



Neutral Citation Number: [2020] EWCA Civ 568

Case No: B4/2020/0318

**IN THE COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM THE CENTRAL FAMILY COURT**  
**HHJ Meston QC**  
**ZC19P00137**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 29 April 2020

**Before :**

**LORD JUSTICE McCOMBE**  
**LADY JUSTICE KING**  
and  
**LORD JUSTICE PETER JACKSON**

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**Re S (Parental Alienation: Cult)**  
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**Will Tyler QC and Kate Grieve** (instructed by **Peacock & Co Solicitors**) appeared pro bono  
for the **Appellant**  
**Portia O'Connor (Pegasus Legal LDP)** appeared for the **Respondent**

Hearing date : 25 March 2020  
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**Approved Judgment**

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be at 10:30am on Wednesday, 29 April 2020.

**Lord Justice Peter Jackson, giving the judgment of the Court:**

1. This is a father’s appeal from the refusal of his application for a child arrangements order to be varied to provide for his 9-year-old daughter to live with him. The existing order provided for the child Lara (not her real name) to share her time equally between her parents’ homes, but that has not reliably happened for some time. The trial judge, HHJ Meston QC accepted the entirety of the father’s case about the cause of the difficulties in this family. He found that a process of alienation of Lara from her father had begun in the context of the mother’s adherence to Universal Medicine, an organisation founded in Australia in 1999 by Serge Benhayon and held by the judge to be a cult. Nonetheless, the judge left the previous order in place. The father now appeals on the basis that the decision does not address the growing harm the child is suffering. For her part, the mother does not accept the judge’s findings concerning Universal Medicine and seeks a reduction in the time that Lara spends with her father. During the hearing she applied for permission to cross-appeal.
2. The appeal was heard using communication technology. We thank the parties and their representatives and the court staff for making this possible.
3. We will address the issues that arise under the following headings:
  - The law concerning freedom of belief
  - The law concerning parental alienation
  - The facts
  - The hearing before the judge
  - The appeal
  - Our decision

**The law concerning freedom of belief**

4. The judge comprehensively surveyed the law’s treatment of sects, cults and minority groups in cases involving children. He rightly described the approach as cautious and neutral, stating:

“99. Clearly the court should not become unnecessarily involved in criticisms of minority groups with unusual or even controversial beliefs or practices, or (as in this case) with unfamiliar or bizarre concepts and terminology, whether or not those have sufficient components to be considered a religious movement. The court should be concerned only with the welfare of the child, and, in particular, only with any harm or potential harm indicated by the evidence. Not only is it necessary to identify any detriment because of the involvement of the family with the relevant group, but it may also be necessary to consider any positive strengths and benefits suggested by involvement with the group. ”

5. That summary draws upon the leading decision of this court, *Re G (Education: Religious Upbringing)* [2012] EWCA Civ 1233; [2013] 1 FLR 677. The issue there was the choice of school for children from an ultra-orthodox Jewish background, but these passages from the judgment of Munby LJ apply equally to belief systems that are not avowedly religious:

“35. Religion – whatever the particular believer's faith – is not the business of government or of the secular courts, though the courts will, of course, pay every respect to the individual's or family's religious principles. Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, after all, demands no less. The starting point of the common law is thus respect for an individual's religious principles, coupled with an essentially neutral view of religious beliefs and a benevolent tolerance of cultural and religious diversity.

36. It is not for a judge to weigh one religion against another. The court recognises no religious distinctions and generally speaking passes no judgment on religious beliefs or on the tenets, doctrines or rules of any particular section of society. All are entitled to equal respect, so long as they are "legally and socially acceptable" (Purchas LJ in *Re R (A Minor) (Residence: Religion)* [1993] 2 FLR 163, 171) and not "immoral or socially obnoxious" (Scarman LJ in *Re T (Minors) (Custody: Religious Upbringing)* (1981) 2 FLR 239, 244) or "pernicious" (Lately J in *Re B and G (Minors) (Custody)* [1985] FLR 134, 157, referring to scientology).

37. The Strasbourg jurisprudence is to the same effect. Article 9 of the European Convention provides as follows:

*"1 Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.*

*2 Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."*

The protection of Article 9 is qualified in two ways. In the first place, the Convention protects only religions and philosophies which are "worthy of respect in a 'democratic society' and are not incompatible with human dignity": see *Campbell and Cosans v United Kingdom (No 2)* (1982) 4 EHRR 293, [36]. I mention the point only for completeness; it plainly does not arise in this case, because the parents' beliefs are in each case clearly worthy of

respect. Secondly, whilst religious belief and thought are (subject to that overriding qualification) given absolute protection by Article 9(1), the "manifestation" of one's religion in "worship, teaching, practice and observance" is subject to the qualifications referred to in Article 9(2).

38. The important point for present purposes is that the Convention forbids the State to determine the validity of religious beliefs and in that respect imposes on the State a duty of what the Strasbourg court has called neutrality and impartiality: see, for example, *Moscow Branch of the Salvation Army v Russia* (2007) 44 EHRR 46, [58], where the court said that:

"The State's duty of neutrality and impartiality ... is incompatible with any power on the State's part to assess the legitimacy of religious beliefs."

...

43. Some manifestations of religious practice may be regulated if contrary to a child's welfare. Although a parent's views and wishes as to the child's religious upbringing are of great importance, and will always be seriously regarded by the court, just as the court will always pay great attention to the wishes of a child old enough to be able to express sensible views on the subject of religion, even if not old enough to take a mature decision, they will be given effect to by the court only if and so far as and in such manner as is in accordance with the child's best interests. In matters of religion, as in all other aspects of a child's upbringing, the interests of the child are the paramount consideration."

6. So in the present case the court must respect the mother's beliefs to the extent that the teachings of Universal Medicine are worthy of respect in a democratic society, but Lara's welfare will always be the paramount consideration.

### **The law concerning parental alienation**

7. At the outset, it must be acknowledged that, whether a family is united or divided, it is not uncommon for there to be difficulties in a parent-child relationship that cannot fairly be laid at the door of the other parent. Children have their own feelings and needs and where their parents are polarised they are bound to feel the effects. Situations of this kind, where the concerned parent is being no more than properly supportive, must obviously be distinguished from those where an emotionally abusive process is taking place. For that reason, the value of early fact-finding has repeatedly been emphasised.
8. As to alienation, we do not intend to add to the debate about labels. We agree with Sir Andrew McFarlane (see [2018] Fam Law 988) that where behaviour is abusive, protective action must be considered whether or not the behaviour arises from a syndrome or diagnosed condition. It is nevertheless necessary to identify in broad terms

what we are speaking about. For working purposes, the CAFCASS definition of alienation is sufficient:

“When a child's resistance/hostility towards one parent is not justified and is the result of psychological manipulation by the other parent.”

To that may be added that the manipulation of the child by the other parent need not be malicious or even deliberate. It is the process that matters, not the motive.

9. Where a child's relationship with one parent is not working for no apparent good reason, signs of alienation may be found on the part of the other parent. These may include portraying the other parent in an unduly negative light to the child, suggesting that the other parent does not love the child, providing unnecessary reassurance to the child about time with the other parent, contacting the child excessively when with the other parent, and making unfounded allegations or insinuations, particularly of sexual abuse.
10. Where a process of alienation is found to exist, there is a spectrum of severity and the remedy will depend upon an assessment of all aspects of the child's welfare, and not merely those that concern the relationship that may be under threat. The court's first inclination will be to reason with parents and seek to persuade them to take the right course for their child's sake, and it will only make orders when it is better than not to do so. Once orders are required, the court's powers include those provided by sections 11A to 11O of the Children Act 1989, and extend to consideration of a more fundamental revision of the arrangements for the child. We agree that whilst a change in the child's main home is a highly significant alteration in that child's circumstances, such a change is not regarded as “a last resort”: *Re L (A Child)* [2019] EWHC 867 (Fam) at [53] to [59] per Sir Andrew McFarlane P. The judge must consider all the circumstances and choose the best welfare solution.
11. Cases at the upper end of the spectrum of alienation place exceptional demands on the court. It will recognise that the more distant the relationship with the unfavoured parent becomes, the more limited its powers become. It must take a medium to long term view and not accord excessive weight to short-term problems: *Re O (Contact: Imposition of Conditions)* [1995] 2 FLR 124 per Sir Thomas Bingham MR at 129. It must, in short, take action when and where it can do so to the child's advantage. As McFarlane LJ said in *Re A (Intractable Contact Dispute: Human Rights Violations)* [2013] EWCA Civ 1104; [2014] 1 FLR 1185 at 53:

“53. The conduct of human relationships, particularly following the breakdown in the relationship between the parents of a child, are not readily conducive to organisation and dictat by court order; nor are they the responsibility of the courts or the judges. But, courts and judges do have a responsibility to utilise such substantive and procedural resources as are available to them to determine issues relating to children in a manner which affords paramount consideration to the welfare of those children and to do so in a manner, within the limits of the court's powers, which is likely to be effective as opposed to ineffective.”

