

Neutral Citation Number: [2017] EWHC 858 (Fam)

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

IN THE MATTER OF THE CHILDREN ACT 1989
AND IN THE MATTER OF DO AND BO (TEMPORARY RELOCATION TO
CHINA)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12th April 2017

Before :

THE HONOURABLE MR JUSTICE BAKER

Between :

WO

Applicant

- and -

RO (1)

Respondents

DO (2)

BO (3)

(DO and BO by their children's guardian)

Christopher Naish (instructed by **Stephen Scown LLP**) for the **Applicant mother**
Christopher Hames QC (instructed by **John Boyle Solicitors Ltd**) for the **First Respondent**
father
Elizabeth Ingham (instructed by **Family Law Company**) for the **children by their guardian**

Hearing dates: 7th, 8th and 14th February 2017

IMPORTANT NOTICE

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment no person other than the advocates or the solicitors instructing them and other persons named in this version of the judgment may be identified by name or location and that in particular the anonymity of the children and members of their family

must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Judgment

MR JUSTICE BAKER :

1. The principal issue considered in this judgment is whether the court should grant permission to a mother to take her two sons to China for a holiday.

Background

2. The two boys are D, born 22 September 2008 and therefore now aged 8 ½, and B, born 25 November 2011 and therefore now aged 6. Their father is aged 74. He has dual UK and Australian nationality. He has been married before and has five adult children from his first marriage. During his first marriage, he lived with his family in Australia for several years. Some of his children still live in that country. He has been involved in property management in the south west of England but alleges that he has no beneficial interest in any of the properties he manages, asserting that they are owned by his sons.
3. The mother is aged 41. She is a Chinese national but has recently acquired a British passport. The parties met in 2001 when the mother was studying in England. They started a relationship but from an early stage it was characterised by allegations of violence and abuse. The police have been contacted on a number of occasions. In 2007, the parties married and in 2008 the mother gave birth to their first child, D. In 2009, the parties separated and the mother spent a period in a refuge with D. Social services became involved as a result of ongoing allegations of domestic violence and after an incident when D fell downstairs. According to the local authority, the parties did not co-operate with social services and as a result a child protection conference was convened and D made subject of a child protection plan. The father applied for a prohibited steps order to prevent the mother removing D to China.
4. Subsequently the parties reconciled and travelled to China together on a number of occasions with D. In 2011, the mother gave birth to their second son, B. In 2013, the mother travelled to China with both boys to visit members of the extended family. The father went out to meet them and the family returned together. The parties' relationship remained volatile and in July 2014 their GP referred the family to social services. On this occasion, both boys were made subject to child protection plans. In August 2014, however, the family travelled to Australia together (according to the father with the intention of exploring the possibility of emigrating) and in December of that year the father took the children back to Australia for a holiday. The following year, the relationship finally broke down. At that point, the boys were living with their father. The mother made a complaint to the police alleging that the father had raped and assaulted her during their marriage. The father was arrested, interviewed and bailed on condition that he did not communicate with the mother save in relation to contact with the children. In the event, the police decided to take no further action in respect of these allegations.
5. On 13th March 2015, the mother issued proceedings seeking a prohibited steps order preventing the father from removing the children from the jurisdiction. An ex parte order was made. On 8th May 2015, the father filed an application for a child arrangements order and permission to remove the children to Australia permanently and also to take them to that country for one month during the school summer holidays. At the FHRA hearing on 15th May, District Judge Thomas ordered a s7 report from social services on the issues of residence and contact and listed the matter

for an interim hearing to consider the issues of the proposed holiday and the mother's interim contact. On 18th June, Deputy District Judge Rutherford refused the application for permission to take the children on holiday to Australia and made an order defining contact between the mother and children – during school terms, on Mondays, Wednesdays and Fridays after school and staying contact on alternate weekends from Friday evening to Sunday evening, and in school holidays all day on Mondays, Wednesdays and Fridays and alternate weekends from Friday to Monday.

6. The s.7 report by social worker Ms Rawlings was filed on 25th June 2015. She listed the large number of complaints made by both parties to the police, social services and other agencies over ten years. The report concluded that

“the chronic parental conflict will continue to place D and B at further risk of emotional harm. Despite periods of child protection planning, the situation has remained one of ongoing conflict between the parents with both focusing their energies on the other's deficits rather than the children's needs ... I consider that the children are aware and affected by the history of parental conflict between [the parents] ... There are no concerns in relation to the care provided to the children in their father's house or when they are having contact with their mother in her home.”

She made the following recommendation:

“If the parents were able to focus on the children, rather than the adult issues and conflict, the local authority would be suggesting a shared care arrangement. However, [for] a shared care arrangement to be successful there needs to be a level of co-operation and flexibility between the adults and an ability to be led by the needs of the children as they grow and mature. The local authority are not confident that either parent is able to manage this form of arrangement and therefore consider that the children should remain in the care of the father, with specific contact to include overnight stays with their mother.”

7. On 29th June 2015, the father filed a petition for divorce. Those proceedings remain outstanding – the parties are still married.
8. On 14th October 2015, the mother applied for permission to take the children temporarily to China for the forthcoming Christmas holiday. That application was withdrawn but on 5th November the mother filed a further application seeking permission to remove the children for 21 days each year for a holiday in China. In her notice of application, she indicated that in return she would agree to the father being able to take the children to Australia for 21 days each year. On 11th November the father applied for a prohibited steps order to prevent the mother taking the children to China. On 24th November, the case was reallocated to me for further directions. The first hearing before me took place on 22nd January 2016 at which I joined the children as parties and appointed a r16.4 guardian, gave directions for further statements and a further s7 report from the social worker Ms Rawlings, and gave permission to the parties (with appropriate directions) to instruct an expert in Chinese law to provide an opinion addressing (a) the legal remedies, if any, available to the father and the English court should the children be retained in China, whether under Chinese domestic law or by enforcing or “mirroring” of an English order and (b) whether, if

the mother renounced her Chinese nationality she will be able to remain in China and retain the children there after the expiry of any visa.

9. Ms Rawlings filed her further report on 10th February 2016. In her conclusion, she noted that at the time of her first report she had considered that the father was able to provide the children with more consistent care as the mother was often presenting as obstructive and agitated. She now reported, however, that the father's presentation "had changed dramatically with him becoming increasingly irrational and fixed on past and present issues which has impacted on his ability to keep the children as his central focus". She therefore recommended that the children should reside with their mother with contact, including overnight stays, with the father.
10. In March 2016, the mother made further allegations of harassment against the father. As a result, he was arrested by the police, interviewed and bailed. He then spent just under 4 weeks in Australia, during which time the children stayed with the mother. Following his return to this country, the father was charged with harassment. As a result of these developments, it was agreed that the final hearing of the various applications under the Children Act, listed for 11th May, should be adjourned until 19th July. At that hearing, I made a lengthy order including (a) an interim child arrangements order under which the children would live with their mother (b) an order that the mother make the children available to spend time with the father under a detailed schedule including four nights per fortnight in term time and for greater periods in school holidays and half-term holidays; (c) a series of undertakings including by each party not to remove the children from the jurisdiction until the conclusion of these proceedings; and (d) directions for a further hearing in February 2017 to determine the mother's application for permission to remove the children temporarily to China. (The father had by this point indicated that he did not intend to proceed at this stage with his application to take the children to Australia.)
11. Following this hearing, the father was arrested again and charged with a further offence of stalking. In November 2017, he returned to Australia for a further month. At a hearing at the Crown Court in December 2016, he pleaded guilty to harassment of the mother on two occasions but was acquitted of the offence of stalking. He was conditionally discharged for 12 months. In the hearing before me, the father's evidence about what had happened at this hearing was opaque. I shall consider this matter later in the judgment.
12. The antagonism and disagreements between the parents continued. Following an allegation by the father that B had told him that the mother had hit him, CAFCASS referred the family to social services again. Having spoken to both parents, social services decided to take no further action. In the week leading up to the hearing before me in February, there was a further dispute when the father had kept the children back from school without telling the mother on the pretext that there were concerns about an outbreak of scarlet fever, and subsequently cancelled an arrangement she had made for a sleepover without consulting her.
13. Both D and B hold dual British and Australian citizenship. Neither child holds or has ever held Chinese citizenship.

