

NEUTRAL CITATION NUMBER: [2024] EWFC 355 (B)

THE FAMILY COURT

SITTING AT OXFORD

HEARD ON 12TH TO 14TH NOVEMBER 2024

JUDGMENT HANDED DOWN ON 2ND DECEMBER 2024

BEFORE HER HONOUR JUDGE OWENS

F

And

M

And

A, B and C acting through their Children's Guardian

The parties and representation:

The Applicant, F, represented by: Mr Brookes-Baker, Counsel

The First Respondent, M, represented by: Mr Jones, Counsel

**The Second, Third and Fourth Respondents, represented through their Children's
Guardian by: Mr Trueman, Solicitor**

This judgment is being handed down in private on 2nd December 2024. It consists of 24 pages and has been signed and dated by the judge. The Judge has given permission for the judgment (and any of the facts and matters contained in it) to be published on condition that in any report, no person other than the advocates or the solicitors instructing them (and other persons identified by name in the judgment itself) may be identified by name, current address or location [including school or work place]. In particular the anonymity of the children and the adult members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that these conditions are strictly complied with. Failure to do so will be a contempt of court. For the avoidance of doubt, the strict prohibition on publishing the

names and current addresses of the parties and the children will continue to apply where that information has been obtained by using the contents of this judgment to discover information already in the public domain.

Introduction

1. This is a final hearing to deal with applications in respect of three children, A, B and C. I conducted a fact-finding hearing in November of last year. The parties are the two parents, M and F, and the children who are represented through their rule 16.4 Guardian.

Background

2. I adopt my judgment from the fact-finding for the purposes of this final hearing. I dealt with the background and the extraordinary length of the proceedings in that judgment so will not repeat those details here. The findings that I made were:
 - a) M has not emotionally or physically abused the children.
 - b) M has not neglected the children's physical and emotional needs.
 - c) Neither party has been coercively controlling towards the other.
 - d) F has made repeated false allegations against M including one of poisoning.
 - e) F has not done as much as a good parent should to get the children to school regularly and to see their mother.
 - f) F has not clearly and consistently given the children explicit and implicit permission (which latter includes emotional permission) to have a full relationship with their mother.
 - g) F has exposed the children to his and the nanny's negative views about M but he has not sought deliberately to influence the children negatively against M.
 - h) M has not deliberately sought to influence the children against F.
 - i) Neither parent has fully protected the children from their incredibly acrimonious conflict, and each has exposed the children to a risk of harm as a result.
 - j) F has breached the child arrangements order without reasonable excuse.

3. After the fact-finding judgment, the Guardian applied for a global psychological assessment of the family. Dr Bailham was duly instructed and completed a psychological assessment of M, F and the three children. That assessment was filed at the end of March 2024 and made various recommendations including for M and F to undergo Cognitive Analytical Therapy (CAT) individually for 16-24 sessions. Following that individual therapy, Dr Bailham then recommended both attend joint CAT couples' therapy. She stated that *"the aim of the joint therapy would be to help F and M gain acceptance and resolution over their relationship and allow them to work collaboratively to co-parent their children and keep them free from emotional harm, and parent in the best interests of the children"* (D138).
4. Dr Bailham was also of the opinion that the children were experiencing emotional harm arising from the conflict between their parents, with B experiencing the greatest difficulty as a result, and B and C's educational and emotional needs being neglected by both parents. Dr Bailham concluded that A is coping with the emotional harm by siding and living with one parent and noted that she had concerns for *"A's ongoing emotional wellbeing as she gets older, if the conflict between her parents continues. A's difficulties are caused by the long-standing conflict between her parents which has caused her emotional harm"* (D143). Dr Bailham recommended that A should have weekly sessions with a child psychologist to help her manage both adolescence but also *"being exposed to ongoing conflict in her parent's (sic) relationship"* (D143). Dr Bailham hoped that therapy would also assist A in repairing her relationship with M as well as maintaining her relationship with F. She recommended that B should be assessed to see if he had any underlying developmental disorders and should have more educational support at school, with both parents needing to prioritise B and C's educational needs. C needed greater input at home in terms of her reading and writing skills and both parents needed to liaise with her school about this.
5. The Guardian was very clear after the fact-finding that the main risk of harm to the children arose from the parental conflict, but also agreed with my conclusion that it was harmful to

