Neutral Citation Number: [2025] EWHC 1403 (Fam)

Case No: ZE23P01539

IN THE FAMILY COURT
SITTING AT THE ROYAL COURTS OF JUSTICE

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15/05/2025

Before:

MR JUSTICE TROWELL

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Between:

E C-D	**1st Applicant**
- and -	
F C-D	**2nd Applicant**
- and -	
G H	**1st Respondent**
- and -	
AB C-D	**2nd Respondent**

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Sarah Lucy Cooper (instructed by **Hanne & Co**) for the **Applicants**

Emily James KC and Jessica Lee (instructed by **Miles & Partners**) for the **First Respondent**

James Nottage (instructed by **Cafcass Legal**) for the **Second Respondent**

Hearing dates: 30 April 2025 to 9 May 2025

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Judgment

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This judgment was delivered in private. The judge has given leave for this anonymised version of the judgment to be published. Nobody may be identified by name or location. The anonymity of everyone other than the lawyers must be strictly preserved. All persons, including representatives of the media and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

1. Before me have been cross-applications relating to a child AB C-D between, on the one hand his birth father, E C-D, and E's husband, F C-D (the applicants, first and second respectively), and on the other his mother G H (the respondent).

2. The applicants were represented by Sarah Lucy Cooper, who appears on a *pro bono* basis via Advocate. I am grateful to her for appearing without pay.

3. The respondent is represented by Emily James KC and Jessica Lee.

4. AB (the child) is a party to these proceedings through his Guardian, Catherine Callaghan who has been represented by James Nottage.

5. AB is 2½ years old and is, I am told, a healthy, happy and resilient toddler.

6. The issues I am asked to determine are many. I shall summarise them at this point as:

   a. Whether the second applicant should have Parental Responsibility;

   b. Child arrangements;

   c. The child's name;

   d. Whether the respondent should be allowed to take the child to Country R for a visit;

   e. Whether the child should be brought up a Muslim;

   f. What school the child should go to.

7. Further, in issue, it having been agreed that the child should not be circumcised, is the narrow point as to whether I should make an order or accept an undertaking from the respondent to that effect. I will deal with that immediately. I see no advantage in an order and therefore consider it appropriate to accept an undertaking.

8. I have had the benefit of opening documents and closing submissions from each party. I am grateful to them for their care in presenting the case to me. This judgment is written on the last day of the seven-day hearing and will be sent out in draft shortly after completion. I will not in this judgment have the time to respond to all of the arguments that have been put to me. Nor do I intend to map out a resolution of the *minutiae* of the different positions advanced. I shall in this judgment deal with what I see as the significant issues between the parties, giving sufficient explanation of why I am making the decisions to enable them to be understood. Where counsel consider my decisions cannot be translated into an agreed order without further rulings from me, I invite submissions in writing. The same invitation applies to any other consequential matters.

Summary Factual Background

9. The bones of the background to this matter are as follows. E is 48, F is 46. They are in a settled relationship and have been for some time. They married after the birth of AB in March 2024. E is self-employed but looking to return to employment. He works

in learning and culture in the arts. E is from Country L, a jurisdiction which has ratified and brought into force the 1980 Hague Convention. He was born in City M, and he has family in Country N, a jurisdiction which has ratified and brought into force the 1980 Hague Convention. F works as a teacher. F is from Scotland. The applicants live in London Borough J.

10. G is aged 40. She was born in Country R, a jurisdiction which (a) applies sharia law and where homosexuality and adultery are illegal; and (b) is not party to the 1980 Hague Convention. She claimed asylum in this country in 2013 because of persecution she feared in Country R arising from her sexuality. (She had previously lived here from 2008 to 2011 while in higher education.) She has had British citizenship since 2021. She told me in her first statement that she does not identify as a lesbian but has relationships with men and women. In her most recent statement, she tells me that she is straight. In her oral evidence she told me that she hoped to marry a Muslim man. She does not work. She lives in London Borough P.

11. In 2021 an agreement was reached that (at least) the first applicant and respondent would have a child together. They had met each other through a mutual friend, a woman known to the first applicant as part of the LGBT community and who was a partner, when they first met, of the respondent. (The first applicant was in fact legally married to another woman, but he had separated from her sometime ago and was in a relationship with the second applicant at this time.) The first applicant provided some semen, and the respondent inseminated herself and became pregnant. The applicants say that this was a three-way agreement. The respondent says it was not at first, because the second applicant initially wanted to be an uncle rather than a father. She says as time went on, and while she was pregnant, his position changed, and he wanted to be a father too. A written document was produced while the respondent was pregnant. This is in the second applicant's handwriting. It is an informal document. From that document it appears that all three were to be considered as parents to the child. There is controversy about this document which I shall deal with later.

