

RE M (CONTACT: PARENTAL RESPONSIBILITY)

Family Division

Black J

6 March 2001

Contact – Parental responsibility – History of abusive criticism of mother by father’s family – Father showing commitment, attachment and concern for severely disabled child – Whether potential misuse of parental responsibility justified refusal

The child, aged 17, suffered from cerebral palsy in all four limbs. She was virtually unable to see and could not communicate in any meaningful way by speech. The child was totally dependent on others for all her needs, and would be so all her life. There was evidence that the child responded to her mother in a special and different way, but it was not clear that she could recognise other individuals. The child was living with the mother, and the mother’s partner, who were planning a move to a different part of the country. The father had 5 hours’ contact with the child every week. The father applied for parental responsibility, for a residence order and for a defined contact order. Since the separation of the mother and father, the father and his family had complained to the authorities many times about the care which the child was receiving from the mother, and about the risk which they alleged the mother’s partner represented to the child. There had been a series of abusive exchanges between the two families, and a number of angry and emotional confrontations. To minimise contact between the families, the father’s contact with the child began and ended at a childminder’s home. Unfortunately, the father had missed a number of such contact visits, apparently because of mistakes as to the day, or problems in arranging transport. The mother, supported by the guardian and experts, sought no order as to direct contact.

Held – refusing the parental responsibility and residence orders but making a contact order for three 5-hour contact sessions a year –

(1) The child’s main carer throughout her life had been the mother, and the mother had discharged that role satisfactorily and with great commitment to the child. There was little evidence that the mother’s partner posed a particular physical risk to the child, or to the mother. The evidence suggested that the father would be heavily reliant on family support if he were to take responsibility for the child’s care, and that this support would not always be available. All the professional advice was to the effect that a move of residence would not be in the child’s best interests. The father was to be provided with certain information about the child, and contacted in an emergency.

(2) Being settled and secure was important for all children, but freeing the child and her carers from the stresses and strains of the arguments which had gone on about her care was particularly vital for this child, because of her special needs. If frequent contact continued, the many problems and arguments which had been a feature of such contact to date would be likely to continue. The child’s handicaps prevented her from experiencing contact as the usual child would, and she would not feel the loss of contact with the father. However, she enjoyed contact with the father and his family when it was actually happening, and it might be very beneficial to her in the long term to maintain the links with her paternal family, who might one day, if anything happened to the mother, be called upon to care for her. Direct contact should be maintained, but reduced drastically to three 5-hour sessions each year. The childminder should continue to be involved in the handover arrangements.

(3) The father had shown commitment to the child over a long period, and a high degree of attachment. The father’s motivation for making the parental responsibility

application was slightly suspect, but was to a significant extent concern for the child. However, these were not the only relevant factors, and in this case there was the very real problem of the potential misuse of a parental responsibility order. It would not be in the child's interests to grant the father a parental responsibility order in circumstances in which it was highly likely that he would misuse it to lend weight to future interference in her care, thereby continuing the stress on the mother and potentially undermining the mother's ability to care properly for the child.

Statutory provisions considered

Children Act 1989, ss 1(3), 8

Cases referred to in judgment

C and V (Contact and Parental Responsibility), Re [1998] 1 FLR 392, CA

D v S (parental responsibility) [1995] 3 FCR 783, FD

F (Adult: Court's Jurisdiction), Re [2000] 2 FLR 512, CA

H (Minors) (Local Authority: Parental Rights) (No 3), Re [1991] Fam 151, [1991] 2 WLR 763, *sub nom H (Illegitimate Children: Father: Parental Rights) (No 2)*, Re [1991] 1 FLR 214, *sub nom H and Another (Minors) (Adoption: Putative Father's Rights) (No 3)*, Re [1991] 2 All ER 185, CA

H (Parental Responsibility), Re [1998] 1 FLR 855, CA

P (Parental Responsibility), Re [1998] 2 FLR 96, CA

S (a minor) (parental responsibility: Contact), Re [1995] 3 FCR 564, FD

Ian Peddie QC and *Andrew Bagchi* for the claimant father

Gabrielle Jan Posner for the respondent mother

Robert Dashwood for the Official Solicitor

Patricia Roberts for the respondent mother's husband intervening

BLACK J:

KM was born on 27 October 1983. She is therefore 17 to 18 later this year. She is the daughter of LW, who I am going to call the mother, and SM, who I am going to call the father. She is presently living with her mother and has 5 hours' contact with her father a week. Her father does not have parental responsibility for her, never having been married to her mother and no order or agreement about parental responsibility having been made up to this point. There are three applications by the father in relation to KM before me:

- (1) an application for parental responsibility;
- (2) an application for a residence order;
- (3) an application for defined contact.

It might be questioned why such applications should be proceeding in relation to a child who is very soon to be 18, and of course, orders under s 8 of the Children Act 1989 are not normally made in relation to children who have reached the age of 16. The circumstances in relation to KM are, however, exceptional.

KM's special needs

KM has very special needs as a result of her multiple handicaps, which have been apparent since she was an infant and which make her completely dependent on others for her care. It was at the age of 4 months that she was admitted to hospital for a prolonged period after an episode at home which is said to have been nearly fatal. The precise cause of her symptoms is not

entirely clear from the papers; but what is evident is that she has cerebral palsy involving all four limbs, has had seizures, and is virtually unable to see. Her hearing is thought to be relatively normal, but she cannot communicate in any meaningful way by speech. Insofar as she is able to communicate her needs and feelings at all, she does so by a variety of other means, which include the tone of her voice, body movements, facial expression, and making noises (she is said to make a clucking noise when she wants food, for instance, and to have communicated that she had toothache by screaming, struggling and poking her tongue out).

It is possible for those who know KM to tell whether she is happy or sad. She is able to respond to stimulation. She likes music, for instance, and seems generally to like being tickled. A common, apparently favourable, response appears to be for her to smile or to laugh.

It is uncertain whether KM can recognise particular individuals. The evidence is clear that she responds in a special and different way to her mother, but I shall return later to the question of whether there is any differentiation in the way in which she responds to everyone else.

KM cannot look after herself at all and is totally dependent on other people for all her needs. She can move her limbs (for example, she can kick and she can press a communication tool called a 'Big Mac') but generally speaking she cannot move in a sufficiently purposeful way to achieve anything for herself. She has no mobility, and has to be wheeled in a wheelchair. She also needs to be lifted and position and re-positioned so that she is comfortable and does not develop pressure sores. She is fed partly by mouth with soft food, and partly through a gastrostomy tube which is especially used for fluids and for medication which she requires regularly. The site of the tube has to be monitored and cleaned to prevent it becoming infected. KM also has to be washed more generally, and dressed. She is doubly incontinent and wears pads which require changing on a regular basis. All these tasks present something of a challenge for a carer because KM has now grown to adult size and is heavy to lift.

Overall it is suggested that KM functions at about the level of a 6-month-old child, but with less ability than an infant of that age would have to conceptualise and to integrate experiences.

She attends school at Roehampton presently. She can continue to do so until she is 19, and is likely then to move on to a day centre. Whilst the school work with KM to improve her abilities, her condition is not likely to improve significantly. She will continue to need full-time care for the rest of her life, and there is no question of her ever having the capacity to take, or implement, decisions about her own care herself. It follows that, whilst the jurisdiction that this court has under the Children Act 1989 in relation to KM will end shortly, if a serious justiciable issue arises that requires resolution in her best interests, it may continue to be possible for decisions to be made about arrangements about her care under the inherent jurisdiction, as the case of *Re F (Adult: Court's Jurisdiction)* [2000] 2 FLR 512 illustrates.

