

JUDGMENT : THE HONOURABLE MRS JUSTICE BARON D.B.E. Family Division. 26th August 2004.

1. There are a number of applications before me in this case. In essence, they all relate to the place in which the child Harry O who was born on the 15th January 1999 (who is thus 5 years and 8 months old) should make his permanent home. The parents have agreed that there should be a joint residence order to mark their equal commitment to Harry and I am happy to make an order in these terms. They have also agreed a schedule of contact for the parent with whom Harry does not have his main base. In essence, that agreement provides that Harry will have alternate weekend staying contact. On one occasion it will take place in the town in which he is based on the other occasion, he will travel to his other home. Save for short periods at the start and end of each period, he will have the whole each half term with his other parent. Christmas and Easter holidays will be divided equally with festival days alternating. The summer holiday will be divided as to 2 weeks to the parent with whom he makes his main base and 6 weeks to the other parent. There has been agreement as to the cost of travel and other ancillary matters, which depend on the outcome of my Judgment. The agreement will be made a schedule to my order.
2. Despite this measure of agreement, the parties cannot agree where Harry should make his main base. It is the contention of Paul O (to whom I shall refer as the Father) that Harry should move with him to B, North Devon and go to SM School. It is the contention of Miss Deborah B (the Mother) that Harry should live in T, where she proposes to buy a home and remain at his current school, namely HO.
3. I wish to say at the outset that both parents struck me as admirable individuals who love their son a great deal. They have different character traits which means that each offers Harry a different but equally valid view of life. Nothing in this Judgment is meant to or should detract from their attributes or their ability to co-operate in parenting their son.
4. The issue in the case is simple to outline but the decision is, for understandable reasons, too difficult for either parent to make. I understand that and I sympathise with each one because the solution to the situation which has been brought about by the Father's decision to move, means that Harry will not be able to have the shared parenting which he has enjoyed for the past 17 months or so of his life. Inevitably one parent will be disappointed by my decision but, whilst one will miss a degree of weekly contact during term time, he/she can be assured that Harry will be happy and well cared for with the other parent and that he/she will have him to stay for more extensive periods in the holiday times. This means that their influence will continue to be a vital part of their son's upbringing. Moreover, he/she will be able to communicate by telephone, on-line and, I suspect, before long "face to face" on the internet. Whilst this is not a substitute for life at home, it does help to ensure that mid-week links are maintained.

The Factual Matrix.

5. I will set out the relevant facts as I find them. For the avoidance of doubt, insofar as the matters set out differ from the evidence of the Mother or the Father, this is because I have preferred the evidence of the other or because I consider that the documents produced confirm my finding of fact.
6. The father was born on the 5th January 1966 (and so is now 38 years old). He hails from Devon, where his mother and other members of his family still live. He was brought up in that county close to the sea and has always loved the way of life which it provides – with Dartmoor, Exmoor and the coast available within easy distance. I do not know a great deal about his education but he qualified as a dentist and, over the years, has developed an expertise as an orthodontist. He obtained an MSc and so he is highly qualified. In recent years he has practised in and about the T and C Areas. He is currently self employed and has been obliged to operate from 5 separate locations. His main base is with an entity called T (which has a number of branches in the South East of England). It was the Father's hope that he would be made a partner in this business but, for whatever reason, this has not come to pass. He works in the NHS and has a contract as a self employed practitioner. At present, this entitles him to ply his trade from various outlets because the current contract is client based. Thus, he is paid for each patient to whom he provides his services.
7. The cost of orthodontistry to the NHS has risen dramatically in recent years. Therefore, it has been the subject of government scrutiny in order to reduce expenditure. In the light of this, a new set of NHS contracts will be issued in 2005. This means that henceforth, payments will not relate to individual patients but monies will be paid to a practice that will then have to allocate resources as is considered

appropriate. Orthodontists will lose their self employed status and will have to become salaried employees of licensed practices. The Father believes that orthodontists who are not partners will find it difficult to obtain work because the cost of staff has to taken out of the approved budget. More importantly, he considers that the changes will affect his ability to earn. At present he earns some £150,000 per annum. His best estimate of his salary after the changes is £75,000 if he secures a job. He told me that T/C area is well served by Orthodontic practices and there is no substantial waiting lists. He consider that the demand for services in his locality, may well lead to a loss of employment altogether.

