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The names of the children have been changed.

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This case is linked to *Re S and T (care - fact finding - FII - emotional abuse)* [2023] EWFC 195.

IN THE MATTER OF [SASHA] AND [TARA] AND IN THE MATTER OF s31 THE CHILDREN ACT 1989

In the Family Court at OXFORD

Judgment date: 29 September 2023

Neutral Citation Number: [2023] EWFC 194

Before: HHJ Vincent sitting as a s9 Deputy High Court Judge

Between:

ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD

Applicant

and

(1) A mother

(2) a father

(3) & (4) SASHA and TARA

(through their Children's Guardian NANDI SUTHERLAND)

Respondents

*Simon Miller for the Applicant local authority, instructed by the Reading Joint Legal Team
Will Tyler KC and Jenny Stone, instructed by M & B Solicitors for the Respondent mother
Kara Cann, instructed by Reeds Solicitors for the Second Respondent father
Alice Darian, instructed by RWK Goodman, solicitors for the children*

Hearing dates: 28-29 September 2023

JUDGMENT

Introduction

1. This is the final hearing of the local authority's applications in respect of Sasha who is fourteen, and her younger sister Tara, who is nine.
2. In March 2023 I handed down a lengthy judgment following a fact-finding hearing. I found that throughout their childhoods, Sasha had suffered chronic emotional, verbal, physical abuse and neglect from her mother, and Tara had suffered emotional harm and neglect whilst in the care of her mother.
3. I found that the mother had isolated and marginalised the children's father from the lives of the girls, perpetuated a relentlessly negative view of him to them, thereby undermining him as a parent and obstructing the girls' relationship with and emotional connection to their father.
4. I found that the mother had made Sasha the focus of negative attributions, suggesting there were things wrong with her, she was odd, and needed various diagnoses requiring treatment including medication and additional support. The mother told various professionals that Sasha had diagnoses for PTSD, ADHD, sensory processing disorder, selective mutism, eating disorder, learning disabilities, lactose intolerance, food allergies, dyslexia/dyspraxia/dyscalculia, autism, OCD, allergies, and an undiagnosed syndrome. Sasha does not have any of these diagnoses.
5. I found that the parenting that Sasha received from her mother caused her to develop a low sense of self, and anxiety, resulting in significant distress and impairment in her general functioning. She now has extensive emotional and psychological needs, is self-harming, has poor body image and disordered eating.
6. When the mother did not receive the diagnoses, treatment or support she sought, or was challenged by professionals, she would often become combative. She was highly resistant to any attempts to help her reflect on, or make changes to, her parenting.
7. I found that Tara was treated differently from Sasha, but nonetheless suffered significant emotional harm and neglect in her mother's care. I found that the mother has often regarded Tara, even at a very young age, as a confidante, and had shared information about Sasha with her that both invaded Sasha's privacy and undermined her confidence, and perpetuated an understanding of Sasha being 'the problem' child. This caused emotional harm to Sasha, but also created a risk of emotional harm to Tara. She has experienced a pressure upon her to 'perform' as the child who does not present problems, to be self-reliant, and not demand anything from her mother.
8. I found that the mother had reported that Tara had ADHD, symptoms from autism of intolerance to noise, and PTSD. Tara does not meet any of these diagnoses.

9. I found that the mother had failed to ensure the girls had gone to school consistently. There had been a significant number of sudden and unplanned school moves over the years. When enrolled at school the girls had consistently low attendance. When home schooled, the mother had not provided consistent education, prioritising her own need to obtain the diagnoses, treatment and support she considered she needed to manage the girls' needs.
10. I found that the mother had failed to protect Sasha from the risk of self-harming, because she knew that Sasha had a razor blade in her possession and colluded with her in concealing it from her father and professionals.
11. I found that the mother had physically and verbally abused Sasha, at times said things which were mean or cruel. I found that she had shaved Sasha's head and that this had caused Sasha distress.
12. Since the fact-finding hearing, Sasha has continued to live in the care of the local authority at [placement P]. She continues to present with complex needs. There remains a risk of serious injury or death through self-harming, particularly overdoses of paracetamol. She is not going to school or taking part in tutoring sessions at this time. She is however beginning to build up trusting relationships with her carers. She is making progress in being able to express herself, reflect on her experiences in her mother's care, and start to process them.
13. There have been ongoing concerns about the risks posed by the mother's visits to the children. At the fact-finding hearing I found that the mother had made secret contact with the girls, providing them with UV pens so that they could write down a phone number for her. I found that she had been in touch with Tara through Roblox, an online gaming site. In supervised contact, there had been incidents when the mother had found a way to speak to one or other of the girls out of earshot of the supervisor. There have been concerns about the girls' presentation following contact sessions with their mother.
14. Since June 2023 Sasha has chosen not to see her mother, who has respected her wishes not to be in contact at this time.
15. The contact records before then show some positive interactions, but also many times when Sasha was quiet and subdued in her mother's presence. There are also some concerning reports of Sasha directly asking her mother for care and being ignored, for example a report that describes Sasha asking her mother to brush her hair, repeating the request another two times, but her mother not picking up on this opportunity to show care and tenderness to her daughter.
16. Tara was seeing her mother twice a week, but since the fact finding this was reduced to weekly. The reports of the contacts describe a positive experience for Tara and her mother. The notes describe loving and warm interactions, with the mother bringing fun and interesting activities for them to do together. However, there have been some