the children for them to continue to be exposed to the negative views of the nanny (E) about M. The Guardian's final report was filed on 19th October 2024 and details the extraordinary number of meetings and amount of time that she has spent with the children involved in these proceedings. It is important to note this because, at points, both parents have sought to suggest that the Guardian has not spent as much time as necessary with the children to ascertain their wishes and feelings. I feel it necessary to also point out that, despite both parents having access to resources, both in terms of intellectual ability and finances, which significantly outstrip many of the families involved in Family cases, they do not appear to have been able to use those in a way that has actively promoted the welfare of the children concerned. They have also commanded a disproportionate amount of professional and court time despite my best efforts to control this in accordance with both the expectations of the Children Act and the overriding objective of the Family Procedure Rules. I accept that the parents have at points been litigants in person, but these intervals have been short compared to the length of the proceedings. The Guardian has also commented on the tone of much of the correspondence between the parties and their legal representatives and her. Having now seen some very unfortunate correspondence in the final hearing bundle which includes a professional who seems to be purporting to advise F, I have disregarded the unfortunate comments in that correspondence about me as I said when I reserved judgement. However, the unfortunate comments included the solicitor for the children and the Guardian and are both shocking and unhelpful when one considers their tone and content in context of an intractable and entrenched private law conflict where parental conflict has been found to be a main cause of harm to the children concerned. It does not seem to me to be conducive to enabling these parents to move on as their children need for officers of the court to be corresponding about other professionals tasked with protecting the welfare of the children in this way. I will return to aspects of this concern later in this judgment when I consider the extent to which F has addressed the issues arising from his failure to protect the children from his and the nanny's negative views of M.

6. For this final hearing I have had the evidence contained in the final hearing bundle and heard evidence from Dr Bailham, F, M and the Guardian.

Parties' positions

7. F seeks that arrangements for B and C remain as under the last court order during term time. Holidays should continue to be shared equally for them, with Christmas, Easter and the start of the summer holidays alternating. Dates should be agreed by 31st January each year. A should live with him and see M when she wants to and there should be no order for this. F invites the court to consider a section 91(14) order. F offers undertakings to the court to start CAT forthwith and that E should have no care of the children and that he will not return to work until he has found new childcare provision for when he is working.
8. M changed her position after the conclusion of evidence in this final hearing. Her ultimate position, broadly in line with the Guardian's recommendations, is that she seeks an order that A live with both parents but with a division of time that she lives with M on alternate weekends when B and C are with M during term time and half of the school holidays. Despite making an application for enforcement of the existing child arrangements order on 30th September 2024 alleging further breaches of the order by F, M did not pursue this during this final hearing. She does not support the making of a section 91(14) order.
9. The Guardian's recommendations are as follows:
 - a) There needs to be a fixed plan for the children for term time and school holidays.
 - b) Both parents should be able to take the children on holidays for up to 3 weeks and should share the holidays equally.
 - c) Each parent needs to tell the other parent about any planned holidays at least one month before the holiday takes place.
 - d) The parent handing over the children should take the children to the other parent and wait until they are received.
 - e) There should be a joint lives with order. For B and C they should spend 7 days with one parent and then 7 days with the other parent with a change over on Friday, with

the returning parent taking the children to school and the receiving parent collecting them in term time. A can spend the same weekend with M as B and C.

- f) A to spend term time with her F with alternate weekends with her M.
- g) The children should spend alternate half terms with each parent.
- h) An order in these terms is necessary to reflect the need for A to spend time with M and A's siblings. A should also be allowed to see M at other times when she wants to.
- i) There should be a section 91(14) order that neither parent can make an application under section 8 of the Children Act or for enforcement without leave of the court. Such an order should last for three years to protect the children from unnecessary proceedings until all children have started secondary school.
- j) F should cease to use E to care for the children in any form.
- k) M should continue to engage with CAT.
- l) F should engage with CAT forthwith.
- m) A suspended change of residence is not recommended in the welfare interests of the children.
- n) The parents need to protect the children from parental conflict. F should protect the children from *"a chorus of negativity about their mother from some of his friends. He should not share court papers with such people"* (Guardian written closing submissions).
- o) Each parent needs to share Dr Bailham's report and addendum with treating clinicians.
- p) The parents would do well to re-read my fact-finding judgment at para 51 (B53) and act on what they were urged to do.

Relevant legal considerations

10. The starting point for a Court making welfare decisions in relation to children is that their welfare is paramount. In considering what is in their welfare interests the Court will apply any relevant criteria from the welfare checklist set out in section 1(3) of the Children Act 1989.

11. The factual context for the determination of the welfare outcome for the children concerned in these proceedings is the outcome of the earlier fact-finding hearing that I conducted. Given the issues in this case, it is also relevant to note that section 1(2A) of the Children Act requires a court to presume that involvement of each parent in the children's lives will further their welfare, unless the contrary is shown. The outcome of the fact-finding hearing did not show the contrary in this case.
12. In considering whether to make an order under section 91(14), the court must consider the provisions of section 91A and Practice Direction 12Q.