The issues

14. The order of July 2016 left open two issues – the final child arrangements and the mother’s application for permission to take the children to China for a holiday. In the event, although there have been ongoing disagreements between the parties as to the child arrangements in the intervening months, there was a measure of agreement between them at the hearing before me. Neither party sought to argue for a substantive change in the arrangements. On behalf of the mother, Mr. Naish put forward a proposal, set out in a detailed schedule appended to his final submissions, which effectively provided for the current arrangements to continue. Although the father had issued a further application shortly prior to the hearing, his counsel Mr. Hames conceded in closing submissions that the order should continue, subject to two conditions (a) that the mother is to liaise with him prior to any additional contact taking place and (b) the children are not to be dropped off with him for additional contact unless he has agreed to it. In the period between the conclusion of the hearing and the delivery of this judgment, however, the mother has filed a further application for a prohibited steps order seeking to prevent the father from collecting the boys from school at any time unless agreed with her in advance. It seems, therefore, that there are in practice ongoing issues about child arrangements notwithstanding the apparent agreement pronounced in the course of submissions. I shall consider what steps to take in the light of these developments at the end of the judgment.
15. The principal issue considered in the hearing was therefore the mother’s temporary relocation application. In addition, however, the guardian at the end of the hearing applied for an order under s.91(14) preventing either party applying for a s.8 order in respect of the boys for a period of 2 years.

The law

16. The leading authority on the law relating to temporary relocation of children is the decision of the Court of Appeal in *Re R (A Child)* [2013] EWCA Civ 1115. Drawing on earlier authorities, in particular the decisions of the same Court in *Re K (Removal from the Jurisdiction: Practice)* [1999] 1 FLR 1084 and *Re M (A Child)* [2010] EWCA Civ 888, Patten LJ observed (at para 23):

"The overriding consideration for the court in deciding whether to allow a parent to take a child to a non-Hague Convention country is whether the making of that order would be in the best interests of the child. Where (as in most cases) there is some risk of abduction and an obvious detriment to the child if that risk were to materialise, the court has to be positively satisfied that the advantages to the child of her visiting that country outweigh the risks to her welfare which the visit will entail. This will therefore routinely involve the court in investigating what safeguards can be put in place to minimise the risk of retention and to secure the child's return if that transpires. Those safeguards should be capable of having a real and tangible effect in the jurisdiction in which they are to operate and be capable of being easily accessed by the UK-based parent. Although, in common with Black LJ in *Re M (Removal from Jurisdiction: Adjournment)*, we do not say that no application of this category can proceed in the absence of expert evidence, we consider that there is a need in most cases for the effectiveness of any suggested safeguard to be established by competent and complete expert evidence which deals specifically and in detail with that issue. If in doubt the court should err on the side of caution and refuse to make the order. If the judge decides to

proceed in the absence of expert evidence, then very clear reasons are required to justify such a course."

17. At para 25, drawing on the judgment of Thorpe LJ in *Re K*, Patten LJ added:

“applications for temporary removal to a non-Convention country will inevitably involve consideration of three related elements:

- (a) the magnitude of the risk of breach of the order if permission is given;
- (b) the magnitude of the consequence of breach if it occurs; and
- (c) the level of security that may be achieved by building in to the arrangements all of the available safeguards.

It is necessary for the judge considering such an application to ensure that all three elements are in focus at all times when making the ultimate welfare determination of whether or not to grant leave.”

18. S.91(14) of the Children Act provides:

“On disposing of any application for an order under this Act, the court may (whether or not it makes any other order in response to the application) order that no application for an order under this Act of any specified kind may be made with respect to the child concerned by any person named in the order without leave of the court.”

19. The leading authority on this provision remains the decision of this Court in *Re P (Section 91(14) Guidelines) (Residents and Religious Heritage)* [1999] 2 FLR 573 in which Butler-Sloss LJ at pp592-3 set out the following guidelines (which she stressed were “only guidelines intended to assist and not to replace the wording of the statute”):

- “(1) S.91(14) should be read in conjunction with s.1(1) which makes the welfare of the child the paramount consideration.
- (2) The power to restrict applications to the court is discretionary and in the exercise of its discretion the court must weigh in the balance all the relevant circumstances.
- (3) An important consideration is that to impose a restriction is a statutory intrusion into the right of a party to bring proceedings before the court and to be heard in matters affecting his/her child.
- (4) The power is therefore to be used with great care and sparingly, the exception and not the rule.
- (5) It is generally to be seen as a useful weapon of last resort in cases of repeated and unreasonable applications.

- (6) In suitable circumstances (and on clear evidence), a court may impose the leave restriction in cases where the welfare of the child requires it, although there is no past history of making unreasonable applications.
- (7) In cases under para (6) above, the court will need to be satisfied first that the facts go beyond the commonly encountered need for a time to settle to a regime ordered by the court and the all too common situation where there is animosity between the adults in dispute or between the local authority and the family and secondly that there is a serious risk that, without the imposition of the restriction, the child or the primary carers will be subject to unacceptable strain.
- (8) A court may impose the restriction on making applications in the absence of a request from any of the parties, subject, of course, to the rules of natural justice such as an opportunity for the parties to be heard on the point.
- (9) A restriction may be imposed with or without limit of time.
- (10) The degree of restriction should be proportionate to the harm it is intended to avoid. Therefore the court imposing the restriction should carefully consider the extent of the restriction to be imposed and specify, where appropriate, the type of application to be restrained and the duration of the order.
- (11) It would be undesirable in other than the most exceptional cases to make the order *ex parte*.”

20. At paragraph 40 of the judgment in *Re P*, Butler-Sloss LJ added this observation:

“ ... [T]he most likely reason for granting a restriction requiring leave to make an application is where the applicant has already made repeated and unreasonable applications with no hope of success. In those cases the applicant must have crossed the line between a reasonable application and one which is both unreasonable and has become or is becoming oppressive. The operation of the section is not however limited to oppressive or semi-vexatious applications. Orders have been made pre-emptively to apply to cases where the conduct of the applicant has not yet reached that level or there is no criticism of the applicant’s conduct but nonetheless there are circumstances where, in the best interest of the child, it is necessary to prevent unmeritorious *inter partes* applications. It is always a balancing exercise between the welfare of the child and the right of unrestricted access of the litigant to the court.”

21. Further guidance as to the procedure to be adopted when such an order is under consideration was given by Wall LJ in *Re C (Litigant in Person: Section 91(14) Order)* [2009] EWCA Civ 674 at paragraph 13:

- (1) Ideally, such an application should be made in writing on notice in the normal way....