The history

KM currently lives, as I have said, with the mother and the mother's husband, RW. They were married on 25 January 2000. It was their second marriage to each other. They were first married on 20 July 1979, but

separated in February 1981, and were ultimately divorced in November 1992.

The mother had a daughter, L, in 1978 when she was 16. L was adopted with the mother's consent when she was about 18 months old. RW and the mother had a son, S, who was born on 11 November 1979. S has also been adopted. His infancy was an unsettled time for his parents. In February 1981 RW was sentenced to 9 months' imprisonment for offences of dishonesty, being released on 18 June 1981. It appears that by the time of his release the mother was living with the father, whom she had met in about 1980. In July 1981 she petitioned for judicial separation from RW on the basis of, amongst other things, his violent behaviour.

At this time, the mother was still looking after S herself. In due course, however, she decided that S should go to live with RW. The father says this was due to pressure being exerted on the mother by RW, who wanted her and S to live with him again. The mother says that what happened was that the father had hit her and had slapped S across his bottom, and social services were threatening to take S away from her and put him into care if she continued to live with the father, following this, with S. So, towards the end of July 1981, S went to live with RW and RW's then partner, Ms S.

It was determined at a directions hearing earlier in these proceedings that the detail of events in S's life would not assist me in reaching a decision about M's future, and I have seen very little of the documentation that deals with this period of time. Accordingly I do not even attempt to resolve the debate about why S moved to live with his father, and I state the events of his early life only briefly.

RW was sentenced to further imprisonment at the end of November 1982, though when he had begun that term of imprisonment, perhaps on remand, I do not know. Whilst he was in prison, S was left in the sole care of his partner. Social services intervened – whether before or after RW went to prison is not entirely clear, but I think RW would say after. An interim care order was obtained by the London Borough of Wandsworth in August 1982. A full care order was granted in October 1983; and later, it appears in 1986, S was adopted. The mother says she contested this but was unsuccessful.

The mother, meanwhile, had continued her relationship with the father and had three children. KM is the middle child. Her elder sister, JM, who was born on 7 July 1982, is 18 years old. I will call her 'J', as the family sometimes do, in order to differentiate her from her Aunt JM, the father's sister. The younger brother is TM, who was born on 29 July 1984 and is 16. The Ms all lived as a family at various addresses until approximately November 1998, when the mother and KM moved to live with RW.

The information as to the 18 or so years that the mother spent with the father is not always clear. The evidence of the parties themselves about their cohabitation is by no means complete, and there is considerable conflict about aspects of it. Rather more independent snapshots of what life was like at times can be seen in the social services files, which contain entries dating back to 1983; but these are snapshot only, because social services involvement was sporadic.

Near the start of that relationship the couple seem to have lived at the paternal grandparents' house in Battersea, with the paternal grandparents. The father's sister, BM, now occupies that property with her family. She is one of the father's three sisters, the others being JM (whom I have already

mentioned) and GM. The father also has a married brother, RM.

In the early days of the relationship, the mother and father had an enforced separation because, like RW, the father spent time in prison. In March 1983 he was sentenced to a term of 9 months' imprisonment for offences of dishonesty, and in October 1987, to 21 months for further offences of dishonesty, which was subsequently suspended when he appealed successfully.

Once they obtained their own independent accommodation, the mother and father resided at various addresses with the children. The last address which the family shared was a large property in Dulwich, to which they moved some time over the summer of 1998 – the social work records suggest probably around mid-July 1998. T did not want to leave the Battersea area where they had been living and around which most of the Ms live, so he went to live with his aunt GM, where he stayed until a date some time after the mother and KM had moved out of Dulwich.

J did move into the new property, but she does not appear to have been settled. She had a social worker through the Home and Away Project who was helping her to get accommodation, as she appears to have found it difficult to tolerate living in the family at that point. When the family social worker, EC, wrote her transfer summary, which appears to have been written at the end of November or beginning of December 1998 just after the mother and KM had finally left, she reported that J was then also living with Aunt GM.

The relationship between the adults had plainly reached a very low ebb by the autumn of 1998. The mother had been working from March 1998. The father and his family felt that she was spending too much time away from home and staying out late in the evenings – although the mother said that she was not and that she would come home in her lunch hour from work and be in each evening with KM, who would not settle to sleep without her.

5/6 September 1998

At the beginning of September 1998, the mother did spend a night away from home. It is common ground that she returned the next day with the police, who asked the father to leave the property. The father says she simply stayed out all the preceding night, and he thinks the whole incident was instigated by RW. The mother says, in her first statement, that what happened was that the father threw her out in the early hours of Saturday 5 September 1998. In her second statement she says that he had hit her and told her to get out, and she left to give him time to calm down. She says that he told her to come back on the Monday and sign the tenancy (which was in her name) over to him, and that his family were all racially abusive to her during the incident.

There is agreement that KM stayed in the house with the father and his family. On 6 September 1998, they contacted the general practitioner because they were unable to deal with KM's feeding and medication, and a district nurse called, finding several adults and children in the house with KM, including the father. J was not living at home at that time, having moved into a hostel shortly beforehand. She came back with the mother later on 6 September 1998, and whatever the deterioration in their relationship afterwards, it seems that the mother and J were allies at this point.

The mother says – and BM's statement confirms – that J left again with

the police that day. The mother says that the police took J to the train station so that she could go back to her hostel, and implies that this action was necessary because the father and his family were being verbally abusive and threatening to herself and J on that day (the Sunday).

Although the father and his family eventually left in response to the police request, the mother says that they returned later and sat at the top of the road in their cars. She found this intimidating, and she called the police to move them on again.

I prefer the mother's version of the events of this time in early September to the father's. It seems to me that the most probable explanation for her return to the property with the police on the Sunday was that she had, indeed, been turned out against her will the night before. I do not believe, as the father suggests, that it was all a plan of RW's, and I really do not see what such a plan would have been designed to achieve for the mother or for RW. Furthermore, I do not consider that the mother would voluntarily have left KM behind in the home. For reasons I shall explain shortly, I have formed the view that she has been a caring and committed mother to KM, who has been predominantly responsible for KM's care, and it does not seem to me likely that she would voluntarily have left KM behind overnight in this way.

There is corroboration also from other quarters of the mother's story of harassment and interference from the wider M family at this time:

- (1) I note that letters were written to each of the M sisters on 11 September 1998 by solicitors on behalf of the mother requesting them to refrain from becoming involved in the domestic lives of the mother and father, because the mother was finding their constant presence and interference harassing and intimidating.
- (2) I also note the allegations made that September by BM to the school and to social services about the care KM was receiving. No evidence was found to support those allegations. Not only the mother, but significantly also the father, felt that they had been made maliciously as a way to get back at the mother because the family wanted to cause trouble because of her wish to separate, and had told her that if she left the father they would ensure that she did not keep KM. This fitted with the social worker, EC's impression that BM seemed very concerned that the mother was planning to leave the father, and her observation that amongst the allegations that BM made were criticisms of the mother of a personal nature not related to the care of KM.

6 September 1998 until end of November 1998

The evidence leaves me very unclear as to the precise sequence of events after the September 1998 incident. Unravelling the factual disputes in this case has been difficult, and I have not felt able to rely wholly upon either of the parents, or the family members on either side, as accurate, unbiased and completely truthful witnesses. Where the story is dependent upon the accounts of the parties with little independent corroboration, there are therefore real problems in piecing together what happened and in what sequence.

The mother spoke in evidence of this period as if the father was either

requested to stop living at the Dulwich house with her, or agreed to do so, and ostensibly went to live with one of his sisters. According to her in oral evidence, however, he would come back each day saying he could not bath at his sister's and that he needed a change of clothes. His sisters did not stay away, she said, from the property either. She also told me in evidence how she went with KM to stay with her mother in Shropshire and was phoned there by J. J said that the father had moved back into the property, so she, the mother, chose not to return to it when she came back to London, going to RW's instead, not, at that time, because she was having a relationship with RW (which is something she says only started up again later – at this stage they were simply friends), but because it was expedient.