8. In the light of this, the Father decided that he had consider his long-term future. He had always hankered to return to Devon and it seems that the imminent changes to his NHS contract prompted him to think of an immediate move. As I shall relate more fully below, he has decided to move from T to B, he has secured employment in a local practice which, after a short probationary period, will be converted into a partnership. He has found a home and secured a place at a good local school for Harry. It is his wish to move that has caused the painful issue in this case.
9. The Mother was born on the 19th December 1967 (so she is now 36 years old). After school she qualified as SRN and she has had a very successful career as a nurse. Over the years she has specialised in providing pain management, particularly of children suffering from leukaemia and is now a Clinical Nurse Specialist (one of only 90 in the country). She has worked at Queen Mary's Hospital, Sidcup since 1997 and currently she heads up the pain relief team. She is contracted to work some 37.5 hours per week that is from 8.00 am until 4.00 pm Monday to Friday. She told me that no overtime was possible and so her hours are certain. Moreover, her job involves a good deal of paperwork which she can undertake from home. Her employers are sympathetic to the needs of working mothers and so there is a great deal of flexibility and latitude given to her. This approach has been confirmed by her line manager a Ms PH, whose evidence is before the Court and is accepted by me. The Mother earns about £30,000 per annum. She is currently studying for an MSc which will qualify her to work as a Consultant nurse. She is due to complete her degree in 16 months time. If she succeeds, then she will be one of only 8 Consultant nurses in England and she will command a maximum salary in the region of £48,000 per annum. She told me that Queen Mary's have budgeted for (but do not have) a nurse of this status and calibre. Consequently, she is assured of a place at the Hospital when she obtains her degree. I have no doubt but that she is a talented and resourceful nurse who is undoubtedly committed to her career.
10. Thus, it is obvious that both these parents are true professionals dedicated to their respective jobs caring for others. They are to be applauded for so doing.
11. Now for the relevant history. The parties met in 1990, when they were aged some 23 and 24 years respectively. They were together for some 4 years but the relationship broke up in 1994, when the Mother formed a relationship with a doctor called SW. It seems that the Father was heartbroken at the end of the relationship and I have little doubt that he regretted that the Mother had altered her affections.
12. The Mother married SW but the marriage was short-lived because Dr SW admitted that he had committed adultery on her 30th birthday. The divorce followed soon afterwards in 1997.
13. In about 1998 the Father and Mother resumed their relationship. I have no doubt that the Father was thrilled to be able to have a second chance of happiness with the woman that he had never stopped loving. Within months the Mother was pregnant. The parties decided to buy a home together in a property was duly purchased in joint names.
14. Harry was born on the 15th January 1999 some 8 weeks premature. He was in the special care baby unit for some 2 ½ weeks during which time the Mother visited him on a daily basis until she was able to use a bed at the facility. Fortunately, Harry did well and was released home where he was cared for by the Mother. She had maternity leave for a 9 month period and so Harry had the benefit of her devoted care during that period. Until July 1999, the Father was studying for his MSc at St. Thomas' and in Canterbury and so, the first few months of Harry's life, he was away from home for periods during the week.

