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**IN THE FAMILY COURT SITTING AT OXFORD**

**IN THE MATTER OF THE CHILDREN ACT 1989 AND IN THE MATTER OF M  
AND J**

Case No.: OX20P00228

8 February 2021

Before:  
HHJ Vincent

**Between: -**

**A father**

**Applicant**

**and**

**A mother**

**Respondent**

Hearing dates: 3 and 8 February 2021

**JUDGMENT**

## **Introduction**

1. This is a final hearing in respect of two sisters, M, who is thirteen, and J, who is eleven.
2. Their parents separated in around 2015. Before the application with which I am concerned was made, there have been two previous applications to the Court in respect of child arrangements, as well as contested financial remedy proceedings. The last set of Children Act proceedings concluded with a fifty-fifty shared care arrangement, the girls moving from one parent to the other every week.
3. Oxfordshire Children's services has been involved with the family on and off for several years since August 2015. They were directed to prepare a section 37 report as part of proceedings in 2016. The most recent period of involvement started in June 2019 when a section 47 enquiry and assessment were commenced. The local authority's concerns at that time were the acrimony between the parents, the mother's alcohol use, emotional presentation of the girls, and concerns about the mother using the girls' bedrooms for AirBnB guests.
4. The girls were placed on child protection plans under the category of neglect in July 2019. In March 2020 the category was changed to emotional abuse. The local authority's concerns had by then centred around mother's alcohol use, and her mental health, in particular her ability to manage her emotions. Professionals reported that in discussions about the girls she was becoming so distressed that she struggled to communicate, at times was abusive, and at others made threats to harm herself and to take her own life. As well as concern about whether the girls' basic needs were being met, there was concern that the girls were exposed to this and it was causing them significant anxiety and distress.
5. At a child protection conference on 30 March 2020 the local authority's recommendation was that the children should live with their father pending further assessment and while support was given to the girls' mother. The father issued his application to the Court for variation of the shared-care child arrangements order shortly thereafter.
6. The father's position is one that is based on the local authority's recommendations through the section 7 reporter, DW. He seeks an order that the children live with him, have unlimited indirect contact with their mother by text, WhatsApp, phone or video, led by the children, but that any time they spend with their mother in person, should be supervised by a trusted third party.
7. The girls' mother seeks a return to the previous shared care arrangement, which has been suspended throughout these proceedings.

8. Both parents represented themselves at the final hearing.

### **The law**

9. In reaching my decision about where and with whom the children should live, I must have regard to all the circumstances, but in particular those factors set out in the welfare checklist at section 1(3) of the Children Act 1989.
10. The children's welfare is my paramount consideration (section 1(1)).
11. The court should not make any orders at all, unless the court is satisfied that it is necessary to secure the children's welfare. Any orders made should be proportionate; the Court must be satisfied that the children's welfare could not be secured in a less interventionist way.
12. Section 1(2A) of the Act provides that the Court shall presume that involvement of a parent in a child's life will further that child's welfare.
13. I must also have regard to the general principle that any delay in determining a question in relation to a child's upbringing is likely to prejudice that child's welfare (section 1(2)).

### **The evidence**

14. I heard evidence from DW then from each of the parents.
15. I have read the contents of the bundle which includes application forms, previous orders, s7 reports from DW and her predecessor GJ who is on maternity leave, and witness statements from each of the parties.
16. DW had some involvement with the family before GW formally handed over to her, carrying out some of the statutory visits to children on the child protection register. More recently she has spent time with the children on their own, supported contact between them and their mother, seen the children in the company of each of their parents, and spoken to their parents individually. She has chaired the core group meetings every four weeks as part of the child protection plan and her views are also informed by the input of other professionals who have been working with the children, and the parents' participation in that process.
17. DW evidently had a very good knowledge of the family dynamics, the children's personalities and their wishes and feelings. She explained the reasons she was confident the views the girls had expressed to her were their own, and that they had not been coached or put under pressure by anyone. She was clear that their views were informed by their own experiences. While acknowledging the depth of the mother's love for her children, DW's chief concern was that the mother did not show any understanding or insight into the reasons for local authority involvement with the family, and that her 'go-to' position was to blame everybody else, principally the children's father, and not to take responsibility for her own actions.