- (2) There will, however, be cases in which the question of a s.91(14) order arises either during or at the end of a hearing. It may arise on the application of one of the parties, or on the court's own initiative. One or more of the parties before the court may be unrepresented.
- (3) In the circumstances identified in para (2), the court may make an order under s.91(14). It is, however, of the utmost importance that the party or parties or other persons affected by the order, particularly if they are in person: (a) understand that such an application is being made, or that consideration is being given to making a s.91(14) order; (b) understand the meaning and effect of such an order, and (c) have a proper opportunity to make submissions to the court...."

The mother's written evidence

22. The mother is Chinese by descent and nearly all of her family still live in China. Since moving to this country, she has revisited China on a number of occasions both with and without the father and the children. On each occasion, she has returned to this country after her visit. In these proceedings, the mother has argued for the children to spend the majority of their time with her partly on the grounds that they need to be able to access their Chinese heritage and to become bilingual, and that it was necessary for the children to spend more time with her to overcome the father's resistance to this. She asserts that the father has spoken in derogatory terms to the children about their Chinese heritage. She has also argued that she is better placed to care for the children and that, if they were placed with the father, he would not promote contact. She asserts that she and the children have suffered as a result of the father's controlling behaviour. She claims that he has a "need to secure control" and that he is unconcerned about the impact of his behaviour on the children. She also accuses him of being secretive, for example about his financial affairs, and controlling of the financial arrangements during the marriage. She asserts that it has been the father who decided, without consulting her, that the children should have dual nationality and that they should be educated privately. She claims that he feels it appropriate to disregard the terms of contact arrangements ordered by the court whenever he sees fit.
23. The mother has indicated that, in principle, she sees an advantage in the children spending time in Australia, but is very concerned that, if given permission to take the children there, the father will not return them. She points to what she describes as his significant source of income and is concerned that, although Australia is a signatory to the Hague Child Abduction Convention, the process of obtaining the children's return to this country would nonetheless be difficult and harmful to them. In contrast, the mother says that she only intends to take the children to China for a holiday, that the father had never previously raised any objection, and that she has never given him any reason to consider that she would fail to return them. She does not believe the father really thinks that she would retain the children in China and contends that his objections now are more about his ability to be in control of matters than a genuine fear.
24. In her statement dated 19 February 2016, the mother said that, if she took the children to China and chose to remain there, she would have the support of her family who would provide her with initial accommodation. She also accepted that she would be

able to obtain employment relatively straightforwardly. She insisted, however, that she did not intend to return to live in China. She says that she has made her life in the UK and is unhappy about the way things happen in China. She is concerned about human rights in that country, and believes there is significant corruption and no real access to justice. She said that she would also be unhappy with the Chinese educational system which she feels is too pressurised and geared towards exams and does not prepare children properly for life. She acknowledges that she does not own her own property in the UK and only lives in rented accommodation, and, furthermore, that she has no substantial assets in this country and is currently reliant on state benefits. It is her plan, however, to apply for full-time teaching posts in due course, although she is unable to follow up this plan because of the arrangements for childcare. She says, however, that she is sure she will be able to secure full-time employment as a teacher once these proceedings are concluded.

25. Another reason advanced by the mother in support of her case that she would not contemplate moving the children to China is that it would mean the termination of their relationships with the father. She says that the children “would be devastated by being unable to continue to have contact with their father and would never forgive me for this.”
26. The mother has been granted British citizenship and it is her belief that, when her Chinese passport expires in 2019, she will not be allowed to renew it. She would be willing to renounce her Chinese nationality as a condition for being allowed to take children to China. She says that she has made this offer with some reluctance because she has been advised by others who have taken this course of action that they have subsequently been refused visas to visit China because, by giving up their citizenship, they have been seen as effectively betraying their country. The mother says this attitude of the Chinese government demonstrates why there are no circumstances where she would want to bring her children up in that country. In her statement she said that she was not in a position to put forward any further or alternative proposals to reassure the court and the father that she would not seek to retain the children in China, save that she would agree to travel to China with the children using their British passports having secured visas for holiday purposes only.
27. The mother has filed statements in support of her application signed by her sister and father. They express a wish for the mother to be allowed to bring the children to China. They acknowledge that she would be returning to the UK at the end of the trip. The maternal grandfather says that he has “come to terms with the reality that my daughter has made her life in the UK and she will not be returning to live in China.” He says that he would be able to provide financial support to her and the children if they visited on holiday and give details of his income and capital assets which include his current home and also a 14 bedroom property, worth £500,000, which was formerly the family home and is now rented out.
28. In her final statement dated 18th December 2016, the mother gives details of the proposed trip and the likely costs. The primary purpose of the holiday would be family-based. It is her wish that the children have the opportunity to meet the Chinese side of their family and form a relationship with their grandfather and extended Chinese family (the maternal grandmother died some years ago). She believes it is important for the children’s cultural identity and ultimate emotional well-being to be able to connect with the Chinese side of their family and have a better and greater

understanding of their heritage. She believes that this could only be achieved by allowing them to spend time in China with their family. In addition, she points out that the children will be able to enjoy a number of other activities during the visit.

The father's written evidence

29. The father says he has been concerned over the years that the mother wanted to take the children to live in China so that he would be unable to see them again. He claims that, throughout their relationship, the mother was prone to volatile behaviour and mood swings and that this has continued since the breakdown of the marriage. He contends that outside agencies, including social services, have had concerns about her care of the children. He asserts that, throughout the children's lives, he has been better able to devote time to them, whereas the mother has spent time away studying and travelling. He claims that the mother favours B over D whereas he treats the children equally.
30. There have been a number of occasions when the mother has accused the father of assaulting and abusing her. It is the father's case that the mother has fabricated and exaggerated these allegations. He argues that she has taken these steps to prevent him being able to take the children to Australia. He argues that this illustrates that the mother cannot be trusted to tell the truth so that her assurances about returning the children to this country after a visit to China are unreliable. He also asserts that the false allegations made against him indicate a state of mind against him and that she does not really value his relationship with the children. The father asserts that the mother did not have a happy childhood in China, that her father drinks excessively, and that her parents were domineering so that she has had little by way of a good role model as a parent. He insists, however, that he fully respects the children's Chinese heritage and he wants to "promote and embrace the boys' Chinese roots".
31. The father believes that the mother has plans to get involved in a business venture in China concerning the arrangements for students to come to the UK from the Far East, and that this may well involve living in China or elsewhere in the region. In support of this contention, he relies on a letter the mother sent to him by email in February 2015 at a point when the plan was for the father to take the children to Australia. In the letter, the mother wrote inter alia:

"I want to say thank you for looking after them so I am able to concentrate on what I would like to achieve for a long time. I am going to have a business trip to China in April with my colleagues, after that it is most likely I will be working in Japan."

The mother's explanation for this letter in a subsequent statement was that she wrote it at a time when the father was indicated he wanted to take the children to Australia and that at that stage she was unaware that she could prevent him from doing so. She said that the letter "reflects the fact that I would therefore leave the UK if he and the children were no longer living in the UK." The mother denies that she has any current plans to work in the Far East. The father does not accept this denial and asserts that she has a good friend in China called Mary who runs an international school and that he strongly suspects she will obtain a job from her if she returns there.