15. At the end of her maternity leave the Mother informed the Father that she wanted to return to her full time occupation. He was distressed by the suggestion and did not approve. He did not consider that they needed the money as he was already a high earner and really wanted the Mother to care for their child. She did not agree. She was a dedicated nurse who had fought hard to progress her career and wanted to continue. I suspect, even by this stage, the Mother felt that she needed a measure of independence from the Father. Accordingly, despite his objections, she found a suitable childminder – a lady called JC - and returned to full time work. She says in her Statement *"I returned to work very conscious of missing Harry, but felt that it was certainly the right thing to do."*
16. Her decision meant that the Father often had to assist with Harry's care. Both parents accept that they were each actively involved in Harry's care. There have been some assertions in various statements that one was more involved than the other – to my mind these are matters of nuance only. These parents were committed to their baby and, to use a fashionable phrase, they co-parented him. He spent weekdays with Ms C and weekends/holidays with his parents. He developed well.
17. The Mother says that, from her perspective, problems began to develop in the relationship in about June 1999, when the Father sought to stop her working. On the 1st January 2000 the Father asked her to marry him. She declined and said that she needed time to think about matters. I think that her reaction (which she says came as an extreme surprise to the Father) was symptomatic of her underlying dissatisfaction with the relationship. She might not have been conscious of what was wrong but her level of commitment to the partnership was not (and never had been) as strong as that of the Father. She says that she accepted his proposal some 3 months later but no date was ever set for the wedding. I expect that from her perspective that was deliberate.
18. As Harry grew, the parties appreciated that he should attend nursery. From May 2000 he attended Eltham nursery on Thursday and Friday of each week. He was with Mrs C for the rest of the week. That nursery was not a success and so in September 2000 he moved to a new one in C. The Father worked in the vicinity on Wednesday and Thursday each week. Thus, the nursery routine was changed to enable him to take and collect Harry to nursery.
19. In September 2001 the Father began to work for TO. It seems that in addition to his days in C, he spent two days in Dulwich and one day in T. At about this time, the parties agreed that the Mother could study for her MSc – which meant that she went to London Bridge each Friday. It was usually a long day and, in addition, she had to study at home. To assist, the Father had to do his full share of the domestic tasks. He was already taking Harry to nursery on Wednesday and Thursday. He now took him to the childminders on Friday. The Mother was responsible for the other two days. The routine that developed accommodated the Mother's needs and shows a good level of co-operative parenting.
20. At some stage in 2001, the Mother formed a romantic attachment to a Mr C. She had met him during her first marriage, because his wife, Lisa, was a mutual friend. She liked Mr C sufficiently to ensure that he became Harry's Godfather. The parties were friendly with and met the couple on an ad hoc basis. In about 2000 Mr C and his wife had a little girl Gabriele.
21. Various dates have been given for the start of the affair but I do not think that I have to make a specific finding about it. I have no doubt that it was very intense relationship and that the Mother was (and is) deeply in love with Mr C.
22. The affair remained secret from the Father and, so far as he was concerned, life continued as normal. The parties appreciated that they had to make decisions about Harry's longer term education. They looked at the possibility of schools in Sidcup. It seems that the child minder found two very reputable schools. But the parents agreed that T would probably be a preferable area because it had excellent schools. The Father undertook the investigations and alighted upon HO Nursery School which he visited one lunch hour. It was agreed that Harry would start by being educated there for 2 days each week. Thus, his routine was one day with Ms C, 2 days in T and 2 days in C. This meant that the Father did 4 "school" runs and the Mother one. The plan was that Harry would move on to the HO Kindergarten School until 7 years old and thence to the linked preparatory school. It was thought that he would go on to one of the well known secondary schools in the area. In the light of this, the parties agreed that they should relocate

to T. They looked at houses in the area and found 13, The Ridgeway. The Father considered it ideal, the Mother was less persuaded. She wanted to look at alternatives but the Father made an offer which was accepted. The Mother says that she and I quote that she was *"very shocked, hurt and upset. It appeared again to me that my opinion did not matter. However, I felt unable to express my concerns to Paul because he was quite clearly so delighted with what he had done"*. In May 2002, the house purchase was completed. Of course, by this time the Mother was in the throes of her affair with Mr C. This factor, no doubt, also impinged upon her thinking.