12. Unhappily, reported decisions in this area tend to take the form of a post mortem examination of a lost parental relationship. *Re A* (above): 12 years of proceedings, 82 court orders, 7 judges, 10 CAFCASS officers, no contact. *Re D (Intractable Contact Dispute: Publicity)* [2004] EWHC 727 (Fam); [2004] 1 FLR 1226 (Munby J): 5 years of proceedings, 43 hearings, 16 judges, no contact. *Re A (Children) (Parental Alienation)* [2019] EWFC B56 (HHJ Wildblood QC): 8 years of proceedings, 36 hearings, 10 professionals, no contact despite an attempted change of residence. In some cases (e.g. *Re A*) a formal finding of a breach of the state’s procedural obligation under Article 8 was made. Another recent example is *Pisica v Moldova* (Application No 23641/17) 29 October 2019, where a mother was deprived of contact despite five years of proceedings during which she had obtained orders for the children to live with her. Finding a breach of Article 8, the ECtHR stated:

“63. The Court reiterates that although the primary object of Article 8 is to protect the individual against arbitrary action by public authorities, there are, in addition, positive obligations inherent in effective “respect” for family life (see, amongst other authorities, *Glaser v. the United Kingdom*, no. 32346/96, § 63)...

...

66. In cases concerning a person’s relationship with his or her child, there is a duty to exercise exceptional diligence, in view of the risk that the passage of time may result in a de facto determination of the matter (see, for example, *Ignaccolo-Zenide*, cited above, § 102; *Süß v. Germany*, no. 40324/98, § 100, 10 November 2005; *Strömblad v. Sweden*, no. 3684/07, § 80, 5 April 2012; and *Ribić*, cited above, § 92).

...

73. It is against this background of increasing alienation of the two children from the applicant that from July 2013 she asked the court to decide the custody case in a swift manner. Despite this request and her many complaints about P.’s actions, the first-instance court took a year and a half to decide (see paragraphs 12 and 31 above). This added to the overall period during which the applicant did not have meaningful contacts with her two children, while P. continued to be able to alienate the children from her (see paragraphs 12, 13, 18, 21, 23, 24, 26, 33 and 34 above). This delay in deciding the case is contrary to the principle of exceptional diligence referred to in paragraph 66 above.

...

80. In the light of the above considerations, the Court finds that, in the present case, the domestic authorities did not act with the exceptional diligence required of them (see paragraphs 66 and 73) or discharge their positive obligations under Article

8 of the Convention. There has therefore been a violation of Article 8 of the Convention in the present case.”

13. In summary, in a situation of parental alienation the obligation on the court is to respond with exceptional diligence and take whatever effective measures are available. The situation calls for judicial resolve because the line of least resistance is likely to be less stressful for the child and for the court in the short term. But it does not represent a solution to the problem. Inaction will probably reinforce the position of the stronger party at the expense of the weaker party and the bar will be raised for the next attempt at intervention. Above all, the obligation on the court is to keep the child’s medium to long term welfare at the forefront of its mind and wherever possible to uphold the child and parent’s right to respect for family life before it is breached. In making its overall welfare decision the court must therefore be alert to early signs of alienation. What will amount to effective action will be a matter of judgement, but it is emphatically not necessary to wait for serious, worse still irreparable, harm to be done before appropriate action is taken. It is easier to conclude that decisive action was needed after it has become too late to take it.

### **The Facts**

14. The parents are able and articulate individuals who are devoted to Lara. Now in their mid-40s, they met in 2009 and formed a relationship in 2010, living in the mother’s home before Lara was born in 2011. The father has parental responsibility by virtue of being named on the birth certificate. The parents separated when Lara was approaching a year old, with the father moving out. Contact initially took place for a few hours at a time, increasing over time to alternate weekends.
15. At the time of the separation in early 2012, the mother became an adherent (known as a ‘student’) of Universal Medicine and in due course of its doctrine “The Way of The Livingness”. She engaged in monthly sessions with a ‘healer’, cut gluten and dairy from her and Lara’s diet, and attended events at ‘The Lighthouse’ in Somerset, the organisation’s European base, sometimes taking Lara with her.
16. The judge understandably did not consider it necessary to decide whether Universal Medicine is a religion. He found that it is a belief system with which the mother and associates of hers are strongly aligned. He recorded extracts from evidence given in Australian litigation by Rev Dr David Millikan, an expert on cults and new religious movements. Dr Millikan described Serge Benhayon as having built a huge superstructure of ideas, so that it is impossible to think of any sphere of human activity which falls outside his ethical teachings:

“Benhayon hovers over his followers with a myriad of pronouncements about how they should behave. His teachings, cloaked in the robes of sanctity, prescribe what food they can eat. He has strict rules on clothes, work, physical exercise, how to speak and move, how sex works (he encourages orgasms like a hermaphrodite), how to treat children, how to dispose of their money, what books to read, who to talk to, what media to read or watch, how to treat family and friends who complain about their discipleship. Piece by piece their lives are recast in the mode of Benhayon himself.”

17. Dr Millikan explained that “The Way of The Livingness” is a teaching series started by Benhayon in 2013 and repeated each year in England and Australia for which Benhayon writes a sermon. As to the experience of being a follower:

“[Y]ou will be asked to accept a philosophical understanding which turns all that you previously understood on its head. You will find yourself in a cultural bubble, surrounded by exhilarated believers. Many around you will “feel” that his teachings are infallible, and unique. You will lose the capacity to question or even scrutinise what you are being taught.”

“Universal Medicine is a closed intellectual system in which what you believe can never be understood by the unfortunate who lives in darkness on the outside... This means there is no point in listening to your partner or family or friends... Many marriages collapse under the weight. Universal Medicine is surrounded by alienated partners, mostly men who grieve for their lost love. I discovered this during the course of the number of confidential discussions with persons who had experienced this.”

18. Finally, Dr Millikan wrote:

“In my experience and based on my studies, approximately 80% of all people who join a cult will leave it within 10 years of joining. This is more often than not a gradual process of exhaustion and disillusionment rather than an overnight epiphany. For those that end up in this situation and leave it can be the most painful moment of their lives.”

And:

“No one who has been a follower of Benhayon can leave without terrible warnings and curses that they will suffer and lose all access to healing and salvation. He is, in effect, assigning them to a half-life.”

19. The judge continued:

“13. The material collated by the father includes tables showing the categories of food allowed and disapproved of by Universal Medicine. The categories include “Fiery foods”, “Pranic foods” (said to hinder the flow of the light of the soul and the body, including all wheat and grain and dairy milk (said to increase dampness in the body)) and “Evil foods”.

14. Apart from “The Way of the Livingness” the material refers to other concepts taught by Universal Medicine, some of which are not easily understood. These include “The Hierarchy”, “The astral plane”, “Atmic service”, “Soul impulse purpose”, “Esoteric truth”, “kidney energy” and “Esoteric healing



modalities”. The latter apparently include “Esoteric ovary massage” which is said to offer women “a true healing to deconstruct the emotional inputs and blockages that may lay suppressed in the ovaries, consequence to the many experiences a woman has endured throughout her life that have had the effect to the relationship she holds with herself”. Another concept is “The Heart Chakra”. The document referring to that is not easy to understand but it appears to be the basis of the requirement to move in an anti-clockwise direction: “The emotions cannot stay in the heart because the rotational spin of this centre is anti-clockwise, therefore by its occult nature cannot hold anything in it that is not in its divine frequency... The heart centre is spinning in an anti-clockwise rotation therefore clearing and remaining clear all of the time.””