12. Early during the pregnancy, the applicants and respondent staged a fake Muslim wedding to deceive the respondent's family in Country R. The first applicant was the

groom, and the second applicant was the Imam. It was communicated by Zoom to the respondent's family in Country R.

13. In November 2022 AB was born. The second applicant was together with the respondent for the birth. Both applicants were with the respondent in a birthing room, but when the respondent needed to go to an operating theatre only one could accompany her, and it was the second applicant that did. AB's birth was registered on the 24 November 2022. The first applicant is named as his father and thereby has parental responsibility. I have seen an email from the respondent of the 22 November to London Borough O Registrars asking for both applicants to be legal parents. This was unable to be accommodated. AB's surname, by agreement, was C-D. This combined the names of the two applicants. I have seen a contemporary WhatsApp message that indicated that the respondent was also intending to change her surname to C-D.

14. After giving birth, the respondent had members of her family come to help her. Her sisters disapproved of the LGBT lifestyle of the applicants. The relationship between the respondent and the applicants became strained. The respondent took the child to Country R in January 2023 and returned with him in April 2023. The applicants consented to that trip understanding that the mother was struggling with *postpartum* depression and seasonal affective disorder (neither condition has been medically diagnosed) but it is accepted by all that the return was later than originally agreed.

15. Notably the respondent on her return made clear to the applicants that she needed more help looking after AB. What she wanted was more, the applicants say, than they could provide given their employment.

16. In October 2023 the first applicant made a reference to social services raising concerns that the respondent had threatened to go to Country R with AB, and that she was struggling to manage the child. The local authority actioned this by some 'Early Help'.

17. The applicants brought an application in December 2023 for a prohibited steps order to stop the respondent taking AB to Country R which has led from the magistrates, via a recorder, and HHJ Suh in East London, to hearings before Peel J, Sir Jonathan Cohen, and Harrison J to this hearing before me. I shall not rehearse each of the hearings that has taken place.

18. In February 2024 the first applicant made a further reference to social services with concerns about the mother's mental health. Again, there was 'Early Help' and no concerns were identified by the local authority.

19. In March 2024 the applicants got married in Scotland. (The first applicant having amicably divorced his wife by then.) A court application was taken out by the applicants because the respondent did not want AB to attend. However, at court she agreed that she would take AB to the wedding.

20. A report was provided by Cafcass under s. 7 of the Children Act on the 18 September 2024. The author of that report, Ms Macalla Hurley, went on maternity leave, and due to the additional complexity of the issues that had by then arisen, Sir Jonathan Cohen directed on the 20 December 2024 that a Guardian be appointed for the child and that has led to Ms Callaghan's appointment from the High Court Cafcass team and her report of the 21 March 2025.

21. There have been expert reports from Dr S relating to the law of Country R, and Law Firm T in relation to immigration issues in Country R. The potential issue between the experts had been resolved, it was thought, and neither were required to give evidence orally to me. There was at the start of this hearing, following an application to admit fresh evidence in relation to a surety being proposed by the respondent to reassure the applicants as to a trip to Country R (which statement I refused), an application to put further written questions to Dr S. I gave permission to put those questions, which then had to be redirected to Mr U of Law Firm T, given the constraints of time. They were answered by email.

22. Further, in October 2024 the respondent went to AB's GP to raise concerns about inappropriate touching of AB by the second applicant. The GP was not concerned but passed the issue on to the local authority, as a matter of procedural requirement. The respondent followed up that reference with the local authority when the email from the GP went astray. They identified no concerns.

23. Further still in April 2025 the respondent again went to AB's GP with concerns about scratches by his testes. That has caused the GP to again refer matters onto the local authority. I am told that she made no allegations of inappropriate sexual behaviour.

Current child arrangements

24. AB lives with the respondent and spends time with the applicants, for 3 nights each fortnight: Tuesday night one week, and Friday and Saturday night the next.

25. He goes to nursery from 9 to 4 two days a week, on Tuesday and Wednesday. From January 2026 (per Ms Callaghan) this can be increased to 4 days a week, but the respondent says that will not be till (at the earliest) January 2027.

26. He interacts well with the applicants and the respondent. He can speak some Arabic and some Spanish as well as some English. I am told by Ms Callaghan that he receives good parenting and there is the potential for him to have a happy childhood if his parents can work together. She does point out however that there are indicators that he is at risk of experiencing harmful conflict.

27. Some handovers take place via the nursery. Some are face-to-face. The second applicant no longer plays a part in face-to-face handovers given tension between him and the respondent. The respondent does not speak to the first applicant at handovers, save for a few words at the most recent handover (following some mediation). This, I am told, will have an impact on AB.

28. I was taken to one particularly difficult occasion between all the parties in the park in November 2023. This meeting was meant to enable the parties to discuss the issues between them, but it is clear that there was not only bad temper, but also some pushing and pulling. The respondent was clearly frightened by the bad temper, in particular, on the part of the second applicant.