occasions when the mother has made comments which have directly, or more subtly, undermined the girls' father. Those subtle comments include gently questioning rules or boundaries that have been put in place around use of electronic devices. Another time she seemed to question whether something of Tara's that the father had said was lost, really had been lost. The implication is that the father may have taken it away.

17. Tara is missing her mother and has consistently expressed a wish to return to her care. At the same time, she is living a full and happy life with her father. In her final report the guardian references the very positive parenting assessment of the father and his partner, and describes how the parenting that Tara is receiving has brought about a dramatic shift for her:

11. [the father] has been the subject of a number of assessments by professionals, including a parenting assessment by Ms L-W in July 2022, which notes "The presenting emotional needs of Sasha and Tara are complex ... [the father] and [the father's partner] have, however, demonstrated that they are responding to the presenting emotional needs of both of the children in an informed, considered way ... They recognise the need for the children to experience consistent, predictable care in a safe environment and they are skilfully providing this. They individually demonstrate a sensitively acquired recognition of the children's presenting needs. Jointly, they demonstrate an impressive ability to work as a team, managing complex issues in a gentle yet effective way. I have no concerns regarding [the father] or [the father's partner]'s capacity to meet the emotional needs of either child and was impressed by the manner in which they have managed this to date." (Para 14.32)

12. [the father] has supported Tara to return to education. Her attendance for the last academic year was over 97%. She is achieving well academically and is reported to be "thriving" at school, being described in her school report as "kind and polite". The school note a very positive relationship with [the father], and he and [the father's partner] support Tara's learning at home, and Tara attending extracurricular activities. For a child whom was previously regularly refusing to attend school, would attend in pyjamas, struggled to engage in classes and was extremely negative about school, this is a very significant achievement.

18. The guardian is equally positive about [the father]'s care of Sasha. She describes him as insightful and child-focused. She says in her final analysis:

As Sasha's needs became more complex and the risk involved with her self-harm increased, [the father] and [the father's partner] worked very closely alongside professionals to respond appropriately. [the father] was considerate of the impact of this behaviour on Tara, and when he felt he could no longer keep Sasha safe, he openly communicated this with professionals. [the father] and [the father's partner] have remained committed to Sasha despite her placement away from home and visit her regularly, which Sasha enjoys. I consider that [the father] has a sound understanding of

his own parenting capacity, and the issues which surpass this, showing an ability to take guidance and advice from professionals where needed.

19. The guardian's opinion is based on her own interactions with the girls, [the father] and his partner, but also having reviewed a substantial body of further evidence obtained since the fact-finding hearing. The mother was the subject of a psychiatric assessment by Dr McClintock and a parenting assessment by an independent social worker Lisa Greaves. Dr Lucy Sawyer and Alice Rogers from Great Ormond Street Hospital who carried out a global family assessment and gave evidence at the fact-finding hearing, have updated their opinion in the light of the findings made in Court. Their views are noted in the transcript of a professionals' meeting led by them.
20. I too have reviewed this updated evidence, together with the final evidence and care plans of the local authority, prepared by Ms B, who is the girls' social worker and has long-standing involvement in the proceedings. I have read and considered witness statements from the mother and from the father, and the guardian's final analysis. I have read the contact records.
21. As at the time of the fact-finding hearing, there is broad consensus among the local authority, expert witnesses and the guardian about the mother's and father's respective capacity to parent the children. In her statement, the mother acknowledges the findings that have been made, and has not sought to appeal my judgment. However, on a more fundamental level, she does not accept the facts as they have been found. Ms B told me in evidence that in conversations she has had with the mother, she has not seen any insight or capacity to accept the findings or to accept that [the father] is going to be the girls' long-term carer. Ms B acknowledged that there have been fewer overtly problematic statements in contact, and that contact has largely been very positive for Tara, but she said that the mother has continued to be very negative of [the father] in conversations with her, and to direct blame towards him.
22. The mother has recently spoken to her general practitioner about having counselling for anxiety. She should be credited for this. Similarly, she should be commended for the careful thought and preparation she devotes to her contact, such as bringing a Japanese meal and coming up with fun games, dressing up or doing nails.
23. However, even though contact has been closely supervised and in a contact centre, concerns that the mother has continued to try to maintain secret contact outside the supervised contacts has continued. [the father] has reported that Tara tried to set up a secret email account. He has previously had to put in rules around Tara's use of her tablet because she was in contact with her mother through Roblox.
24. The mother has not appeared to be able to show Tara any sign that she is the one who bears responsibility for her separation from Tara and Sasha. She has attributed blame to social services, repeating on various occasions to Tara that it is social services and the Court who