20. In February 2015, when Lara was aged three, the father contacted the local authority to express concerns dating back to 2012. These included issues about Lara’s tiredness and restricted diet, inconsistency of contact, and the influence of a ‘healer/cult’ upon the mother’s idea of parenting and thinking. A child and family assessment was carried out. A good relationship was observed between the mother and Lara. The mother said that the father was not the first person to make allegations about the healers; there had been a lot of bad press in Australia but all of the allegations against Benhayon were unfounded. The social worker’s conclusion was that the mother had somewhat fixed ideas about parenting, but these did not amount to a safeguarding concern. The parents were advised to seek legal advice about contact issues.
21. In the following month, May 2015, social services received a referral from the mother and Lara’s GP that the mother had said that she was concerned regarding the risk to Lara when staying at her father’s house. The mother was concerned about the risk of sexual abuse. Another child and family assessment took place. The father explained that he would lie alongside Lara at her request to help her go to sleep. A ‘team around the child’ plan was put in place and continued until October 2015. In closing the case, the social worker expressed concern about different levels of parenting exacerbated by the parents’ lack of effective communication. Both parents appeared to love and want the best for their daughter, but their methods of communication led to confusion with Lara in the middle of their conflict. At all events, social services withdrew, leaving the school as the parents’ main external point of contact.
22. Later in 2015, the father applied for a child arrangements order in which he sought a shared care arrangement for Lara and a specific issue order to prevent Lara from having any further contact with Universal Medicine, which he considered to be a form of brainwashing. The mother replied that Universal Medicine was an award-winning complementary healthcare organisation bringing many benefits to its adherents, herself included. It was not a cult but an organisation founded by an individual committed to exploring the human condition. Her life was a normal one, and not dominated by Universal Medicine. The father responded with entries from an online blog written by the mother in January 2016 and May 2017 in which she lavished praise on Benhayon:

“Here is a man who can be truly trusted, who is inspiring many, many people to live with such deep integrity, deep care and love in our societies today... There is not one topic that Serge is not

an expert on. He can bring a depth of knowledge and wisdom to all subjects regardless of sensitivity or obscurity... It is extraordinary that we are not seizing the moment to hear all he has to offer”.

“Serge provides the absolute reflection of integrity and truth, and of unwavering love for all in service untiringly and unceasingly... No greater role model have I ever met.”

23. In April 2017, a Cafcass officer, Ms Beer, reported. Her interviews with the mother and Lara and her discussions with the school did not raise concerns of immediate risk of harm to Lara from the mother. However, she considered that the reasoning of Universal Medicine was confusing and she was concerned about some of its beliefs. She advised that Lara should not attend any Universal Medicine events until she was of an age where she was able to make informed choices. She referred to the possibility of Lara becoming segregated, which would impact on her formation of relationships. She supported the father having equal input into Lara’s development and upbringing by Lara spending equal time with each parent once the father had obtained suitable accommodation locally.
24. The father’s application came before District Judge Alderson for final hearing on 5 June 2017. No oral evidence was given and after negotiation an order was made by agreement incorporating a shared care arrangement as recommended by the Cafcass officer, together with a prohibited steps order barring the mother from:
  - Taking Lara to any Universal Medicine workshops and courses before the age of 16
  - Imposing Universal Medicine teachings and doctrines on Lara
  - Initiating discussions about Universal Medicine with Lara, and limiting them appropriately if Lara raised the subject
  - Taking Lara to any premises at which Universal Medicine events are occurring
25. The shared care agreement came into effect in April 2018. The father has been assisted by his mother, who stays regularly.
26. In May 2018, Lara’s GP made another referral to the local authority after Lara was treated for vaginitis and the mother again raised concern about co-sleeping. A further assessment was carried out. Lara was spoken to by a social worker and did not describe anything of concern. The father reiterated his fears about the effect on Lara of the mother’s involvement in Universal Medicine. The mother stated that she was involved with Universal Medicine but did not involve Lara. The assessment, completed in August 2018, did not identify any risks to Lara but noted that the ongoing disagreements between the parents in relation to parenting styles and priorities may lead to further referrals.
27. In the summer of 2018, the mother took Lara on a visit to ‘The Lighthouse’.

28. In July 2018, the father wrote to the mother that it had become clear to him over the past year that she had not adhered to the prohibited steps order. He said that the influence of Universal Medicine over Lara had increased, as had her mother's control over her. He asked the mother to respect the order and warned her that he would consider options to protect Lara. The mother asked for examples, which the father gave in lengthy reply in which he described Lara's behaviour and produced further extracts from blogs written by the mother in late 2018, showing her devotion to Universal Medicine and Benhayon.
29. In September 2018, the parents visited Lara's GP together. The father raised his concerns about restriction of Lara's diet as she had stopped eating food she had once enjoyed and was obsessed with reading ingredients on packets. The GP advised that Lara should be told that she is not allergic to gluten or dairy and said that there was a risk that she could develop an eating disorder.
30. On 15 October 2018, a four-person jury empanelled by the Supreme Court of New South Wales brought in its verdict at the end of long-running proceedings brought by Serge Benhayon against a former student, Esther Rockett. In 2014 she had accused him of a wide range of fraudulent and criminal activities and in 2015 he sued her for defamation. After a trial lasting 6½ days, the jury dismissed the action. Its extensive findings, contained in the final determination of Justice Julia Lonergan on 6 December 2018, are recorded at [Benhayon v Rockett \(No 8\)](#) 2019 NSWSC 169. Amongst other things, Universal Medicine was found to be a socially harmful cult and Benhayon to be a sexually predatory charlatan who had assaulted female students including Ms Rockett, and had an indecent interest in children as young as ten. It was described by the judge, when making an indemnity costs order, as a comprehensive victory for the defendant and a comprehensive defeat for the plaintiff.
31. The father issued his current application in January 2019, seeking the variation of the 2017 order and citing the mother's continued involvement in Universal Medicine and its impact on Lara. He sought an order that Lara should live with him and spend time with her mother on condition that she adhere to the prohibited steps order. He stated that without such an order there was a risk of further alienation and emotional harm. He gave examples concerning Lara's food beliefs, and her preference for Universal Medicine ideas.
32. In March 2019, the Cafcass safeguarding letter reported that the father would ideally like shared care to continue but he felt there needed to be a change in order to keep Lara safe. It need not be permanent and she may not want it, but it was in her best interests. The main concern remained the mother's escalating beliefs in Universal Medicine that were influencing Lara daily in a way that alienated him from her. She constantly rang and asked to speak to Lara in secret (the father described Lara going into a cupboard to do so). For her part, the mother was dismayed by the return of court proceedings. She raised no safeguarding concerns herself, saying that the problem was about different parental views. She had wholly abided by the prohibited steps order and she followed her Universal Medicine beliefs when Lara was asleep or absent. Lara was eating healthily.
33. The Cafcass Officer recommended that the court hear evidence on whether there had been any breaches of the prohibited steps order, and said that if the order had been breached there would be significant concerns about the current arrangements. The

teachings of the group are not appropriate for Lara at this age and it could affect her detrimentally both emotionally and physically in the immediate and long term.

34. At the first appointment on 28 March 2019, the court noted the disagreement about whether the prohibited steps order had been complied with and identified the issue in the proceedings as being whether there needed to be a change to the shared care arrangements. It provided for statements and for there to be a Scott schedule of the father's allegations and the mother's responses.
35. In May 2019, the Parents exchanged detailed statements in which the father set out his reasons for a change and the mother responded that she was "absolutely behind the current arrangement". For his part, the father described many remarks made to him by Lara, including "*You're not love daddy, Serge is love. You don't know anything daddy and Serge knows everything*". He described Lara saying of members of his family, "*They won't reincarnate because they're eating gluten*". She was also preoccupied with doing things, such as walking round a shop or mixing pancake batter, in an anti-clockwise direction.
36. In a further safeguarding letter in May 2019, another Cafcass officer reported on Lara's wishes and feelings. Lara said that the most important people in her life were her mother, her father and her granny and that she lived with both of her parents and did not want this to change. She said that the only thing that upset her was when her parents did not agree. She was also worried that her mother did not have very much money and thought that she worked very hard to look after her. The Cafcass officer advised the court to determine whether the factual basis for the father's allegations was made out. If it was not, the living arrangements should remain unchanged. If risks were identified, the court should consider what steps were necessary to protect Lara.
37. At a hearing on 20 May 2019, the court refused the father's application for a psychological assessment of Lara. However, it granted his application for a report to be provided by the independent social worker, Helena Ware, who amongst her other professional experience has worked as a Children's Guardian for 28 years. The matter was listed for pre-trial review in October and for a three-day final hearing in November.
38. The mother visited 'The Lighthouse' in the summer of 2019.
39. The report of Ms Ware was filed on 4 October 2019. She saw Lara, and each parent on four occasions each. She received a very positive report from the school, which described Lara as having blossomed in the past year. In the course of her report Ms Ware noted that Lara dislikes the conflict between her parents and would really like them to be together. She would like to be with her mother more than her father but it would be OK if things stayed the same. She would not like more time with her father.
40. Ms Ware gave a detailed account of her discussions with the parents. The father said that he did not trust the mother to distance herself and Lara from Universal Medicine. He was aware that Lara would be devastated to spend less time with her mother and hopes that she can commit to leaving the organization and its teachings. If not, he believed that on balance it would be better for Lara to suffer short term sadness and disruption than the long term harm that she was at risk of as things stand. The mother described the father as controlling and abusive. He found it difficult to accept her close bond with Lara and was obsessed with her involvement with Universal Medicine. She

described herself as having benefited from the organization and its teachings and rituals. She was at a loss to understand the criticism of the organization and its founder.