Analysis

13. I have already noted the evidence that I have had for this final hearing. Dr Bailham was required to give evidence despite the provisions of Part 25 and Practice Direction 25B because neither parent fully accepted her conclusions and recommendations. F would have been content for the issues to have been dealt with on submissions, but M was not and Dr Bailham was thus required to attend via video link. Dr Bailham did not change her recommendations as a result of cross-examination, but did add when I clarified with her that both parents would potentially benefit from Mentalisation Based Therapy given her conclusion that each *"have difficulty reflecting on the consequences of their behaviour on others around them. They both have difficulty mentalizing (sic), that is, the ability to understand the mental state of oneself or others that underlies overt behaviour"* (D135). She remained clear that the children have suffered emotional harm as a result of the parents' inability to protect them from their conflict and remain at risk of suffering harm from that conflict unless the parents address their issues with CAT. A also needs psychological therapy and all three children need to have their emotional and educational needs consistently met by both parents prioritising meeting these rather than pursuing their adult conflict.
14. The oral evidence of both M and F was illustrative of the points made by Dr Bailham in her assessment of them. She had noted that *"there is a tendency for both parents to lack*

acceptance that their relationship did not work, but to intentionally blame the other party, rather than accept that they were not able to compromise and accept each other's shortcomings as a couple" (D135). Sady each simply could not help themselves answering questions about their actions by almost always seeking to add a negative comment about the other parent. I asked F if he was aware that he did this constantly, a question which he never actually answered but instead tried to say that he thought it was important that he gave the context. As the judge who has dealt with these proceedings for just over two years, conducted a fact-finding hearing and read and heard far more evidence than is usual in such cases, I think I have a better grasp of the context than most. I also, of course, have the vital factual context of the fact-finding judgment. The Guardian commented in her oral evidence to me that each parent can at times say very positive things about the other, however it seems to me that, as Dr Bailham concluded, they have a very profound lack of ability to mentalise and cannot avoid returning to criticism of the other at any opportunity but especially when feeling challenged. Their lack of ability to mentalise is one of the fundamental drivers of the emotional and psychological harm that each has inflicted and will continue to inflict on the children unless they change, I find. It is also something that I would have thought they would want to address in their professional lives given the work that they do. Improving their ability to mentalise and step outside of their inability to process their own failures can only improve their personal and professional relationships, and their ability to empathise with others.

15. It was also clear from both of their oral evidence that they do not really accept the findings that I made. F in particular was asked if he accepted that he had made numerous false allegations about M including that she tried to poison him. He told me that he still believes that she did try to poison him. If he had read my earlier judgment, he should have noted that there was no foundation to his belief. To persist in this belief in the absence of any proper evidence shows how deep-seated his negative view of M is and underlines how important it is that he undergoes the CAT that Dr Bailham recommended. F's evidence was also concerning in relation to what he has done to address the findings made against

him. On his own account, he did not remove E from childcare until 6th October 2024. That is nearly a year after the fact-finding judgment and despite the clear recommendations of the Guardian immediately after that judgment was handed down. The Guardian also told me that the children have consistently told her that they do not like E, so F has also disregarded their wishes and feelings about this. This is on top of the serious findings I made about the corrosive negativity about M which E subjected these children to. F's explanation for taking so long to address the issue of E was concerning. He told me that he sat E down and went through the judgment and it took some months (approximately 4 on his account) to come to terms with the judgment. He also said that E now has other personal commitments that mean she is no longer available to provide childcare for him. He also said that he struggled to find a replacement and it seems he has still not done so at this point. M acknowledged that he might struggle to find the sort of 'wrap around' childcare that he was seeking, but F's evidence was rather more focused on his difficulty juggling working and finding someone suitable. It seems he did find a candidate at one point earlier in the summer, but they withdrew. If they had detected any inkling of the family dynamic and issues for the children involved in this case, then I am not surprised they withdrew. F did say that he has now been signed off work and intends not to go back to work until he has sorted childcare. I did not find his evidence at all compelling or credible in terms of his being really committed to protecting the children from the ongoing adult conflict. The failure to remove E from caring for the children is a stark illustration of this, and of his continuing to subject the children to emotional and psychological harm by not prioritising their needs above his own. It seems clear to me that it is E becoming unavailable that has led to her ceasing to provide childcare rather than F acting as a good enough parent should have done to remove her from the children's lives after the fact-finding judgment.

16. Similarly, his evidence about CAT was concerning when I consider his parenting capability and the risk of harm to the children. He accepted that he had not yet started CAT. He said that he had tried to find a local therapist, though he gave some confused account of