are deciding about whether they can see each other in a contact centre, that social services decide the length of time they may spend together, and that it will be social workers who decide if or when it is safe for Tara to come home to her. On one level, it is right that the decision making has been out of the mother's hands, but this narrative is one which casts Tara and her mother together as victims at the hands of an arbitrary system, and ignores the facts as found by the Court. Tara has been separated from her mother as a result of the abuse that she and her sister suffered in their mother's care, and due to the risk of continued harm if they were to return to her care.

25. The mother has not overtly said things to Tara that cast Sasha as the problem or which directly blame her for social services' intervention and the Court proceedings, as she was found to in the past. However, what she has said does seem to me to perpetuate a sense again that the mother is the victim of Sasha's behaviours towards her, and that there is no good reason for it, it is just the way Sasha is. For example, at contact on 22 July 2023:

Mother reminded [Tara] that it is her sister's birthday on Wednesday and expressed that she did not understand why she is not speaking to them and told her she does not want to see her for her birthday which really upsets her. Mother said she cannot understand the reason. Mother got emotional (tearful) but remained in control ensuring [Tara] did not witness this.

26. This does not help Tara because the mother is unable to acknowledge that Sasha's decision not to have contact with her is a response to the way her mother parented her. Blame is directed towards Sasha. I have not seen any evidence that she has made any meaningful step towards acknowledgement and acceptance of responsibility for the circumstances which meant that both of her children remain out of her care.
27. There is evidence that Tara continues to feel responsible for her mother's emotional well-being. Back in February 2022 the mother became upset in contact and was crying. Tara is recorded as saying, 'put my picture in your room and whenever you get sad and miss me, you can look at it.' In the same contact, her mother told her that she was doing everything she could to get her home, and again became upset and was crying. Until very recently, Tara continued to be under the impression that her mother was intending to ask the Court for orders that she could go home and live with her mother. She found out that her mother was not opposing the plan from the guardian.
28. The episodes of Tara seeming to be responsible for her mother's emotional well-being and seeking to please her are repeated throughout the contact records. In a contact in July 2023 her mother complains her toastie is cold, Tara says hers is fine but jumps up to heat up her mother's. Tara draws her mother's attention to the fact that she is wearing a dress her mother bought her. Tara gives her mother a bracelet she has bought for her in the shops. Tara offers to play her mother's favourite game with her as a birthday treat.
29. There is no doubt of the closeness between mother and daughter, but there is also an element of performance to it, in the sense that there is a lot of gift-giving and sharing of treats and declarations of love and closeness. It is incredibly difficult in the confines of a

contact centre to find activities to do. Of course I understand that the time together is precious and would want to be marked out as special and to be treasured. I do not criticise the mother for telling her daughter she loves her and that she is proud of her in as many different ways as she can. I also understand that it is not easy for her to have a conversation that would explore the reasons they are separated in any depth. The mother has been told not to discuss the proceedings with Tara and would not want her to be distressed. Nonetheless, in the context of a relationship where Tara has been under pressure to perform I am concerned that being constantly told that she is perfect and amazing could increase that pressure. If it is constantly reinforced that she is the person who makes her mother feel better, she may well experience that as a pressure to continue to always be amazing and perfect for her mother, to bear the responsibility for cheering her up when she is down, to buy her gifts to make her feel better.

30. If at the same time, she is conscious that her mother is undergoing some kind of test in order to see if it is safe to return home, this may also create a pressure upon her to perform.
31. My concerns about this were reinforced when I read in one of the notes that the mother openly expressed frustration in contact that she was not sure that social workers were reading the contact notes to see how well she was doing.

Issues for the Court to determine at final hearing

32. The threshold for making public law orders in respect of both girls is crossed by virtue of the findings previously made. The summary of those findings is annexed to this judgment.
33. There is no dispute that Sasha should continue to live at [Placement P] pursuant to a care order.
34. She is having regular contact with her father and Tara which is going very well. The hope is that in time this will increase to regular staying contact, and in the longer-term for her to transition back to his full-time care. But for now, all parties are agreed that her welfare needs require that she continues to stay where she is, and where she can receive specialist therapeutic care.
35. Sasha's mother has respected her wish not to have any form of contact with her at this time. This will be kept under regular review at Children We Care For meetings.
36. The mother has proposed that she writes letters for Sasha that could be kept safely for her and shared with her when she is ready. In my judgement this could backfire as she has expressly said she does not want any contact at this time. I would be concerned that if there comes a time when she does express a wish to receive a letter, and discovers a large collection of letters she may become overwhelmed. In my view it would be better to restrict indirect contact to birthdays and Christmas for now, with staff keeping letters safe for Sasha, and to keep this under review, in accordance with Sasha's wishes and feelings

about indirect contact. There should not be any other form of indirect contact between Sasha and her mother at this time.