29. Ms Callaghan has suggested that this litigation is making the relationship between the parties worse. I very much fear that this hearing, and the cross examination in particular, might exacerbate the difficulties in the relationship.

Oral evidence

30. I have heard oral evidence from the parties, including Ms Callaghan for AB. I will set out my general impressions of them here.

31. The first applicant presented as a pleasant man who was rather taken aback as to what had happened. He had thought that the respondent was part of the LGBT community and that she shared his values. He was admiring of her cultural heritage but had not understood when he agreed to father a child with her that she was (or would become) more actively Muslim and would (as he saw it) re-engage with a family that disapproved of homosexuality. He was easily able to praise the respondent as a mother but was perplexed and distressed by what he saw as a rejection of him and the second applicant.

32. I was told that the applicants had raised with the legal aid authorities that there had been no domestic abuse, and questions were put to the first applicant about this. He acknowledged that it would have made matters more difficult for the respondent if legal aid were withdrawn but said that he had taken the point because the allegation of domestic abuse was wrong.

33. The second applicant also presented as a pleasant man. He did however give the impression of having a harder core than the first. He did appear to have some real insight into what the respondent might have felt, but he was less prepared to just gloss over what had upset him. He was whole heartedly supportive of what the respondent had achieved with AB, but he was clearly outraged that she had said that she was the victim of domestic abuse (and so secured legal aid) and that he had inappropriately touched AB.

34. The second applicant did acknowledge that the respondent had struggled at first with AB and that he and the first applicant had not been able to answer her requests for help, and he was able to see that might have had an effect on the difficulties they were now facing.

35. The second applicant did not accept that he was at first thought of as more of an uncle than a father. When it was pointed out that it was said that he 'clocked out' from AB when he was in Country R, he answered convincingly that that was because it was too painful being away from him. I note here (albeit I was taken to it in cross examination

of the respondent and by Ms Cooper in her position statement) that following on from the WhatsApp messages between the first applicant and the respondent where there is the reference to the second applicant having 'clocked out', and in which the first applicant says that people are talking about AB being away in Country R, the respondent says:

Things get hard and easy and what ppl think don't matter. I just want [AB] to grow happy and healthy w his family (you, [F] me, [her dog] and [their dog] in London. Along w his extended amazing family.

I find this is firm evidence of the second applicant being part of the child's family.

36. He responded with striking clarity to a question as to the impact of him not being granted a parental responsibility order by saying that other than from a legal point of view it would make no difference, AB was part of his life, and he would love and be responsible for him whatever happened.

37. The combined impression that the applicants gave me was that they had not entered into the parenting arrangements with any grasp as to how dramatic the impact of having a child would be. When the respondent found her life turned upside down by having a child, they did not upturn their own lives as much as she needed to make things work for her. On the other hand, something else they had not predicted is the fact that over time they fell in love with AB such that now they are desperate to be with him, look after him and bear responsibility for him. Further, they struggle to cope with the fact that the respondent has, as they see it, moved away from the LGBT community and is now a more observant Muslim then she had been when they met. Indeed, it was accepted by the respondent that she would drink alcohol and eat pork when they first met but would not do so now.

38. The respondent impressed me as a thoughtful witness with firm views. She was careful in her use of language. I think she took the oath to tell the truth that she had sworn on the Koran seriously, and was careful to tell the strict truth but on occasions her presentation could mislead a listener who was not paying attention, for instance when describing the fake marriage, she said that her sisters had met F, so must have known

he was not an Imam, but she did not say, until pressed, that she believed her sisters thought that the marriage was nonetheless a valid Muslim marriage.

39. The respondent was able to give heartfelt praise to the applicants. She said that she owed a great debt to the second applicant because he had during her pregnancy been very supportive. She reminded me that he attended NCT classes with her. She was able to understand after questioning how what she had done might have looked like to the applicants. Having accepted that she was reassured by social services that there was no good reason to believe that there had been inappropriate touching of AB, she did offer, for the first time, an apology to the second applicant as to the pain that it might have caused him to have been accused of such behaviour. Indeed, she accepted that she could enter into mediation with both applicants. (Some mediation between her and the first applicant had started shortly before the hearing.)

40. The respondent's particular evidence on the various issues between the parties I will set out below. I do however note that I consider that the respondent is for the most part trying to make decisions that she considers to be in AB's interest. As I will explore below, I do not think that she gets the balance right on each occasion but save for one point I do consider she is genuinely trying to do the right thing. That one point is her approach to the second applicant and particularly his application for parental responsibility. She is, I consider, emotionally fixed in relation to that. She is a woman of resolution, and he has a hard core. I am not at all surprised that their interaction has caused sparks. I remind myself that I should not underestimate the impact on her of these points of conflict – and think in particular of the fear that she clearly felt during and following the incident in the park. The first applicant, by contrast, is more able to glide over points of disagreement to oil their relationship. I find, however that her difficulty with the second applicant goes beyond these points of conflict; he is a clear marker of part of the respondent's past that she wants to step away from. It was very obvious that she would avoid referring to the second applicant and only refer to the first, as for instance in her religion plan (to which I will refer below) which talks only of what the first applicant can or cannot do. And, it was notable that she, and Ms James on her behalf, reminded me on a number of occasions that the first applicant was married to a woman, K, when the parties met despite there being no issue but that the first applicant and K were separated, and the respondent agreed, under cross

examination, that every time she met the first applicant the second applicant was with him as his partner, including the occasion of insemination.