18. This was consistent with the impression that the mother gave to me at the final hearing. I have met her (remotely) at previous hearings and we have had a number of discussions, and it has been recorded on orders that in order to make progress in this case there is a need for confidence that the mother's mental health is stable, her alcohol use under control and that the girls would be safe, would feel safe in their mother's care and that they can be reassured that she is well. However, the mother maintained throughout the hearing that the involvement of the local authority with the family had been unnecessary and a waste of its time and said the only reason for the current difficulties in her relationship with the children was their separation from her since last March.
19. On 14 May 2020 I directed that hair strand testing should be carried out to discover whether the mother had consumed alcohol in the previous three months. The instruction had not been made by 24 June 2020 and I directed the mother to take the steps previously directed to put evidence of alcohol use before the Court. I made clear that if the mother did not comply with the order then the Court may draw an inference that she had not complied with testing because she wished to conceal the true nature of her alcohol use before the Court. Recorder Weston QC repeated the directions in an order made at a hearing on 3 August.
20. At a hearing before me on 3 November 2020 the testing had still not been done. The mother said that it was because she could not carry out the instruction herself, as she was not a solicitor. Ms Farbrother, a member of the local authority's legal team, kindly agreed to effect the instruction but although she received the father's share within moments of the request, the mother did not put her in funds and so the instruction could not be carried out.
21. The mother has told me that as she has been out of work she has not been able to raise the funds to pay for her share of the testing.
22. She has submitted evidence from Turning Point which shows that she has fully engaged with their service since 23 September 2020, attending eight sessions, and presenting as mature, insightful and reflective in her approach. She blew into a breathalyser before each session, and the results showed that she did not have alcohol in her system on any of the meetings.
23. She has also provided a letter from her AA sponsor who speaks in glowing terms of the progress she has made.
24. However, while of course encouraging, this is not evidence of the mother's actual alcohol use over a period of time. It was of concern to me that during her cross-examination of DW, the mother suggested that it was 'new news' to her – at the final hearing - that the children were put on the child protection plan because of concerns about her alcohol use. This is not the case. The mother's mental health presentation and alcohol misuse, its impact on the girls and that it was the principal reason for the child protection plan in place, was the focus of discussion in early May 2020 at a hearing when I approved the suspension of the shared-care arrangements. It has been the subject of

discussion at each subsequent hearing. But at the final hearing the mother suggested that the only reason the children had moved to live with the father was because of the local authority's lockdown policy that the children had to live with one parent. Again this was not a policy ever in place, and in her earlier reports, GW explains the local authority's concerns at the time and the process by which the decision was made to support the girls moving to live with their father.

25. In very difficult circumstances, each of the parents did their best to question the other politely and tried to reframe or redirect their questions to relevant issues when I asked them to. However, the level of acrimony between them was only too evident and both found it difficult to avoid comment either about the questions asked or answers given. The mother did not recognise the father's or professionals' concerns about her parenting, and attributed the current state of affairs to malicious, controlling and evil intent on the part of the father. To the extent she accepted that she did have an issue with alcohol, she denied that it would have impacted upon the girls, said it was historic, and entirely caused by the father's treatment of her during their relationship.
26. The father presented as weary of the dispute but unable to extricate himself from it, and wanting the mother to recognise and take responsibility for the current state of affairs. He has had the benefit and the burden of caring for the girls since the end of March last year, home-schooling them through lockdown while working himself. Throughout the proceedings he has expressed his wish that the children might be able to spend time with their mother and even return to a shared care arrangement, provided it was safe for them. However, by the final hearing he was clear that sadly the circumstances do not currently exist that would enable that to happen. He presented as attuned to the girls' needs, wishes and feelings. He was insightful into their situation, recognising their desire to see their mother, but not to feel at the mercy of unpredictable behaviour or harsh words that sometimes came from her, and a deep-seated anxiety that she may be drinking again.
27. Throughout these proceedings the girls have been in touch with their mother by text but have spent very little time with her apart from the odd supervised visit. With the help of DW, some progress had been made in November when the girls met their mother for a walk and their father walked the dog nearby. This went well for four weeks but on the weekend of 5 to 6 December the meeting did not go so well and the girls texted their father asking him to come and find them. The mother says that this event has been blown out of proportion and while she accepts that she did text the girls when she arrived to find out where they were, this was because she was unexpectedly early, but had not realised. She accepted that she did speak to the girls about some of her concerns about their father and his ex-girlfriend, and that at some point the girls went on ahead of her and she called to them to come back. M has described hearing her mother's *'drunk voice behind the texts'*, that her mother was saying *'horrible things about her dad'*, and told DW repeatedly how embarrassed she had felt. M described to DW that it was she who managed to calm her mother down after her mum said they would never see her again,

they were not allowed to call her dad on contacts and if they told anyone they would not have any presents. DW said that J's account was the same as M's.