41. Ms Ware gave as her opinion that the mother seemed not to have understood the gravity of the concerns about Universal Medicine. She described the mother as “deeply steeped in the teachings including restricted diet, sleep patterns, esoteric massages and the spiritual aspects in terms of The Way of Livingness”. She considered Universal Medicine to be a cult and the mother’s involvement to be harmful to Lara in terms of restricted diet, behaviour and beliefs. The mother underestimated her influence over Lara. If she remained in Universal Medicine or associated with it on any level she would influence Lara. She had previously said that she would disassociate from Universal Medicine but she had not done so despite previous proceedings that had continually raised concerns about it. Given the mother’s heavy involvement over 8 years and her continued support for its teachings and leader, Ms Ware doubted that she could extricate herself without significant therapeutic support and a true commitment to do so.
42. As to the effect of this on Lara’s relationship on her father, Ms Ware noted that she had accused her father of not being like her and her mother because he does not have the same beliefs. She is at risk of becoming alienated from him as a result. She would find it difficult if the current arrangements were changed so that she lived with her father because she is so close to her mother, with whom she is in an alliance, but unless the mother was able to relinquish her interest in and commitment to Universal Medicine, Lara will continue to be at risk of harm. In such circumstances she should move to live with her father full time and have supervised contact with her mother.
43. The filing of Ms Ware’s report, with its clear assessment of Lara’s circumstances and its precise recommendation, gave the mother an opportunity to reflect on her position if she was able. However, in October 2019 she changed her legal representation and began to be represented by Ms Portia O’Connor. On 10 October, within a week of Ms Ware’s report, Ms O’Connor filed an application, seeking to strike out the father’s application altogether. The basis for this application was that acceding to Ms Ware’s recommendation would breach the mother’s Article 8, 9 and 10 rights and that, even if the mother had any involvement with Universal Medicine, that would not disclose any legally recognised reason for varying the 2017 order.
44. The pre-trial review came before Her Honour Judge Brasse on 15 October 2019. Not surprisingly, she dismissed the mother’s application and gave final directions for trial. The issues for the trial were confirmed as being those identified at the outset of the proceedings. The mother’s request for an extension of the time estimate was not granted.
45. Since then the mother’s stance has shifted to and fro. Until shortly before the trial, her position was that the arrangements should continue in accordance with the 2017 order. However, Ms O’Connor’s opening written submissions for the hearing stated that the mother considered that the shared care arrangement had proven to be unworkable and that Lara was very unhappy. Her relationship with the father was strained. The shared care arrangement should be changed so that she spent time with the father on long weekends and for half the school holidays. The father was using Lara to control her. How she chose to live her life was a private matter. The Australian case had nothing to do with her. It would involve multiple breaches of the Convention to require her to

give up her beliefs and it would be discriminatory towards Lara to stigmatise Universal Medicine, as opposed to other common belief systems, punishing Lara for her thoughts and conscience. But the mother “will of course do what is required to keep her daughter living with her”. This position was confirmed by counsel at the start of the hearing, but in her evidence the mother said that she would prefer to maintain the current arrangements. However, in closing submissions counsel again said that her client sought a reduction in Lara’s time with her father, but only for six months until matters had settled down. After that, the 2017 order could be reinstated.

### **The Judge’s Decision**

46. The final hearing took place over three days from 11 November 2019. Evidence was given by Ms Ware, by both parents and grandmothers, and from three witnesses for the mother, who were not cross-examined. Statements were received from witnesses for the father giving evidence about the activities of Universal Medicine and its impact on their own families. The court considered recordings of sermons and promotional materials, a BBC programme, and recordings of Lara talking to her father. The parties made written closing submissions and judgment was reserved. On 16 December the judge informed the parties of his decision and on 2 January 2020 he handed down his 30-page judgment.
47. The judge methodically set out the law, the background facts, and the witness evidence. In summary, Ms Ware advised that Lara had a very close relationship with her mother and a close relationship with her father. In her view, shared care was the best arrangement for Lara but the mother needed to accept help and support to extricate herself from Universal Medicine. The influence on Lara was not just in terms of diet and rituals, but was shown by her feeling that her father was different because he did not follow their beliefs. That was starting to alienate her from the father. In Lara’s mind there was no middle ground: her mother’s way is the right way and her mother’s beliefs are the right beliefs. She was conflicted and anxious.
48. The father and his mother gave evidence in line with their statements. In her evidence, the mother denied imposing Universal Medicine beliefs on Lara. She did not know why Lara was anxious about food. She accused the father of abusive and controlling behaviour and of constantly monitoring Lara. She denied encouraging secrecy but had told Lara that it was alright for her to have privacy when talking to her when she was with her father. She said that if it was necessary she would renounce Universal Medicine, speak to a therapist and a dietician, and accept that serious findings had been made in Australia.
49. In closing submissions on behalf of the mother, counsel described the father’s application as “a tactical ploy” and argued that the Australian judgment should not be given “any weight whatsoever”. The father was a coercive and controlling person, and Parliament has legislated for “these cunning abusers”. He has stalked the mother online. The damage to his relationship with Lara is due to his conduct. “Why despite concerns about father sharing a bed with Lara does he continue to do so? Is it because he wants her close so that he can question her when she is most relaxed or for other reasons?” It is “not healthy”. Ms Ware’s recommendation should not be followed. The mother will give whatever undertaking is required but nothing can “de-programme” her or Lara. The risk from moving Lara is far greater than any present risk. “This is an unhappy child in the father’s home.” As described above, the closing

submission was that the father's time with Lara should be reduced for a period of six months.

50. The judge remarked of the mother's evidence:

"91. At points the mother seemed defensive, cautious and somewhat evasive in her oral evidence about her involvement with Universal Medicine, but ultimately she appeared genuine in her agreement to do whatever might be required to dissociate herself from Universal Medicine if that ensured that Lara was not removed from her care."

As to the father, the judge said this:

"106. ... In the closing submissions on behalf of the mother in the present proceedings it was argued that that the father's conduct, particularly leading up to the earlier proceedings, amounted to controlling and coercive behaviour. I do not consider that any finding of controlling or coercive behaviour (as each is defined in paragraph 3 of Practice Direction 12J supplementing Part 12 of the Family Procedure Rules 2010) is justified.

107. I reject the criticisms of the father and of his motives put to him in cross-examination. I found him to be genuinely concerned and sincere in wishing only to protect Lara. He recognised the positive features of the mother's care of Lara and had taken considerable trouble to inform himself about Universal Medicine before deciding to pursue his concerns through legal proceedings. He has been fortunate in having the assistance of his mother whom I found to be an intelligent and caring grandmother of Lara."

51. Having surveyed the legal principles, the judge approached his conclusions in this way:

"102. Thus, in this case the only proper focus for the court is whether the mother's adherence to Universal Medicine impacts on the care of Lara and whether it involves practices and attitudes which are or might be harmful to Lara, and, if so, whether and in what way any such harm can be mitigated. In addition, of course it cannot be overlooked that an additional source of actual and potential harm to her is the continuing disagreement and conflict between the parents, in particular their disagreement on the important and difficult issues relating to Universal Medicine. The disagreement has created tension and suspicion between the parents, the mother alleging that the father is seeking to undermine her relationship with Lara and the father alleging that the mother is seeking to alienate Lara from him."

52. The judge then addressed the welfare checklist. He said that Lara's wishes are important but that she has a limited understanding of the issues. The extent to which

her physical (dietary) needs are being met is unclear and if concerns persist, assessment by a dietician may be needed. She needs normality and a good, safe relationship with both parents if possible, but this must be balanced with the prevention of harm. She needs the legal process to be resolved. A change of circumstances would take place in the context of Lara being familiar with both homes, but curtailing time spent with her mother would be particularly upsetting and would be hard for Lara to understand; an aspect of her background is that she is influenced by her mother and regards herself as part of Universal Medicine and its teachings. She would need support during the transition and afterwards to come to terms with it.

53. Of the capacity of the parents to meet Lara's needs:

“Both parents love Lara. Each is capable in practical terms. The order made in 2017 and its implementation showed that the parents were each willing and able to promote Lara's continuing relationship with the other parent. The father has shown himself to be reliable and consistent in meeting the full range of Lara's needs. The mother too has, of course, much to offer Lara, but inevitably the focus has been on the ability of the mother to recognise and accept the concerns about the effect of the beliefs and practices of Universal Medicine on her daughter. Ms Ware put it starkly: “[Her] commitment to and involvement with Universal Medicine interferes with her ability to meet Lara's needs in all aspects of her care....”