41. Ms Callaghan gave professional evidence focussed on what she considered to be AB's best interest. It is evidence which came under attack from Ms James, but those attacks are best considered in relation to the arguments set out below. Ms Callaghan did not change her recommendations orally from those she expressed in writing. I have no doubt, contrary to the tenor of Ms James' submissions, that Ms Callaghan was entirely focussed on AB's best interest, and I make clear that I see no reason to consider her more empathetic to the applicants than the respondent. As I will set out, I do differ from Ms Callaghan's conclusions in some respects but that is no criticism of her professional evidence; it is me doing my job, her having done hers.

The Parenting Document

42. This is a document completed during the respondent's pregnancy. A form with a series of potential issues has been printed off the internet and completed, in the handwriting of the second applicant. It is not signed. It is not produced as a consequence of legal advice. The respondent says it was not something that had her full attention because it was being written up while she was clearing up after cooking them all a meal. The applicants say that they were all sitting round after dinner when it was filled in.

43. On any view it is no more than an indication of what the parties were thinking at that time and does not compel any particular conclusion on the issues which are before me now. Those issues need to be considered on their merits as things currently stand. I do however prefer the applicants' account that the respondent did attend to the document and more particularly to the issues it raises. It does appear that the evening was arranged to allow them to talk through the parenting problems they anticipated facing. The document had been printed out in advance to allow them to do so. The document is more of a prompt for the discussions rather than a settled and detailed record of conclusions, hence it is not signed, but the parties never envisaged that they would end up in court.

44. I draw the following points as notable from that document:

a. It was envisaged all three would be parents ('both' is repeatedly replaced with 'all');

b. It was envisaged the respondent would be the 'primary carer';

c. It was envisaged that the first applicant and the respondent would be on the birth certificate;

d. It gave the lead to the second applicant over education, as he was a teacher;

e. It envisaged there would be teaching of ethics but not religion;

f. It was envisaged there would be travel with the child to Country R and City M.

45. I remind myself that this is not a formal legal document and that it is in the second applicant's hand and may therefore reflect his interpretation of the discussions between the parties.

The Law:

46. There is no disagreement on the law I should apply. AB's welfare shall be my paramount consideration, and there are circumstances detailed in s. 1(3) of the Children Act 1989 to which I should have regard. I will not lengthen this judgment by repeating them here. I have them in mind.

47. There were rehearsed before me details of the interaction of parental responsibility and child arrangements orders. I do not consider that given the conclusion that I have reached and will set out below on the issue of parental responsibility they need to be repeated here.

48. I have been referred to some particular authorities to guide me in relation to the issues I need to decide. I shall deal with those I rely on under the relevant sections below.

49. I have been told that my decision must be holistic. It is. I set out my decisions sequentially because I must, but I have in the process of judgment considered the cross relationship of one decision on another, and I have held in mind the evidence as a whole, as is all but inevitable given that I compose this judgment having heard all the evidence.

The issues:

Parental Responsibility order in favour of the Second Applicant

50. Ms Callaghan tells me (paragraph 24 of her report) that, given the involvement by the second applicant in AB's care prior to and since his birth, it is appropriate, necessary and in AB's welfare interests that he should have parental responsibility. Ms Hurley reached the same conclusion.

51. The applicants agree and point out that it was the parties' position that they should each be parents, and point, among other things to the email to the London Borough O Registry Office. Further they say this is very different from a stepparent relationship.

52. The respondent says that I should not grant the second applicant parental responsibility because (and this is my summary):

    a. practically that would have the effect of causing her to be outnumbered on every decision as the applicants would align,

    b. she and the second applicant do not get on,

    c. it is not a necessary order, because the applicants' position is always aligned,

    d. it is intended only to 'placate the father's husband'.

53. I consider that the fourth argument does not have force and is an attempt to diminish the importance which had previously been attached to the second applicant. He is important to AB as more than his father's husband. He had been considered by the parties as one of the 'parents' from at least the time when the respondent was pregnant. I accept he was not a biological parent nor even a primary carer, in the words of the parenting document, but he was considered as one of the trio of adults with special responsibility for the child. He is not merely a stepparent as the respondent would now label him: he attended NCT classes; he was present at the birth.