28. The girls' accounts are corroborated by the text messages seen by DW and their father's evidence that M had called him and he could hear the mother screaming in the background. He then spent ten minutes looking for the girls and their mother.
29. In her evidence to me the mother said yes, the girls had got a long way ahead and *'I did scream – I would shout – a screamed shout – I asked them to come back they were going too far ahead.'* She did not accept she had said to the girls that they would never see her again or not have any presents if they told anyone what had happened. She did accept that she had subsequently said she would not attend the Christmas contact with the girls on 23 December. She explained to me this was because she was planning to spend Christmas in Wales with her parents rather than endure it alone. In the event lockdown prevented her going to Wales and she was able to see the girls on 23 December which was supported by DW and this was a positive contact.
30. While there are some minor differences as to what exactly was said, the mother's evidence does also fit with that of the girls and their father. The incident reveals the level of the girls' insecurity in their mother's care. It is evident that the mother was not able to regulate her emotions, that M reached out to her father to feel safe and secure, and that it was M who had to take care of her mother's emotions; she took responsibility for calming her down.
31. The mother may have had good reason to plan to spend Christmas in Wales. However, she did not seem to me to appreciate that nonetheless, and coming so soon after this difficult contact, it would have been very difficult for the girls to hear that they were not going to see her at Christmas. If it is right that she had said to the girls that they would not get any presents and they would not see her again if they told anyone what had happened at the contact, then they could well have understood the cancellation of the contact shortly afterwards as the mother being true to her word. Even if she had not said those words, at the least this was obviously a very difficult contact and one might have expected their mother to take some responsibility for her part in it and to seek to reassure the girls. Instead, she has been dismissive of it as a minor incident used by their father to mount a case against her.
32. She has not shown any evidence of appreciating the situation from the girls' perspective. She was more focused on justifying her own actions and blaming others – she had got the timing wrong, Starbucks had served her coffee rather than hot chocolate, the father had interfered in the contact unnecessarily, she had to go to Wales rather than spend Christmas alone and without her children. She suggested to DW that the father had bribed the girls, and that he had *'coerced M behind the scenes'*. I am satisfied that M had not been in any way influenced by her father and that the views she has expressed are her own, informed by her own experiences.

## Welfare checklist

33. I now turn to consider the checklist at section 1(3) of the Children Act 1989.
- (a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);*
34. I am satisfied that DW's account of the girls' feelings is reliable, obtained by her from direct conversations with the girls' themselves, discussions with professionals including their teachers, and observing them with their parents.
35. I accept DW's evidence that the girls have said to her that they continue to feel unsafe in their mother's presence, that these are their genuine feelings, not planted by anyone else, and they are based on their experiences in their mother's care. M is more confident in articulating her feelings and although she feels guilty about talking about her mother in this way, she has said to DW that she felt it was important that she told the truth. She said she '*would need to feel really sure that mum had stopped drinking and could prove this*' before starting visits again. She speaks to her mum on the phone about five times a week and they exchange text messages.
36. J is much more reserved. She has chosen not to speak to her mother on the phone. DW said that a lot of times J will prefer to nod or give a thumbs up or down to show her feelings, but when she visited the girls at their father's before Christmas J and they decorated the Christmas tree together, J was much more chatty, seemed relaxed, and said that she felt it was better to be living with her father. Both girls have clearly said to DW that they do not feel safe with their mother at the moment unless there is somebody else with them.
37. The girls have shared similar feelings with their father, he has over many months now seen how they have been before and after interactions with their mother. His descriptions of the girls' wishes and feelings accords very much with those of DW and adds significant weight to her evidence.
- (b) their physical, emotional and educational needs;*
38. Both girls are reliant on the adults in their life to provide for all their daily needs, to establish, guide and support them in routines and healthy habits for life. They need to be supported in their education, in developing their own interests, friendships, and, as they head towards adolescence, to become more independent, make more decisions for themselves, and start to experience more of life away from their family unit. They need to feel love for others, feel loved and valued themselves, and to understand loving relationships as a source of security for them. This is important in the here and now, but also for their future and how they will form relationships with people outside their family as they grow up.
39. Every single one of these needs is underpinned by a need to be safe and to feel safety and security in their home life. They need to be protected from parental

conflict and they need to be able to focus on their own needs and not to feel responsible for their parents' emotional welfare. They need to see home as a place of safety and security and to feel settled.