23. The parties were due to move to their new home in June 2002. In fact, the Mother informed the Father that their relationship was at an end. The affair was out in the open and the parties separated. The Father and Harry moved to T whilst the Mother remained in at the property. In July Mr C left his Wife and moved in with the Mother. So far as Harry was concerned, during this important period in his life, it was his Father who became his main carer. I expect that the Mother's life was in turmoil, but it fair to say that she accepted the situation. It may be a matter of regret now but it is clear to me that from June 2002 until March 2003, it was the Father who was the stable and constant influence in Harry's life. By that I do not suggest that the Mother abandoned him, she saw him at weekends and popped over to T about twice a week to see him after school. However, he was not her number one priority as she sorted out her new life. On the 11th September 2002, Harry started at HO Kindergarten as a full time pupil. So far as he was concerned his life was now centred in T. He made that transition with ease and settled well.
24. The parties entered into mediation in an attempt to sort out the ramifications of their separation. The Mother found the Nationwide Mediation Service from the Yellow pages. Two mediators were involved namely, Steven Dury and his colleague, Patrick Esson. The mediators purported to assist with financial matters by drawing up a Deed of Separation and also sought to persuade the parties to enter into a Parenting Agreement in relation to Harry. A copy of the latter document is exhibited to the Mother's statement. In fact, no agreement was ever reached because the Father would not accept the terms proposed. I must say that I am surprised that the privilege of the Mediation process has been invaded by the Mother exhibiting that document. It seems to me that was wholly inappropriate. I do not propose to censure anyone because, to my mind, the document is not relevant and its contents may be misleading because it was never agreed. Even on the Mother's case, the mediator was being partisan in his approach.
25. By this date, the Mother's relationship with Mr C had run into difficulties. In fact, by December 2002 he had returned to live with his wife and child. It is asserted that this was for economic and business reasons but I feel confident that Mr C's wife thought that there had been a rapprochement. This must have been a very difficult time for the Mother. Despite Mr C's departure the affair continued but she was living alone and must have wondered about their future.
26. In early 2003, it seems that the mediation process stalled. The Mother wanted to have residence of Harry and the Father would not agree. The Mother says that Mr Steven Dury told her that he found the Father *"difficult"*. She says and I quote *"Having spoken to the school and advised them that Harry would not be in school for a few days. I then, on the advice of the mediator, Steven Dury, took Harry away from his home with me, driving to my sister's in Horsham, Sussex.... I would never have acted as I did, taking Harry away without the specific advice of Steven Drury, the mediator, who told me that this was what I should do"*. She also stated that Mr Dury said that he would give *"Paul a strong talking to. He also said to me that of course I had not got that advice from him, as he was meant to be impartial"*. The Father accepts that Mr Dury did call him and was aggressive in tone. With hindsight (although he cannot possibly know) he suspects that Mr Dury may have given the Mother the guidance that she alleges. Of course, I have no way of knowing the precise words that were used but if this type of advice (or anything like it) was given by a professional mediator I am, quite frankly, flabbergasted. It is not in a child's interest to be removed from home and taken to another location without the knowledge and, even if there is no residence order in place, the permission (tacit or express) of the other parent. To suggest otherwise is wholly wrong. To use it as a tactic to put pressure on a parent to come to an agreement is simply incredible. If the mediator did proffer any such advice or suggestion it is to be deprecated. It may be that the Mother misinterpreted his guidance. If his words were such that they were capable of misinterpretation, then he ought to have been more careful.

After all this time, I doubt that he will remember what was said and I note that he has been put on notice about these allegations. Consequently I do not make any findings against him but I hope that my expressions of concern will put all mediators on notice that, this type of advice is not part of their role.