54. As to the issue of harm:

“I have summarised above the views of Ms Ware which I accept. In her view and in my judgment Lara's exposure to Universal Medicine is harmful, causing Lara to see her father's way of life as different to that of her mother and herself. If her mother remains involved with Universal Medicine or their practices, Lara is at risk of further harm.

However, there is also a risk of considerable harm as a result of a transition from the existing arrangements for the care of Lara to the full-time care of the father with restrictions on contact between Lara and the mother. However carefully such a transition might be managed and explained, it is difficult to measure how Lara might react.”

55. The judge then stated his conclusions. He said that the court had to assess all the factors relevant to Lara's welfare, focusing on her best interests in the medium and long term. The decision had to be proportionate to the problems found. The father's concern about the influence of Universal Medicine was substantial and justified. The mother's case that the father's application was opportunistic was rejected and the Australian judgment was found to be persuasive, though not binding. The judge then made these specific findings:

“111. ... Having reviewed the evidence I confirm that I accept, as submitted on behalf of the father, that



- (i) Universal Medicine is a cult with some potentially harmful and sinister elements. I find the available evidence presented by the father relating to the harmful and potentially harmful influence and effect of Universal Medicine to be compelling. The mother's attempts to explain and justify some of the teaching and practices of Universal Medicine were unpersuasive. The independent social worker in these proceedings clearly and, in my judgment, correctly considered that aspects of the teaching and practices of Universal Medicine were unsafe, particularly for such a vulnerable and impressionable child.
- (ii) The mother has been an uncritical adherent to the beliefs and practices of Universal Medicine and has expressed unqualified admiration for Serge Benhayon.
- (iii) The mother has inevitably exposed Lara to the beliefs and practices of Universal Medicine, and naturally Lara has been influenced by her mother's thinking. This does not appear to be disputed on behalf of the mother.
- (iv) Continued exposure of Lara to the beliefs and practices of Universal Medicine gives rise to the risks identified by the independent social worker.
- (v) The increased anxiety shown by Lara, about which both parents gave evidence, is not just the result of her awareness of these proceedings and of the continuing disputes, but it is the result of Lara coming to feel that her father is different to her mother and herself, of her worry that the father will have a heart attack or die as a result of his not being "love" and of eating things that she does not eat, and also of her feeling that deviation from the beliefs and practices of Universal Medicine would be disloyal to her mother [and] also would make her ill or lost.
- (vi) Either because she has been told, or has recognised, that she must not tell the father about what she and the mother think Lara feels compelled to hide her beliefs and to speak to the mother in a secretive way.

112. Specifically, I have no hesitation in making the findings sought by the father in respect of paragraphs 1 and 2 of the Scott Schedule, and accept without qualification the detailed evidential points made in respect of those allegations in the written closing submissions on behalf of the father. The third allegation by the father, that the mother has been attempting to alienate Lara from the father, is less easy. In reality, even though the mother does not see herself as alienating Lara from the father, that has started to occur. It is the result of what Lara, whose predominant loyalty is to the mother, has come to think about the

father as someone who does not follow the “Way of the Livingness”.”

56. Against that background the judge’s decision is contained in these passages:

“114. The independent social worker did not hear the subsequent evidence of the parents, and in particular the evidence of the mother when the mother said that to enable her to be allowed to retain the care of Lara and a role in her life she would do whatever might reasonably be required of her. The mother said that she would not find it easy to walk away from Universal Medicine but would do it if thought necessary because she would not jeopardise her relationship with her daughter. Specifically, in cross-examination on behalf of the father, the mother said that she would renounce Universal Medicine and that she would speak to a therapist, and also consult a dietitian in respect of Lara. Of particular significance she said that she would accept that the Supreme Court in New South Wales had made serious findings about Serge Benhayon. It was not apparent that the mother had actually read the decision of that court or fully grasped the implications of the strong criticisms of Mr Benhayon having been upheld by that court. I would expect the mother now to read and understand the findings made by the Australian court. Whilst it might have been possible for adherents of Universal Medicine to dismiss criticisms and critics of Universal Medicine, there is now a decision of a court in Australia made after a trial which no reasonable parent in the mother’s position could disregard.

115. The mother, having stated in her answers to questions put on behalf of the father about what specifically she was prepared to do, also tentatively agreed to submit to a further risk assessment by the independent social worker. She also again said (contrary to her position as I understood it at the start of the hearing), that she was happy for the arrangements under the 2017 order to continue. Having read and reread what the mother said in evidence I accept that in that respect she was sincere and genuine in what she was saying and that she can now reasonably be expected to give appropriate and necessary undertakings to the court to protect the child as required and to modify, if not wholly change, her thinking about Universal Medicine and Serge Benhayon.

116. The court cannot achieve ideal arrangements for Lara, only arrangements which are the best in the circumstances and which appear on the evidence to be the least harmful.

117. Lara is fortunate in having a strong attachment to 2 loving and capable parents who live in close proximity to each other and to her school.

118. If at all possible and consistent with her welfare Lara needs the continued security of the familiar and essentially workable arrangements under the order made in 2017 and she needs her valuable relationship with each parent to be preserved. She needs normality and certainty. A substantial change in the arrangements made in 2017 would be harmfully unsettling and distressing for Lara, and such a change should not be required or attempted unless the effects were outweighed by the harm or risk of harm if she continued to be exposed to the beliefs and practices of Universal Medicine which are of most concern.

119. I reject the criticisms of the father's motives and conduct. He is a good parent. I also find that, apart from the influences of Universal Medicine, the mother too is in all other respects a good parent. I have reached the firm conclusion that it is in the best interests of Lara to continue the arrangements for her under the order made in 2017.

120. I will therefore make an order refusing the father's application for variation of that order provided that the mother does now give formal, clear and specific undertakings to the court, not only reiterating the agreed terms of the order made in 2017, but also in line with what she told the court in evidence that she was now prepared to do to dissociate herself and Lara from Universal Medicine and from its specific practices.

121. I therefore ask the parties' legal representatives with their clients to agree and draft the undertakings to be required and the order reflecting this decision. The mother must understand those will be undertakings to this court, not just promises to the father, and that she would be accountable to the court if she breached them in any significant way. More importantly she should understand that this court has made its decision trusting the sincerity of what the mother has said and what she is prepared now to do. She should be under no illusion that if she is unwilling or unable comply with what is now expected of her it is likely that at some time there will be further legal proceedings when the court may be forced to review this decision. A future failure to comply with the required undertakings is likely to be seen as an inability by the mother to prioritise the welfare of Lara. It could well also be seen as evidence of behaviour which alienates Lara from her father. That said (and subject to any further developments or submissions), at this stage I do not propose to direct a review hearing at any set point in the future."

57. However, the judge's final paragraph reflected growing difficulties on the ground:

"116. My decision and conclusions were given to the parties and their representatives at a hearing on 16th December 2019. I was then informed that there was further difficulty such that Lara had not spent time with the father since before the hearing in

November. However the parents had apparently attempted to overcome the problem with an agreed arrangement for the forthcoming Christmas holidays. In the circumstances no specific orders were required but it was agreed that a further provisional hearing should be listed by the court in January 2020. This has now been listed at 2 p.m. on 15th January 2020 on the basis that it can be vacated if the court was informed that it is no longer required. If however difficulties did persist, the court would have to then consider the way ahead which might require appointment of a rule 16.4 guardian for Lara.”