*(c) the likely effect on them of any change in their circumstances;*

40. The girls have had experienced significant changes over the past five years as a result of their parents' separation, house moves, exposure to the continued acrimony between their parents and the involvement of social services in their lives.
41. It is nearly a year since they went to live with their father and the extant order was suspended. This was a major change for them as before that they had been moving every week between their parents' houses. Not seeing their mother regularly has been a significant loss. On the other hand, both girls now say they prefer the stability of living in one place, they do not want to go back to a situation where they are switching every week, when it was stressful to pack everything up and make sure they had everything they needed in the right place. They feel settled and safe in their father's care. DW's evidence, informed by her own observations and input from professionals to the core group meeting, is that the girls are currently doing extremely well, they are happy where they are living and expressed the view that they would like to live full-time. They are both thriving at school, achieving well academically, and they have access to counselling services in school which they are both using to their benefit.
42. Any change back to the previous shared-care arrangement is likely to have a destabilising effect on the girls. Given that they have not seen any real change in the parenting they have received from their mother in the past year, is likely to bring with it a return to them feeling worried – both that their mother may not be able to take care of them in a practical sense, that she may once again be angry, capricious and inconsistent with them, or share her own worries and concerns with them so that they feel responsible for her.

*(d) their age, sex, background and any characteristics of theirs which the court considers relevant;*

43. There are no additional factors under this heading to consider.

*(e) any harm which he has suffered or is at risk of suffering;*

44. I find to the standard of a balance of probabilities that the girls have suffered emotional harm in their mother's care and that there were times when they were at risk of physical harm.
45. I accept the evidence of the father about the situation as it existed in the weeks and months leading up to March 2020, which is corroborated by DW, and the information she has obtained from the girls and other professionals during the course of her involvement with the family.



46. I find that the mother at that time was drinking to excess, that her mental health state was not stable and that this led to there being occasions when she was not in a fit state to care for the girls and the father had to intervene to bring them to his care. I find that as a result of being exposed to circumstances where their mother was physically incapable of caring for them or they felt very worried about her emotional state, the girls became very worried both for themselves, and for their mother. The issue about the Airbnb bookings is one example of the mother at that time not having the girls' interests as her priority, but it is only part of the overall picture. I accept the father's evidence that out of six weekends when the girls were with their mother prior to him contacting social services, he went to collect the girls from their mother because she was incapable of caring for them because she had drunk too much. M's report to her teachers of her worries about her mother and that she had made threats to take her life in front of M is consistent with the language that GW recorded in her conversations around that time, and which led to her being very concerned for both the mother's welfare and that of the girls.

*(f) how capable each of their parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting their needs;*

47. I accept the assessment of DW that the girls' father is able to meet all their physical, educational and emotional needs. The conflict between the parents remains heightened, but I have not seen any evidence that the father has spoken negatively about the mother directly to them or in front of them. He has not sought to obstruct the girls from spending time with their mother, and has worked with social services to try to make arrangements where they can see her but feel safe and secure at the same time. Because they do not feel that safety and security with her directly, it has to come from the presence of third parties.

48. The girls' mother loves her children dearly and there is no doubting the pain and distress she has felt from her continued separation from them. That her emotions were running high at this final hearing was of course understandable. However, she did come across as struggling to contain her emotions, as has been the case at a number of hearings before me. If this is consistent with how she presents to the girls at times, and as has been described by others, it is easy to see that they would be likely to be concerned for her welfare but also that they may not feel she was able to give them the consistency and reassurance that they need.

49. I agree with DW's assessment that the mother at this time does not recognise that the girls' wishes and feelings are informed directly by their experiences of the parenting they have received from her. Until she does, and is able to make the changes needed, so that their relationship may be repaired and rebuilt on more secure foundations, she is not in a position to provide them with the emotional stability and security they need.

50. It is of credit to the mother that she has engaged with Alcoholics Anonymous and latterly with Turning Point. However, I was not persuaded that she is where she needs to be on her journey to be able to provide the girls with the reassurance they need, for the following reasons:

- (i) On one level she said she took responsibility for her actions but at the same time she denied that her drinking had really been a problem, in the sense that she denied any impact on the girls. It was difficult then to see what she identified as the reason for engaging with AA and more recently with Turning Point;
- (ii) She did not tell me that she no longer drank alcohol. When describing the support she had received from Alcoholics Anonymous she said three times during the hearing that for her AA was *'not about alcohol'*, rather it was about thinking in a spiritual way. She said, *'you start with the drinking you end with the thinking ... it's the spiritual side that keeps you going'*;
- (iii) Despite repeated Court orders she has not provided evidence from hairstrand tests which would provide reassurance that she is no longer misusing alcohol. It was made clear to the mother that if she was not able to provide this the Court may draw an inference that she did not wish the Court to see evidence that would show what her levels of alcohol consumption have been. I was not persuaded that the reasons she gave for not complying were convincing and I do draw that inference;
- (iv) The recent engagement with Turning Point and the evidence that she did not have alcohol in her system on any of the appointments she attended is positive. However, she accepted that similar evidence was submitted in previous proceedings, but hair strand tests subsequently obtained showed a consistently high level of alcohol consumption over a twelve-month period. Of course previous hair strand tests are not evidence of current consumption, but this history is a reminder that neither the Turning Point letter nor the letter from her sponsor can be regarded as reliable evidence of mother's current alcohol use. These letters would need to be underpinned by objective evidence from hair strand testing.

