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IN THE FAMILY COURT AT OXFORD

Neutral Citation Number: [2023] EWFC 93

Case numbers: OX22P00215 & OX22P00261

Date: 18 April 2023

Before: HHJ Vincent

Between:

Ms F (a mother)

Applicant mother

and

Mr G (a father)

Respondent father

The Applicant mother represented herself
Kate Ferguson, instructed by John Welch & Stammers solicitors, represented the father

Hearing dates: 17 and 18 April 2023

JUDGMENT

Introduction

1. B is twelve, and C is nine.
2. The parents were in a relationship between 2010 and 2016. They separated when B was five and C was three. After they separated the boys lived mainly with their mother, but spent regular time with their father.
3. Mr G (the father) is not C's biological father, but has been in C's life since birth and has treated C as his own son. The parents told C about this in 2020. He has not shown much curiosity about his birth father and sees Mr G as his dad.
4. Social services became involved with the family in 2019. The local authority was concerned about the level of conflict between the parents about arrangements for contact, and the impact that was having on the boys. In addition, there were concerns about the boys in their mother's care. Ms F was finding it difficult to put in place positive parenting strategies, in part due to her own mental and physical health needs.
5. After the national lockdown in March 2020 Mr G did not see the boys for some months. He made an application to the Court. In September 2020 an order was made that the children live with their mother, and spend every other weekend and every other Tuesday night with their father, as well as broadly half the holidays.
6. In the early months of 2022 Ms F was having a difficult time emotionally following several deaths and other traumatic events in her close circle, as well as being ill with covid. She asked the father to look after the boys. They moved to live with him (seeing their mum at weekends). They went back to Ms F's for a couple of weeks in March, but by the end of the month they had returned to live with Mr G. The local authority and Mr G had become very concerned about the boys' welfare in their mother's care at this time. While the mother agreed to the boys moving back, this was because she was given to understand by the local authority that if she did not agree, then the local authority would apply to the Court for an order.
7. The local authority's concerns were about neglect and emotional harm. The boys were clear that they loved their mother, but they did not feel safe at home with her. The local authority felt that Ms F was struggling and was overwhelmed due to a number of issues around her mental and physical health, her finances, and her ex-partner. She has fibromyalgia and endometriosis and PTSD (linked to being abused as a child) and has suffered from depression. She took an overdose in August 2019. A summary of the main concerns in March 2022 is as follows:

- the home conditions needed improvement;
- The mother had been in a relationship with Mr S and the boys had reported witnessing domestic abuse between him and their mother. Mr S had reported to the father that he and the mother had a physical fight in front of the children during which she had hit him with an ashtray, and he had held her by the throat. C had described seeing his mother hit Mr S over the head with an ashtray and also seeing his mother and Mr S throwing objects at one another and a glass jug falling and smashing at his mother's feet;
- The mother had given the father her old phone to be wiped and used by one of the boys, but messages found on the phone gave rise to concerns that Mr S may have been dealing in drugs from the property and that Mr S and Ms F had talked about getting cocaine and taking it. (Ms F subsequently admitted to using cocaine on one occasion. Drug tests for May to September were clear);
- The local authority was concerned that the boys had been taking on a caring role for their mother.
- The boys were said to have been looking after themselves, preparing their own dinners of pasties and microwave snacks, and getting themselves ready for school;
- There had been times where they had been unable to wake their mother, C is reported to have said this happened almost every day. This had made them feel scared. Both boys reported being told off by their mum for not waking her;
- The boys reported being scared about other people coming to the flat. They described their mum being on Tinder and involving them in this, seeing inappropriate pictures. They described people banging on the door to the flat when their mum was asleep, and they could not wake her, and finding this scary. They described men who were strangers to them staying overnight in the flat;
- The boys reported that their mum had lost the keys to the flat so it was open all the time and they were worried about who could come in to the flat;
- Ms F seemed to be consumed with issues concerning her and Mr S rather than reflecting on how she could work with social services in order for the children to return home;
- Ms F seemed to be blaming the boys for speaking to social services, rather than reflecting on what they were saying.

8. The boys were placed on a child protection plan on 3 May 2022. It was a condition of the plans that the children remained living with their father.

