take account of three years for a first degree, two years for a Master's degree and a further three years for a PhD. Whilst I applaud the father's confidence that his two younger daughters will further their education to PhD level, I imagine that statistics would show that the majority of university students cease to pursue higher education after a first degree. In any event, at this stage how far into further education they might venture is of little relevance.

48 I find the father's proposal so removed from reality as to have something of the phantasmagoric about it. The mother has made full disclosure of her finances and therefore it is unrealistic to suggest she would have £224,000 at her disposal to invest in a trust. The father's contribution to the trust would be zero. That he should seek to shirk responsibility for the future maintenance of his children is misguided. If my information is correct, in the United Kingdom, students who are not privately funded by parents begin university life on the back of a student loan and they end university with a considerable loan which they have to repay once they are in gainful employment. That students should embark upon higher education in debt is a fact of life in the United Kingdom; it is not uncommon or prohibitive to study. The overseas jurisdiction seems to offer more opportunities for funding, but even then, in the worst case scenario, the girls would be no worse off in the overseas jurisdiction than if they lived in the United Kingdom and were going to university there. Gibraltar offers a very advantageous package of funding for higher education, but the lesson to be learned from the United Kingdom is that lack of commensurate funding does not result in frustration of university careers.

49 Rather than express concern that it would be unfair to the girls to start life in debt, or that it would not be in their best interests to do so, the father appears to focus on the fact that it would be unfair on himself to have to pay towards university education if the girls left Gibraltar because, if they stayed, he would not have to pay because the Government would. It is important to remind myself that I am not dealing with a situation where the education needs for the girls would not be met because they would be unable to further their education if they moved to the overseas jurisdiction, but rather that furtherance of that education *may* involve some cost.

50 In his address to this court and in relation to finances for education, the father said: "All that is relevant here is the support [the mother] can bring to the table today . . . if they lose all entitlement, this court must satisfy itself that there is money to put them through university and they cannot leave unless that is guaranteed." With respect, I disagree; what is relevant is what is in the best interests of the children. Having considered all the circumstances of this case, I am of the view that it is in the best interests of the children to move to the overseas jurisdiction with their mother and her husband-to-be, D.

51 I do not ignore the fact that such a move might disqualify the girls from obtaining a grant from Gibraltar, or might entail additional financial support from their parents, or the securing by them of a student loan, but it will not of itself prevent them from progressing to higher education if they are minded so to do. We are indeed fortunate in Gibraltar to have university funding, but a lack of that funding, of itself, is not a reason to refuse permission for the move when every other aspect which I must

consider points to the move being highly beneficial to the girls. The best interests of the girls must be my paramount consideration and I would be failing them indeed if I ruled against the move solely because it might save the parents (or indeed themselves) money in the future. The father pays maintenance towards his children now; that is a continuing obligation which will need to be adjusted according to variables in his and his daughters' future lives.

52 For the reasons given, I grant leave for the mother to remove B and C from the jurisdiction and relocate to the overseas jurisdiction.

53 I urge the parties to agree a realistic contact regime, which would take into account the wishes of the children and the existing contact currently in force. However, if they are unable to do so, I shall hear the parties on their proposals in this regard.

Application allowed.