a therapist querying why he needed CAT. When I queried with him why he had not simply shown any potential therapist the report of Dr Bailham, he said he didn't know that he could disclose it even though he accepted that this had been covered in at least one earlier hearing after the report was filed, and he has had the benefit of legal advice. I am satisfied that he has not prioritised sourcing and starting the recommended CAT, despite being a clinical professional who (as Dr Bailham noted), was well placed to do this both geographically and professionally. That he now offers an undertaking to do this as soon as possible is simply too little too late to persuade me that he really accepts that this therapeutic input is vital to change things for the children in this case. I am also left in the dark about whether he has tried to adjust his working hours to make arranging childcare any easier and, frankly, the excuse that he is a busy working parent (though only working three days a week) is one that carries less weight when I think of the parents I see who work more and with far fewer resources available to purchase assistance and yet manage to make arrangements. I am also unpersuaded that F really accepts he has allowed the children to be surrounded by the sort of chorus of negativity that Mr Trueman highlighted in closing and which formed part of my findings about E. Yet the evidence F himself produced in the bundle in section F provides ample evidence of this, and it would appear from the Guardian's written and oral evidence about A's comment at D197-198 that F has still failed to ensure that A is not able to overhear adult conversations that she should be entirely protected from, I find. F needs to face the cold, hard, truth that, unless he changes this, he risks all of the children continuing to suffer harm by his actions. And in the context of this sort of case there is a real risk of the children, including A, deciding that they do not want to continue a relationship with him as they get old enough to understand the harm he has caused them.

17. In terms of M's evidence, it was similarly sadly illustrative of the problems that Dr Bailham's assessment highlighted. It is positive that she changed her position prior to closing submissions and was no longer pursuing an order forcing A to live with her and spend time with F. However, the fact that this has also taken her until the 11th hour illustrates how

necessary the therapy that Dr Bailham recommended is for her and how far she still has to go despite having started that therapy. Like F, she was also constantly trying to refer to negatives about F when she was asked about her own actions. In answer to questions from me, it was also very apparent that she really does struggle to accept that she also bears responsibility for the situation that the children find themselves in at this point, particularly in the fractured relationship that she has with A. It also seemed to me that she has a tendency to try to seek explanations outside of her own failings (much like F, in fact), including questioning the validity of the work undertaken by the expert and the Guardian. That being said, given the evidence about F's utter inability to ensure that the children have the relationship with M as is their right, and this inability having persisted for years at this point, F's comments to the Guardian about not complying with court orders and my findings that he has breached the previous order, I can entirely understand her fear about yet again facing a situation where the children are not spending time with her. I have my own grave concerns about F's parenting capability and ability to protect the children from harm arising from not promoting and permitting their relationship with their M in future, frankly.

18. It was this that led me to ask Dr Bailham and the Guardian about a suspended change of residence since this is a tool that a Family court can consider in these sorts of cases. Dr Bailham was very clear that the psychological risks to A of such an order were greater than the risks of future disruption to her relationship with M: *"if the court enforces a final order in M's favour to live exclusively with her mother and only see her father at weekends, this is likely to confirm A's beliefs that her mother is not listening to her and trying to control her...based on what A told me if she lives with her mother, she is likely to feel frustrated and angry and will struggle to accept what she perceives as extreme restrictions and limitations imposed upon her. She is also very likely to worry about her father as she is used to having frequent contact with him. I would be very concerned about the psychological impact on A if this happens. A is likely to either become more oppositional in her behaviour and this could increase the risk of her running away from home. This of*

course would not only raise concerns about A's emotional wellbeing but also about her safety and physical wellbeing. Alternatively A may be inclined to internalise her emotional distress and not show this in her behaviour outwardly, as she feels she has little control in her life. It is then possible A will find unhealthy or maladaptive ways of expressing her distress by restricting her eating and possibly self harm" (D172-D173). The Guardian was also very clear that the balance of harm tipped against making such an order given the wishes and feelings of the children which have been reported by her throughout this case. B and C have consistently stated that they want to spend time with both M and F and even A has said that she just wants the conflict between her parents to stop and for them to be 'normal'. Forcing A to change residence to live with M or threatening her with this would backfire was the essence of the Guardian's evidence to me. I have also been mindful of the evidence of Dr Bailham about M and "when A acts in a rejecting way to M she tries harder to put this right, and this is then perceived by others as being controlling behaviour. The more A rejects M the more controlling M becomes" (D133). It is therefore important that A is not placed in a position where she perceives that she is without control, and equally important that both of her parents focus on providing her with parenting that enables her to have a relationship with both of her parents.

19. Considering the relevant welfare checklist headings in relation to this case, the first is the ascertainable wishes and feelings of the children in light of their age and understanding. It seems clear from the evidence before me that A in particular has had her understanding significantly and harmfully skewed by the ongoing parental conflict. All of the children are clearly too aware of the acrimony between their parents (see for example Dr Bailham at D142), but as the Guardian noted "they do not express themselves to me or any other professional in the ways that the parents say they do; their communications could be interpreted as their wanting to be left out of it and what they say to either parent as amplifications of the parents' feelings" (D162). There has been a consistent theme within these proceedings of the markedly different parenting styles of M and F, which can be broadly summarised as M imposes more boundaries and F fewer. Whilst children can find