32. The father says he understands that, although the mother has said that she would be willing to renounce her Chinese nationality, he believes that once she is in China she could “reclaim” it. He argues that, given the conflict and hostility that exist between them, he can see no reason why she would want to return to this country. He asserts that the UK does not have anything to offer her. She does not have a secure home here, nor any secure employment. Nearly all members of her extended family are living in China. He claims that she refuses to engage with him or communicate with him concerning the boys and adds that “she appears to despise me.” He says that she has repeatedly told him that she does not respect him and wishes to have nothing to do with him. He contends that, if she stays in this country, it is likely that she will continue to be scrutinised by the local authority. He draws attention to the fact that, when he separated from the mother in 2009, she returned home to China to live with their parents, leaving D in his care. He cites this as an illustration of her close emotional connection with China.
33. The father believes that the mother is no longer in a relationship with a man that she was at one point seeing and has sought to demonstrate, through evidence obtained via a private detective, that she describes her status as single on various dating websites.

The parties’ oral evidence

34. Both parents gave extensive oral evidence at the hearing before me. Neither party was wholly reliable as a witness and in some respects each of them gave evidence which I thought was inaccurate and untruthful. I remind myself of the principle in *R v Lucas* [1981] QB 720 that a witness may lie for many reasons – shame, misplaced loyalty, panic, fear and distress – and it does not follow from the fact that a witness has lied about some matters that he or she has lied about everything. Nonetheless, some of the evidence given by both parents before me gave me considerable cause for concern as to whether I could accept the rest of their evidence and, in particular, the assurances they gave about their future conduct.
35. The mother insisted in oral evidence that she has no plans to relocate to China permanently. She told me that she is now in a relationship with another Englishman who is settled in this country, and has two adult sons and an elderly mother both living in the same area. She told me that he stays overnight and that both D and B have met him. She says that they have discussed getting married once her divorce proceedings are concluded. He runs a business in this country which has had some trading activity with China but there is no prospect of his moving to that country. The mother also told me in oral evidence about her nephew who has recently come to this country and is taking an English course with a view to going to university near to her home where he is at present staying. The mother advanced this as a further reason why she has no plans to leave this country.
36. The mother gave further evidence about the father’s ongoing harassment of her. She said that she is constantly receiving messages from him, some of which have a sexual content. She said she did not think that the father would ever stop behaving in this fashion. Cross-examined by Mr Hames on behalf of the father, she said that, in behaving like this, the father was not putting the children’s interests first. He loved himself more than the boys. An example, she pointed to a threat which she said he had uttered to stop paying for the children’s private school fees. The mother said that, if the father could use the children against her, he would do so. She said that, although

he would never cause the children physical harm, his behaviour was undoubtedly causing them emotional harm. It is clear that she feels very strongly under pressure from him, but she insisted that she did not want to escape, adding that he was still the boys' father and she would continue to facilitate and encourage contact. She agreed in cross-examination that if they did not see their father it would have devastating consequences for them.

37. The mother said that ideally she wanted to go to China at Easter 2017 or at the latest in the summer holiday 2017. She produced photographs of her father's current flat where she proposes she and the boys would stay during the visit to illustrate that it was suitable accommodation. She also produced other photographs of her father's bank statements and other documents to illustrate that he would be able to provide financial support. It seems that, prior to giving evidence before me, she had not offered any sum by way of security for the children's visit to China, but in the course of her evidence she was asked questions about this, in particular by Miss Ingham on behalf of the Guardian, and the following morning returned to court stating that her father had offered to pay the sum of £10,000 by way of security. Asked why her father could not travel to England to see the boys, the mother said that he was now in his 70s and not able to travel because he has a heart problem. It would be a bigger burden for him to travel here than for her to visit China with the boys.
38. The mother was cross-examined about a property in Sanya in China which had been purchased some years ago. She explained that her parents had bought the property with a mortgage to provide a home for her in the event that her marriage to the father broke down. She was also cross examined about her financial position. She confirmed that she is currently living in a six-month short hold tenancy. She said that she is currently working in voluntary roles and said that she had made an effort to get full-time employment but at present wanted to spend more time with the boys. She added that if she was in a full-time job, the father had said that she would have to pay him maintenance for the boys. She alleged that the father owns over twelve properties in the local area and that he was concealing the truth about his financial position. I remind myself that the divorce proceedings are still ongoing and it seems probable that there will be a hotly-contested financial remedies dispute.
39. The mother accepted in evidence that when she first came to this country it had not been her intention to stay permanently and that she had only done so because she formed a relationship with the father. She acknowledged that she had gone to China in 2009 when the relationship broke down, but said she had only done this because as a foreign national she was not entitled to stay in a refuge.
40. She was cross-examined at some length about the letter she had sent in February 2015. She explained that she had been referring to a possible job with the local authority establishing cultural exchanges with China. She insisted that she had no intention to work abroad and allege that, when she wrote "it is most likely I will be working in Japan" she had meant that it was likely that she would be working "with Japan" adding "it's just my English". I found this part of her evidence wholly implausible. Although it is not a first language, her English is fluent and I think it extremely unlikely that she would have made such an error. Furthermore, her oral evidence on this point was contrary to her explanation given in her later statement quoted above that the letter had been sent at a time when she was unaware that she

could prevent the father taking the children to Australia and “reflects the fact that I would therefore leave the UK if he and the children were no longer living in the UK”.

41. In his oral evidence, the father was asked about his recent criminal conviction. He accepted that what was set out in his statement about this was not the complete picture, that although he had been acquitted of stalking he had pleaded guilty to two offences of harassment, and explained that his barrister had explained the outcome as “you’re not guilty, you just have a couple of things to sign”. Cross-examined by Miss Ingham, he said that he had “forgotten” to tell the guardian that he had pleaded guilty to the offences of harassment. I found his evidence on this issue wholly implausible. He undoubtedly pleaded guilty to two offences of harassment for which he was conditionally discharged. Either he does not appreciate the fact that he has a conviction for harassment or he understands the true position and is choosing to minimise it.
42. The father was extensively cross-examined by Mr Naish about the evidence of his controlling behaviour. He accepted that he had described the mother to the guardian as “psychotic” and that he has said that the criminal proceedings brought against him had been “vicious, malicious and bad news for the boys”. He accepted that he had told the guardian that he had concerns about the mother’s mental health, and about the lack of attachment between the mother and the children, and about allegations of physical abuse by the mother on the children. He also accepted that he had alleged that the mother had been engaging in sex work from home. He said that he had subsequently withdrawn this allegation after receiving the enquiry agent’s report but had previously been genuinely concerned about the boys’ welfare. Through his answers to Mr Naish on these topics, and his evidence overall, I formed a clear view that this father continues to want to control the mother’s life.
43. The father gave evidence that he has visited a school in China at which the mother and her friend Mary had taught together. It had been run by Mary’s father and the mother had worked for him. He produced a photograph of himself, the mother and Mary all outside the school which he said had been run by Mary’s father. He said he was pretty confident that Mary wanted the mother to go to China to work in her international school there.
44. The father was cross-examined on his own circumstances. He insisted that he owns no property in this country and had not done so since 1998. The properties in the south-west of England which the mother asserted were owned by him were, he claimed, really owned by his sons. I found his evidence about his financial circumstances evasive and unconvincing. In addition, he was cross-examined about his proposal to move to Australia and accepted in the course of cross-examination that his statements about this in the past had been “lenient in the truth”
45. In his oral evidence, the father alleged that he had paid £14,000 as a sort of dowry which had been used as a deposit on a property which should be bought for the mother in China. When he returned to resume his evidence on the following day, he produced a document purporting to demonstrate the transfer of this sum to the mother’s account from a joint account in the name of the father and one of his sons. He also produced a document which he said was evidence of the deposit put down by the mother on the property in Sanyo in China. Cross-examined by Mr Naish he stated that the sum of £14,000 had in fact belonged to his son in Australia. The purpose of

the transfer had been to buy a property in China which the whole family could use. He accepted that the rest of the purchase price of the property had been paid by a loan raised by mortgage but said he did not know the details about that.