58. Having received the judgment, the father indicated an intention to appeal. When the parties returned to court on 15 January for the finalisation of the order, he provided a statement describing the reduction in his time with Lara since 4 November. In November Lara refused to stay on 5 of the 14 nights. She refused to stay at all during the week of 2 December. She was due to stay from 16-19 December before going abroad with her mother for Christmas and the father had to insist when she came to him. During those days, the father describes Lara:
- Breaking down and phoning her mother many times, until he had to unplug the phone.
  - Hitting him twice.
  - Refusing to come out of a dark clothes cupboard for 30 minutes.
  - Letting herself out of the flat and trying to run away.
59. The father exhibited email correspondence charting the difficulties. It included a message sent by the mother on Christmas Day that included this passage:
- “Also, [Lara] came back after her last stay with you saying that you do not respect her personal space when she asks for it and that she has learnt about it at school and that it counts for everyone. As she is getting older it is important to respect her personal space when she asks and things that she might once have been comfortable with she might no longer be. She needs to know that you understand no means no. No hug, no kiss means just that.”
60. Following Lara’s return from holiday, she went to her father for a week but was unsettled and tearful, saying that she missed her mother. She had become angry and rude and the father stated that he felt as if his authority and parental position had all but disappeared. *“Now I have a daughter who doesn’t see me as a true parent figure.”*
61. At a hearing lasting for three hours on 15 January 2020, the subject of the mother’s undertakings was discussed. The father presented a detailed series of proposals that included the mother:
- Renouncing Universal Medicine and ceasing all related activity

- Engaging in specialist therapy to support her in dissociating from Universal Medicine and modifying her thinking
- Reading and accepting the Australian decision
- Removing Universal Medicine materials from the home
- Not associating or allowing Lara to associate with Universal Medicine members
- Working with a dietician to normalise Lara’s diet
- Encouraging Lara’s relationship with her father
- Engaging in further work with Ms Ware and considering her advice

62. The mother’s proposed undertaking was:

“That she will dissociate herself and the child from Universal Medicine and practices associated with Universal Medicine by

- (1) Not reading or listening to any material produced by Universal Medicine and not attending any event organised by Universal Medicine
- (2) Not making any reference to any activities or action being done by anyone in an anticlockwise motion
- (3) Continue to abide by the provisions of the prohibited steps order dated 5 June 2017.”

63. The significant differences in the position of the parties in relation to the undertakings was that the mother made no proposal to seek therapy or to engage with the Australian decision or otherwise distance herself from Universal Medicine teaching or Universal Medicine followers, nor did she give any assurances in relation to Lara’s diet.

64. In the position that then existed, Ms Kate Grieve on behalf of the father invited the judge to reconsider his decision. That application was refused and the father’s application to vary the 2017 order was dismissed, as was his application for permission to appeal. However, and in a change from the indication given in his judgment, the judge made ongoing directions, though following the dismissal of the father’s application it is not clear to what proceedings they were attached. The directions were (a) that the mother should provide a statement in reply to the father’s recent statement and provide revised proposed undertakings by 5 February, (b) that Ms Ware was to be instructed again to undertake work with the family to support the current arrangements working effectively, to assist Lara to settle back into them, and to report to the court on progress, and (c) for the matter to be restored for further directions once a decision on the father’s application for permission to appeal had been made.

65. The mother then filed a proposed draft undertaking that said only that she would (a) comply with the 2017 order and (b) ensure that Lara has a consultation with a nutritionist in February 2020 and once a year thereafter. At the same time she stated

that if the father obtained permission to appeal, she would file a Respondent's Notice seeking to uphold the judge's decision on the additional grounds that the father presents a risk to Lara because of his coercive and controlling behaviour, that the undertakings that he was seeking were further evidence of that, and that a requirement for an undertaking that the mother give up her right of association was a breach of Article 9.

66. In her statement, dated 12 February, the mother said that the father's "contact" had resumed but that Lara was at times very distressed about going and would prefer to spend less time there. Her account included multiple complaints about the father bullying Lara to stay with him. She described some of these situations as "horrific" and "frightening". Her statement includes these passages:

- *"All this has nothing to do with me or Universal Medicine as he is implying. It is down to the quality of the relationship they have ..."*
- *"... she said... he's a bully and all he cares about is the court, not me ... her intelligence and insight sometimes takes me by surprise."*
- *"It's incredibly hard to parent a child who does not want to go to her father's house."*
- *"[Lara] is now seeing him for who he is ..."*
- *"He is using the court as a means of coercion and control... the pretence that this is about [Lara]."*
- *"He needs to allow her to sleep in her own bed and stop touching her when she does not want it."*
- *"Her time with her father has become a not very pleasant experience for her."*

The mother's statement ended with her saying that she had carefully considered what undertakings she would offer. She remarked on the extent of the disparity between what the father was asking and what she was prepared to give: *"He is looking to run my life, he is clearly not thinking about [Lara]."*

67. Between the hearing on 15 January and the appeal hearing on 25 March, the father records Lara as having stayed with him on nine nights in January, eight nights in February and four nights in March (the mother's figures for the same period were ten, thirteen and seven respectively – we did not seek to resolve the difference).

68. On 6 March, while Lara was with her father, the mother wrote a long message to the father, that ended in this way:

*"I do hope you are now focusing on repairing your relationship and trust with [Lara] so that [Lara] looks forward to seeing you. I know she is excited that you are finally getting her a new desk as I know she really didn't like the grey table she had in her room. I'm concerned though by the level of distress [Lara] was in during the phone calls with you at 6pm on Wednesday the 5th of*

March and Thursday 6th of March which I cannot imagine has done anything to fix your relationship.

I am writing to you in this way because I know these things are going to be brought up in court and I do not want to be accused of getting in the way of [Lara] seeing you. So let me know now if you disagree with anything that I have said in this email.

I need you to think about [Lara], I am very worried about her emotional state. Going to your house has become a really traumatic experience for her. The night before last [Lara] had another nightmare about going to your house. It should not be like this and it cannot continue like this, I need you to think of ways to repair your relationship with your daughter.”

69. Lara’s most recent visit to her father’s home ended on 9 March. The current coronavirus restrictions were announced on 23 March.

### **The Appeal**

70. The father filed an Appellant’s Notice on 13 February. On 14 February, Williams J granted permission and transferred the appeal to this court under FPR 30.13.
71. In their skeleton argument Mr Will Tyler QC and Ms Grieve condensed the grounds of appeal:
- (1) Flawed risk assessment: The judge was wrong in his assessment of the risk that flowed from his findings and in his decision that undertakings from the mother were a sufficient protection for Lara.
  - (2) Inadequate response to alienation: Having found that the child was becoming alienated from the father, the judge was wrong not to consider that this, in conjunction with the other risk, demanded her removal from the mother’s shared care.
  - (3) Not finalising undertakings: The judge was wrong not to particularise the detail of the undertakings he required the mother to make or require that these were actually made before making the order.
72. As to the first ground, it is said that the judge understated the risks associated with Universal Medicine and gave insufficient weight to:
- The indoctrinating nature of the cult, the length of time that the mother has been a follower and the extent of her adherence to its teachings.
  - The difficulties the mother, particularly as she is unwilling, would face in extricating herself from the cult and significantly modifying her belief system without intensive professional intervention.
  - The harm already suffered and the risks of further harm to Lara.

- The recommendation of Ms Ware, from which he gave inadequate reasons for departing.
- The fact that, by the time of his order of 15 January, the child arrangements were already wholly disrupted.
- The mother's backtracking from the undertakings purportedly offered in her oral evidence and recorded in the judgment.

73. In relation to the other grounds, it is said that the judge was wrong not to act to address the growing alienation between father and daughter, compounded by events since the judgment was given. Further, he was wrong not even to identify undertakings from the mother before making his order. He should have ensured that any undertakings were carefully drafted, given full judicial imprimatur, and freely entered into by the mother. This court is invited to allow the appeal and substitute an order that Lara should live with her father.

74. The mother's response is contained in three documents. The first is a skeleton argument dated 17 March from Ms O'Connor in response to the appeal. The second is a Respondent's Notice dated 19 March and the third a skeleton argument in support of that notice, filed on 23 March.

75. The appeal skeleton argument asserts at its outset that:

“To date there has been no findings or suggestions, except by Father, that Mother has caused the child harm or will cause the child harm in the future. Nor has there been any finding that the child has been alienated from her father as a result of mother's conduct or, at all.”

Ms Ware's recommendation should be seen in the light of her lack of experience of cults. Requiring the mother to relinquish her belief system would be an unjustifiable breach of Articles, 8, 9 and 14, but she is nonetheless prepared to do so for the sake of her daughter. The judge was wrong to leave father with the impression that he had the right to determine the terms of the undertakings. The fact that the mother had agreed to a prohibited steps order was enough, and the father's application should have been dismissed without more. With reference to concerns relating to Lara's vaginitis the court should not ignore the mother's concerns about father sharing a bed with her. The father's time with Lara should be reduced.

76. The mother's Respondent's Notice also seeks a reduction in the father's time and contends that the judge's decision should be upheld on four different or additional grounds:

- (1) The judge should have treated the hearing as a fact-finding hearing only and limited his consideration to whether or not there had been a breach of the 2017 order.
- (2) The judge was wrong not to find that the father is a coercive and controlling individual.



- (3) The judge allowed consideration of Universal Medicine to overshadow “deeply concerning evidence about father's conduct”: Lara’s sore vagina and bed-sharing, and coercive questioning of the child.
- (4) The judge was wrong to ask the mother for undertakings and then be unwilling to accept them. The father’s insistence on disproportionate undertakings is coercive and controlling.