54. I was taken to the words of Baroness Hale in *Re G (Children)* [2006] UKHL 43 at paragraphs 33 and 35, where she sets out that there at least three ways in which a person my become a natural parent of a child and lists the third as a psychological parent.

Notwithstanding what I consider, and he has acknowledged, was a less than adequate response to the request for help of the respondent when she returned from Country R, I have no doubt (using Baroness Hale's words) that he has been meeting AB's needs of feeding, nurturing, comforting and loving, and, as he gets older, will meet needs of guiding, socialising, educating and protecting.

55. I do consider there is force in the first and second argument. And I note in this regard the words of Peter Jackson J to which I have been referred in *Re R (Parental Responsibility)* [2011] EWHC 1535 (Fam) as to the risk of conflict. In relation to the first argument, as I said during the hearing, exercise of parental responsibility does not take place on a majority vote basis. I urge the parents to approach the decisions they need to make not as one side versus the other but as an enquiry into the child's best interest to which they can all contribute. As things stand, given the poor relationship between the parties, I acknowledge that these arguments must weigh in the balance against giving the second applicant parental responsibility.

56. I have recorded above that I consider that the respondent was made afraid during the incident in the park. It is not an incident of such gravity that this decision should be dictated by it, albeit I do consider I should hold it in mind. It shows mutual disagreement, an open loss of temper – on both sides though almost certainly more frighteningly on his, and an insensitivity on his part to the effect the incident had on the respondent.

57. It is further necessary for me to consider at this stage a criticism that is made of the second applicant by the respondent, namely that he puts her down by way of his email correspondence. I have been taken to a large number of emails and other written messages between each of the adults. For the most part they can be read in two ways, an enquiry and an implied criticism – depending on whether they are being considered by a defensive recipient or a questioning sender. Some are more overtly hostile but can readily be seen as being the next step in a simmering mutual row. I consider all the adults as equally guilty both of taking offence unnecessarily and causing offence (whether intentionally or otherwise). I do consider that the current poor relationship, as I have already said, is something that I need to consider, however my overwhelming thought as to this correspondence is that all three adults should do better, and I hope

that the court experience will make them reflect on how they express themselves hereafter.

58. As to the third argument, I accept that during these contentious proceedings the positions of the applicants has aligned. That agreement may not continue, and it is appropriate I recognise the potential for the second applicant to have a different view to the first. Considering, as I do, that the second applicant has AB's best interest at heart, then it is an advantage to AB having the involvement of the second applicant.

59. Various improbable scenarios were considered by the advocates as to the death of different 'parents' or indeed the separation of the applicants. None need to be repeated here, and of course alternate remedies will be available in most of those scenarios, but what they do all underline is that it is in AB's best interest to have the second applicant as someone who can contribute to his future as a parent.

60. Ms Cooper says to me for the applicants that an order for parental responsibility will have a material advantage for AB in enabling third parties, such as schools and hospitals, to recognise the second applicant's importance in his life. I agree with this.

61. I accept entirely that this is an issue of real importance, as urged on me by Ms James. I note, and have mentioned above and will return to below, the importance that she says it has for the respondent. I do bear in mind all the considerations set out in the Children Act checklist. In the final balancing I agree with Ms Callaghan, for the reasons that she expresses, that the second applicant should have Parental Responsibility. To her reasons I add three things:

    a. I impose Parental Responsibility on the second applicant as a burden - should AB need help in the future even if it is inconvenient to him and even if it be difficult to fit with his employment, he must take on that responsibility;

    b. I was struck by his reaction in cross examination that he would consider himself responsible even if no order were made – this is an appropriate way for someone who wants a parental responsibility order to feel;

    c. I agree that it will materially help third parties understand who is important for AB.

Child arrangements

62. Ms Callaghan recommends a shared 'lives with' order in favour of all adults, with an immediate increase to 4 nights out of 14 to the applicants, by extending the weekend, increasing to 5 nights out of 14 when the child is three years old (when extra nursery days she believes will be available) and 6 nights out of 14 when he starts school, with holidays shared equally. (Ms Hurley made a similar recommendation.)

63. The applicants agree (broadly) and offer to pay for the extra nursery days which the respondent says will not be available as Ms Callaghan envisaged. The importance of nursery to the proposals is that if collections and delivery can be via the nursery then confrontation between the parties is reduced.

64. The respondent urges that there should not be a joint 'lives with' order, as this does not reflect the reality. She accepts the increase to the weekend contact but would, until January 2027, when extra nursery days become available, lose the midweek contact leaving the applicants with 3 nights out of 14 immediately, increasing to 4 nights in January 2027.

65. She points to the fact that she does not work while the applicants do work. She is the one who will be around for AB. She tells me of an informal Arabic class that she takes part in with other mothers and which AB attends. She reminds me that he is thriving now and so reasons we should not change things.