such differences difficult to navigate, their stated wishes and feelings to professionals in this case show that they have learned to navigate these differences and enjoy spending time with each parent when they are with them. The Guardian gave compelling oral evidence of the warmth of the interactions she observed between all children and both parents. I am concerned that A's wishes and feelings are also unduly influenced by the pressure the Guardian noted that she faces when it comes to her relationship with M: *"I could not draw A on anything positive about her mum and I wondered if she felt that she could not say anything positive because she knows her dad is going to read my report and he has told her that there is a better chance of him 'getting custody' if she goes to mum's. I would consider that A is under tremendous pressure not to have a nuanced relationship with her mum, it must be all bad"* (D199). As the Guardian also noted in her final report, A's wishes and feelings do carry greater weight in view of her age, but she is not a competent child and has clearly been influenced by her father as I have concluded. C wants her parents *"to be nice to each other"* (D201), and B *"is not worried about spending time with mum or dad"* (D202). I have also already noted in this judgment that none of the children wanted E to be involved in caring for them either, hardly surprising given the findings I made about E's negativity towards M.

20. The next relevant welfare checklist heading is the physical, emotional and educational needs of the children. All of the children have an emotional need to have a relationship with both of their parents and there is no safeguarding reason to prevent this. There have been historic issues with the children not receiving the sort of support from their parents to enable their educational needs to be met, and it is important as both Dr Bailham and the Guardian's evidence shows that the parents focus on ensuring that all three children attend school regularly and are provided with support at home to ensure that they are performing as expected for their age academically. This will require each parent to put aside their conflict and focus instead on meeting the needs of their children as again the professionals have noted. In April this year the Guardian noted that the younger children's physical needs were clearly not being met, noting that they were reported by the school to

be “*unkempt, dirty and had headlice*” (D158). This appeared to be worse in the care of F than M, but the school had to give advice to both parents about working together on this and on the children’s hygiene (D158 again). F told me that the children became attached to particular items of clothing and that explained their going to school in dirty clothes, and he gave graphic evidence of the state of C’s fingernails and hair prior to his giving her a home haircut. What his evidence did not do was explain how a medical professional could have thought that it was appropriate for a child to be in such a state nor what he was doing to ensure that the children were learning how to properly manage their health and hygiene. It also seems from what C told the Guardian about her haircut that F did not appreciate that C was not actually as keen on the haircut as he thought she was (D160) which suggests the sort of failure to mentalise that Dr Bailham identified as an issue for both parents. Similarly, allowing children to attend school in dirty clothes risks them being ostracised by their peers and lacks an appreciation of the emotional impact on the children of this. More concerning is the evidence about neither parent being able to agree about therapy for A and how to manage C’s asthma and eczema. As the Guardian put it in her report at D205 “*A, B and C’s parents are medical doctors who appear to be unable to consistently follow medical advice about managing their child’s asthma or ‘viral wheeze’ in such a way as to resolve it for her, they are more focused on pointing out which one is at fault...it’s the same situation regarding C’s eczema; Asthma and Eczema are common childhood concerns and should be easily manageable, C should be able to rely on her parents to sort this out. So far, she can’t, and they have jointly failed to do so*”. It seems to me that, regardless of whatever clinical expertise either parent may feel they have, they lack objectivity when it comes to their own children in the context of their adult conflict and simply need to follow the advice of the GP in terms of how to manage C’s asthma and eczema if they cannot agree otherwise. Failure to do this risks causing the children further harm in my view and would be evidence of them continuing to prioritise their conflict rather than the needs of the children.

21. The next relevant heading is the likely impact on the children of any change in their circumstances. I have already noted that the evidence of Dr Bailham and the Guardian was overwhelmingly urging caution in relation to a potential change of residence even on a suspended basis. Dr Bailham also stated in her addendum report that *“there should not be any significant changes in the children’s living arrangements until the children have had the opportunity to undertake the therapeutic work I recommended in my report” (D173)*, a view that she confirmed in her oral evidence to me. Given the change in M’s position in this final hearing, the potential change of circumstances for the younger children is a move from the current termtime 8/6 split of B and C’s time with each parent to either M’s requested change of primary residence or the Guardian’s recommended 7/7 split (D208-209). F’s view is that it should remain as currently, but I have heard no compelling evidence about why this is in the welfare interests of the children beyond that this is what they are used to. It is also his case that there should be no order for A, which would be a change to the status quo for her.
22. Since the fact-finding Guardian has provided two reports which carefully detail that the younger children want to spend time equally with their parents, all of the children find handovers difficult and that this can in turn lead to problems with school attendance. Compounding these difficulties is the clear evidence showing me that these parents simply cannot communicate with each other in a way that is child focused and puts the welfare of the children first rather than their adult conflict and their desire to find evidence of wrong doing on the part of the other parent. The Guardian noted that *“they are unable to communicate with each other constructively and have a lot to say about why the other’s approach is wrong and what they think the other should do; there is extensive correspondence between the parties, officially via their solicitors and unofficially where they both want to defend their actions or perceived actions in not complying with court orders or say why they disagree with the other. I would highlight this is a central feature of both parents’ behaviour; they engage with their solicitors to dispute the minutiae but have not complied with orders” (D155)*. The Guardian also told me that she would

recommend that the parents use some form of parenting app to address their communication issues. Both M and F accepted this was a good idea in their closing submissions to me.