The applications before the Court and the parties' positions

9. On 12 May 2022 the mother applied to the Court for enforcement of the September 2020 order.
10. On 7 June 2022 Mr G cross-applied to the Court for an order that the boys should remain in his care. The local authority encouraged him to make this application. The local authority has paid for Mr G to be legally represented.
11. At this final hearing Ms F has represented herself. Mr G was represented by his barrister Kate Ferguson.
12. The mother seeks the return of the boys to her care, alternatively for them to split their time equally between her and their father. If the Court orders that they remain in their father's care, she seeks as much contact with the boys as possible, and for that contact to be unsupervised. Since last March all contact that has taken place has been supervised. Contact on Facetime has been supported by Mr G. Contact in person has been supervised by Ms F's brother Y, and a few times by Ms F's mother and her husband.
13. Ms F felt at a disadvantage because she did not have a lawyer, unlike the father whose lawyer was paid for by the local authority. She told me that she felt the criticisms the local authority had made of her were unfair. She told me that she was not perfect, but she was a good mother who loved her children beyond anything. She told me the boys had been happy in her care and that she had been working with the school and the local authority to address any issues. She is desperately missing them.
14. The father would like the children to stay living with him. He says that he supports the children having a relationship with their mother, provided it is safe for them both physically and emotionally. He says he understands the difficulties that supervised contact has placed upon the mother's brother. He says he is willing to explore moving to unsupervised contact, but he suggests this should happen once a week but for only two hours at a time to start with. At the moment supervised contact has been for five hours at a time, every weekend.
15. The father has also asked at this hearing for the Court to make an order directing that C should move to a new primary school.

The evidence

16. I have read the contents of the bundle, which includes the application forms, previous orders, witness statements from each of the parties, disclosure from the local authority and a section 7 report from Catrina Flynn, who is an independent social worker. Ms Flynn was directed to complete the section 7 report because the Court did not consider it appropriate for one of the local authority's own social worker to report, where the local authority had already taken the position that it supported the father's application.
17. I have heard evidence from mother and father and from Ms Flynn.
18. Ms Flynn's report was prepared after she had met (remotely) with both parents, had introductory visits with the boys at each of their parents' homes, and then individual meetings with the boys at their schools. She spoke to each of their headteachers, to the boys' social worker Ms B, and spoke to the father's partner. Her report shows a clear understanding of the issues, her conclusions are well-reasoned, reference the welfare checklist factors, and are supported by the evidence which she obtained, and the weight of the rest of the evidence. Her oral evidence was consistent with the report. She confirmed that none of the updated evidence she had read changed her conclusions.
19. Even though she did not have a lawyer to present her case, the mother gave her evidence clearly and had come prepared with the points she wished to challenge Ms Flynn about, and get across in her own evidence to me. I was left in no doubt that she loves her boys and misses them very much. I found that she was doing her best to tell me the truth. She was open about accepting many of the facts that had given rise to the local authority's concerns in the first place. For example she accepted the boys had witnessed domestic abuse between her and Mr S, she accepted there had been times when they could not wake her (not as many as had been alleged), she described a time someone unknown had stayed, she accepted she had lost the keys to the flat.
20. However, everything that Ms F said in evidence underlined the conclusions reached by Ms Flynn. Ms F was not able to accept that the difficulties she was having in March 2022, and for some years leading up to that, were affecting the way she was able to parent her children. She did not accept that the boys were suffering, although there is a lot of evidence that makes plain that was the case. She has not accepted that in order to make things better for the boys, she needed to make some big changes in the way she is as a parent. At the hearing before me, she could not show that she had made much progress with making any changes, or understanding that changes were needed at all.
21. Ms F tended to blame everyone else for what has happened, including the boys, who she says have not told the truth. She blames Mr G, saying he has manipulated the situation

and has an agenda to exclude her from the boys' lives. She said she would only go on a parenting course if the father was made to go on one too. She said it was not right she should go on a domestic violence course, as she had not done anything wrong, and why should it be her rather than a perpetrator who should be made to go on a course. These answers suggested she has work still to do in order to improve her ability to listen and reflect, think about other people's perspectives, most importantly that of her children.

22. The father gave evidence briefly. What he said was consistent with his witness statement and with the impressions formed by Ms Flynn. It was difficult not to get drawn into an argument with Ms F, but he made the points he wanted to clearly and calmly, and tried to bring the focus back to the boys and their needs. He explained to me the reasons why he thinks it would be in C's best interests to change school for the last year of primary school.