37. The mother has conceded that the Court should make a child arrangements order for Tara providing that she lives with her father. Having regard to all the circumstances, and in particular the welfare checklist factors at section 1(3) of the Children Act 1989, I am satisfied that such an order meets Tara's welfare needs and is in her best interests. There is no need for any public law orders, which would be disproportionate. Her father, together with his partner [the father's partner], are well able to meet all Tara's physical, educational and emotional needs to a high level, to keep her safe, and to help her in time to understand, process and recover from the experiences that led to her being separated from her mother and her sister and placed with him. It is to his credit that he is able at the same time to support Tara's relationship with her mother, albeit that he continues to work with professionals to put safe boundaries around the time they spend together so as to protect Tara from emotional harm.
38. Tara cannot safely return to her mother's care. Her mother loves her, but continues to present a risk of physical and emotional harm to Tara. She has not yet reached a stage where she is able to take responsibility for that, or to start the work of making changes that would enable their relationship to continue in a freer and less boundaried way. The harmful parenting her children received from her persisted for many years and has left long-lasting consequences for them. Each of them now has particular and complex needs, which will require a high level of attuned and consistent care to respond to. It is not realistic to expect the mother to be able to make the changes required that would enable her to be in a position to meet Tara's (or Sasha's) needs as a full-time carer for the foreseeable future.
39. Tara's placement with her father now is to be regarded as for the long term.
40. There is an issue about the frequency of contact between Tara and her mother, and whether it should take place in a contact centre or in the community. There is a further issue about whether or not I should make a section 91(14) order, restricting the mother's ability to apply to the Court for an order to vary the child arrangements order. If I do make such an order, there is a dispute about the length of time it should be in place.

Tara's contact

41. It is often said that contact is for the benefit of the child and not the parent. What does that mean for Tara?
42. Tara needs help to understand the reasons that she is not living with her mother and sister, to process her experiences and to recover from them.
43. She needs to know that she has not done anything wrong.

44. Tara needs to know that her mother loves her and will continue to love her even though they are not living together. She needs to know that she is not responsible for her mother's emotional well-being, and that her mother's well-being does not depend on Tara returning to live with her.
45. Tara needs help to understand that her placement with her father and [the father's partner] is for the long-term, and to be allowed to settle in her home with them. She needs to develop a sense of stability and security in their care and to develop loving and trusting relationships with them. If she cannot do that, then her ability to develop trusting and safe relationships with other people in her life will be compromised.
46. Tara's father is well-placed to support her in meeting all these needs.
47. Having regard to the evidence I have heard and read, I do not have confidence that Tara's mother can support her.
48. There are continuing concerns that the contact Tara is having with her mother is acting against her ability to settle and find security in her father's care. She has accepted that final orders will be made providing for Tara to live with her father, but she has not been able to communicate to Tara that she accepts this outcome is truly in Tara's interests. The mother has been seen to say things and act in ways which undermine the father as a carer.
49. If the mother cannot take responsibility for the harm that she has caused to Tara, then there is a risk that Tara will look for an alternative explanation, and blame herself for remaining separated from her mother. When Tara received a letter from me explaining the findings from the fact-finding, her response was to say that it was all lies, and this was what her mother had told her. A contact record notes Tara's mother telling her about her father's 'lies'.
50. I accept the evidence of the local authority, supported by the professional witnesses, and the guardian's careful and balanced analysis. Ms B's evidence was based on her own experiences and having taken into account the views of the expert witnesses. She has carefully weighed up the risks and benefits of contact and her conclusions are well reasoned and supported by the overwhelming weight of the evidence.
51. I have had regard to all the circumstances, and in particular the factors on the welfare checklist.
52. I consider that the appropriate order is for contact to take place once a month (twelve a year), with additional contacts to celebrate Tara's birthday and Christmas. If and when contact with Sasha resumes, I consider there should be an additional contact for Sasha, Tara and the mother on Sasha's birthday.

53. I take into account Tara's wish to see her mother frequently, but also the need to ensure there must be time for Tara to visit Sasha, and for Tara to have free time to develop her own interests and friendships.

54. The parents are free to arrange additional or alternative contact as may be agreed.

55. Contact should continue to be supervised and take place in a contact centre. I appreciate that this limits the activities that Sasha and her mother can do. However, when contact was in the community there were incidents of secret conversations. Even when contact has been closely supervised there have continued to be concerns about secret communications between the mother and her children. The mother has not acknowledged the harm from this. There is no evidence of a change in thinking that reassures me the risk has lessened. In the professionals' meeting, Alice Rogers described the risk as follows:

AR ... there is just more evidence of mum getting into these secret little interactions which can seem quite dangerous actually. We were really worried about the razorblade but also the strange conversation about 'show me your self-harm cuts, let me see the other leg'. It's just very worrying and what we were thinking about is if she does that with Sasha, what is the potential for her to do that with Tara as Tara gets older. It's the secretness of it that's so worrying because it's just so hard to manage. And the same applies to making comments during contacts that undermine dad, that undermines Tara, that means that mum just cannot seem to get her head around Tara's needs to have stability and mum's need to be wanted overrides in that moment and she just can't stop herself.