66. I disagree with the respondent in relation to her rejection of a shared lives with order. I see this as a consequence of wanting to avoid the second applicant having parental responsibility. I hold that it is important to recognise that AB has two homes and therefore consider it is in his best interest to have a shared lives with order and make clear it should name both applicants as well as the respondent.

67. I do however see some force in her observation in relation to the division of time. I take the view that pushing to 5 nights out of 14 imminently may not be in AB's interests if it is to be achieved only by sending him to nursery for two extra days. I should note that Ms Callaghan did consider there was an advantage to AB in going to nursery more.

68. I remind myself that AB is generally recognised as growing up very well at the moment and see that as a reason to be slow to change the arrangements too dramatically.

69. It is for these reasons – how well he is currently doing and prioritising time with the respondent rather than in nursery – that I differ slightly from Ms Callaghan,

70. As to the significance of nursery being the means of avoiding confrontational handovers, I repeat that currently some handovers take place outside the nursery between the parties rather than by way of a full day at the nursery. Having heard them give evidence I find that the applicants and respondent should be able to conduct themselves civilly to each other at handover and would even benefit from the opportunity of meeting briefly to be able to communicate about AB. They all have AB's interest at heart and they will all be aware that confrontation and even frosty silence will not help him. I am concerned that it may be an unhelpful indulgence of adult emotion instead of proper concentration on what is in AB's best interests to set up a scheme whereby the parents do not meet.

71. Taking all these matters into account, I take the view that the increase should be to 4 days out of 14 immediately, and 5 days out of 14 when AB starts at school. This is to be done (before he starts at school), at the respondent's election, either by way of an extra day at nursery paid for by the applicants, with one exchange being by way of pick up and drop off and one being directly between the parties, or, without an extra day at nursery but with two direct handovers. I trust her to make the decision whether it will be in AB's best interest to have an extra day at nursery, and avoid a direct handover, or have a day with her, but have a direct handover. Obviously, she will need to make up her mind which she prefers promptly, and any change of arrangement thereafter will need to give the applicants adequate notice.

72. I make clear that I do not see this division of time as fixed permanently and expect the parties to be able to adjust the arrangements as should best suit AB in the future. Indeed, I note, the respondent did say in her evidence that as AB grows up, she would anticipate he would spend more time with the applicants. That may well be appropriate.

73. I am not going to descend into detail about the mechanics of the direct handover. I am aware that the respondent does not want the second applicant to be present. I do not consider his absence is appropriate in the long term. The impression that would give AB would be bad for him. In the short term I consider that it would be insensitive for the second applicant to push himself forward. I anticipate that the parents will address

this issue in mediation, and I consider it more appropriate for me to trust everyone to act properly than micromanage the situation.

74. There are some limited issues about the division of holiday time. It is agreed that it should be divided equally in one week blocks once AB is at school. Until then, while he is at nursery, Ms Callaghan suggests a gradual increase during 'shadow' school holidays from four nights to five nights and then a full week.

75. While this judgment was being drafted, Ms Callaghan has clarified her suggestion is the holiday contact should be 4 nights in 2025, five nights in 2026 and a full week in 2027. I endorse that. The simple arrangement would be for the days to fall in the alternate weeks of the shadow school holidays, subject to the parties agreeing (in writing) an alternative arrangement.

76. I expect the parents to be able to sensibly address any special days and to adapt the contact arrangements between them. I note that it was agreed during evidence that the respondent should have AB at Eid, and Christmas should be alternated.

Child's name

77. The child is called AB C-D on his birth certificate.

78. The respondent wants to add her surname: H, take out one of C or D and hyphenate the first two names – she uses one and the applicants the other.

79. Ms Callaghan agrees with the hyphenation of the first name and suggests adding H as a middle name.

80. The applicants' concern is that neither of their names is dropped.

81. I see the sense in hyphenating the first name – that makes each part equally important.

82. I can understand that the respondent wants her surname now added. I note that she did not on registration, but I have found that since that time her family have become more important to her and her self-conception. I disagree with Ms Callaghan that it should be a middle name – a middle name appears to have less importance than a last name. I do not consider it appropriate to drop either of the applicants' names. I reach this

conclusion given the decision I have made on parental responsibility and the fact that the child is already known as C-D.

83. While it is cumbersome I will direct that the surname be changed to the triple H-C-D.

Trip to Country R / Prohibited Steps Order

84. The applicants are worried AB would not be returned from Country R if the respondent were allowed to take him.

85. The respondent wants to take AB because that is her childhood home and her heritage, and her father is old, and she wants AB to spend time with him before he dies.

86. Ms Callaghan is against such a trip because Country R is a non-Hague country and there is a real risk that if AB is allowed to go there, he will not be returned. That risk derives from two different but related sources:

    a. the animosity between the parties which might lead the respondent to take the view that she and AB are better off without them,

    b. the fact that the applicants are gay, and the Country R family, in particular the father, have been deceived by way of a fake marriage to conceal the applicants' homosexuality, such that they might pressurise her to stay.