77. These themes were developed in Ms O’Connor’s skeleton argument in support of the Respondent’s Notice. She argued that even if the scope of the hearing below was correctly configured and findings about Universal Medicine and the mother were permissible, the court would have had to consider whether the father would be a suitable carer. It would need to rule on these issues, amongst others:

- *The bed-sharing issue. Why has father persisted in sharing a bed with his young daughter even when he claimed not to be doing so?*
- *A better investigation of how this child ended up with sore private parts. Father’s explanation that he has to look after her when she is in his care is a poor explanation ...*
- *Does Father have enough understanding and sensitivity to take care of the needs of a pre-pubescent girl?*

It was said that the coercive way in which the father treats mother is indicative of how he is likely to treat his daughter, and how he will lack respect for her privacy.

78. At the hearing of the appeal, we pointed out to Ms O’Connor that the Respondent’s Notice, criticising the judge’s decision and seeking a different order, amounted to a cross-appeal for which permission had not been sought or granted. She confirmed that the mother was now asking for permission to cross-appeal.

79. Mr Tyler’s core submission was that the judge had rightly made heavy findings but that he had come to the wrong conclusions. He described the repeated references to co-sleeping and vaginal infections as a slur, and extremely concerning. The mother had made no explicit allegation or sought any finding of that kind in the proceedings. A fear of sexual harm was inconsistent with her stated position that she wanted Lara to continue to stay with her father and her having specifically told the Cafcass officer that there were no safeguarding issues.

80. Ms O’Connor submitted to us that there was not enough evidence to sustain the judge’s findings about Universal Medicine being dangerous. The Australian decision was the decision of a regional court of equivalent standing to the county court in England and Wales. Ms Ware is not an expert in cults, and her investigation of Lara’s situation was insufficient. The judge should have confined himself to assessing the mother’s compliance with the 2017 order, and not looked more widely. Asked about the persistent references to bed-sharing in the paperwork, she described it as a low-key issue in the proceedings, but one with which the mother is struggling. However, there is no reference to such a concern in the mother’s extensive written or oral evidence, except for a brief chronological mention of the May 2018 GP referral. Asked by King LJ to justify what appeared to be a veiled allegation of sexual abuse in her written

submissions, Ms O'Connor accepted that there was no evidence (or as she put it, not enough evidence) but said that it was not for her to justify why bed-sharing was going on. Was something more sinister taking place? As to the undertakings, the judge should have outlined precisely what he required. The father's requests go far beyond what reasonably arises from the judgment. The mother does not accept that she needs therapy and she takes issue with the father demanding it. She is nevertheless willing to go to therapy and make any promises necessary to prevent Lara's removal. The drastic reduction in contact has been with the father's agreement or, more accurately, his acquiescence. There is no precedent for a change of residence in circumstances less extreme than those seen in the reported cases. The judge's assessment of the risks of a move was correct. The mother sought an order remitting the case, appointing a Children's Guardian for Lara, and reducing the father's contact to alternate weekends while investigations take place.

### **Our Decision**

81. We first address the mother's application for permission to bring a cross-appeal, based on four assertions.
82. The first relates to the scope of the hearing. The judge did not limit his consideration to the question of whether the mother had complied with the 2017 order. In that, he was right. He was obliged to take account of all matters relevant to Lara's welfare. Moreover, the preparatory orders specifically set out that the issue for the court was whether there needed to be a change to the shared care arrangements.
83. Second, the judge's assessment that the father's conduct was not to be characterised as coercive and controlling was one that he was clearly entitled to make. No material that he saw or that we have seen casts any doubt upon that conclusion. The fact that the mother finds the father's stance objectionable does not make his behaviour in seeking to protect their daughter coercive and controlling.
84. The third assertion is that the judge allowed consideration of Universal Medicine to overshadow concerning evidence about father's conduct. Apart from coercive and controlling behaviour in relation to Universal Medicine, the focus here is upon Lara's sore vagina and 'bed-sharing'. The father's account has been of normal parental proximity with a child of Lara's age. The mother has at various times since 2015 raised the issue with the intention of conveying some sexual risk to Lara from her father, but there has never been any evidence to support the suggestion. Nor was the allegation stated during the course of the proceedings. Despite that, during the hearing below and during this appeal, the mother has continued to trail her coat on this point, with clear insinuations in counsel's submissions that something improper may have been going on. We agree that this submission is an unjustified slur that should never have appeared in professionally drafted documents.
85. Fourth, the scope of the undertakings proposed by the father were in our view a broad reflection of what the judgment required if the current arrangements were to continue. Had there been any meaningful counter-proposal from the mother, a process of discussion and refinement might surely have followed. As it is, the complaint that the father's stance amounted to a further example of controlling behaviour is a hollow one. The mother's rights to protection from coercion and to freedom of belief do not confer upon her the right to harm others.

86. We also unhesitatingly reject the further submission that there was insufficient evidence to support the judge's finding that Lara's exposure to Universal Medicine is harmful and that aspects of the teaching and practices of Universal Medicine are unsafe, particularly for an impressionable child. The judge approached this issue carefully and correctly. He had credible information from Dr Millikan, an expert in cults, and specific expert social work evidence about the effects on Lara from Cafcass officers in 2017 and 2019 and from the independent social worker. His conclusion on that issue cannot be faulted.
87. For these reasons we refuse the mother's application for permission to cross-appeal. The way in which her case has been presented has only served to amplify the father's legitimate concerns and corroborate the judge's primary findings.
88. As to the father's appeal, we remind ourselves that fact-finding and the evaluation of the significance of the facts as found are pre-eminently matters for the trial judge and that this court will not interfere with his conclusions unless it is satisfied that he has gone wrong. Here, the judge's findings of fact were undoubtedly open to him; indeed so far as they went, we consider them to have been plainly correct. What is in issue is his evaluation of Lara's welfare in the light of the four kinds of harm that he identified:
- The wide-ranging psychological and physical effects on any young child of Universal Medicine ideas;
  - The particular emotional harm to this child arising from the parental rift over Universal Medicine;
  - The emotional harm to Lara of becoming alienated from her father;
  - The harm arising from a change in Lara's living arrangements.
89. The judge accurately identified the first two sources of harm to Lara and found that they had already caused her some actual harm in relation to her fixed beliefs and her anxious food behaviour. He also rightly considered the effect on Lara of removal from her mother. However, we have concluded that there were errors in his balancing of these risks and that these fundamentally undermine his decision. We will consider each form of harm in turn.
90. In the first place, the judge's findings at paragraphs 111 and 112 identified an immediate risk to Lara's welfare in all its aspects, arising from the mother's adherence to Universal Medicine. The judge rightly considered that this state of affairs could not be allowed to continue. However, such slight measures as he then took to mitigate the harm were in our view highly unlikely to be effective. His assessment at paragraph 115 of the mother as sincere and genuine could not be sufficient without some solid reason for believing that, as he put it, she was likely to modify, if not wholly change, her thinking about Universal Medicine and Serge Benhayon. It is difficult to know what led the judge to believe that this was at all likely. The mother had been a convinced adherent for almost all of Lara's life and the father had been raising formal concerns since the child was aged three. The clear evidence of Ms Ware, which the judge accepted, was that, given the mother's heavy involvement over 8 years and her continued support for its teachings and leader, it was unlikely that she could extricate herself without significant therapeutic support and a true commitment to do so. Neither of these

conditions was met when the judgment was written and there was in our view no reasonable basis on which the judge could have expected them to be met in the foreseeable future.