23. The Guardian has provided unequivocal evidence that these parents need the structure of a court order to protect the time that A spends with her M, to minimise the need for them to communicate and to manage handovers in a way that reduces the need for direct contact between the parents. Altering arrangements as recommended by the Guardian for B and C to spend time with each parent during term time for 7 days each with handovers taking place at school would achieve this and thus reduce the risk of harm to these children in future, I find. F's proposal that B and C remain on an 8/6 split is not in their welfare interests because it does not achieve the simple and straight forward division of their time that the Guardian's evidence powerfully demonstrates is required given the parents inability to communicate and the deeply entrenched parental conflict. It sends an important message to the children (and I include A in this since she will see the arrangements for her siblings in operation) that their parents are both their parents and neither parent has primary parental responsibility for them. For the same reasons, M's proposal that the two younger children live with her during term times and live with F on alternate weekends is not in the children's welfare interests. Similarly, structuring an order that allows A to spend time with M on alternate weekends during term time so that she would be with M when B and C are also with M is in A's welfare interests. It gives all concerned the sort of structure that the Guardian's evidence shows is necessary, grants A permission from the court to have a relationship with her M, allows her to spend time with her siblings, reduces the need for her to be exposed to further adult conflict because it sets the minimum arrangements for her and still gives her the freedom to choose to spend more time with M if she wishes. In terms of school holidays, it is also in the welfare interests of the children to set out arrangements for these so as to minimise the scope for the parents to have to try to communicate and agree these in advance since the evidence shows that these parents simply cannot do that reliably and in a way that protects the children from their

conflict. These changes are therefore necessary and will provide the children with stability and remove them from the harmful adult conflict that has affected such a significant proportion of their lives.

24. The children's age, sex and background and any characteristics which the court considers relevant is the next relevant heading. I have already noted that A's age is relevant in weighing her wishes and feelings, and it is also relevant to note that these proceedings have taken over four years to resolve which is a disproportionate part of the children's lives to date. The children's dual heritage from each of their parents is also important in terms of their identity needs and their being able to access this heritage through each parent is vital to their sense of self. Dr Bailham has also identified the profound psychological impact on all of the children of the corrosive adult conflict that they have been inappropriately exposed to, and the potential for B to have additional needs if he is assessed as having a developmental disorder. All of these aspects mean that the children have a greater level of need for stability and protection from further harm from their parents than usual, I find.

25. Any harm which the children have suffered or are at risk of suffering is the next relevant checklist heading. I have already mentioned some of the compelling professional and expert evidence in this case which amply demonstrates that these children have suffered and are at risk of suffering emotional and psychological harm arising from their parents' conflict. Dr Bailham's evidence is particularly notable in relation to this, concluding that such is the level of harm suffered that all three children need therapeutic input. The Guardian's evidence also highlights the level of harm suffered and I am satisfied that the harm that the children have suffered in this case is significant. In other words, the threshold for the making of public law orders is passed. That finding is one that a court does not make lightly, but such is the level of inability of these parents to protect their children and the depth of emotional and psychological harm that the children have suffered that it cannot be described as anything other than significant in my view. Very few private law disputes in the Family Court result in a recommendation from an expert that all of the

children require therapeutic input and are at risk of further significant harm if the parents cannot put aside their conflict and really prioritise the needs of the children. In the case of A, the evidence of Dr Bailham is also very clear that A is at risk of physical harm and, if she were to run away and engage in other risky behaviours, I can take judicial notice of the fact that A would be at risk of being deprived of her liberty, which would have profound implications for A's future.

26. How capable each of the parents are of meeting the children's needs is the next relevant checklist heading in this case. Despite each constantly seeking to find evidence of the other parent not being capable of parenting to a good enough standard, the only evidence of lack of parenting capability relates to the parents' inability to protect the children from their adult conflict. F's inability to promote the children's relationship with M, especially for A, stems from this conflict and his extremely negative view of M. The issues about hygiene for B and C, their presentation at school and management of C's asthma and eczema are also all aspects that come back to the parents being more focused on their conflict with each other rather than meeting the needs of the children. As the Guardian succinctly put it in her final report: *"it is none of the other parent's business how they chose (sic) to parent in their own household and the children should be allowed to enjoy the different aspects of what each parent has to offer without negative interference. F's approach to parenting is to encourage a lifestyle much akin to his own upbringing; M's is from a very different culture and has different views and should be allowed to bring those things to how she parents her children in the same way F does"* (D210-D211). It is also telling that she noted *"neither parent seem to be particularly aware that they both seem to see the other as the problem at every turn and their communication is always about allegations and defence rather than problem solving"* (D205). This accords with my experience of these parents during these proceedings, both in terms of their written and oral evidence to me. That needs to stop to ensure that these children are protected from further significant harm and parented in a way that is good enough.