51. I accept the evidence of DW and the father that the mother has not yet been able to show understanding of the reasons that the local authority became involved with the family and changes were made to the shared-care arrangement. The mother's own evidence only confirmed this for me. She continued to lay blame at the father's door. She said she had completed 'step ten' on the father and had forgiven him, but in fact she continued to place blame for the current situation entirely on him and described him as evil during the course of the hearing.

*(g) the range of powers available to the court under this Act in the proceedings in question.*

52. I remind myself that whatever orders are being sought the court can make a whole range of Section 8 Children Act Orders or indeed no order at all if he considers that to be appropriate.
53. Having regard to all the evidence I have heard and read, and considering all the factors on the welfare checklist, I am satisfied that the girls' welfare needs are met by a continuation of the current arrangements. I have considered carefully the recommendations of the section 7 reporter which in my view are fair, balanced and based on a real understanding of the children and their welfare needs. There is no good reason to depart from her recommendations.
54. I will order that the children shall live with their father.
55. In the event that I did not direct an immediate return to the fifty-fifty shared care arrangement, the mother asked if she provided negative hair strand tests for a period of three months whether there could then be what she described as 'a break-clause' i.e. a return to the previous arrangement.
56. In my judgement this would not be in the children's welfare interests. Firstly, because the children have had a lot of disruption and change and what they need now is stability and security. They are now settled in the current arrangement and in my view would benefit from knowing that there is some permanence to that. Secondly, although of course it would be a very significant step for the mother to show that she has not been dependent on alcohol for a certain period of time, three months would not in my view be even close to justify a change to existing arrangements. The change needs to be established and maintained – I would expect for at least a year to eighteen months. Thirdly, the alcohol misuse is a part of the picture, but there is also significant work that would need to be done to repair the children's relationship with their mother, involving insight and acceptance by her as to the part that she has played in its breakdown. The adults may know that the mother has maintained abstinence, but the children would still need time to build up trust and to feel confident in the relationship again.
57. I agree that the children should continue as now to be able to text, WhatsApp, video call or speak to their mother on the phone, as they wish. I would expect their father, and while they are involved, children's services, to support them with this, to make sure that such contact continues to be positive and for their benefit. I would hope that the father supports the mother in this by informing her of upcoming activities, and if a message has not been well received or there has been a difficulty, to explain, without judgement and in a child-focused way, what the impact has been on the children and a suggestion about how it might be better received.
58. For the time being I agree that any direct contact should be supervised by a third party.
59. While social services are involved they can continue to support supervised contact. I would hope that they can revisit with the parents the list of proposed

supervisors provided by the mother, if they are not known to the father, to carry out some sort of basic check or screening and to speak with them so they understood the reasons for supervision and what would be expected.

60. We discussed what might happen once children's services are no longer involved. The mother's suggestions of taking the children on holiday to France or Abu Dhabi were not at all realistic. The maternal uncle and his family are in the [redacted] area and the maternal grandparents are in Wales. At some point in the future it may be that they are able to support the children spending time with their mother at their homes, for example during school holidays. However, that is not realistic at the moment, while the children's relationship with their mother is so fragile, I would not make an order binding any third party to a supporting or supervisory role without their input, and there would be major practical issues for example the question of who would travel with the children to either home. Their mother could not take them on her own. For these reasons I have not made any provision in the order for contact to be supervised by family members. I hope that before social services step back that they do some work with the children and their parents to consider the options for how regular supervised contact might take place, including consideration of spending time away with members of the maternal family.
61. Despite the upheavals of the recent years, it has not all been bad. M and J have received good parenting from both their parents. They are doing well at school, have resilience and inner strength, and are by all accounts delightful children. Both their parents love them with all their hearts and want nothing but the best for them.
62. I sincerely hope that the parents will be able to put the conflict of the last five years behind them, that all will feel respite from being away from the Court arena, and I wish all members of the family the best for the future.

HHJ Joanna Vincent  
Family Court, Oxford

8 February 2021