Welfare checklist analysis

23. In my conclusions I must decide what orders would meet the boys' welfare, having regard to all the circumstances, and in particular the matters set out at the welfare checklist as set out in Section 1 (3) of the Children Act 1989. The boys' welfare is my paramount concern.
24. I have considered all the evidence I have heard and read, and had regard to each of the factors on the welfare checklist.
25. The children have said very clearly, and consistently over a long time that they would like to stay living with their father. They told Ms Flynn they would be happy and relieved if the decision was for them to stay with their father. They would be fearful, angry and confused if they had to go back to their mum's house. B said he would run away.
26. In her evidence, Ms Flynn said that the boys like to see their mother, but have real fears that things would return to how they were before, where not only were their needs not met, but they were feeling unsafe. The boys have said that their mother hit them and shouted at them, was sometimes not responsive to them, not available to them, and was not taking basic care for their safety. They were having to cope with this and look after each other, and her. This is not their job as children.
27. Both boys have expressed strong views that they would like contact to take place under supervision, and for their mum to be fully focused on them, showing an interest in them, and doing activities with them.

28. The children are clearly talking based on their own experiences of living with their mother, and more recently spending time with her. She said they were not telling the truth when they described contact, but in fact when we looked at some of the details, she did accept what had been reported. However, her focus was on defending her own actions and explaining her own position, rather than thinking about the boys' points of view. An example is that the boys were upset that she had said she would decorate their bedroom, but she didn't do it. They were sad that when they visited her they found their room filled with things including stuff belonging to her partner at the time. The boys felt she was putting her partner before them. The boys said at contact they stayed at the flat, she was on her phone a lot, and she had told them about fun activities she had done with her partner and his children, but was not doing those sorts of things with them. Ms F accepted she was on the phone sometimes, but said she had little money for activities. She said it was her brother's fault for not wanting to drive them places. She said it was not reasonable to expect her to keep a whole room free in her flat for the boys when they were not with her. She said there was not time to go through their possessions or do decorating with them, or go on days out in the short time for contact she had been given.
29. I was satisfied from the evidence given by Ms Flynn that the boys were expressing their true wishes and feelings, and that they had not been influenced by their father or anyone else. Their wishes and feelings are based on their own experiences. They had similar views, but each expressed themselves in their own way. The way they act and present around each of their parents matches their feelings. They have said the same things for some years now. The way they presented was consistent with them having had the experiences and the feelings that they have described to Ms Flynn, to their teachers, to their dad, and to social work professionals.
30. While Ms F does love her boys very much, she has not been able to show that she would be able to meet their needs.
31. I accept Ms Flynn's evidence that Ms F has not been able to show much progress in making the changes in her parenting that would be needed for the boys to return to her care. She repeated a number of times that she loved her children and had never harmed them and that she was being made out to be a bad parent. She has not yet acknowledged that it was possible for her both to love her children and for them to have suffered significant harm in her care.
32. She needs to show the boys that she can keep them safe and meet all their needs. The first step is for her to show that she understands what went wrong and how the children were hurt, so that she can reassure the children that the same thing would not happen again.

33. In important areas, she has not been able to show this.
34. I have seen evidence from her general practitioner of her ongoing physical and mental health issues. It is not her fault that she has these issues, but she could take responsibility for how this has affected the way she parented. She was not able to acknowledge the impact that this had on the boys. It made them scared and worried about her. They were caring for her, and caring for themselves. It is important that she would be able to show the children that she could take on the role of caring for them and parenting them in an active way. If they saw this, they may in time feel reassured that they would not go back to the situation where they were looking after her, and were frightened and worried when she was not responsive to them.
35. Mr G reported to Ms Flynn that Ms F could sometimes make the boys feel sorry for her by saying she is not well and has no money. If the boys do not respond to her texts she becomes upset with them. These may seem like little things, but they are signs that Ms F is still looking to the children to take care of her. The boys need to know that things have changed, they are no longer required to care for her, and her priority is to take care of them.
36. Ms F has done an online parenting course. The course she did was at the end of 2021, and there were clearly some significant issues with her parenting thereafter. It is to her credit that she did the online course, but there does not seem to have been any change in her parenting. In contact she does seem to have been passive, on her phone and not coming up with ideas of things to do. She has not been able to show that the boys are her priority. For example, after they moved to their father's care, she kept the child benefit for her own use, and spent it on her legal costs. It has been recommended that she does a face-to-face parenting course, but she has so far not seen the need for this.
37. Hair strand tests were clear for cocaine (although they are not conclusive). Ms F says that she does not have substance abuse issues. She told Ms Flynn that she had been working shifts in a pub, but realised she was drinking excessively, and the job was becoming too much for her, so she stopped drinking, and stopped working there. She said that she now had different ways of managing stress, like watching a film. But it is not really clear whether that has been put to the test, whether she does understand what might be a trigger for drinking excessively again, and how to prevent that. She said she did not need any help from Turning Point even though the local authority suggested she go.
38. The boys suffered harm by being exposed to domestic abuse between their mother and Mr S. Ms F was said to be more focused on her issues with Mr S, and the boys' needs were neglected. Given what the boys have experienced of that relationship, it is