27. Of course, even if the Mother was advised in this manner (or thought that she had been), she did not have to follow the suggestion made. It was obvious, that it could not be in Harry's interests to disrupt his routine and not tell his father where he was. Not surprisingly, the Father made an ex parte application to the Court that Harry be returned forthwith. A residence order was made in the father's favour by Johnson J on the 21st March 2003. The Mother complains of inaccuracies in the Father's affidavit in support of his application. In particular, his statement that he had been the primary carer of Harry from March 2001. I accept that this was inaccurate, because the parties had been sharing care until the separation in June 2002. But from that date, I do consider that the Father had been Harry's primary carer. A number of other inaccuracies are listed but they do not seem to me to be of any moment.
28. The matter returned to Court on the 28th March 2003, when the Mother appeared with her Counsel Oliver Wise. On that occasion the residence order in favour of the Father remained in place. It is the Mother's case, that she was advised by Mr Wise that she had no alternative but to agree in the circumstances. She says that this is not what she wanted but she in awe of the process, did not have her solicitor at Court and did as she was advised. I have seen the instructions to Mr Wise which state "*the Respondent has been advised by instructing solicitors that the Court is likely to wish to maintain the status quo and order that Harry reside with the Applicant in the interim. Nevertheless at this stage Counsel is requested to seek a residence order in favour of the Respondent*". It seems her solicitor was of the view that the residence order would remain in place in the interim. I note that Mr Wise has not been informed of the effective assertion that he failed to comply with his instructions.
29. The next hearing date was 30th April 2003 when the matter came before Munby J. On that occasion the Mother was represented by Mr Mark Saunders. She states that on this occasion she wanted a residence order in her favour. She has produced the Instructions to counsel that make her position clear. She says yet again she was persuaded by advice (against her better judgement) to agree to a residence order in favour of the Father. She says that she called out "No!" in Court when the order was made, which led to the Learned Judge pointing out that no such order was ever final. The transcript is available. Her call was not sufficiently audible to be picked up on the tape. Once again, she is critical of her Counsel but, he has not been informed of the complaint.
30. In fact a letter written by the Mother's solicitors the day before that hearing puts a different gloss on the situation. It says and I quote "*After discussions between our clients yesterday your client confirmed that he would agree to Harry spending one half of the time with our client. The effect of this would, of course, be that the care of Harry is equally shared. However, because of your client's expressed wishes that the order of the 28th March remain in force our client has agreed not to seek an amendment provided we receive written confirmation from you that your client was agreeable to this arrangement*". Thus, it seems to me that the Mother was less concerned with the label than she was at achieving more time with her son.
31. The accusations against Counsel seem to have been unnecessary. But when such allegations are made against professional (be they barristers or mediators), they are very serious. If they are to be made, then the professional concerned should be given advance warning so that he/she can deal with the potential slur on their reputations. It does not seem to me to be good practice to make allegations and produce otherwise privileged instructions/documents without giving the person accused an opportunity to rebut the assertion made. I wish to stress that these matters, whilst they are unfortunate, will not have any effect on my judgment as to what is right for Harry in the long-term. However, I consider that it is important to make it clear how these cases ought to be put forward when a client makes allegations such as those made in this case.
32. After March 2003, the parties worked together in order to ensure that Harry saw a good deal of his mother. Over the months a routine developed whereby the Mother saw Harry each alternate weekend from Friday evening until Monday morning and she saw him on Thursday and Friday each week. In fact, she told the Father (and I accept) that she found Friday evenings difficult because she had meetings which, on occasion, ran late. In the circumstances the parties agreed that her nights would be

Wednesday and Thursday. Since January 2004, this has been the regime and Harry has adapted to it well. It is co-parenting in the true sense. It was envisaged that this would be a long-term arrangement and that Harry would remain at school in T, moving in due time to preparatory and then secondary school.