87. Ms Callaghan recognises the importance to AB of experiencing his heritage, and so suggests the parents review the situation when AB is 6.

88. The applicants just say AB should not go: the risk of him not being returned is too great. They point to an increase in the religious engagement of the respondent, and the fact that she no longer sees herself as wanting to have relationships with women - the issue that caused her to seek asylum here.

89. The respondent says that her life is in this country. Her home is here. Her friends are here. She draws attention to the fact that she has already taken AB to Country R and returned him.

90. The respondent attempted to offer some form of surety at the beginning of the hearing to reduce the risk of non-return. She has suggested:

a. a bond of £25,000 raised from her family;

b. a charge over her father's home in Country R, though the charge, as things stand, has fallen away given the expert evidence as to its lack of enforceability;

c. oaths by her and possibly members of her family taken on the Koran promising return.

91. I was referred, through a number of cases, to the analysis of Patten LJ in *Re A (Prohibited Steps Order)* [2014] 1 FLR 63, and in particular to the three related elements detailed in paragraph 25:

a. magnitude of the risk of breach of the order;

b. magnitude of the consequence of the breach if it occurs;

c. level of security that may be achieved by building in safeguards.

92. It was conceded by Ms James that the consequence of breach would be catastrophic, because Country R would ignore orders of this court calling for the return of AB.

93. The argument was in substance around the magnitude of the risk that the respondent would not return. There was some argument about the security but I need not dwell on this: £25,000 could be seen as a price that could be paid to secure a move, and the oath, without any expert evidence as to the effect of breach of an oath on the Koran, amounted to no more than another 'trust me' argument. I make clear that on any future application on this issue (should there be any) these possible sureties should be raised sooner and proper expert and other evidence (for instance as to the wealth of the respondent's family) obtained so that they can be properly evaluated.

94. What follows are the factors that having heard the arguments I consider I should bear in mind, pushing either way:

a. AB has already been taken to Country R, and he was returned.

b. But it is accepted that the relationship between the parties has substantially deteriorated since that trip. Further I find it significant that the respondent is fixed in her view that the second applicant should not have parental responsibility – indeed I was told in closing submissions that it would be

something considered catastrophic by the respondent - and I am making an order which will grant him parental responsibility. So, the deterioration of the parties' relationship and the order that I am now making means that the past return cannot be a reliable indicator of a future return.

c. The respondent was sufficiently concerned as to the way her sexuality might be treated in Country R as to seek and be granted asylum in this country. Albeit I accept that recent political developments have ameliorated the anti-homosexuality nature of Country R society it is appropriate to hold in mind that there might be some risk that there may be society or family pressure not to return AB to the applicants, given the attitude to homosexuality.

d. On the other hand, that the respondent did make the effort to obtain asylum in this country and citizenship here and has built a life for herself here and that her life as a woman in Country R would appear to be much more limited makes it unlikely that she would want to change course and live in Country R.

e. I must hold in my mind the importance to AB of meeting his grandfather and experiencing his mother's childhood home, and culture.

f. I note from the expert evidence that if the respondent were to travel to Country R on her British Passport then neither she nor AB would be entitled to any benefits in Country R (including health care and education); that a route to establishing Country R citizenship for AB would be at best fraught and would involve deceit; and that after 90 days remaining in the country they would be in breach of a tourist visa - though I have no evidence as to what in fact the process of ejection might be and whether this could be remedied by an employment visa.

g. I further note that if I am to make the prohibited steps order effective, I have to restrict the respondent from travelling not only to Country R, but out of this jurisdiction (to which I would add Scotland) altogether. Otherwise, there will be a risk of onward travel.

h. Yet further, I do see force in the argument of Ms James that her client was honest, and I could trust her. However, I cannot rely on her broad honesty while giving evidence because I am deeply troubled by the emotional block that the

respondent has in relation to the engagement of the second applicant. Put shortly, how she will react to this order?

95. How do I weigh all these different factors? As to the risk of the family or Country R society generally forcing the respondent and AB to stay in Country R against her will, I do not consider this to be of sufficient magnitude to warrant a prohibited steps order. However, the risk that the respondent may be so unhappy with the order that I make that she might decide to stay in Country R with AB to thwart that order, in particular the parental responsibility of the second applicant, is real. Given that there is no remedy available should AB not be returned, I determine the prohibited steps order should remain preventing travel of AB with the respondent out of the jurisdiction, save to Scotland.

96. It should not however be a long-term order. I take the view that a move by the respondent with AB to Country R would be irrational for the reasons expressed above. I must anticipate that any unhappiness with my order will pass. I must also bear in mind that it is a very significant restriction on her freedom to travel with AB that would be imposed by the prohibited steps order.