56. I accept that the contact is positive for Tara and that she has consistently said that she would like to see more of her mother, and she wants to live with her again. Tara is a bright and articulate girl who loves her mother and cherishes the time they have together. Of course I have regard to her wishes and feelings. However, against that must be balanced the risk of harm to her from spending too much time with her mother. Because of her mother's actions, the time she spends with her mother risks undermining and de-stabilising her placement with her father, and her relationship with him. If that placement were to break down, it would not be safe for her to live with her mother. Tara risks further disruption and the possibility of further public law proceedings in that event.

57. Even though there are many loving interactions between Tara and her mother, these interactions in themselves do create risk of re-enacting some damaging elements of the parenting that Tara received when she was in her mother's care. This creates a risk of Tara being under pressure to care for her mother's needs before her own, to be 'perfect' and, in contrast to her sister, not perceived as a 'problem'. It risks leading to her becoming over compliant and to suppress her own wants and needs.

58. In the months before care proceedings were initiated there were signs that Tara's mother was informing professionals of diagnoses of mental health issues for Tara, which were not

found to exist, in the same way that she had for Sasha. There remains a risk that she will project her anxieties onto Tara as she has done in the past, leading to a risk of harm.

59. I accept that Tara may well find a further reduction in the time she spends with her mother difficult to manage and she is likely to be saddened, confused and upset. She may well feel resentful that her wishes have not been heeded. However, on balance I have come to the conclusion that the risk of harm of reducing contact is less than the risk of harm to her in maintaining it at its current level. Further, I have confidence that her father will be able to support Tara emotionally with a further reduction, as he did previously when it was reduced from twice a week to once a week.
60. For all these reasons, I approve the local authority's plan for Tara and will make a child arrangements order as proposed.
61. I note that the local authority has offered to continue to fund supervised contact for a period of six months. Thereafter, the cost of booking the contact centre, and supervisors will fall upon the mother. She is not contributing financially to the father at the moment for Tara's maintenance. Her actions are the reason that supervision is required, in the circumstances she should bear the cost of supervision.
62. Tara is now living in the area of the [London Borough name redacted]. Ms B has been liaising with children's services there, and they have agreed to put Tara on a child in need plan in order to ensure that she continues to receive support as required following these proceedings. They will however keep matters under review and they cannot be compelled to keep Tara on a child in need plan for any specific period of time. It will be a matter for them to review in due course. Ms B will effect a handover and ensure that those managing the child in need plan have the information they need.
63. Once the case has passed to the [London Borough name redacted] it is for them to keep matters under review. However, for the avoidance of doubt, I have made a decision that Tara should see her mother once a month, with two contacts happening in October to manage the transition from once a week to once a month. I do not consider that there needs to be a review to reconsider frequency of contact at the end of October. In the future (and after the [London Borough name redacted]'s involvement with the family ends), I envisage that the level of contact will remain as set out in the order, and the mother will pay the costs of a supervisor. However, the final order will provide that there may be 'such additional or alternative contact as the parents may agree', so of course if both parents agree to a change in the arrangements, that may happen.

Section 91(14) order

64. Mr Tyler KC has helpfully set out an agreed summary of the law, taking into account the new section 91A of the Children Act 1989 inserted by section 67 of the Domestic Abuse Act 2021. Section 91A provides as follows:

91A Section 91(14) Orders: Further Provision

- (1) *This section makes further provision about orders under section 91(14) (referred to in this section as ‘section 91(14) orders’).*
- (2) *The circumstances in which the court may make a section 91(14) order include, among others, where the court is satisfied that the making of an application for an order under this Act of a specified kind by any person who is to be named in the section 91(14) order would put –*
 - a. *the child concerned, or*
 - b. *another individual (‘the relevant individual’),**at risk of harm.*
- (3) *In the case of a child or other individual who has reached the age of eighteen, the reference in subsection (2) to ‘harm’ is to be read as a reference to ill-treatment or the impairment of physical or mental health.*
- (4) *Where a person who is named in a section 91(14) order applies for leave to make an application of a specified kind, the court must, in determining whether to grant leave, consider whether there has been a material change of circumstances since the order was made.*