I do not know how all that oral evidence ties in with the information in the mother's first statement that in November 1998 her solicitors wrote to the father giving him until 16 November to vacate the property, so she took KM to stay with her mother in the Midlands that day, not wanting to be in the property whilst he was moving his things out and with the phone call from J to say that the locks had been changed by the father and that she would not be able to get back in. What is clear to me, however, is that the relationship was finally ending by the time the mother went with KM to see her own mother for a short time during November 1998, and that on her return, probably on 23 November 1998, she went directly to live with KM at RW's.

I note that the father says in his first statement that the mother left on 18 December 1998, and that it was a week before she returned to collect KM and to take her with her. I do not accept that. It does not tally with the social work records, which are quite full for this period and contain, for example, a note on 25 November 1998 reporting a telephone call from the father to a duty social worker claiming that the mother had left him and taken KM, and a report of a call to the emergency duty team on 29 November 1998, during which the father complained that the mother had left him a week before taking KM.

Whatever the precise circumstances of the mother's decision not to return to Dulwich on her return to London, it seems that the social worker was persuaded that by then, she (the mother) could not cope with the harassment she had been complaining of from the father's family for some time and wanted to separate from him.

The mother's move with KM to RW's accommodation was, however, the signal for the Ms to redouble their complaints to the authorities about KM's care, adding complaints about the risk that they felt RW posed towards her. EC's November/December 1998 transfer summary says this:

'There appears to be much animosity between family members at present. It appears that [JM], [TM] and [the father] are unhappy about [the mother]'s decision to leave [the father].'

Complaints by the father's side of the family at around this time were many, and include the following:

- (1) Social services were contacted on 23 November 1998 and went out late at night to check on KM, together with the police. They found all appeared to be well.
- (2) The father called a duty social worker – the call which is reported in

the records on 25 November 1998 – and said RW was a pervert. He had also made a call to the school which was reported to social services the same day, in which he said RW was a paedophile and a drug addict.

- (3) An Out of Hours Team report from social services dated 29 November 1998 at 12.30 in the morning records the father's call to the emergency duty team complaining that KM was staying in unsatisfactory accommodation; that RW was drunk and abusive to JM and TM when they went to visit KM; that RW was an alcoholic who was rumoured to have abused a 12-year-old child.
- (4) The late November/early December 1998 transfer summary records that, since the unfounded complaints made by BM in September 1998, the father's sisters had been in touch with social services on two occasions to make allegations. One occasion was just after the initial investigation and was to raise the same concerns; the request was that that be put in writing, but that was not in fact done. The second was a conversation with the Children and Families Duty Team, and that conversation had to be terminated because the caller became quite abusive, the content being mainly quite personal remarks about the mother.
- (5) Further concerns seem to have been raised with social services by JM on 14 December 1998 about RW and about KM's sleeping arrangements, her feeding tube, her hair, and a window frame which was said to be hanging by a string from the wall and posing a danger to KM.
- (6) On 21 December 1998, J reported to the police that she had visited KM at RW's accommodation and been subjected to threats and abuse by RW, also alleging that her father was unhappy about KM's living conditions and that RW was always drunk.
- (7) On 6 January 1999, a phone call was made by the father to social services, concerned because he had information about RW having abused children in the past, and concerned about contact for JM and TM with KM. The records for January 1999 include a note also that father and GM had repeatedly rung somewhere described as 'District Duty' making allegations about RW since the mother left in November 1998, and a reference to complaints to various different police stations.
- (8) On 14 January 1999, BM wrote to social services expressing anxiety about RW, KM's living conditions, and that she was being neglected, reiterating that the mother had neglected KM during the summer and autumn of 1998 and suggesting that the mother was using KM as a meal ticket.

The taped conversations that I have heard and seen transcribed from around this period leave me in no doubt that feelings were running very high at this time. I doubt very much that all the aggravation was coming from one side or the other, and I observe that both sides were taping what was going on, though the mother, for her part, did not know that RW was doing this.

The mother herself has been described as 'quiet', and that fits with the way that she has been in court, although I observe that what she said to J in the transcribed conversation from J's visit to RW's house in December 1998

was not calculated to be particularly helpful in calming J down.

RW comes across as irate and vociferous, in no way attempting to step back from the situation and not averse to raising the emotional temperature with the Ms. He explains his contributions as the product of continual harassment from the Ms. He says (and I accept this in the light of the conversations taped by the Ms and their general conduct at this time, as well as roughly contemporaneous references in the social work records) that this included repeated telephone calls to his house so that he had ultimately to have his telephone monitored. It included also repeated contact with social services, the school and the police by the Ms about their concerns for KM's care, as I have already set out; and it included, as the tapes and a letter from Battersea police make clear, an allegation made not only to the mother but also to the police that the mother had stolen valuable jewellery from J and the Ms. It was around this time that the mother's mobility vehicle, which she used to transport KM, was stolen and destroyed by fire, and this she and RW attributed to J, who they say took a set of keys for the vehicle from their kitchen when she visited just before the theft. I have not got sufficient material on which to reach any determination as to the truth of this allegation, but the Ws' perception was plainly reflected in their feelings towards the Ms.

A further problem was what happened at the Dulwich property, which it is common ground was vandalised around the time of the separation. I do not consider that the mother and RW were responsible for this, as the father and his family implied; but I do not make any finding about how, precisely, it did occur, the evidence being unclear and incomplete. I accept that the mother was unable to recover KM's bed and other belongings from the property, and that when RW went to collect them, they were missing. RW's remarks to this effect in the taped conversation with the father sound to me entirely genuine. I have a very real suspicion that the father had kept these items himself. He refers in one of his statements to having KM's equipment, and one inference from his sister GM's statement is that the items were stored in her garage. However, GM was unable to attend court to be questioned about this because of illness, and I do not feel able to make any findings about it.

I understand that, just as RW claims justification for his conduct, so the Ms claim justification for their behaviour, rooted, they say, in the risks posed by RW to KM and the unsatisfactory circumstances in which they thought she was being cared for. I can accept that, at the core of their activities, there was, indeed, real care and affection for KM. I have absolutely no doubt that their very strong sense of family has extended to KM. They are a family who regularly see a lot of each other, and offer each other what they see as support and advice, although it may at times be perceived as interference. It seems to me the practical input of individual M family members will have varied through KM's childhood, as the events of their own lives dictated. But the evidence shows that there have been times when they have been helpful to the parents, including, for example, JM looking after KM when she was small, GM accommodating TM during 1998, and recently JM, in particular, helping with contact transport.

The father himself cares deeply for KM. His feelings about her in the early days can be seen in the social work records, which suggest that he was devoted to her, even at the expense of the other children at that stage. More

recently, observations of other professionals support the continuation of the father's feelings about KM. His affection was seen by social workers during contact visits, for example; and the most recent social worker noted in an interview in January 2000 that it was apparent that he cared deeply about KM, but by then in the context of intense adverse feelings about the mother and RW.

I can accept also that the Ms were entitled to be concerned for KM's living circumstances. Putting aside the reasons why KM had moved away from Dulwich (which are likely to have had a considerable amount to do, in my view, with the conduct of the Ms themselves), the fact was that KM was living in a property which was not adapted to her needs, and RW's past, about which the Ms had some information, contained worrying elements, in particular, unproved allegations of sexual abuse against a child, convictions for violence as a much younger man, and suggestions of more recent violence in a family context. I observe that whilst social services, having visited the mother and investigated KM's care, did not consider that she was being in any way neglected or ill-treated following the separation, they did not dismiss the concerns about RW and were planning a risk assessment by an outside agency.