understandable they would be nervous about her having a new partner. Even if they were not seeing her in situations of domestic abuse again, if they saw their mum putting that partner's needs before their own, it would likely make the boys worried that she was in another relationship which prevented her from giving them the care and attention they needed. Where they see their mum still having arguments with their dad, it would make the boys worried that if they were spending time with her, she might be having arguments with other people that could escalate in the same way that happened in the past.

39. Ms F has recently done six sessions of the Own My Life course. This is to her credit and she told me she planned to attend the rest of the sessions. However, it was not clear from what she told me in evidence that she had understood the reasons why it was important for her as a parent to do this course, and that she had seen how this might lead to her making some changes that helped the boys.
40. The boys found it difficult not having a predictable routine, and struggled with their mother being inconsistent with them emotionally. B has talked about feeling differently treated from C, C has suffered from comments made by his mother about Mr G not being his father. If the boys' mother continues to do behave towards the boys like this, then they will continue to feel unsure and uncertain around her, and insecure as they develop their own sense of themselves growing up.
41. Ms F continues to blame the boys themselves, their father and the local authority for taking the boys away from her. She is not able to accept her share of responsibility for what happened. This means it will be difficult for her to repair her relationship with the boys. She said the boys were '*quite negative boys*'. She did not see that there had been anything negative about the times when they were living with her, apart from her being out at work and Mr S being asleep in bed a lot.
42. Until she is able to acknowledge that their worries are based on their own experiences of her parenting, and give the boys confidence that she has made changes, the boys are unlikely to get the reassurance they need from her.
43. If the boys were to go back and live with their mother they would be at risk of suffering significant harm. Their mother has not shown that she has made any of the changes that would have been needed to parent them so as to meet their needs and keep them safe.
44. Returning to their mum would make the boys feel angry and that their wishes and feelings had been completely ignored.
45. The boys are happy living with their dad, his partner, her two older children and their younger sister. Mr G and his partner [J] have been together since 2016 and are working

well in partnership to meet the needs of a large household, which is described as happy and calm. They have established consistency and a predictable routine for the boys, who feel safe and secure, and are busy enjoying a wide range of activities with family and friends. When they first moved to live with their dad, they were described as anxious and boisterous, fighting a lot. J described them as happier, calmer, more confident, have stopped fighting and just seem to enjoy playing, *'as if a burden has been lifted off their shoulders.'* B has lost two and a half stone in weight, has joined the cadets and is thriving at secondary school. C is currently having some difficulties at school, but in general, compared to how things were a year ago, he is making good progress, and like his brother is more confident and able to give voice to his feelings.

46. A move back to their mother's would be disruptive and would undo a lot of the excellent progress that they have made in the last year.
47. Having regard to all the circumstances, I consider that I should make an order that the boys should live with their father and his partner.

Contact

48. Contact has been supervised so far and the boys have said they would wish for that to continue.
49. Ms Flynn's clear recommendation is that contact should continue to be supervised 'for the foreseeable future'.
50. However, the only family member who seems able to supervise the contact is the mother's younger brother Y. He has his own life to lead, will be getting married next year and has a career as a landscape gardener, which often involves him working at weekends. It is plainly not reasonable to ask him to supervise the boys' contact with their mother for five hours of every weekend indefinitely.
51. The parents have not felt supported by the local authority. It appears to have recommended that contact continue to be supervised, but has not provided any resource to support the parents with this.
52. Again I have regard to all the circumstances, and the factors on the welfare checklist.
53. It is difficult to strike a balance between encouraging the boys to have a relationship with their mother, and repeatedly exposing them to the risk of harm. This risk arises because the children are being put back in a situation where they have the same fears for their physical and emotional well-being that they had before, and they are not receiving assurance from their mum that there is no longer any reason to have those fears.