97. I therefore make the order for two and a half years, or until AB starts school whichever is the later. If the respondent wants to travel to Country R after that she should give the applicants sufficient notice, and propose appropriate protective measures (including such things as travelling on her British passport). The applicants can apply for an extension of the order if they consider that necessary at the expiry of that term, or for a fresh order on the receipt of any subsequent request to travel to Country R. The respondent can apply for the order to be lifted if circumstances require that prior to the end of that term. While of course any application will need to be considered on its merits at the time, I would expect the change in circumstances on which the respondent would be relying to be striking and I would expect the applicants to need to produce tangible reasons to think there is an ongoing risk, or that the protective measures can be sensibly improved.

98. I will consider submissions as to how passports should be held as a consequence of my conclusions on travel to Country R if the parties do not agree this.

99. I note that in an attempt to make things seem less uneven to AB the applicants have agreed not to travel abroad save to Scotland and City M for the duration of the prohibited steps order. Ms Cooper made clear at the conclusion of her submissions that they wanted to go to City M for 4 days this summer.

100. No one was able to properly respond to that. I heard no evidence on it. It would be improper for me to rule on it. In general terms there was no application to restrict their travel so I can see the argument that they should be allowed to go but I remark at this stage that it appears to me far from clear that it is in AB's best interest to go on such a long journey for so short a time, and for them to raise this at the end of submissions in relation to this summer strikes me as insensitive. My initial view is that they should reconsider their plan.

101. I do record that obviously, there will not be any restrictions on the respondent's travel without AB.

Brought up a Muslim

102. The respondent wants to bring up AB a Muslim. The applicants are largely relaxed about his exposure to Islam and Islamic culture by the respondent but want him in due course to form his own views. At the beginning of the trial a document was produced by the respondent in which she set out her religious plan, which required, for instance that the applicants should not challenge his Muslim religion.

103. It is impossible for me to work through the document, and arguably unhelpful of me to do so given the attitude of the applicants and indeed the more relaxed evidence which the respondent gave in the box. I would not require the applicants to take AB to religious classes. I would suggest that they should show respect (as I fully anticipate they will) to that faith. I would not require them to support it, and as AB becomes older, I would not restrain them discussing their own beliefs with him. As far as the information given to his future school might be concerned, I consider the school should be told that the respondent is a Muslim and the applicants are not, which has the obvious advantage of being the reality.

104. Obviously, and I hope unnecessary for me to say, it would be harmful if religion were to be used as a vehicle to condemn the applicants' relationship as sinful.

Schooling

105. It is accepted that AB has some time before he starts at school. The parties are however wanting me to make an indication as to whether he should go to a school near the respondent, or one to the edge of London Borough P towards London Borough J where the applicants live.

106. The applicants have aligned their position to that of Ms Callaghan which is that they should look for schools on the London Borough J edge of London Borough P. That would have the effect of making journey times relatively similar from each home.

107. I made clear during the hearing that I am not now in a position to determine which school AB should go to. Much will depend on the reputation of the schools which are available closer to the time, and where by then the families live. In this regard it should be recorded that the respondent is waiting for larger accommodation to be provided for her by London Borough P and has been so waiting for three years.

108. I do consider that there is force in the respondent's point that she will have to make the journeys on her own while there are two of the applicants. Further, there will be more school trips to and from her house than the applicants' not only because, under the child arrangements order I have made AB will be with her more than the applicants, but also because more of their time with him is at the weekend.

109. I further see force in her argument that if he goes to a school near one of the households (she obviously says near hers) then AB will develop local friends. This I see as a supporting argument.

110. I therefore see force in the school being nearer her, but I would require the parties to consider further at the appropriate time: (i) what is offered by the particular school; (ii) public transport links to each of their homes; (iii) any changes in the contact arrangements.

111. I record that if I were to be making a choice now, without having been taken through the different educational qualities of the schools, and on the division of AB's time that I have directed, I would be choosing the school near the mother, School Q. I further note that I can see different factors will come into play in relation to secondary schools. By then the quality of the education will attract greater weight.

Conclusion

112. I acknowledge that I am about to become preachy, I do however want these parents to take away from this hearing that they are lucky to have a healthy, resilient child. They should strive to do their best for him and take their pleasure from him doing well. Courts are a terrible way of sorting out differences between them, however well-intentioned each party is. They will need to work things out between themselves. There will, over the years of parenting ahead of them, be occasions when each of them behaves less well than they should. That is a condition of humanity, especially stressed parents. They will have to control themselves, forgive each other, not stand on their injured pride or what they might perceive to be an infringement of their rights, and work in the best interests of AB. He is their blessing that they should cherish.

113. I record that Ms Callaghan has suggested that the parties engage in mediation. The respondent has now agreed to three party mediation. The applicants have offered to pay for some mediation. I say to them all, try it. Talk about what will be in AB's best interests. Think of him and how he will benefit from the three of you working together.

Mr Justice Trowell

15 May 2025