The problem about the Ms' response to their genuine concern and anxiety is, first, the uncontrolled and threatening way in which they went about getting something done. They badgered the professionals, and it is easy to understand how their persistent and (I feel sure) angry pursuit of their concerns through the school, social services and the police, as well as with the Ws themselves, will have caused ill-feeling and considerable stress in the W household which can only have been harmful to KM, as the Ms should have recognised.

A second problem about the Ms' response is their inability to confine themselves to real concerns, which they mixed in with allegations about the mother's conduct and her care of KM which were completely unfounded. BM's malicious contact with social services in September 1998 is an example of this.

M as sole carer

Another plain example is the assertion by the M family that it was the father who was the main carer for KM in contrast to the mother, who was neglectful of her care. The evidence leads me very firmly to the opposite conclusion to this: that is, that it was, in fact, the mother who has always been the principal carer for KM and taken responsibility for her. It is fortunate that I have been able to draw, in making my findings in this important respect, on a considerable number of independent sources, and I make a number of points in this regard:

- (1) The mother has only worked from March 1998 until November 1998. J was alone in saying she worked before this, and I think she was mistaken about it. The father was away in prison in the very early days, and later clearly saw it as his role to work to earn money. There is no record of when he was working, but it appears to have been from time to time throughout the relationship, and when there was work to do this would inevitably have taken him out of the house and taken up his energies.

- (2) Whilst there is an early report of the father giving the mother a lot of help and support, the preponderance of the social work recording by the 1990s suggests that it is the mother who is doing the major part of the care and organisation of the family. In a March 1993 social work report, for example, reference is made to the father not appearing to take an active role in KM's care or the running of the household, and usually sitting in a chair when the social worker visits. This sort of approach has been observed also by others more recently, and in my judgment it is likely to be a typical picture. The most recent social worker, for example, told me that on a visit to see the Ms when KM was there for contact, the father was not inattentive in that he sat with his arm around KM, but it was BM who was preparing the meal and made KM comfortable and ready to eat (and this was in the context of the family having been asked by the social worker to act as they would normally do). I accept also the evidence of Dr D, in preference to the evidence of the Ms, who told me that when she went to visit KM at the Ms, the father was not present when KM left the house at the end of the visit with her aunt and TM.
- (3) Letters from the doctors set out that it is the mother who has taken the main role in ensuring that KM's medical needs were attended to, attending hospital appointments with her. Dr S thinks the father did attend hospital appointments in the past, but had not seen him recently at the time of his letter in June 1999. Mr W, the paediatric surgeon who inserted KM's feeding tube and her gastrostomy button and has been seeing her since 1995, says that it was the mother who always attended outpatient and inpatient appointments, and that he did not recall seeing her father on any occasion. Mr O, the orthopaedic surgeon, says that the mother attended his clinic appointments, and Mr R, the oral surgeon, says that whenever KM came to hospital, it was always accompanied by her mother.
- (4) Similarly, the perception of the school was that the mother was the main carer. The school nurse, for example, had never met the father, and never seen him attend a parents' evening.
- (5) The mother's pivotal role in the care of KM is perhaps most clearly and practically revealed when she is unable to fulfil her normal duties for some reason. In August 1993, she hurt her back and KM had to spend a period receiving respite care at R Lodge, for example, as she did again when the mother was injured in 1996. The mother's work commitments coincided with concerns about KM's care during 1998; and in September 1998, when she was absent for only one night, as I have explained already, the family had to call on the doctor because they were unable to feed KM and give her her medication.

F's feelings about K

This main role of the mother is not to suggest that the father did not take an interest in KM or have a role in her life. I have already commented upon his deep care for KM and the notes in the social work records of his early attachment to her. I do not accept the mother's assertion that, in so far as the social work records show her praising the father's involvement in the family, this was in fact a false stance taken up for her own ends. I think she probably

did find the father supportive in the early days, and he may well have contributed towards the housework and with the children, although I do not consider it probable that his role was consistently active, or ever really dynamic, in the household management and care of the children. I am satisfied that, in the abstract sense, he does care, and always has cared, about the family. His feelings towards KM can be seen most recently in the contact sessions that he had with her, with supervision from social services. Dr D was not particularly impressed with what she saw of the father on contact very recently, feeling that he did not pay enough attention consistently to KM's needs. Her observations contrasted, however, with those of the earlier sessions on which the social services report, and I have to take into account that Dr D saw the father with KM only once, by which time there had been prolonged problems about contact and gaps in it, and that Dr D was attempting to engage the father in an important discussion about KM's life, whilst still expecting him to show how well he could relate to KM. From what I have seen and read of the father, I think he would have found this division of his attention extremely difficult, and I am not prepared to read too much into what was seen in Dr D's session between the father and KM. The earlier observed contacts are, it seems to me, a better guide. As usual, however, the picture is mixed, and the Ms were not able, in those sessions, to put aside their grievances entirely to concentrate on KM. I find that it was because of disruption from the M family, for example, that the sessions at the C Respite Care Unit in mid-1999 had ultimately to be moved to another venue. I note also that, during one of the visits, J telephoned a solicitor and informed the solicitor that KM looked unclean and her hair smelled.

However, that apart, the content of the contact itself was good. Miss R comments that KM responded well to her father's visits and there were no reported episodes of KM being distressed by the contact with her family. Miss R comments on the affection shown by the father towards KM, who (Miss R thought) responded and interacted positively to her father's presence. J and TM also engaged positively and with affection with KM at times. The detailed reports of the contact sessions speak of the father, J and TM talking to KM, looking after her, playing with her, and stimulating her with songs and so on, cuddling and kissing her, and making other physical contact in a way which KM likes.

The quality of the care given by the mother to KM

I find that the quality of the care given to KM has, for the most part, been at least adequate, and indeed there has been praise from various professionals for the mother in this respect. There have been times – a period in the early 1990s and in the summer of 1998 in particular – when standards have dropped, but this has been very temporary and has been explicable in the light of the circumstances of the family at the time. The first period was caused or contributed to by housing problems; and the second coincided with the mother obtaining employment, problems with her own mother, and, it seems to me, almost certainly increasing problems in the relationship between the parties.

The only real evidence of any more protracted or generalised problem is that of Miss D, the school nurse, who suggested to social services that the care of M had always been borderline. Her observation is a historical one. More recently since the separation, Miss D, too, has been satisfied with the

mother's care of KM.

Teachers at the Roehampton school, despite their regular contact with KM and liaison with the mother both before and after separation, have not expressed themselves unhappy with her care or concerned about her physical or emotional condition.

Looking at the communications from the doctors, the picture is of a committed mother who, apart from some missed appointments in the period immediately prior to and after the parents' separation, attended hospital regularly with KM and provided care that was at least adequate and in many respects good. Mr W, for example, sets out in a letter of June 1999 that the mother was an extremely dedicated and proficient carer for KM, and that KM's progress during the period he was seeing her spoke for itself in that she had grown satisfactorily throughout and even shown signs of developmental progress. He comments that he would be extremely disturbed by the suggestion that KM should be removed from the care of her mother. Dr S, paediatrician, comments that KM had been brought to his clinic on 26 January 2000 by the mother and RW and found to be very well cared for, and indeed her significant obesity had been brought under control.

Social services records refer, in the very early days, to the mother being a very affectionate and caring mother with a deep commitment to the care of KM. More recently, in November 1998, knowing of the allegations made by the M family, EC has commented that she has no child protection concerns about KM, and had found the mother to be a committed and caring parent who took everything on board relating to KM's care needs. Miss R concluded that, after the separation, the mother and RW had a good insight into KM's daily needs and requirements, and that KM appeared to be happy and comfortable in her home environment and she was satisfied with the mother's care. Most recently, the recent social worker has also been satisfied with the care given to KM in the W household.