91. Moreover, the judge found that the decision of the Australian court was one that no reasonable parent in the mother's position could disregard, but that is exactly what the mother had done throughout the year of the proceedings, to the extent that it was not apparent that she had actually read the Australian decision, still less had she taken any interest in the material that led to it. In addition, events following the judge's own judgment were bound to dissolve any hope that the court might have entertained that she was now going to approach matters differently.
92. We have set out above and at unusual length the evolution of the mother's case. It shows that, far from accepting the judgment and showing signs of changing course, the mother's unmistakeable position was that she did not accept the judge's findings about Universal Medicine, and that she had no respect for the experienced opinion of Ms Ware. Nor has she any time for the fears of the father, with whom she shares parental responsibility: her response has been to attack him for taking action to protect their daughter, something that any responsible parent would want to do, though not all parents would have the determination to see it through. From beginning to end there has been no sign that the mother actually *wants* to distance herself and Lara from Universal Medicine. Even if she did want that, it would be a considerable achievement to free herself from the beliefs that have underpinned her thinking for so long. In these circumstances, her repeated, unsupported assurances that she would do anything that is required of her to keep the care of Lara can carry very little weight.
93. Finally on this aspect of the matter, the dismissal of the father's application at a point where the mother was yet to give any undertakings at all represented a clear failure to get to grips with the rooted problem that the judge had identified. In relation to the nature of undertakings, the parties find themselves in some form of agreement. The mother argues that the judge was wrong to ask her for undertakings and then to refuse to accept them. The father agrees that the judge should have ensured that the mother's undertakings were voluntary. The inability of the court to identify undertakings that were both voluntary and sufficient should have alerted the judge to the intractable nature of the problem. In the situation that then existed, the harm arising from Universal Medicine (both from its teachings and its divisive effect) was set to continue.
94. The second way in which we consider the judge to have been in error concerns his response to his findings of alienation. Having found that a process of alienation had started to occur, he did not in our judgement take effective steps to counter it. By the time of the order of 15 January, the relationship between Lara and her father was in considerable difficulties. The court's response was to re-instruct Ms Ware to advise the parents. However, even if advice from any quarter was likely to be effective, the mother showed no sign of being amenable to receiving it from Ms Ware. The orders made following the dismissal of the father's application were not made in any recognisable proceedings and disclose no identifiable strategy for addressing the damage that was being caused to Lara's relationship with her father. There was no incentive for the mother to change her approach of laying all problems at the father's door, with time passing all the while.

95. We also consider that the judge would have done well to have addressed the insinuation of sexual impropriety that was a feature of the mother's presentation. She had been bringing the matter up on and off since May 2015. It is particularly striking that she should promote suspicions about the father, despite the lack of any evidence, when she is at the same time impervious to proven allegations against Benhayon. This state of affairs was capable of providing support for the father's case in relation to alienation, but it did not receive any attention in the judge's overall evaluation.
96. The third respect in which we consider the judge erred is in relation to the nature of the different sorts of harm that he was balancing. He correctly reminded himself that he was concerned with Lara's medium to long term welfare, but we do not consider that he brought that objective sufficiently into account when reaching his conclusion. There is a contrast between on the one hand the long-term nature of the harm arising from Universal Medicine and from parental alienation, and on the other hand the short or short-to-medium term harm that would be caused to Lara by a change in her living arrangements. The order sought by the father was indeed a significant change in Lara's circumstances and implementing it against her wishes would undoubtedly be very steep challenge in the short term. But the court's powers are ample to achieve and enforce such an order if that is necessary in the child's interests.
97. We do not find a balancing-up of these factors in the judgment. At paragraph 119 the judge simply states a firmly-reached conclusion. We infer that he found that the harm arising from a move to the father's care would outweigh all other forms of harm. In our view, that minimised the continuing and untreated harm to Lara from Universal Medicine and from the developing parental alienation while at the same time it gave inordinate weight to the disadvantages of change designed to address the deep-seated problems within the family.
98. For these reasons the appeal must be allowed.
99. The last and most important question concerns the order that should now be made. We have found this the most difficult aspect of the matter. It is not evident that the case has to be remitted. We have most if not all of the information to enable us to remake the decision. The judge's primary findings are available to us, supplemented by a body of up-to-date evidence. The proceedings have already been on foot for over a year. The conditions for the appointment of a Children's Guardian (PD16A 7.2(c)) may well be met but the court has already had the benefit of the advice of Ms Ware, an experienced Children's Guardian.
100. In assessing Lara's welfare, some matters are well established. The first is that, while she would ideally want her parents to be together, the best realistic solution would be for them to share her care peacefully and co-operatively. The next established matter is that everyone agrees that the shared care arrangement is not currently working well. Both parents are unhappy with it and Lara has become increasingly distressed.
101. The judge's findings provide a framework for the welfare decision. Lara's wishes and feelings are known. She loves both her parents and wants them to get on. Asked, she opposes having more time with her father and she deals with her situation by gravitating towards having less. However, she has no way of understanding that a very significant contributor to this process, if it is not indeed its cause, is the mother's adherence to Universal Medicine. It is a pervasive source of ongoing harm to Lara, emotionally and

psychologically, and may make her vulnerable to eating disorders. We consider that unless decisive counter-measures are taken the influence of the belief system and the distancing of Lara from her father are likely to become entrenched as she grows older. We do not overlook the fact that she has two loving parents who are capable of meeting all her needs but for (and it is a big but) the dynamic that has increasingly characterised the mother's approach. She now approaches the arrangements for Lara on the basis that she knows best and that the father is someone from whom Lara is to be protected. She views Universal Medicine as a vital and benign entity. She has not begun to understand the substance of the judge's findings and the concerns expressed by others. That is how cults work.

102. What then is the practical solution? The current situation cannot be allowed to continue. If the mother continues to ally herself with Universal Medicine there are only two possibilities. Either, on the mother's case, Lara's time with her father would have to be reduced in an attempt to reduce her anxieties. Or, on her father's case, her time with her mother must be reduced in an attempt to remove her from the source of anxiety and build up her resilience. One approach addresses the symptoms, the other the cause.
103. It will be apparent from our analysis so far that we find that Lara must be distanced entirely from Universal Medicine. Shared care can therefore only continue if the mother makes an immediate and definitive break with the organisation. Otherwise Lara should move to live with her father. A period with him would give her a sustained opportunity to experience a less anxious and prescriptive way of living. There is a strong argument for saying that the time for such a move has now arrived, that this court should make the necessary orders, and that nothing short of the shock of actually losing Lara's care is likely to impel the mother into doing what is necessary. The alternative is to remit for a further hearing, giving her a final opportunity to dissociate herself in a determined way from Universal Medicine and seek the help she needs to do so. That brings more delay against a deteriorating background, and in the meantime, if the mother does not change her self-defeating stance, matters may get worse.
104. We find the arguments finely balanced. In the end, and not without hesitation, we have concluded that the risks involved in postponing a final decision are just worth taking. The current circumstances, adding to the difficulty of an immediate transfer of care, have also been significantly in our minds. With the agreement of the President of the Family Division, we shall remit the father's application for early final determination by him. By determining the matter in this way we are giving the mother a very short respite during which she will have one last chance to take her own steps to leave Universal Medicine, start intensive therapy, and reverse the process of alienation of Lara from her father. In doing this, we are taking a different course to that taken by the judge, as we now explain. Normally, when remitting a case we would emphasise that this court holds no preconceptions about the outcome. Not so here. In the first place, while the welfare decision will ultimately be for the judge, we remit on the limited basis that the factual foundations for future decisions are contained in the judgment of HHJ Meston QC and of this court, and that the only further evidence that will be needed is in relation to subsequent events. Similarly, the evaluations of the harm being caused to Lara by Universal Medicine and by alienation from her father are left undisturbed by this appeal. Above all, and so that the parties are left in no doubt, we warn that we foresee that without a wholesale transformation in the mother's position the court at the further hearing is likely to find it necessary to transfer Lara's care to her father. The main thing

that deters us from making that order now is the possibility, and it is no more than that, that the mother will finally and with a full heart see that she needs to take immediate and unmistakeable steps if she is to continue to play a central part in Lara's upbringing. If that can happen, Lara can return to a balanced arrangement that gives her the best of both parents, something that she is not getting and will not get as matters stand. If it cannot happen, her loss will be very great, but she will gain from growing up in the care of a good parent while attending the same school, and her childhood will not continue to be overshadowed by the baleful influences that have led to the present situation.

105. Our order will provide as follows:

- (1) The mother's application for permission to cross-appeal is refused.
- (2) The father's appeal is allowed.
- (3) Paragraph 4 of the order of HHJ Meston QC is set aside.
- (4) Paragraphs 11-13 of the order of HHJ Meston QC are replaced by the terms of this order.
- (5) The orders of DJ Alderson dated 5 June 2017 shall remain in full effect.
- (6) There shall be a further hearing of the father's application before the President of the Family Division on a date to be notified to the parties in July 2020, time estimate 2 days, when a final welfare decision will be made.
- (7) Until that hearing, neither parent shall change either of Lara's home addresses or remove her from England and Wales. A warning notice will be attached to this paragraph.
- (8) In preparation for the hearing the parents shall exchange statements not exceeding 20 pages including exhibits no later than a date in early June 2020.
- (9) The Independent Social Worker, Helena Ware shall be instructed jointly by the parties to prepare a report to advise the court on (i) the extent, if any, to which the mother has responded to this judgment, and (ii) the child arrangements that should be made for Lara. The report shall be filed by a date in late June 2020.
- (10) If the parents are agreed upon the orders they will ask the court to make at the hearing, they shall draw up a draft consent order.

106. The parents will need to discuss what Lara is to be told about the outcome of the appeal. They may think it sensible to consult Ms Ware in order to reach an agreed position.