54. I accept Mr G's evidence that in the last year there have been issues with contacts being missed or rearranged. This has led to the boys being confused and let down. The parents do not agree about the reasons for contacts being missed. There have been some disagreements over supervisors. Both parents fairly accepted to me that there had been times when they had forgotten to be in the right place or time for Facetime contact. Mr G says that sometimes Ms F does not call, or she has sent messages to the boys which have made them feel emotionally manipulated and therefore reluctant to speak with her.
55. The boys have been upset by things their mother or other people (her mother and partner, or uncle Y) have said to them. Mr G says the mother questioned the boys about why they didn't want to live with her, that when C was indecisive about what food he wanted she shouted at him, that C said when they had been throwing darts, he missed and hit a glass table, his grandmother had called a 'spastic bitch' and said he would have to pay for it. On another occasion they said the Applicant's mother and partner had said abusive things to the boys about their father, and when C asked them to stop, they had told him off and told him to shut up. The father reported that Ms F asked the boys to take their homework with them one time, the boys told him that she got angry, told them she didn't know what she was doing and they would have to get on with it.
56. Because the boys are not yet seeing the changes in their mum that would give them the reassurance they need, the reassurance that they will be safe has had to come from contact being supervised.
57. In order to find a way through, Mr G has proposed that contact moves to Tuesday afternoons, takes place for a couple of hours each time, and is unsupervised. He would like Ms F to give an undertaking that she will not hit the boys, will not drink or take drugs when she is with the boys or for the twenty-four hours beforehand, and that if other people were to be at the contact, she would agree that in advance with Mr G.
58. Mr G hopes that in this way, he will be able to give the boys some reassurance that they will be safe in contact. He hopes that this will be a different way of enabling them to keep their relationship with their mum, who they love very much and want to see, while reassuring them they can be safe.
59. Because Ms F has not made changes in her parenting since the boys were taken away, the risk does remain, and, like Mr G, my preference would be for the boys' time with their mother to remain supervised until such time as she is able to actively repair her relationship with the boys, by taking responsibility for what has happened in the past, and reassure them that things will be different in the future, by showing that there has been a fundamental change in the way she parents.

60. However, Mr G has clearly thought carefully about this issue, has taken advice from social work professionals, and made his assessment of the competing welfare needs of the boys, to spend time with their mum, for their relationship to be healed, but for them to feel safe and secure. He has shown himself to be a loving, committed and thoughtful parent, who understands his children's needs well. He has supported them very well at a difficult time in their lives, and clearly has their best interests at heart. I think he has shown a good understanding of the impact the mother's parenting has on the children and what needs to change to make things better. At the same time, he has shown himself to be committed to supporting the boys' relationship with their mother.
61. In all the circumstances, I accept his assessment that this is a risk he is well placed to manage, with support of his partner and professionals, and with an agreement in place that should provide reassurance to the boys. I would hope that the local authority could assist in drawing up the working agreement.
62. I understand that the mother's brother Y may still be available to supervise at times, and it may be a good idea to put in some longer sessions of supervised contact, perhaps six times a year in school holidays as a starting point, but more if an agreed supervisor can be found. In time, if the shorter sessions go better, and trust can be built up, then it may well be as Mr G envisages, that a pattern of regular staying contact can be established, with the boys seeing their mum every other weekend, one night during the week, and for longer times in the holidays.
63. However, those changes would only come if there has been a change in the way Ms F parents the boys when they are in her care. She cannot wait until they are given more time together, she needs to take advantage of every chance she has to be with them, even if that is a couple of hours at a time.
64. Facetime calls work well and I understand that there is no difficulty with them continuing as and when agreed.