33. For the avoidance of doubt. I wish to make it clear to all parties that I do not regard the residence order made in March 2003 as being of any real relevance to my decision. It does not give the Father an "advantage" nor does it "disadvantage" the Mother. I am concerned with the situation on the ground and Harry's perception of his little life. The label is of secondary importance to that reality.
34. All was proceeding well until the Father reached the decision that his career and earning potential were at risk in the light of the changes in the NHS contract which I have outlined above. Consequently, he made the decision that he had to investigate the possibility of securing a partnership elsewhere. I accept that he was justified in being concerned about his future. I do not believe that he was Machiavellian or fanciful when he told me of his concerns. It was important for him to ensure that his earning capacity was not eroded. I do not consider it to be unreasonable for a man or woman to wish to ensure that he/she earns to the best of their ability or to seek to enhance their career prospects. For instance, the Mother wishes to do that by taking her MSc. It is laudable. Miss Bangay suggested that the Father would have sufficient if he earned £75,000 but that is too simplistic and misses the point. Work is not simply about earnings – it is about security and fulfilment. This Father says, and I accept, that his work is not secure in the T area and that his prospects are poor.
35. Accordingly, he was justified in deciding that he would look to other areas. The natural one from his perspective was Devon. It was not a capricious choice, it was the area from which he had emanated. He states that in happier days, the parties both discussed that they might ultimately end up in that part of the world.
36. The sadness of this case, is that a move to that part of the country is some 250 miles away. It means that it is inevitable that Harry will see less of one parent. The Father says that he will go to Devon even if Harry has to remain in T. I think that there is no doubt that he is going to move. The house at 13, The Ridgeway has been "sold" in the sense that an offer has been accepted, exchange has not been possible because it is part of a chain. The house is worth some £585,000 and is subject to a mortgage of £380,000 – thus it has an equity of just under £200,000.
37. The Father obviously had savings because he has been able to purchase a property in Devon. It cost £231,000. He put down a 10% deposit and raised the remainder on mortgage. Once sold, the equity in the Ridgeway will cover this mortgage. But the Father says that his ultimate plan is to buy a larger house (with separate accommodation where the Mother could stay on her visits to Devon). Alternatively he might keep his new home and either rent it out (presumably on holiday lets) or make it available as a base for the Mother. In any event, there is no doubt that it is a suitable property.
38. Likewise, there is no doubt that SM is a suitable school. The Mother has visited it and has no criticisms of it.
39. From 2003 until Easter 2004 the Father was in a relationship with a lady called Sally. I understand that she moved into his home and was part of his (and Harry's life) until the relationship broke down. Apparently it ended at that time because the Father had not informed her of the proposed move to Devon. She was, not surprisingly, very affronted when she learned that the Father had not sought her views on the move. It seems the Father is inclined to make decisions without seeking the views of his partner. I have no doubt that this has (and will always) cause problems if the habit continues. Suffice it to say, Sally and the Father remain friends and she will travel to Devon to see him once he is settled.
40. The Mother's relationship with Mr C has also continued. He told me that both he and the Mother were "passionate" people and I expect that he was accurate. On occasion, their relationship has not been straightforward but it has survived since 2001. In about May 2004, Mr C left his wife again. He says that they will divorce but, as yet, no proceedings are in being. He sees his little girl (now some 3½ years old) on a regular basis and has her to stay some 2 nights each week and alternate weekends.

41. I am told that the Mother and Mr C see their future together. Whilst the romantic side of their relationship may be strong, it does seem to me that they have a good many practical issues to sort out. For example, I note the Mother told me in her evidence that she envisaged buying her own home in T whilst Mr C spoke of a joint purchase. He has commitments to a child currently based in Reigate. It seems that these issues still need to be considered and clarified. For example, it may be some time until he knows what financial contribution he could make to any joint venture and he may wish to live closer to Reigate.
42. There has been some evidence about Mr C's relationship with Harry. It is reported as good by the Mother and Mr C. I have no reason to doubt this evidence. I am not clear from the evidence how much Mr C has, in fact, been involved in the home when Harry has spent time with his Mother. It seems that Harry and Gabbie have not been together on overnight visits for some 18 months and so I do not know how this factor will impact.
43. There has been concern that Harry has been calling Mr C "a bad man". The Father has been blamed for this. I am clear that the Father does not have a good view of Mr C and that is not surprising. Equally, he is a good father and I doubt that he has deliberately inculcated his views into Harry. The child must however be sensitive to the situation and, I suspect, that the Father does not hide his feelings. The Father told me that Harry had said that Mr C had "pushed in" between his mother and father. That seems to me to be a wholly age appropriate response to the reality of the situation so far as the little boy is concerned.
44. It is important that Harry is able to adjust to the new partners which the parties have or will have. Negative views should, if at all possible, be kept to the adult world. I have no doubt that Harry likes Mr C sufficiently well for them to have a reasonable relationship. Thus, Mr C's presence in the Mother's life is a neutral factor so far as I am concerned.
45. It seems that the Father began his researches in early 2004. He did not keep the Mother abreast of his plans but presented her with his decisions on about the 15th March 2004. This mode of operating has been his style and it is almost guaranteed to cause affront. The Mother says that when she was informed of his plans, she made it very clear that she objected. She says that she burst into tears and said "I will fight you all the way". The Father says that although she was upset, she did not say that she objected and he took this as her tacit acceptance. I am sure that the Mother was very upset. I am sure she thought that she would fight him all the way but I doubt that she expressed herself in this way on that day. All the evidence points to her being rather over awed in traumatic situations and finding it difficult to voice her objections. I suspect that she was stunned and did not fight her corner that morning. However, the next day her father contacted a new solicitor.
46. I do not consider that the Father would have altered his views even if she had objected. He had decided that a move was essential and so it was a fait accompli. He offered mediation but the Mother did not think it would assist. I agree.
47. The Mother considers that the status quo should prevail. She considers that Harry has flourished in the current regime. She would wish it to continue. I am afraid that it cannot. The Father is due to move next week. His name is already on the practice notepad. His first patients are booked for the 8th September 2004.
48. In the light of this, the Mother says that she will move to T. The Brockley property is under offer at a sale price of some £263,500. This price is a substantial increase on offers made earlier in the year because the Mother has improved/refurbished it in the interim. She plans to move to rented accommodation which will cost some £800 per month whilst she appraises the market. She told me that she would buy a house in T but it may be that she will wait to buy with Mr C.
49. It is her case that her move, will enable Harry to remain at his current school. He will be changing classes but he will retain his current friends and will go through the education which the parties always intended. She maintains that Harry – as a boy of 5 ¾ years old - needs the nurture that only a mother can give. She says that she has played an equal role since about March 2003 and that Harry would be better if he were to stay with her. She says that her hours are flexible enough to ensure that she can care for him.