46. Following the father's evidence, the mother was recalled to the witness box, first to confirm that her father had offered security of £10,000, and then to deal with issues that had arisen in the course of the father's oral evidence. She denied that she and Mary had ever taught at the same college. She did not know why Mary was in the photograph produced by the father. Her explanation for the transfer of money to her account at the start of the marriage was that she and the father were then running properties in the south-west of England, some of which were empty and needed furniture. They therefore decided to buy the furniture in China and ship it back to England. In the event, however, they had decided not to bring furniture here but had used the money to buy pictures instead. She insisted that none of the money provided by the father had been used to buy the property in Sanya. That property had been bought by her parents and put in her name as a wedding gift. She accepted that the property had been purchased and indeed that the father had been present when she chose the property. She reiterated that it had been given to her by her parents so that she would have a home to go to if the marriage broke down. It was not intended as any form of investment. Her evidence was that the plan had been for the father to pay the mortgage instalments but that the payments had not been made so that after two years the property had been rented out and thereafter managed by her father and brother who had paid the mortgage instalments. She said that she did not know what had subsequently happened to the mortgage and that the property was nothing to do with her anymore. On this issue, I again found the mother's evidence unconvincing.

The expert evidence

47. The parties jointly instructed Ms Flora Huang, of the Shanghai Promise Law Firm, to provide an expert report on aspects of Chinese law. The original letter of instruction posed the following questions.
- (1) What legal remedies, if any, are available to the father and the English court should the children be wrongfully retained in China by the mother?
 - (2) What legal remedies, if any, would the father have, pursuant to Chinese domestic law?
 - (3) Are there any international conventions or agreements by which the Chinese courts would either recognise or enforce an order made by an English court?
 - (4) Would the Chinese court make an order in the same terms as an English order, or is there a mechanism by which the Chinese court would "mirror" an English order?
 - (5) Would the answers to (1) to (4) above be different if the children have dual British and Australian citizenship?
 - (6) Is the mother as a Chinese national able to apply to the courts in China in respect of the children (a) if she has renounced Chinese nationality but is

habitually resident in England, (b) if she has renounced the Chinese nationality but is physically present in China or (c) for any temporary or emergency orders irrespective of her nationality and the children's nationality?

- (7) Is it possible for the mother to hold dual nationality?
 - (8) If the mother renounces her Chinese nationality or has the same removed by the Chinese government, would she be able to remain in China and retain the children there after the expiry of any holiday visa held within her British passport?
48. In response to a request for clarification by Ms Huang, the solicitors confirmed that "nationality" referred to the legal status of the parties in a given country as opposed to their origin or cultural association. In addition, the father's solicitor added further questions about "nationality" and "citizenship" under Chinese domestic law.
 49. In answer to the first question, Ms Huang advises that, at present, there is no legal basis for the unconditional recognition and enforcement of an English family court judgment or order in China. Chinese law calls only for the recognition and enforcement of the divorce element, if any, of a foreign family judgment. The child custody, support and asset division elements of such a judgment would not be recognised by, or enforceable through, the Chinese courts.
 50. If the children were not returned to the UK after the holiday, Ms Huang advises that the father's primary legal option would be to bring a case before a Chinese court of competent jurisdiction pleading for the return of the children to their country of habitual residence. Such proceedings would take the form of a hearing de novo of the child custody issues with a fresh determination being made according to Chinese law and practice. Ms Huang explained that the principal aim of the Chinese courts when deciding child custody and related matters is the protection and promotion of the child's health and well-being. She identified other principles applied by the Chinese courts by reference to an opinion issued by the Supreme People's Court. She added, however, that, although British judgments and/or orders will not be recognised and enforced by the Chinese courts, they may be entered as evidence in the Chinese proceedings.
 51. Ms Huang confirmed China is not a signatory to the Hague Child Abduction convention, nor to the 1996 Hague Child Protection Convention. She further confirmed that the UK and China have not concluded any relevant bilateral agreements on the mutual recognition and enforcement of family law judgments.
 52. Ms Huang further advised that the Chinese courts will not issue a "mirror image" order without investigating first the substantive aspects of the case in accordance with Chinese law. In practice, this would entail a full redetermination of the child custody matters in China, adjudicated according to Chinese law. Ms Huang confirmed that the answer to this question, and the preceding three questions, would not be materially affected by reason of the fact that the children have dual UK and Australian citizenship.

53. In respect of the fifth question, Ms Huang stated that, as the mother is at present a Chinese citizen, a sufficient connection to China exists to satisfy the relevant Chinese jurisdictional requirements for starting a case in that country. As a result, both the mother and the father have the right to start proceedings in China in relation to the children. By default, litigation in China will be conducted in the Chinese language and with the application of Chinese law. It will be possible for the parties to request that the court apply English law, but Ms Huang advised that the Chinese courts were most unlikely to agree to such an application. She further advised that the mother will be able to apply to the Chinese courts with respect to the children on the basis of her Chinese citizenship, regardless of the fact that she is habitually resident in the UK. If she were to abandon her Chinese citizenship, however, she will be able to apply to the Chinese courts in respect of the children only after successfully completing one year of uninterrupted residency on which to found jurisdiction. Furthermore, China does not have any legal mechanism to apply for or issue urgent or emergency orders in family law cases.
54. As to the various questions asked by the parties concerning nationality and citizenship, Ms Huang advised, first, that the ability for a Chinese citizen to hold more than one nationality is explicitly precluded by Chinese domestic law. Should she renounce or be stripped of her Chinese citizenship, and thereafter travel to China on her British passport, the mother will be subject to Chinese laws and regulations governing foreign aliens present on, or seeking entry to, Chinese territory. In particular, she would be required to conduct herself in accordance with the rules governing her visa category and remain in China no longer than for the permitted visa period. Were she to overstay her visa, she would be subject to legal and administrative action. It is not possible to abandon “nationality”; abandonment of “citizenship” would not alter the individual’s ethnic designation under Chinese law. Ms Huang advised that it is possible to reapply for Chinese citizenship after successfully abandoning it, although the failure rate for such re-acquisition is extremely high. She therefore advises that in practice, abandonment of Chinese citizenship should be considered a permanent decision. A person who abandons her Chinese citizenship loses all rights and privileges afforded to a citizen, including the right to remain indefinitely on Chinese territory without the need for a visa or residence permit.
55. In a supplemental letter, the father’s solicitor enquired whether, given the mother’s Chinese status, she could apply for a Chinese passport for the children. Ms Huang drew attention to article 5 of the Nationality Law of the People’s Republic of China which provides that

“Any person born abroad whose parents are both Chinese nationals or one of his parents is a Chinese national shall have Chinese nationality. But a person whose parents are both Chinese nationals and have both settled abroad, or one of whose parent is a Chinese national and has settled abroad, and who has acquired foreign nationality at birth, shall not have Chinese nationality.”