65. I have been referred to the cases of Re A (a child) (supervised contact) [2022] 1 FLR 1019, and A Local Authority v F and others [2022] EWFC, in which Gwynneth Knowles J considered sections 91(14) and 91A, summarised the relevant parts of Black LJ’s leading judgment in Re A, and directed herself that section 91A(2) gives greater latitude to the Court to make section 91(14) orders than the previous guidance from Butler-Sloss LJ, in the case of Re P (Section 91(14)) (Guidelines) (Residence and Religious Heritage) sub nom: In Re P (A Minor) (Residence Order: Child’s Welfare) [2000] Fam 15; [1999] 2 FLR 573:

S.91A(2) provides that an order may be appropriate if the child is at risk of harm, harm being defined in accordance with section 31(9) of the Children Act 1989 to mean “the ill-treatment or the impairment of health or development including, for example, impairment suffered from seeing or hearing the ill-treatment of another”. The risk that harm may arise to a child under the age of 18 unless the making of applications is restrained is not qualified by words such as “serious” or “significant” and neither is the degree of harm that a child may experience. I observe that, insofar as the risk that harm may arise to a child is concerned, section 91A(2) sits a little uneasily alongside guideline 7 of the Re P guidelines which states that there must be a “serious risk [my emphasis] that, without the imposition of the restriction, the child or primary carers will be subject to unacceptable strain”. Correctly applied to a child’s circumstances, section 91A(2)

gives a court greater latitude to make section 91(14) orders than the Re P guidelines do. Thus, in coming to my decision in this case, I have applied the new statutory approach to harm set out in s.91A(2) rather than guideline 7 of the Re P guidelines and, in so doing, I have adopted the ordinary civil standard of proof. That course is consistent with the modern approach of the Court of Appeal in Re A as outlined above.

66. Further, I have been referred to and have considered Practice Direction 12Q of the Family Procedure Rules 2010, inserted to accompany the addition of Section 91A Children Act 1989, and which sets out a number of 'key principles' to consider when deciding whether or not to make an order under section 91(14).

67. In his note, Mr Tyler has helpfully drawn together from all this source material the following formulation, setting out what he (with agreement of the other parties) contends should be the Court's approach to an application for a section 91(14) order:

- a. If findings of domestic abuse are made, even if the victim did not apply for this relief, the court is now bound to consider whether or not to make a s.91(14) order.
- b. While such an order is *'the exception and not the rule'*, it does not follow that the case or its circumstances must somehow be adjudged to be *'exceptional'* before such an order could be made.
- c. The court should bear in mind that such orders represent a protective filter – not a bar on applications – and that there is considerable scope for their use in appropriate cases.
- d. Whether the court makes an order is a matter for the court's discretion. There are many and varied circumstances in which it may be appropriate to make such an order. These may include cases in which there have been multiple applications (*'repeated and unreasonable'*), but that is not a necessary prerequisite. They may also include cases in which the court considers that an application would put the child concerned, or another individual, at risk of harm (without the need to find the *'risk'* to be *'serious'* or the likely *'harm'* to be *'significant'* or *'serious'*).
- e. Subject to any inconsistency with the above, the Re P guidelines continue to apply.
- f. If the court decides to make an order, it must consider:
 - (i) its duration, as to which, any term imposed should be proportionate to the harm the court is seeking to avoid, and in relation to which decision the court must explain its reasons;
 - (ii) whether the order should apply to all or only certain types of application under the CA 1989;

(iii) whether service of any subsequent application for leave should be prohibited pending initial judicial determination of that application.

g. In all of this, the welfare of the child is paramount. That said, any interference with a parent's otherwise unfettered right of access to the court, including the duration of any such prohibition pending permission, must be proportionate to the harm the court is seeking to avoid.

68. How does this apply to Tara's case?

69. The chronology of events leading up to the issue of this set of proceedings shows that the children have been the subject of repeated applications to Court, and they have been the subject of repeated local authority investigation and intervention. These care proceedings themselves were issued on 15 December 2021. At the time, there were ongoing private law and enforcement proceedings (ZW20P0119 and ZW21P01100) which were consolidated with the care proceedings.

70. It is not in Tara's welfare interests to be subject to further sets of contested proceedings in the family court. This would likely bring with it stress upon both her father and her mother, which would risk taking their focus away from her needs, and would likely bring with it yet more meetings with professionals, investigations and reports. These circumstances constitute a risk of harm to her within the meaning of section 91A of the Children Act 1989. Tara needs time to process and recover from the current litigation, not to be plunged straight back into another dispute.

71. A section 91(14) order does not prevent any application being made to the Court, but rather puts a filter on such an application being made before a certain time. In considering whether to give permission, the Court will have regard to all the circumstances as they exist at that time including whether there has been a change of circumstances.

72. Tara is going to be ten in January. She has another year of primary school after this one, and would move up to secondary school in September 2025.