27. Finally I have to consider the range of powers available to the court under the Act. F submitted that there should be no order in respect of A, saying through Mr Brookes-Baker that she should be allowed to choose when she spends time with M. Sadly, the history of these proceedings and F's failure to promote the children's relationships with M gives me grave concern about that outcome for A. I am very concerned that F would simply fail to exercise his parental responsibility to encourage and promote A's relationship with M in light of his negative views about M. It would also potentially risk sending A the message that she doesn't have to have a relationship with her mother, and by extension risk undermining her relationship with her siblings who have not aligned themselves with F in the extreme way that A has at this point. Sibling relationships are amongst the most enduring family relationships and ordinarily will endure far beyond the lifetimes of the parents concerned so it is vital that these are not put at risk in a case where the children's relationships with M have been so disrupted at points. Making an order setting out the minimum expectations of the time that A spends with each parent also sends a powerful message that neither parent is the more powerful parent, and that A is equally the child of both her M and F. F will need to ensure that he complies with the order and his evidence to the court and that of the Guardian about what he said to her does raise a concern about his willingness and ability to do this (see for example D205). I have previously found that he has breached court orders without reasonable excuse and would remind him that it is not optional to comply with a court order. Failure to do so could result in further proceedings in future and may tip the balance in terms of whether it is more harmful to the children to change their living arrangements or not.

28. I am satisfied that it is necessary and in the welfare interests of the children to make an order under section 8 of the Act specifying arrangements for them as follows:

- a) All three children shall live with both M and F.
- b) In respect of B and C, during term time, they will spend 7 days with one parent and then 7 days with the other parent with a change over on a Friday. In respect of handovers for all three children I am adopting the recommendations of the Guardian.

The returning parent will take the children to school and drop them off and the receiving parent will collect them from school on that Friday. If the children are not at school for any reason on the Friday, then holiday handover arrangements will apply. A will spend term time with F apart from alternate weekends when B and C are with M when A will spend time with M and her siblings.

- c) Holiday time for the children shall be shared equally with each parent and each parent is permitted to take the children on holiday (including temporarily out of the jurisdiction) for up to 3 weeks during the summer holidays. Each parent is to notify the other parent of their holiday plans by no later than 6 weeks prior to the planned holiday. The parent handing over the children for the start of the holiday time with the other parent should take the children to the other parent and wait until they are received. Easter and Christmas holidays should be alternated so that the children spend Christmas with one parent and Easter with the other one year, and the other way round the following year. Half-term holidays should be alternated. Since the children have not all spent Christmas together with their mother for some time, ideally this would have started this year, but I am aware that it may take time for A to adjust to the arrangements and that F has yet to even start the required CAT. M submitted through Mr Jones that the children should spend this Christmas with F in any event. However, as was submitted by Mr Brookes-Baker, her suggestion of the children spending the whole of one Christmas holiday block with one parent and then the other way round next year would risk the children not seeing both parents for any of the Christmas period. I will therefore order that the children shall spend this Christmas with F and thus the first half of the Christmas holidays, but that they will spend the second half of the Christmas holidays with M and the arrangements will alternate in this way for subsequent years. The half of the Easter holiday containing the Easter public holidays 2025 will be spent with M since the children will have spent Christmas 2024 with F and again this will alternate in subsequent years. The first half term in 2025 will be spent with M, the second with F and the third with M, and this will then alternate between each parent for subsequent

half terms. The first half of the summer holidays in 2025 will be spent with M and the second with F, alternating in subsequent years.

- d) It is an expectation of the court that communications about the children between the parents will be conducted via a parenting app to ensure that they are business like and child focused.

29. I will accept undertakings from F as follows:

- a) F will not use E to provide any form of childcare for the children and this undertaking will apply for the next three years.
- b) F will engage with and complete CAT as recommended by Dr Bailham and must identify a CAT therapist within 2 weeks and confirm to the other parties that he has done so.

30. F and the Guardian also ask me to consider an order under section 91(14) of the Act and this was something that I would have considered of my own motion given the extraordinary length of these proceedings and the significant harm that the parental conflict has caused the children in this case. M has submitted through Mr Jones that she is concerned about such an order preventing necessary enforcement of the court order. That is a valid concern given F's history of non-compliance and my own concerns about F's willingness and ability to comply with court orders as previously noted. However, section 91(14) orders are not an absolute bar to further proceedings, they function as filter so that a court has to determine whether further proceedings should be permitted or not.