Thus the children in this case are not automatically Chinese citizens but, rather, foreign citizens who would need to apply for citizenship. Under Article 7,

“Foreign nationals ... who are willing to abide by China’s constitution and laws and who meet one of the following conditions may be naturalised upon approval of their applications:

- (i) they are near relatives of Chinese nationals;
- (ii) they have settled in China; or
- (iii) they have other legitimate reasons.”

Ms Huang advised that, as a condition of Chinese citizenship, the children would be required to renounce their British and Australian citizenship. Furthermore, the fact that the mother maintains dual citizenship in contravention of Chinese law could be a complicating factor in any Chinese citizenship application made on behalf of the children.

The guardian’s opinion

56. The guardian has prepared two reports in these proceedings. Much of the information in the reports concerns the child arrangement issues which, subject to further submissions as explained below, have now been resolved. In the circumstances, I do not think it necessary to set out that information in any detail. Suffice it to say that the guardian confirms the high level of antagonism between the parties and the impact of that antagonism on the children. She concludes that the children’s awareness of the ongoing conflict between their parents is having an impact on their emotional well-being and stability. She advises in her last report that the children appear settled in their mother’s care and she feels that the mother demonstrated good insight into their needs and experiences. Although she has struggled on one occasion to manage B’s behaviour, overall the children appear to be provided with consistent routines and boundaries. Equally, the Guardian concludes that the children clearly have a good relationship with their father and enjoy contact with him. She reports that D would like slightly more contact. The guardian expresses the view, however, that the father remains focused on the conflict between the parties whereas, in contrast, the mother has largely disengaged from this and recognises the impact on the children. The guardian therefore believes that the current child arrangement should continue.
57. The guardian’s reports contain relatively little analysis of the issues concerning the proposed visit to China. In her first report, she noted that the children’s Chinese heritage is an essential component of their identity. She observed that they were well settled in their school and local area. She thought there was little evidence to suggest that the mother is planning to move permanently to China and in the circumstances, she considered it appropriate for the children to be able to explore their heritage and identity by visiting that country. She accepted that, were the mother to retain the children in China, this would be detrimental to the children and have a significant impact upon their relationship with the father.
58. In her second report, the guardian added these observations on this issue:
- “It remains my view that the children would benefit from a holiday in China in order to explore their heritage and culture. Due to the level of animosity between the parents which includes frequent allegations made against [the mother], the court may feel there is a risk that she may seek to relocate to China with the children. This may be considered a way to remove herself from the conflict. This would have a negative impact upon the children’s stability and relationship with their father. In my view, the risk of absconding is finely balanced against the

benefits of the proposed holiday. However, I was reassured by [the mother's] view of this conflict and her lack of engagement with it. She has been consistent in this view for around a year. In my view, she no longer focuses on the conflict and instead prioritises the children's needs. I was further reassured by the statements from her sister and father. I feel there is little evidence to suggest that she plans to relocate to China."

59. In her oral evidence, the guardian confirmed that she supported the mother's application to take the children to China for a visit but concluded that Easter 2017 was too soon. She recommended that the visit be postponed until 2018. She thought waiting a year would help the boys manage the stresses better. She acknowledged that the father was a very significant figure in the boys' lives and the consequences for the boys of not being returned would be serious. She thought, however, that the likelihood of the children not being returned was low and outweighed by the benefits to the boys of seeing their father and engaging with their Chinese heritage. She conceded that, if the likelihood of the children not being returned was anything other than low, the balance would come down the other way.
60. The guardian advised the court that the current child arrangements should continue. She remains very concerned, however, about the impact of these proceedings on the boys who she described as being caught between their parents. If there were further proceedings, their anxieties would escalate. The events of the previous week had merely demonstrated that the father continued to push the boundaries at every opportunity. She therefore proposed that the court makes an order under section 91(14) to prohibit any further applications without the court's permission.

Submissions

61. On behalf of the mother, Mr Naish submitted that, applying the principles identified in the reported authorities, in particular *Re R*, the court should make an order permitting the mother to take the children to China for a holiday. He submitted that the father's evidence was strikingly dishonest in a number of respects and that the court should conclude that he lacks all credibility as a witness. He relied on the fact that the father has, over a prolonged period, demonstrated controlling behaviour towards the mother and the children and showed an unrelenting hostility towards the mother coupled with a tendency to denigrate her. He submitted that the father lacks genuine respect for the boys' Chinese heritage.
62. Mr Naish anticipated a submission on behalf the father that the mother's evidence lacked credibility in certain respects but contended that overall her evidence was credible – in particular, her clear evidence that she recognised the boys needed to have a good relationship with the father. He submitted that this evidence was corroborated by the way in which she has behaved, for example by permitting him to have additional contact with the boys, notwithstanding his wholly unacceptable behaviour towards her. Mr Naish submitted that, even if the court concluded that the mother's evidence had been untruthful in some respects, the court should apply the *Lucas* principle and recognise that the reason for any untruthful statements was likely to be a wish to avoid giving an adverse impression, rather than fundamental dishonesty. In respect of the evidence as to the Sanya property, Mr Naish submitted that this issue only arose during the course of the hearing when the father produced documents and that the mother did not have opportunity to obtain evidence from her

family to support her contention as to the provision of funds and the current position. Mr Naish added that, in any event, this issue is a red herring. Even if it is her property, it is unlikely that the mother would wish to live there as it is located 1500 kilometres from the family home. Mr Naish submits that the evidence concerning the mother's relationship with Mary is tenuous and apparently based on a photograph which is capable of many different interpretations. As for the letter sent by the mother in February 2015, he submits that the fact that she may have been contemplating working abroad then, at a point when it was anticipated that the children will be living with the father in Australia, does not mean that she now intends to move to the Far East.

63. So far as the risk is concerned, Mr Naish invited the court to accept the mother's position that the father has no genuine belief that she would not return the children to this country but is merely advancing the argument as a means of extending his control over her. Mr Naish characterised the arguments advanced on behalf the father on this issue as unattractive – namely that the worse the father behaved, the greater the mother's incentive to abscond, and the less well off the mother the less financially able she is to put up a bond as security and therefore the harder it would be for her to persuade the court to permit her to go. Mr Naish urged the court to be wary of discriminating against a parent who has been the victim of controlling behaviour and is of limited means. In any event, he submitted that the mother's ties to this country are in fact very strong and there is no real prospect that she would wish to relocate to China. First and foremost, there is a recognition of the boys' need for a relationship with her father. Mr Naish submits that, if the court accepts this, it is compelling evidence that she would return. In addition, there is evidence of her relationship with a local man, the fact that she has been settled here for many years, her expressed preference for the British educational system, and the fact that her nephew is now studying in this country. It is submitted that this constellation of factors amounts to compelling evidence that the mother has no intention of remaining in China.
64. It is accepted on behalf of the mother that the consequences of a breach will be extremely serious, although it is not accepted that the father will be without a remedy. It is submitted that the reality is that he has demonstrated that he has access to funds whenever they are needed – be it for school fees or legal representation or trips to Australia – and therefore would be able to afford to pursue remedies in China if necessary. Furthermore, the mother now puts forward an offer of a bond of up to £10,000 by way of security. Mr Naish submits that this is a significant offer representing as it does most of the father's savings. The mother's preference would be to travel on her Chinese passport because she believes that, if she travels on a British passport and applies for a visa, her Chinese passport will then be cancelled. She is reluctant to do this in case she needed to travel there without the boys at short notice, for example if her father becomes ill. However, if the court considers it a necessary precaution, the mother is prepared to do this and deposit the Chinese passport with the court.
65. Mr Naish endorsed the guardian's analysis and recommendation to the court, save that he submitted that she was wrong to identify 2018 at the earliest time when a holiday in China could take place. The proceedings have been ongoing for nearly two years and the proposed trip has already been postponed for some time. He submitted that the guardian was wrong to suggest that the period of twelve months would be

sufficient to enable the boys to become more settled. It is the father's behaviour that causes them to be unsettled and his behaviour is not going to change.