73. Tara's mother has not yet demonstrated insight and understanding of the need to take responsibility for the harm she has caused, to acknowledge the risk she continues to pose to her children and to take steps to make meaningful change. At this time she has maintained to professionals her narrative that the harm that has been caused to her children is as a result of their father's actions, that their particular needs have not been acknowledged or understood, and she did not receive the support from statutory and other agencies that she needed to meet those needs. While she remains fixed on this narrative, there remains a risk that she will continue to seek to make applications to Court relitigating these issues, when there

have been extensive proceedings which have explored in detail her account and found the overwhelming weight of evidence painted a very different picture.

74. Having regard to all the circumstances, I am satisfied that I should make a section 91(14) order that provides no application for orders under section 8 of the Children Act 1989 should be made for a period of three years.
75. I consider the order to be proportionate to the risk of harm to Tara of becoming embroiled in further litigation so soon after the conclusion of these long proceedings. It restricts, but does not prevent entirely, Tara's mother from applying to the Court.
76. I do not consider that the limitation should apply to applications for enforcement of an existing child arrangements order (which would be made under section 11J of the Children Act 1989).
77. This order would allow Tara to have some space to settle with her father and for the new arrangements to become regular. It would cover the transition to secondary school, and remove an element of uncertainty around that as she moves into year six and starts to think about where she is going next.
78. At the end of that time Tara would be twelve. Child arrangements orders may be made until a child is sixteen, exceptionally until they are eighteen. There would still be time for Tara's circumstances to be considered by the Court if required.
79. By making an order for a period of three years, the Court is not to be taken to be inviting a review of the child arrangements after that time.
80. The mother has sought to exclude the father from the girls' life in the past. He will be having continuing contact with the mother in respect of arrangements to do with the girls. In all the circumstances, I do not consider this is a case where he should be protected by not being served with any future applications made by the mother to the Family Court. To the contrary, I consider that he should be served with any future application so that he has an opportunity to let his views be known.
81. I wish Sasha, Tara and their parents the best for the future.

HHJ Joanna Vincent,
Family Court, Oxford
29 September 2023

Annex 1: threshold findings document

IN THE FAMILY COURT SITTING AT OXFORD

Section 31 Children Act 1989

Sasha

Tara

**FINDINGS MADE BY HER HONOUR JUDGE VINCENT (S9) TO
SATISFY THE THRESHOLD CRITERIA PURSUANT TO S31(2)
CHILDREN ACT 1989**

24 MARCH 2023

The findings are directly attributable to the primary care of Sasha and Tara by [the mother], and which satisfy the S31 Children Act 1989 threshold.

Both Sasha and Tara have suffered significant harm and are at risk of suffering significant harm as a consequence of the parenting given to them by their mother, which was below what could be reasonably expected.

1. Sasha has a diagnosis for a social anxiety disorder, which:

- has developed in the context of physically and emotionally abusive behaviour by her mother towards her;
- where she has been treated differently to her sister;
- where she became the focus of negative and continual attributions from her mother, focusing on there being things wrong with her, odd and needing various diagnosis.

As a result, she has developed a low sense of self, which meant she was more anxious about what other people thought of her. Sasha's symptoms were such that they resulted in significant distress and impairment in her general functioning.

2. Sasha does not meet the criteria for autism spectrum disorder.
3. [the mother] has over-medicalised Sasha's behavioural difficulties by seeking a variety of referrals / diagnoses. [the mother] has told professionals that Sasha has diagnoses/problems for:

PTSD

ADHD

Sensory processing disorder

Selective mutism

Eating disorder

Learning disabilities

An undiagnosed syndrome

Lactose intolerance

Food allergies

Dyslexia / Dyspraxia

Autistic symptom of intolerance to noise

ASD with element of OCD

A new allergy growing every day

Dyscalculia

Sasha does not have any of these conditions.

4. [the mother] has asked for referrals to:

Occupational therapist

sleep specialist

allergy specialist; and

has made a number of requests for Sasha to be admitted to an inpatient psychiatric facility.

5. Sasha has:

- extensive emotional and psychological needs;
- self-harming behaviours;

- a low self-concept;
- a poor body image; and
- disordered eating conditions.

6. Although Sasha was diagnosed with joint hypermobility in 2017, she did not suffer from chronic joint pain, which was exaggerated by [the mother]; and

[the mother] has made exaggerated claims in respect of the physical difficulties she says Sasha had in her daily living.

7. Sasha's presentation is a psychological response to:

- an experience of early childhood instability and conflict in the primary care of her mother; and
- change in caregivers; and-
- neglect by her mother

8. [the mother] has been preoccupied with Sasha's physical and mental health, perceiving Sasha to have numerous things wrong with her.

9(1) Sasha presents with a highly insecure and disorganised attachment style, is compliant, and inhibits difficult or 'negative' emotions.

9(2) Sasha:

- has no ability to communicate, process, or manage such emotions;
- is compulsively compliant;
- exhibits clingy and preoccupied behaviours; and
- is highly self-reliant

9(3) As a result:

- (1) she has not been able to regulate her relationship with her mother; and
- (2) get her needs met; and
- (3) her behaviour has become increasingly fragmented and desperate;

which has more likely than not exacerbated [the mother]'s perception of something being wrong with Sasha.