31. Considering the provisions of section 91A, I am satisfied that the making of an application for an order under the Act for either variation or enforcement of the child arrangements order would put the children at risk of harm based on the evidence of both Dr Bailham and the Guardian about the significant emotional and psychological harm that the parental conflict has caused them. The Guardian's evidence is that the duration of such an order should be for three years to protect the children until all of them are in secondary school and I accept that is an appropriate and proportionate period, particularly when I consider that these proceedings have taken over four years to conclude. I am also mindful of the

amount of time that each parent will need to spend engaging in CAT and then, assuming that CAT is successfully completed, moving on to joint CAT couples therapy as recommended by Dr Bailham (D138). F has also yet to even start his CAT which adds to the likely time before he may be able to evidence that he has made the necessary changes identified by Dr Bailham for both parents to *“gain acceptance and resolution over their relationship and allow them to work collaboratively to co-parent their children and keep them free from emotional harm, and parent in the best interests of the children”* (D138).

32. I have mentioned that the order should cover both applications to vary the arrangements for the children and enforcement. This is necessary in my view because of the fact that even an application to enforce has the potential to result in variation of the arrangements for the children in a case such as this, and thus the children are potentially parties even to enforcement applications through their Guardian. There have been multiple allegations of breach, the most recent not pursued by M at this final hearing, and it is thus necessary and proportionate to include enforcement applications with the category of applications that cannot be made as of right so as to protect the children from further proceedings unless there is compelling evidence of breach and a need to revisit arrangements for them as a result. This strikes the balance in terms of protecting the rights of the children to private and family life but also protecting the article 8 and 6 rights of the party who may apply for permission to enforce which is more likely to be M on the evidence before me in this case at this point.

33. I also have to consider whether service of any application for leave should be prohibited until the court has made an initial determination of the merits of such an application applying the considerations set out in part 6 of PD12Q. Para 3.6(c) reminds a court that “such an order delaying service would help to ensure that the very harm or other protective function that the order is intended to address, is not undermined”. Mr Brookes-Baker submitted that F should be given notice of any application for leave. In view of my findings about the extraordinarily corrosive and long-term conflict between these parents, I do not find that it would be in the welfare interests of the children for any respondent to an

application for leave to apply to be given notice until the court has determined it. To give such notice at the outset risks fueling the adult conflict that is the source of the significant harm that these children have suffered and are at risk of suffering and may detract focus from the therapy that each parent needs to undertake in my view given the evidence from the Guardian and my own experience of these parents' tendency to focus on disputing the minutiae. If an application for leave is determined, notice is then given to the other parties and this would include CAFCASS being invited to appoint a rule 16.4 Guardian for the children again if the application for leave to apply is granted, and this strikes the balance in terms of protecting the article 6 rights of the respondents to any such application.

34. Finally, I have to consider whether on any subsequent application for leave a determination on the merits of the application should be made without an oral hearing, subject to the provisions of Part 18 and part 6 of PD12Q. Again, considering the way in which both parties have at times conducted themselves during these proceedings, seeking court determination of issues that they cannot agree in a way that has not always complied with the expectations of the overriding objective as I have noted earlier, and the tendency of both parents to fail to comply with clear court directions intended to limit the scope of written evidence, I am satisfied that it is necessary and proportionate to direct that any application for leave to apply should be dealt with on the papers. Applying the provisions of PD12Q and the still relevant case law about section 91(14) orders, it is also necessary for me to give some indication of the sort of circumstances that may satisfy the court that there has been a material change of circumstances since the order was made or that the court should exercise its discretion to grant leave to apply. In the circumstances of this case, the sorts of circumstances that may justify leave could include the following:
- a) Clear evidence of relationships between the children and either parent breaking down such as any of the children not spending time with each parent.
 - b) Successful completion of the recommended therapy by the party applying for leave to apply (though they would also have to show that the children had completed the recommended therapy too).

- c) Clear evidence of consistent failure to comply with the court order other than occasional unforeseen problems arising from circumstances outside the control of the parent alleged to be in breach.
- d) Clear evidence of F using E (who I have found inappropriately exposed the children to her extremely negative views of M and thus caused them emotional harm) to provide childcare for any of the children.

35. Any application for permission to apply during the period of the section 91(14) order should in the first instance be reserved to me if available.

Conclusions

36. Mr Trueman in his closing submissions highlighted what I said in the fact-finding judgment about these parents needing to move away from their own conflict and to support the children going to school regularly and spending time with each of their parents. Over a year later, these parents still need to do this and have not yet shown either Dr Bailham, the Guardian or the court that they are consistently capable of doing so. Their children will only be children once and they desperately need their parents to stop harming them with their adult conflict. As C told the Guardian, she *“wants them to be nice to each other” (D201)* and *“she knows they are not” (D201)*. That is a damning indictment of the parents by one of their own children and again I would urge them to reflect on this and to stop what Mr Trueman properly described as their ‘war’ with each other. Failure to do so risks irreparable damage to all of the children, the repercussions of which will last long adulthood for them and would be likely to adversely affect their adult relationships in future.



2nd December 2024