66. On behalf of the father, Mr Hames submitted that, if the mother is permitted to take the children to China, there is a substantial risk that she will retain them there and not return them to this country. It is the father's case that the magnitude of that risk is greater than any perceived advantage or benefit to the children of going to China. Furthermore, there are, it appears, no effective safeguards which can be put in place.
67. Mr Hames acknowledged that there will undoubtedly be some benefit to the children of visiting China. Holidays are usually fun. The mother will be relaxed. They will enjoy the company of their maternal grandfather and family they will experience the culture of their mother's homeland. Travel broadens the mind and will provide a vivid insight into their background. On the other hand, Mr Hames identified a number of disadvantages. The children do not speak Chinese. They will miss having face-to-face contact with the father. There is likely to be some anxiety about the newness of the temporary environment. In addition, the father has concerns about the accommodation proposed by the mother.
68. The principal argument advanced by the father against the trip, however, is the risk that the children will not be returned. Mr Hames characterised the risk as moderate – not high but not low and certainly more than minimal. The magnitude of the risk flows from a number of factors. The mother has no extended family here, other than her newly-arrived nephew. Although she gave evidence about a new relationship, Mr Hames points out that the details were only disclosed in the witness box. The mother has no financial attachment here – no property or assets and no permanent employment. On the other hand, her family in China have means – the father owns two properties. As a qualified teacher, she has skills that are readily transferable to China. It is the father's case that her friend Mary may have offered her a job in China. Mr Hames submitted that the mother's evidence about Mary was vague and that she was seeking to downplay the teaching opportunities available to her in China. Mr Hames submitted that the mother's letter of February 2015 demonstrated that she was willing to relocate to China at that stage.
69. Mr Hames contends that the mother's evidence about the Sanya property was unsatisfactory and untrue. He submitted that she concocted her explanation for why the money was transferred by the father into her account in 2007. He further submitted that her apparent ignorance as to what has happened to the property, and her disclaimer of any interest in the property, are implausible. It is his case that the mother knows that she still owns the property and that the reason for her failure to be candid about it was that she realised that it might adversely affect her application.
70. Mr Hames further relied on the fact that there is, on any view, very considerable conflict between the parents. He submitted that, whatever the rights and wrongs of that conflict, the mother has accused the father of harassment, interference and excessive control. The mother does not have a good word to say about the father. As a result, there is, Mr. Hames submitted, an obvious temptation for her to remove herself from the conflict by remaining in China.
71. It is submitted that, on any view, the consequences of the children being retained in China would be catastrophic. They would be completely removed from all that they

have known – their home, their schools and friends. They will be stranded in a country where they would not be able to speak the language of most of the local population. Most importantly, their relationship with their father would be destroyed. Mr Hames submits that given the father's age and circumstances, they would be put beyond his effective reach. Drawing on Ms Huang's report, Mr Hames submitted that there are no effective safeguards which can be put in place to prevent the children being retained in China if the mother so chooses. The offer of £10,000 by way of security was too little too late. Mr Hames submitted it would be insufficient to form any fighting fund to facilitate the father taking proceedings in China.

72. Mr Hames urged the court not to follow the guardian's recommendation to allow the mother's application to take the children to China. He submits that the guardian has not carried out a proper or adequate assessment of the consequences of the risk or the appropriate safeguards required by law. In all the circumstances, Mr Hames invited the court to reinstate the earlier prohibited steps order preventing other parties from removing the children from the jurisdiction without the written consent of the other parent or order of the court.
73. In support of the guardian's application for an order under s91(14), Miss Ingham submitted that it has become clear to the guardian that the children have not been shielded from the parental conflict over the course of many years and have been heavily involved since 2014. This conflict has been unremitting and played out in every available forum with applications by each parent for the involvement of the court and other agencies. This has directly impacted upon the children, for example through witnessing their father being arrested or being questioned themselves by social workers. Such behaviour has continued in conjunction with the court proceedings. Within the court arena, there have been ongoing proceedings for nearly two years with various applications being made by each parent. This has led to the children not knowing which parent they were going to live with and what time they would then spend with the other, but also at times it has been uncertain for them as to which country they would be living in. Miss Ingham pointed out that, during a relative period of calm in the court proceedings since last July, there have nonetheless been allegations of physical harm made against the mother by the father in October 2016 necessitating a further referral to the local authority as well as the criminal proceedings resulting in the conviction of the father for harassment of the mother. Added to all of this, there has been recent uncertainty over whether the children could remain in their current school. Miss Ingham submitted that it is hard to see any element of the children's lives which could be said to have been free of care or any period of time over the last three years during which they could just enjoy their childhood. The guardian is greatly concerned about the impact of these anxieties upon the children, in particular D.
74. Realistically, the guardian acknowledges that it is unlikely that the children will be spared further exposure to problems in the parental relationship. It would however be of considerable benefit to them if they are able to be told that their current living arrangements are not going to change for a considerable period of time. Although there is no history of repeated applications to the court, the extraordinary and unrelenting fashion in which the parental problems have impacted on every area of the children's lives over the past three years puts this case into a bracket which goes

well beyond the “normal” level of animosity to be expected in any private law dispute.

75. Both parties oppose the making of a s.91(14) order. On behalf of the mother, Mr Naish submitted that a section 91(14) order restricting the mother from applying to the court would be unjustified on the grounds that applications to the court have been generated as a result of the father’s desire to exercise control. For his part, the father offers an undertaking that he will not make any further application to vary the existing child arrangements order for six months. But he opposes any order under section 91 (14). Mr Hames submitted that such an order is inappropriate for a number of reasons. First, no application for it was made prior to the hearing. It was only raised by the guardian at the conclusion of the evidence. Consequently, it has not been the focus of this hearing which has centred around the temporary relocation application. Mr Hames therefore submitted that it would be procedurally unfair for this court to make such an order at this stage. He further submitted that the father had not pursued any unreasonable application nor is there any history of repeated and meritorious applications. It is submitted that there is no proper evidential basis for any finding that the father will bring further unwarranted proceedings. Furthermore, there may be a need for both parties to approach the court for a prohibited steps orders or specific issue orders. Mr Hames reminded the court that *Re P* emphasises that s.91(14) order should be the exception not the rule. He contends that, quite apart from procedural unfairness of making such an order at this hearing, the welfare of the children and the overall circumstances do not justify it at this stage.