10. Sasha has been exposed to chronic emotional, verbal and physical abuse and neglect by [the mother].

(1) This has included:

- Emotional unavailability and neglect
- Negative attributions and misattributions to her
- Developmentally inappropriate and inconsistent interactions with her
- A failure to recognise or acknowledge her individuality
- Failure to promote her social adaption
- Pulling her hair
- Verbal abuse

(2) Sasha was blamed by her mother for causing issues within her family.

(3) Sasha was physically neglected, isolated and verbally blamed by her mother for the "family's problems"

11. Tara has suffered significant emotional harm and neglect whilst in the care of [the mother].

12. Due to the care received by [the mother], Tara:

- presents with a predominantly anxious-avoidant style of attachment alongside features of disorganisation;
- She presents as competent far beyond her years; and
- she is, unusually, highly self-reliant.

Further, Tara:

- Has not had her needs met by her mother; and
- Her experiences of her mother not responding appropriately to her needs were inconsistent.

13. Tara was exposed to the differential treatment of herself and Sasha by [the mother]. such as:

- She had her own playroom; and
- shared a bed with her mother

This was:

- destabilising for Tara; and
- created confusion about why her and Sasha were treated differently.

[the mother] has often regarded Tara, even at a very young age, as a confidante, and has shared information about Sasha with her that has both invaded her privacy and undermined her confidence, and perpetuated an understanding of Sasha being ‘the problem’ child. This caused emotional harm to Sasha but also creates a risk of emotional harm to Tara. She has experienced a pressure upon her to ‘perform’ as the child who does not present problems, to be self-reliant and not demand anything from her mother.

14(1) [the mother] has reported to various agencies that Tara has ADHD, autistic symptoms of intolerance to noise, and PTSD,

14(2) Tara does not have ADHD, autistic symptoms of intolerance to noise, and PTSD.

15. [the mother] isolated and marginalised [the father] from the lives of Sasha and Tara and perpetuated a relentlessly negative view of him to the girls, thereby undermining him as a parent and obstructing the girls’ relationship with and emotional connection to their father, by:

- Moving home address and not telling him to where they had moved.
- Changing schools unilaterally, not consulting with the father beforehand nor informing him of the changes.

- He was not kept informed and nor was he consulted about the children's medical matters and various assessments. He was not invited to clinical appointments.
- Making false allegations of domestic abuse against him.
- Using racist and foul language in front of the children to describe their father '... my black cunt face ... dunce ... pussy hole ... illiterate little boy ...'.
- witnessing their mother physically assault, and show aggressive behaviour towards, [the father].
- Stating directly to the girls and to others in their presence that their father is not interested in them.
- In March 2016 making a false report to the police of assault against the father.
- Following a fact-finding hearing in which no findings were made [against the father] [the mother] has continued to put forward to the police, social services, teachers and other professionals a false narrative that [the father] is a perpetrator of domestic abuse against her, which narrative she has shared with the children.
- Not complying with court orders that required her to make the girls available to spend time with their father.
- Denying the children contact with their father by putting obstacles in the way of contact taking place.
- Exaggerating/fabricating/causing anxiety prior to the children going to see their father.
- Wrongly and unfairly blaming [the father] for the breakdown of the children's relationship with him due to his 'behaviour and degeneration and hostile thoughts' (to [the mother]) which she says have 'embedded the children's breakdown of their relationship' with him.
- Stating the children are frightened of their father and do not want to see him.
- Having secrets between her and the girls which undermined the father's ability to develop a trusting relationship with the girls and to act protectively.

16. The allegation made to the police by [the mother] on 1st March 2016 was untrue and that this was a false report made by [the mother] to the police.

This was a response to [the father]'s application to the Court for a child arrangements order.

17. [the mother]:

(1) has failed to ensure Sasha and Tara, whilst in her care, received an educational provision on a consistent basis, whether that be by attending at school or providing it through elective education at home; and

(2) both Tara and Sasha have had consistently low school attendances.

18. [the mother], on the 9th August 2022, did not act protectively of Sasha and colluded with Sasha in concealing the blade.

19. [the mother] has failed to protect Sasha from the risk of self-harming. By failing to report to [the father] or others caring for her, she failed to ensure they were informed of the risks, thus hampering them in their abilities to protect her.

20. On a date in December 2021, and prior to Sasha going to live with her father, [the mother] shaved Sasha's head, causing her significant harm, and:

(1) Did not prepare Sasha for having her head shaved; and

(2) It was not something that was Sasha's choice; and

(3) It caused Sasha distress; and

(4) Further contributed to her low self-esteem.

**Her Honour Judge Vincent
Sitting as a Deputy High Court Judge
Family Court, Oxford
24 March 2023**