She will be able to take him to school and collect him most days – in any event there is an after school club which he enjoys and could attend.

50. Her case has been prepared with meticulous care by her solicitor and put with great skill by her Counsel. I am entirely clear about the Mother's perception of Harry's needs and her wishes for his future. Miss Bangay put in very full written submissions – both in opening and closing. I have taken all those matters very much into account. In her final summary Miss Bangay sets out the following:-
- a) *The Father with the perceived advantage of a Residence Order, obtained in unfortunate circumstances, against a history of a shared care arrangement for Harry, decided to relocate to Devon with little regard to a proper consultation process with the Mother but more importantly with scant regard to the impact of such a move on Harry. His claims that the Mother might ever have provided her informed consent have been exposed as untrue and were wholly inconsistent with her stated intent and instruction of solicitors.*
 - b) *His determination to move for primarily financial reason is indicative of his priorities- he considers his own financial advancement to be more important than the deprivation of Harry from his mother.*
 - c) *Both the Father and Mrs Smith accept Harry is the Mother's number one priority. She has employment which enables her both to be financially self- sufficient and to work effectively around Harry's school day. She has demonstrated an unfailing commitment to Harry and there are no doubts as to level of care which she provides and is able to provide in the future.*
 - d) *The Father has available substantially more holiday time [some 8 weeks and 2 weeks study leave] than the Mother [currently 4 weeks and expected to be 6 weeks from October 2005] and an ability to enjoy enhanced periods with Harry.*
 - e) *For Harry to be removed from all that is familiar to him and away from his mother is not a position that should be endorsed by the court.*

I have taken all of her submissions and these points fully into account.