Dr D, the consultant child psychiatrist invited to prepare a report by the Official Solicitor, found nothing in her interviews and investigations to suggest that there were problems of neglect, misunderstanding, or abuse in the mother's care of KM, and she forecast that the mother is likely to continue to provide satisfactory care throughout KM's life.

Putting all the evidence together, and taking account also of how the mother has come over in these proceedings, I find that she is a committed and caring mother who has done her best for KM in difficult circumstances and has usually achieved at least adequate care.

The father concedes that she can provide that care for KM in the future provided she has support, and he said to me in the witness-box, temporarily leaving aside the family grievances for a moment, that he thought until she left, leaving the two other children behind, she was a good mother.

Small things often show commitment, and I was interested to see the photographs of the Ws' property. KM's room is nicely decorated, even though her vision is limited, and RW has made her a bed himself. This sort of attention to detail on KM's behalf is something the mother has shown from early days. The father's sister, JM, comments in her statement on how the mother would spend most of her time decorating KM's room with pretty dolls, teddy bears and colourful decorations. That the mother did that reveals to me her care for KM. That JM manages to turn it into a criticism of the mother for forgetting or neglecting KM's disability and doing all this for her

despite KM's lack of vision reveals the sad and partisan outlook of the M family.

The allegations against RW

Although the father originally suggested that the mother was not caring properly for KM, he had, as I have said, realistically accepted by the time of the hearing that she can provide good enough care providing she is supported, and his complaints about her and the reasons for his continued pursuit of a residence order therefore centred upon the presence in her household of RW, who the father says poses a risk to KM. That risk is said to be twofold, deriving from allegations of sexual abuse made in the past against RW, and from RW's violent behaviour.

I. Sexual abuse

In the early 1990s, RW stood trial on offences arising out of alleged sexual abuse of a 13-year-old girl, K, the daughter of his then cohabitee, BF. At his first trial the jury were unable to reach a verdict. RW was then re-tried and acquitted. Nonetheless, as the Ms said to me, the seed of doubt had been planted for them and they could not put aside their concern that RW may have sexually abused K and may sexually abuse KM, who would not be able to tell anyone about it because of her disability.

This issue was rightly taken seriously in the proceedings, and the Official Solicitor instructed a psychiatrist, Dr SM, to assess what risk, if any, RW posed in the light of the sexual abuse allegations and the allegations that were made of violence on his part.

In the event, however, it has proved impossible, despite the issue of a witness summons, for the father to secure the attendance of K, who is now, of course, an adult, at court to give evidence about the alleged sexual abuse. In these circumstances, Mr Peddie QC inevitably concedes that he cannot invite me to make a finding that RW sexually abused K, and that the father cannot rely upon the sexual allegations or pursue an argument that, notwithstanding the opinion of Dr SM on this question, RW poses a significant sexual risk to KM.

The Ms may continue to be suspicious about what happened about K, but I cannot act on the basis of suspicion only, and I put completely to one side, therefore, the sexual abuse aspect of this case.

II. Physical risk

The mother and RW deny absolutely that there is a risk that RW may behave violently towards the mother or to KM. The father accepts that RW is not likely to be violent to KM, but he relies upon RW's past history to establish that RW is a man with a short temper and a propensity to violence, and that he is likely to behave aggressively and violently towards the mother once these proceedings are over and the spotlight off their relationship, thus creating, the father says, an environment which will be wholly undesirable and harmful for KM.

I found the position taken by the mother and RW about the issue of RW's violence completely unrealistic. They have not, in my judgment, been telling me the truth about this issue.

- (i) RW accepts, as he must, that he has convictions for violence in the

past. He has been convicted of, and imprisoned for, wounding in 1974 and in 1979, on both occasions the victim being a family member. He seeks to explain these offences away and to justify his conduct, but the fact of his conviction remains.

- (ii) The mother, when she petitioned for judicial separation in 1981, also made allegations of violence against RW, as I have said. She now says these were false allegations, made at the suggestion of the father, to free herself more quickly from RW. I do not believe that. I have had my attention drawn to what she said about this in her statements for these proceedings. The first statement says simply that RW had never been violent to her. A much more recent statement says this of those early days:

‘I was drawn to [RW] even though he had a bad reputation and a bad temper. We were both obstinate. We had a volatile relationship and our arguments spilled over into pushing and shoving. I can only recall one occasion when he assaulted me which was when I was pregnant with S. It is right that I told social workers that he beat me up. This was not true.’

She goes on to justify the lie to social workers on the basis that RW was very anxious to be involved with S’s care and she would tell social workers, she said, anything that she thought would help her case.

The mother did not accept, in cross-examination, that this passage that I have just read from her statement was, in fact, a concession that RW had assaulted her, and would not accept anything more than ‘pushing and shoving’ ever took place in their relationship. I do not consider this passage of her statement can be explained away in that way. The reference to the pregnancy with S ties in exactly with the assault alleged in the judicial separation petition, and the statement contrasts the assault on that occasion with the ‘pushing and shoving’ at other times. I find that RW did assault the mother in the early days when they were first together, and that she and he have lied about this to me, no doubt because they considered that to admit any violence would be to prejudice their case for residence of KM.

- (iii) RW admitted in his criminal trial in 1992 that in a subsequent relationship with BF there was also violence, including her stabbing him and him punching her. He also agrees, in that trial, that he slapped K around the face, he says to calm her when she was hysterical. That transcript shows that he admitted, as well, that he drank very heavily at that time – over 10 pints on a Saturday night – something which he now no longer does, his evidence being that he limits his drinking to, at most, a bottle of cider at weekends, and there being no recent evidence to suggest anything to the contrary.

BF, who has kept on friendly terms with RW who is, of course, now looking after their son, S, denies in her statement that there was any violence by RW towards her. That conflicts with the statement of MS, who reports the complaints BF made to her of RW’s repeated violence. However, neither of these ladies have been able (or perhaps I should say willing) to give evidence before me, so I make no

findings beyond the violence which RW himself conceded, in the BF relationship, in the course of the criminal trial.

- (iv) It has been suggested that RW has made threats to harm TM and has been threatening towards JM. Certainly he has shown anger towards the M family, as the recorded conversations show. However, the evidence for actual threats, in particular to sodomise TM and to harm the M cousins, is confused. Nothing is revealed by any of the recorded conversations of this nature, and I am ever-conscious of the inability of the M family to tell me a straight and unembroidered story. Whilst I am sure RW will have used unpleasant language to the Ms, I do not find it established that he has made any real threats, in the recent past, to harm them.

The position is, therefore, that it is established that RW has been violent on a number of occasions in the past, but that it is now some considerable time since the last violent incident. The father says a leopard never changes its spots. I am driven to observe that this places a number of the participants in these proceedings in considerable difficulty, if that is right. JM, for example, was convicted of assaulting a police officer in 1971, and of offences of assault occasioning actual bodily harm in 1974; and BM's partner has offences of robbery on his record in 1983 and 1984. In evaluating the impact of past violence, such as that for which RW has been responsible, more reliable guides are, it seems to me, Dr D and Dr SM. Both observe that a maturing process can be expected in individuals with a history like RW's. Dr SM found RW's account that he is no longer prone to violence or substance misuse credible. Whilst I have rejected RW's comments on his past conduct towards the mother, I too found this part of his evidence credible. The situation with the Ms has been such, and the provocation involved in it of such degree, that I would have expected RW, had he been prone to violence as he was of old, to have been unable to resist a violent response to it at some point – for example, on the contact occasion when JM leapt out of the car suggesting that he had deliberately assaulted KM by pushing her wheelchair into a wall. I am equally sure that, had there been anything at all of this kind, the Ms would have told me about it. In my view, the absence of any report of violence therefore corroborates RW's account that it has not happened in recent times. I accept in the circumstances Dr SM's assessment that there is little indication that RW poses a particular physical risk to KM, and that the risk to her is of an acceptably low level for him to remain in the family home. Indeed, I would extend Dr SM's view to say also that it seems to me that the risk of violent behaviour by RW towards the mother is now also at an acceptably low level, so that KM can remain in the home with some confidence that her care will not be impaired by her mother having to cope with assaults upon her by RW. I was impressed that the relationship between RW and the mother is now much more mature and more solid than the first relationship they formed when they were very young.