Conclusions

- 75A. I endorse the guardian’s comments about the serious impact which the parents’ mutual antagonism and chronic arguments have had on the children. Although the opinion of the guardian, echoing the observations of the social worker in the s.7 report, is that the father remains fixated about the dispute whereas the mother has to some extent moved on, my overall conclusion from their oral evidence was that each party harbours a strong sense of grievance towards the other. There is clear evidence that the father has persisted in his relentlessly controlling behaviour towards the mother, but I also detected a high level of bitterness in the mother’s attitude towards the father. Unless the parties modify their behaviour towards each other, it is likely that the children will suffer significant emotional harm which could in turn lead to further social services intervention.
76. Turning to the mother’s application, the first and crucial issue is the assessment of the risk that the mother would not return the children to England if given permission to take them to China. I do not consider there is a high risk that she would fail to return the children, but equally, having carefully analysed the evidence, I do not think the risk can be described as low.
77. I accept that the father has demonstrated a desire to control the mother, but I do not consider this to be his only motivation in objecting to the proposed visit to China. I find that he does have a genuine concern that the children would not be returned. Plainly a crucial factor in my analysis is my assessment of the mother’s evidence. As indicated above, I did not find her to be a wholly satisfactory witness and I conclude that she has been less than candid about a number of aspects of evidence. I did not accept her explanation concerning the letter of February 2015. Her claim that she

intended to say “with Japan” instead of “in Japan” was, to my mind, an obvious fabrication. Of course, the fact that she has lied about this does not mean that she has lied about everything. Looking at the possible explanation for this lie, I have considered the point that she is merely anxious that the court will think that the fact that she was willing to move to the Far East in 2015 indicates that she has a similar intention now when in fact she does not. I have concluded that I cannot dismiss this fabrication in that way. I am left with the strong feeling that she does indeed have a plan of some sort to work in China. In this context, I found evidence concerning her friend Mary, and her dismissive responses to suggestions concerning Mary’s business venture, somewhat unconvincing.

78. Furthermore, I found aspects of her evidence concerning the Sanya property lacked credibility. In particular, I do not accept her explanation as to why the father transferred money to her account, namely to purchase furnishings for properties in England. In addition, her apparent lack of knowledge as to whether or not she retained interest in the Sanya property was implausible, given her overall evidence and in particular her evidence as to her parlous financial circumstances. I simply do not believe that she does not have a clear understanding as to the position about the property. I conclude that she does retain an interest in the property which was, as she said, purchased for the specific purpose of providing a home for her in the event of her marriage breaking down.
79. Although the mother gave evidence of a serious relationship with an English businessman, my overall impression was that she has comparatively few ties to this country. She has no assets and no job, and her accommodation is a six month tenancy. Furthermore, she has for a number of years been subject to harassment and interference from the father who is, I accept, obsessively controlling in his treatment of her. I accept Mr Hames’ submission that these factors could well lead the mother to decide not to return to England.
80. On her behalf, Mr Naish submits that the principal factor keeping her here is her acknowledgement that the boys love their father and will be devastated if they lost contact with him. Having listened carefully to her evidence, however, I was not convinced that her real view of the relationship between the boys and their father was as she described. I bear in mind her comments concerning the Chinese education system and human rights abuses in that country. Overall, however, I am not convinced that this will be sufficient to lead her to bring the children back if she thought that she and they could have a better life in China.
81. Drawing these threads together, I conclude that there is a moderate risk – a not insignificant risk – that the mother would not return the children to England at the end of a holiday in China. I acknowledge that the guardian reached a different conclusion but it is, of course, the judge who is in the best position to carry out this assessment.
82. I therefore turn to the second and third factors identified in *Re R*. I accept the evidence of Ms Huang. There are indeed no effective safeguards which could be put in place to prevent the children being retained in China if the mother so chooses. I was not persuaded that the mother’s belated offer of £10,000 by way of security offered any significant assurance in this regard. I do not accept that the mother’s offers to travel on her British passport and to renounce her Chinese citizenship are a sufficient safeguard. It would be open to her to withdraw any renunciation of citizenship and,

although Ms Huang advised that re-acquisition of citizenship in such circumstances was difficult, I do not consider it would be impossible for the mother to re-acquire it, particularly if she was able to argue that she had only renounced it at the court's insistence. China is not a signatory to any Hague Convention. There are no bilateral arrangements between China and the UK. The Chinese court would not make a mirror order or otherwise give effect to any English order. At most, it would admit the order in evidence in the course of any proceedings brought by the father seeking to recover the children, but such proceedings would amount to a de novo assessment of child arrangements. Whether or not the father has any financial resources – a matter of very considerable dispute between the parties – I accept that it would be difficult for him to access the court in China. It would not be completely impossible for the father to secure the return of the children, but this could only be achieved by initiating proceedings in China. The process would undoubtedly be difficult and there is no guarantee that the Chinese court would order the children's return. Indeed, given the history of the family, there is a significant prospect that a Chinese court would refuse to do so.

83. Turning to the third factor – the consequences for the boys of being retained in China – I accept the evidence of the guardian that they would be devastating. Apart from the company of each other and their mother, they will be deprived of everything in their lives to date – friends, home environment, school, the culture in which they have been brought up, and, above all else, the relationship with their father. Notwithstanding his at times deplorable behaviour, their relationship with their father has been strong and beneficial to the boys.
84. In the light of this assessment of the risk of the children not being returned, and the consequences for them if that occurs, I turn to the overall welfare analysis, applying section 1 of the Children Act. I accept that it is ordinarily in the interests of children to have an opportunity to meet all members of their family and to explore their background. In this case, it is manifestly in the interests of these boys to get to know their maternal family in China and have an opportunity to learn more about their Chinese heritage. In other circumstances, it would definitely be in the interests of the boys to be taken for a holiday in China. But in the light of my assessment of the risk that the children may not be returned to China, the lack of sufficient safeguards to ensure that they would be returned, and the dire consequences if they are not returned, I conclude that it is not in their interests to be taken to China at this stage. I therefore refuse the mother's application for permission to take the boys to China for a holiday.
85. I turn briefly to the other applications. I was minded to endorse the agreement concerning child arrangements as set out in the schedule to Mr Naish's closing submissions. In the light of the ongoing dispute as set out in the mother's latest application filed since the conclusion of the hearing, however, I am not persuaded to give such an endorsement at this point. I want to hear argument concerning these developments before deciding whether the proposed order is indeed in the children's best interest. It may be that the evidence concerning the matters that the mother now wishes to raise will justify a re-evaluation of the division of parenting time.
86. Finally, so far as s.91(14) is concerned, I recognise the strength of the guardian's arguments. I have concluded, however, that there is force in the submission that the focus of the hearing before me was on the relocation application and that this court may not have the evidential basis to decide whether to make such an order at this

stage. The guardian is rightly concerned about the children's heightened anxieties, but in my view those anxieties spring not so much from the ongoing proceedings but rather from the persistent and probably chronic difficulties between the parents themselves. There has not been the history of a number of unmeritorious applications to the court which is usually, although not invariably, found in cases where the court makes a s.91(14) order.

87. On balance, I have decided that it would not be appropriate to make a s.91(14) order at this point. I will, however, adopt a course which goes some way to meet the guardian's concerns, I will direct that upon issue any further application for orders under s.8 of the Children Act concerning these children should immediately be allocated to me or, if I am not available, to the Designated Family Judge for the area to determine what course to take. It is, of course, always open to the court in appropriate circumstances to make summary orders if it concludes that such an approach is in the interests of the children and I can foresee circumstances in which a court in this case would take such a course. Furthermore, by ensuring that the further application comes before me, or the DFJ, the question of whether a s.91(14) order should be made can be reviewed if the court concludes that the overall circumstances justify such an order.