51. The Father's case has been equally well presented at solicitor level and by Counsel. It is the Father's case that his attachment to Harry is stronger than that of the Mother. He sees his main home as being with his father. He has told the welfare officer that he is looking forward to going to Devon. The Father says that Harry is expressing what he really wants to happen. Mr Rosenblatt has provided written opening and final statements. I have taken all his points fully into account.
52. In fact, the Hearing has been conducted without rancour. Both these parents were good witnesses and struck me as commendable people. There were tears in each of their eyes when Counsel made their respective submissions. I appreciate that this has been a gruelling and expensive process for each of them.
53. I have seen the Report from the Cafcass officer, Mrs Smith, who also gave evidence before me. She said that it was difficult to perceive what Harry wanted. She described Harry as a "*happy and secure child who has benefited from the love and care he receives from his parents*". Mrs Smith also records that he "*enjoys a high level of stability in his present circumstances*" and his school report "*reflects his happiness and stability. He is making good progress in academic, practical and social aspects of his life*".
54. In her evidence Mrs Smith stated:- "*On the face of it there are no substantial material benefits. Paul O told me that he was moving because of work and his financial position would be better, therefore securing Harry's lifestyle*".
55. Mrs Smith's impression [at paragraph 32 of Report] that Harry "*may prefer to move to Devon*" was qualified in her evidence when it was suggested to her that the Father had discussed the proposed move with Harry in positive terms. She said "*I accept that it is bound to impact on Harry's understanding of issues. I accept that I actually said that his view was probably inconclusive and I was not giving it great store*". But she did say he spoke with enthusiasm about Devon and that children sometimes spoke about things that they wanted to do. In the end she was not sure and her report came to no conclusion. She described the decision as finely balanced. I was grateful for her efforts but did not find her evidence to be of any real assistance.
56. The Court process is so often destructive of relationships. Inevitably, each party's position has to be polarised to some extent. Thus, each parent has made some criticisms of the other. For example, the Mother points to the fact that the Father has been late taking Harry to school and that he is reported to

be tired on Mondays. The Father denied that he was habitually late. The School Headmistress confirmed he was sometimes 10 minutes late. The Father also made complaints about the Mother – for example, that she took little interest in the school. His allegation was not supported by the school. He said that her working hours could impact on her ability to care for Harry. I will not enumerate each allegation, counter allegation and retort. None of them was fundamental to the outcome of this case.

57. Rather than make either parent feel inadequate, I prefer to stress their individual, but different, ability but to care for Harry. Fundamentally each agreed that the other offered good quality care. Moreover, I consider that both parents will adapt their work routine so far as possible to accommodate Harry's needs and, if they cannot be there on any occasion, they will put in place sensible alternative plans.

58. The Law.

In this case the Law is simple. The welfare of Harry is my paramount consideration. In assessing his welfare I must and do take into account all those matter set out in the Welfare checklist under paragraph 1 (3) of the Children Act 1989. Those factors are so well known that I will not lengthen this Judgement by setting them out verbatim.

59. I have said that this case will cause disappointment to one party. But Harry will continue to love both his parents and will see a great deal of each one. The circumstances mean that there will rather more emphasis on one home base during term time but the quality time during holiday periods will be balanced in favour of the other parent. Thus, he/she will have the opportunity to spend more actual, quality time with him as he will not be distracted by school.

60. Having seen both parents and read all the evidence, I have come to the clear conclusion that Harry's primary attachment is to his father. He was there in the difficult days of the initial separation, he was solid and dependable. Harry adjusted to the single most important change in his life (that is the separation of his parents) very well. This is in small measure due to the manner in which the Father handled this period. Since then each parent has adopted an unselfish approach to Harry's needs – despite their personal hurt and concerns. I do not consider that the special bond that was created at that time has ever been broken despite the fact that the Mother has increased her role. Although Harry cannot articulate it clearly but I am clear that Harry considers that he will be going to Devon. There is no suggestion that he has been saying to anyone that he does not want to go. I believe that he would have done if he had any doubts. His past shows that he is an adaptable child and I do not consider that his education will suffer by a move at this stage. Of course, he will miss his local friends but he will make new ones.

61. If he stayed in T, he would be moving to a new class teacher and a new rented property – thereafter to another home probably with Mr C. These factors would also be disruptive.

62. In the final analysis, whilst this has been a sad decision for me to make, but it has not been finely balanced. I am of the clear view that Harry should move to Devon and that henceforth the contact schedule should be implemented as agreed. Nothing in this Judgment would preclude the Mother from moving to Devon and, if she did, then, of course, the shared care regime could be re-established.

Deborah Bangay (instructed by Levison Meltzer Piggott) for the Applicant

Jeremy Rosenblatt (instructed by Rooks Rider) for the Respondent