What of the mother's collusion with RW to deny past violence? What does this tell me of her ability to protect KM should the worst come to the worst and unforeseen violence erupt towards her or KM in the home? I am aware that there is evidence that RW has been dominant in his interactions with the mother and KM, and that the mother has not been able successfully

to intervene when his play with KM ceased to be enjoyable for KM. I am also conscious that RW revealed himself in the witness-box to be a very dominant character, fencing unpleasantly with counsel and attempting to control their interchange. However, I am satisfied that the mother's commitment to KM is fierce, and that if KM were to be at risk, either directly from RW's conduct towards her, or indirectly by being caught up in an atmosphere of domestic violence, she would act promptly to protect KM and would put KM's interests first.

Residence

I turn to the question of residence in the light of my findings so far. In making a decision about this, as with the other decisions in this case, I must make M's welfare my paramount consideration. I must take into account all the circumstances, including the factors set out in s 1(3) of the Children Act 1989. All the professional advice on the question of residence is one way, to the effect that a move of residence would not be in M's best interests. Dr D, in particular, would not advise any change. I agree with her. There is no need, in my view, for KM to be moved, and a move would be counterproductive for her. KM's main carer throughout her life has been her mother, and her mother has discharged that role satisfactorily and with great commitment to KM, and continues to do so. In so far as one can tell, KM is happy living with her mother. She shares a special relationship with her. They have routines established that meet KM's needs. My findings about the risk posed by RW do not suggest that a move should be justified on account of him.

The problems of a move are underlined when one considers the circumstances to which KM would move. The father is currently in a property that is upstairs, with no lift, and which would not be suitable for KM. I know little about the property because he has not enabled the Official Solicitor's representative to visit him there. He says this was because of confusion over appointment arrangements, but I am unpersuaded that this would have prevented a visit had the father wanted it to happen.

I am puzzled as to what the true situation is as to accommodation for the father. I was told by him and by JM that they moved in there within the last few weeks, although the property has been available, subject to decorating, for a considerable time. On the other hand, BM, with whom I thought the father had been living, said he moved from her property in November. After the father and his witnesses had given evidence explaining that he was now living in that property on his own and intended to care for KM with direct family support, obtaining an alternative property from the council in time as he would be entitled to do as the carer of a disabled child, his counsel suddenly received instructions from the father that, in fact, the father intended to get married within a matter of months to a lady who had her own house and children. He had been engaged, it transpired, for 15 months, but had told no one anything about this at all, despite the fact that it was clearly central to his proposals.

I have been unable to see his fiancée give evidence because she suffered a panic attack and did not feel herself up to the process. I have not, therefore, been able to investigate further whether perhaps the father has been living there in the time since he left BM's house; or whether BM's evidence – or perhaps even the father's – about where he has been living was intended to

mislead me in some way.

Immediately upon the disclosure of the engagement, the Official Solicitor made inquiries about the father's fiancée and found that she had been known to social services for some time (although the file is currently closed), having had problems with depression and with the care of her children. Shortly upon this information becoming available, the father announced that his engagement was over. He had not known these things about her and now did not intend to marry her. I find it incredible that the father should have been engaged for 15 months – for some of which period there was active social services involvement with his fiancée – and known nothing of her problems, and I do not accept that. Whilst I do not doubt that the father has had a genuine relationship with the lady concerned, I am left with the deep suspicion that his handling in these proceedings of the issue of his engagement was in some way intended to be the production of a trump card which would enhance his residence application, a card which he equally suddenly drew back from the table when he found that it was not having the desired effect. The net result of the engagement interlude is that what the father now puts forward is what he put forward before – in other words, a package of care in which himself and family members will be responsible for KM.

A combination of carers is inevitable. The father understandably chooses not to look after KM's intimate care himself, and would need J or another female relative to do it. Furthermore, he cannot read or write, and would have great difficulty administering medicine to her unless it was measured out, as the past shows. I am also deeply conscious of the deterioration in KM's care when the mother has not been playing as active a part as normal in it, and this must reflect upon the father's abilities to manage on his own. An untried package of care, and one which would be subject to change, in my view, as the demands on the other carers involved in it changed over time (with J, for instance, needing to develop her own life and the sisters to look after their families) would not be in KM's interests. The problems of reliance on contributions from multiple carers can be seen clearly in another context, in the contact, which the father has not been able to have when family members who help him with it have been unable to participate – for example, TM being on holiday, and JM's car being out of commission. Although there is a wide M family, I note there has not been a willingness or ability to fill in, one for the other, so that contact could be made to happen.

The huge challenge that caring for KM would pose for the father, with or without family support, would, I also observe, not be assisted by the depression for which he is currently receiving regular treatment.

In all the circumstances, I am quite satisfied that KM's best interests will be served by her remaining with her mother and RW.

Contact and parental responsibility

I need to consider the issues of contact and parental responsibility against the continuing problems that there have been between the M and W families. These were abundantly clear from the oral evidence that I heard. RW could see no good whatsoever in the Ms. The Ms could not see any good in him. Any good they might once have seen in the mother had been overtaken by their feelings about her leaving the father, and in particular J and TM, to go to live with RW.

The Ms are, and always have been, a close-knit family, and I had a strong sense in their evidence of them uniting entirely – J included – against the Ws. It seemed to me that much time and energy have almost certainly been expended by M family members in various combinations discussing at great length the issues concerning the mother leaving the family and KM's welfare in her changed circumstances, as well, no doubt, as raking over the perceived deficiencies of the mother as a carer during the parties' relationship, deficiencies which the Ms feel they had to make good, only to have their generosity thrown back in their faces. Family members echoed, in their evidence, each other's phrases in describing how they felt about the situation, and each showed, in their own ways, their obvious emotion about it.

I need just to say a word about J and TM. It is said that the mother's conduct towards them reveals defects in her ability to make emotional commitment to children, or to understand the emotional commitment that others have to KM. Putting it simply, the argument is that a proper mother would not have walked out on two of her children.

My view is that this is, in fact, a very complex situation. J and TM had clearly had problems prior to the mother leaving. As I have said, J was receiving social work help over accommodation and also had education problems, as had TM. The evidence establishes that neither child was reliably living at home at the time of the final separation of the parents, and it is therefore understandable that the mother's departure was with the one remaining wholly dependent child. There is evidence also – for example, the letter of BM to social services – that the other children chose not to live with the mother, rather than her rejecting them.

I do not consider that the mother has necessarily handled the issue of J and TM well, as the progress or lack of it with regard to their contact with her and with KM has shown. But I do not consider that it can be said that she does not care about them. I think she is in fact distressed about the turn of events with regard to them, but I do not think she would be able to do anything about it at present, given the force of the M point of view with which J, in particular, is now so closely aligned.

The force of the Ms' feelings has continued to have an impact upon the care of KM and upon those caring for her throughout the period since the separation and the early days of the Ms aggressively involving the authorities in their complaints about M's situation. I will mention two particular ways in which this has had a continuing impact.