Change of school

65. Mr G has not made a formal application to change schools, but in his evidence to the Court he confirmed that he has secured a place for C at [X] primary school. His partner's daughter L (in the same school year as C) and his and his partner's daughter M have recently moved to X primary school.
66. Logistically, it would be much easier for Mr G and his partner to manage if C were at the same school as L and M. C's current school is half an hour away in the car, X primary school is a five-minute walk. Mr G feels that C is not thriving in his current school, has a

bad relationship with his class teacher, and has become the ‘class-clown’, having difficulties with friendships and acting out, but never given the benefit of the doubt by his teacher, and frequently sent out of class without any exploration of what is really going on. He reports that C has expressed a wish to move schools.

67. Ms F initially agreed to the move, but upon reflection does not think it is right to move C away from the school where he has been for some time, and when he only has one year to go before making the transition to secondary school. C’s current school is only minutes from her home.
68. I haven’t got any up to date information from C’s school, nor have I seen any information about the new school.
69. Should I require Mr G to make a separate specific issue application or file further evidence in support of the application? That will cause delay whereas the boys need certainty and for these proceedings to be over. A formal application would not trigger involvement from Cafcass or an independent social worker because change of schools in this context does not give rise to safeguarding issues. Mr G was able to give evidence which covered all relevant factors. Ms F has not been taken by surprise by the application because it was discussed at a Child in Need meeting on 13 March.
70. In all the circumstances, I have decided that it would not be proportionate to delay this application.
71. Having regard to the evidence I have heard and read I am satisfied that Mr G should have permission to change C’s school.
72. On the basis of Mr G’s evidence I am satisfied that the new school would meet C’s needs, as it appears to be doing very well for L and M. C is very happy as part of Mr G’s family unit and spoke to Ms Flynn about his strong relationships with Mr G’ partner’s other children. That family life will be cemented and made easier if they are at the local school. Friendships are easier to make and maintain with children who live very locally, and could even make the transition to secondary school easier. I accept his evidence that C is struggling emotionally at his current school, and that Mr G and his partner consider themselves better able to support him at X primary school. While the prospect of moving for only one year before then moving on again is not ideal, if C has effectively ‘checked out’ of his current school, is struggling to thrive there, and feels ‘type-cast’ as a misbehaving child, then a change does sound warranted and worth experiencing the challenges that will inevitably come with it.
73. For these reasons, I will give permission for Mr G to move C to X primary school.

Local authority's role in this case

74. Had the children's mother not agreed to the boys being removed from her care in March 2022, the local authority would have issued public law proceedings. The local authority has made it clear that if the children were returned to their mother's care at the end of these proceedings, they would again consider the children to be at risk of significant harm, and would be considering taking steps that might again lead to public law proceedings being taken.
75. Ms F evidently did not continue to agree with the decision for the children to live with their father, and would have wished to challenge the local authority.
76. If the case were in public law proceedings, both parties would have been legally aided.
77. Ms F has been able to make her position clear in these private law proceedings, but she has not had the benefit of legal advice or representation. By funding the father's legal costs, the local authority has enabled him to have advice and representation, where Ms F did not. As a result she has felt at a significant disadvantage.
78. District Judge Buckley-Clarke directed that the s7 report was prepared by an independent social worker, where the local authority initially planned to do it. It was plainly right to have an independent expert to advise the Court.
79. I have done what I can to support Ms F at this hearing, to hear and understand her perspective, to help her question the independent expert and consider additional points that could be made.
80. Ms Flynn has carefully reviewed all the paperwork from the local authority, spoken with the social worker, and made her own investigations. She concluded that the local authority's planning, decisions about what assessments to carry out, and decisions to take steps to protect the children were correctly made at each point, and justified on the evidence they had at each stage. She felt they had intervened at the correct time, focused on the children's needs, and their assessments were of good quality. I agree with her conclusions and have no criticism to make of the local authority's social work. I have made my decision based on my consideration of that evidence, but also that of each of the parents, and the section 7 report. The conclusions I have reached are supported by the weight of all that evidence.
81. It was appropriate to seek the mother's agreement to the children to being removed from her care in March 2022 rather than rush to Court for an order. The local authority has a

duty to take only steps that are proportionate, and to avoid issuing proceedings if it is not necessary.

82. However, the local authority may wish to consider whether if a similar situation arose in the future, a mother who was not continuing to give her consent to being separated from her children should receive legal assistance.

HHJ Joanna Vincent
18 April 2023
Family Court, Oxford