I. Continuing allegations of physical harm

Allegations have been made by the Ms of physical injury to KM. Bruising and possible pinch marks were reported, for example, in August 1999, and on a separate occasion that month, a swollen lip. Other allegations include one that was aired in court in front of me and which I do not find established, that is that RW deliberately pushed KM's wheelchair into a wall at a contact visit, injuring her. Insofar as KM's wheelchair did touch the wall on that occasion, I am quite satisfied it was an accident caused by inadvertently poor manoeuvring of the wheelchair by RW.

Each allegation necessitates KM being taken to the GP to be examined. Neither the GP, nor social services who have also investigated, have found evidence of any child protection concerns, nor has any question of physical

abuse of KM been reported by the school who are involved daily with KM's physical care during the week, including changing her nappies, and who, over a period of time could, in my view, be expected to have identified any suspicious injuries.

II. Contact

Contact between the Ms and KM has been a continuing problem throughout the currency of these proceedings, indeed, since the separation. It was set at one point at three times a week. There were elaborate and unsatisfactory arrangements, for example for collection on the corner of a road, using TM, in order to ensure that the two sides of the family did not come into contact with each other. The irate exchange when JM and TM thought that the wheelchair had been deliberately pushed into the wall by RW is an example of the sort of problem that happened when they did come into contact with each other. Another example is the time when tempers were inflamed by the Ms being significantly late to collect KM.

Eventually, in August 2000, there was a hearing, and contact was set at once a week for 5 hours. By then the idea was to use a child minder to look after KM prior to her being picked up by the Ms and whilst she waited for her mother to collect her at the end of the contact. That this was necessary shows the extent of the difficulties in the families interacting with each other.

After some teething problems, the child minder arrangement got under way. The father, however, then missed a significant number of contact visits. Generally speaking he offers explanations for this – mainly that those who he needed to help him with lifting and transporting KM were not available to him, or that he was unaware when the school holidays were and mistook the day of the contact. But the fact remains that the M family did not manage to work their way round the practical difficulties and many visits were missed, not always with proper notice.

This has improved so that in the recent past contact arrangements have been adhered to, but that is a relatively recent development. One can well understand the frustration and annoyance that the contact problems have caused in the W family, and the disruption to KM's routine. She may not be able to forecast that she is going to have contact, but the evidence is that she does know when she is got ready to go somewhere and she has had a considerable number of waits, ready prepared for contact, only to find that it has not taken place.

It is this unreliability of the father that led the recent social worker to change the recommendation that she made in her first report that there should continue to be contact perhaps once in the week and every other weekend with shared holidays, to one that contact should effectively cease.

The social worker also comments in her second report on the confusion for KM that contact can cause. It is easy to see how contact may indeed be confusing and is likely to be tiring for KM. On a school day it is a long day for KM, who comes from school to the child minder, from there to see the father where she has the company of many relatives who still all want to see her and who, now that visits are less frequent, concentrate their visits into the one-weekly period of contact, then back to the child minder and from there, home.

The social worker, however, also highlights a real dilemma about KM's

contact, and that is whether she can get anything meaningful from contact with her father and the wider family. It is common ground, I think, that KM enjoys receiving stimulation from anyone who treats her kindly and appropriately. On the mother's side, however, it is said that KM does not recognise her father or siblings, and responds in the same way to them as she does to anyone else, other than her mother, who provides her with stimulation. This is a point of view supported by Dr D, who considers that KM responded in exactly the same way to her as she did to her father and paternal relatives.

By the father's side it is said that KM recognises her father as special and can benefit from contact with him and his side of the family for this reason, as well as because of the stimulation involved in the contact session. There is some support for this paternal point of view in the documentation, although it is not clear to me what degree of understanding those who made the observations about KM have about her and her abilities. There is a very real risk in this case, in my judgment, that an observer, even one qualified in social work for example, may see a positive reaction by KM to her father, for instance, and assume that this is underpinned by a relationship with him and a recognition of who he was.

I do not think anyone suggests that KM would have any understanding of the concept of, for example, parental responsibility, or even that she would understand what a father – or a mother – was. Nor do I think it is suggested that she would be able to retain and process information so that she could predict that she would be going to see her father for contact at a particular time. As I understand it, the level of recognition that is contended for is that she recognises her father as a special person in her life and one with whom she has been associated for most of it, and who cares about her.

I respect Dr D's expertise in this area, and it may well be that she is right about the lack of differentiation KM makes between her father and anyone else. However, it does seem to me that this was an area of her investigation which could have been enhanced by her speaking directly with others who know KM well, and in particular with the school, to find out what their views were about KM's abilities. I am left in doubt about this aspect of the case; indeed, I may have remained in doubt about it whatever the investigations that were carried out, for the simple reason that it is impossible for KM really to communicate what her level of understanding and her feelings are. However, I bear in mind that the observations of the father's earlier contact may indicate that KM has, at least in the past, attributed some special significance to him. Whether this is right or not, she has certainly got pleasure from his company and that of his family.

Dr D advises me that contact would now be of no direct benefit for KM, and points out the practical problems that the planned move of the Ws out of London to the Midlands will put in the way of it. Her view is that there should be no order for face-to-face contact. She points to the stress of the present journey to visit the Ms, and the likely increase of this stress after a move. She points out also the antagonism that there is between the families and the potential for KM to be harmed by it because of the stress it places upon her carers. She advises there should be indirect contact, but no order for direct contact, which should be left to the mother to suggest if she considers it appropriate. Dr D's view is that direct contact should be no more than two or three times a year, if it does happen, and this is a view shared by

the Official Solicitor.

The mother has, at times, considered that contact is in KM's interests. Even as recently as 7 December 2000 she proposed to Mr R that contact should take place once a week on a Sunday between 11 am and 5 pm, with the Ms collecting KM from the W home, providing RW could be present. On the move to the Midlands, she suggested contact based on a local contact centre. She has now drawn back from this and aligned herself essentially with Dr D. She suggests contact twice a year until KM is 18 only. The impression I get is that that will be the end of it. Furthermore, the document in which she and RW set out their proposals on contact makes clear that the offer is on their terms, with which the father must comply.

This is all very far from what the father wants, which is the continuation of very frequent contact with KM.

Looking, as I must, at KM's best interests, there are a number of particular considerations that I balance on this issue of contact. I am guided, as always, by the knowledge that it is generally in the interests of children to have contact with their natural parents. I must, however, take fully into account the limitations that KM has which make her so different from the usual child, and prevent her from, in my view, having any understanding of parenthood, and probably from expecting or predicting anything in her life. I do not consider, on the evidence I have about her, for example, that she would feel the loss of contact with her paternal family if it did not take place again. It could be replaced for her with other stimulating activities. On the other hand, when she does see her paternal family, she has in the past enjoyed contact with them, and there is a possibility that this might be enhanced, whilst it is happening, over and above the contact she has with some other people, by some sort of recognition of the family at some sort of level.

I can also see the benefit to KM, particularly in a future which is unknown and in which her mother may not always be able to care for her as she does now, of retaining links with her paternal family. At worst, they would be able to visit her in a way which Dr D considers would be to her benefit if she were to be in an institution. At best, they may have made strides forward and be able to offer her care as an alternative to the combination of RW and the mother's sister, which the mother presently commends. It seems to me that the paternal family are much more likely to be able to offer KM something positive, in these circumstances, if they have remained involved in a real sense with KM the person, rather than through indirect contact only – not so much because she will remember them from visit to visit because I do not think she will, but because they will remember and continue to think about her.

It seems to me that one of the most important things for KM in her day-to-day life – probably the most important – and also for her long-term wellbeing, is that she should be secure and settled, and that she and her carers should be freed from the stresses and strains of the arguments that have gone on about her care over the last 2-plus years. Being settled is important for all children, but it is particularly vital for KM and her carers because of her special needs.

Knowing all I now do about the families involved in this dispute, I cannot see that the problems there have been will resolve, and the arguments cease, in the aftermath of this hearing, if there continues to be frequent contact

through KM between the two sides of the family. I think I can fairly confidently forecast more problems with handovers, more failed contacts when the father is unable to make proper arrangements to collect KM, more arguments, and more allegations about KM's care.

The only answer to this, in my judgment, and the one which is in the best interests of KM, is to maintain contact but to reduce it very drastically. This will be particularly material when the journey between the Midlands and London becomes an additional factor, but I consider that it is the correct course now in any event. In my view, the right course for KM is for her now to have three periods of contact each year with her paternal family. It seems to me that the present 5-hour contact is appropriate, and I envisage that the child minder will continue to be involved in the handover arrangements. I appreciate that the mother, and to an extent the Official Solicitor, ask me not to make any order for contact, but I am not persuaded that this contact will take place unless I do, such is the feeling on the mother's side of the family about the Ms and the value (or lack of it) of contact. I say this particularly in the light of the terms of their note about contact. I consider that this limited contact is of sufficient importance for KM (continuing, as it should, her link with her paternal family into the future – and by that I mean into her adulthood as well) for an order to be made.

The remaining question, and one which I have found very difficult, is parental responsibility. The mother and the Official Solicitor urge me not to make a parental responsibility order in the father's favour. They point to the extraordinary level of interference by the Ms with the Ws, and thereby in the care of KM, much of it, the Official Solicitor suggests, motivated by malice; and they express the fear that, if this can happen without a parental responsibility order, how much more may it happen with one? The Official Solicitor suggests that there is little chance of the father exercising a parental responsibility order responsibly, and fears that the M family may understand it as conferring upon them rights which it does not confer.

Whilst ultimately I must weight up all the factors in determining the father's parental responsibility application, the starting point for such applications is, as is now established, the principles set out in *Re H (Minors) (Local Authority: Parental Rights) (No 3)* [1991] Fam 151, sub nom *Re H (Illegitimate Children: Father: Parental Rights) (No 2)* [1991] 1 FLR 214. I must, in accordance with that decision, look to see what degree of commitment the father has shown to KM, the degree of attachment exhibited between them, and the motivation behind the father's application.

Subsequent decisions have made clear that parental responsibility is a status, not entitling a father to interfere in the day-to-day life of the child. Here it cannot be argued (as it can in many, or indeed most, cases) that KM's self-esteem will be enhanced by the knowledge that she has a father who has the commitment to her to want parental responsibility. Her understanding comes nowhere that level. However, it is said that it would be of advantage to the father because he would be recognised formally by the world at large as her father; he could be sure to receive information about her medical condition and schooling, which he has not received up to press; and he would be sure to be consulted about arrangements in the event of KM's death.

I am satisfied that this father has shown commitment to KM over the whole of her childhood, even though the method by which he has shown it

has sometimes been misguided in recent times and has led him into interchanges with her mother and RW which have not been to KM's advantage and may even, at times, have been motivated (at least in part) by malice. I accept also that the father is attached to KM. That is the evidence, for example, of the observed contact visits and, more recently, of the most recent social worker.

I am extremely hesitant about his motivation in making his application for parental responsibility. I do not criticise him because he did not seek parental responsibility earlier in KM's life. It is commonplace for such an application only to be made once problems develop between the parents, and in particular over the child. But I am not at all confident that he has understood, even with legal advice, what a parental responsibility order is (or is capable or willing to understand) and I am therefore concerned that he would seek to misuse such an order as a 'make weight' in future dealings with those in authority such as the police, social services, the school and doctors, about KM. Furthermore, I am concerned, given the influence that each member of the M family has upon the others, and in particular the influence that the sisters have upon the father, because it seems to me that the wider M family also see a parental responsibility order as conferring some sort of right.

Ultimately I have concluded that the father's motivation for seeking the order is, to a significant extent, concern for KM and the desire to endorse his many years as part of her life with an order recognising his status as her father, even if this will only serve a limited purpose for a very short time until she is 18. In the light of this, the authorities suggest that I should start well-disposed to the father's application for parental responsibility.

However, commitment, attachment and motivation are not the only relevant factors, as, for example, *Re H (Parental Responsibility)* [1998] 1 FLR 855 sets out. Nor, I have to say, is the paternal concern which I have just referred to, the only aspect of the father's motivation. I am driven to the conclusion by the evidence that he and his family see a parental responsibility order as providing them with rights to intervene in KM's life.

There remains, therefore, the very real problem of the potential misuse of a parental responsibility order. I found myself contemplating, in the light of the history of this matter, that a parental responsibility order could only be workable if hedged about immediately with safeguards in the form of orders setting out what the father and his family may not do in reliance on it, and found myself also concluding that even that sort of provision would not, in the extreme circumstances of this case, prevent the misuse of parental responsibility in ways which would ultimately impact undesirably on KM's care. KM requires, above all, as I have said, a settled existence free from stress and continuing argument over her care. It will not be in her interests that a parental responsibility order should be granted to the father in circumstances in which I predict he would be highly likely to misuse it to lend weight to future interference in her care, thus continuing the stress on the mother and potentially undermining her ability to care properly for KM. This would be so for any child, and is particularly so in the case of KM in the light of her special needs and disabilities.

I am sorry to have to reach this conclusion where the father has remained committed and involved with KM over most of her life, but parental responsibility is not a reward for the father, but an order which should only

be made in the best interests of KM.

I appreciate the existence of authorities such as *D v S (parental responsibility)* [1995] 3 FCR 783, and *Re S (a minor) (parental responsibility: contact)* [1995] 3 FCR 564, in which the court held that hostility and lack of trust between parents are not sufficient reasons to withhold parental responsibility; and *Re C and V (Contact and Parental Responsibility)* [1998] 1 FLR 392, in which the court fell into error in speculating what use would be made of a parental responsibility order, and refusing it for fear that it would be misused.

There exist also, however, cases, perhaps *Re P (Parental Responsibility)* [1998] 2 FLR 96 in particular, in which parental responsibility has been properly refused because inappropriate use would be made of it, and I do not accept that this class of case is limited to cases where the father has devalued his commitment by injuring the child or by being involved in criminal conduct. It covers also, in my judgment, the present rather exceptional and extreme case. In those circumstances, I refuse the father's application for parental responsibility.

Accordingly the orders that I make are for residence of KM to be with her mother, and for contact between the father and KM three times per annum, for 5 hours, during school holidays, with the father collecting and returning KM to the child minder. This will continue even when the mother moves to the Midlands, and I would hope that it can continue also when KM reaches her adulthood, because that, it seems to me, would be likely to be in her interests. The father will be entitled to send cards and presents to KM for her birthday and at Christmas, as well as at Easter if he wishes.

I refuse the father's application for parental responsibility, as I have said. However, I make the residence order upon the basis that the mother is to provide him with copies of school reports for KM and to arrange, if possible, for him to be supplied with medical information about her. In the event that there is a medical emergency concerning KM, it is my judgment that the father should be notified as soon as the crisis allows. It would be helpful if he could also be supplied with a regular report summarising routine medical treatment, and I would have thought that once or twice a year would suffice for that but I will hear argument about it, and about how it should be achieved and as to whether there is any other form of information that I am invited to add to those provisions of my order.

Order accordingly.

Solicitors: *Spencer Gibson* for the claimant father
Leon Kaye for the respondent mother
Official Solicitor
Anthony Gold Lerman & Muirhead for the respondent mother's husband intervening

PHILIPPA JOHNSON
Barrister