

NEUTRAL CITATION NUMBER: [2024] EWFC 371 (B)

THE FAMILY COURT

SITTING AT OXFORD

HEARD ON 12TH & 13TH, AND 17TH DECEMBER 2024

BEFORE HER HONOUR JUDGE OWENS

M

And

F

And

A, through their Children's Guardian

The parties and representation:

The Applicant, M, represented by: Miss Lavis, Counsel

The First Respondent, F, represented by: Miss Henry, Counsel

**The Second Respondent, A, acting through their Children's Guardian, represented by:
Ms Davies, Counsel**

This judgment is being handed down in private on 17th December 2024. It consists of 20 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 child 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 child 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 in Children Act proceedings. The parties are the two parents, M and F, and their child, A, who was born in 2016. I gave judgment at the conclusion of a fact-finding hearing in January 2024.

Background

2. I adopt my judgment from the fact-finding [2024] EWFC 34(B) hearing for the purposes of this final hearing judgment. I will not repeat the background set out in that judgment, save to reiterate that these proceedings have suffered from lamentable delay and lack of judicial continuity prior to my involvement with the case.
3. Since the fact-finding hearing there have been three directions hearings. I granted an application by the Guardian for psychological assessment of the family by Dr Schoeman after the fact-finding hearing. On 19th July 2024 the case was timetabled to this final hearing, however by October both parents had made applications for further expert evidence including an autism assessment of A. F's application was also seeking to adjourn this final hearing. Both applications were refused at a hearing on 30th October 2024 as not necessary to justly determine the issues in the case, and the fact that they would create further unnecessary delay in resolving extraordinarily protracted proceedings which would not be in A's welfare interests.
4. I have had the Bundle which contains, in addition to other documentary evidence in sections D and E, the statements of M and F, two statements from the Local Authority (one dated 31st July 2024 and an updating one dated 28th November 2024), the expert report of and responses to questions by Dr Schoeman, and the Guardian's initial analysis from April of this year and her final analysis dated 21st November 2024. No party sought to

cross-examine the parents and, given the narrowing of the issues before me, it was agreed by all that I did not need to hear evidence from them. I therefore heard evidence from the Local Authority Social Work Team Manager and the Guardian and heard oral submissions from the advocates.

5. I would note at this point that the Local Authority (Oxfordshire County Council) Social Work Team Manager was required to attend court to give evidence. That is not unusual where a party needs to cross-examine them. What is unusual, in my experience and that of the other advocates, is that the Local Authority also instructed counsel to attend this final hearing. No application to be joined as a party had been made and counsel seems to have been instructed with a view to eliciting evidence in chief from the Team Manager and to cross-examine the Guardian. Counsel in question was also apparently instructed to provide 'updating information' for the Court. I queried their standing within the proceedings for counsel to do that on behalf of the Local Authority and asked whether the Local Authority was in fact seeking party status. I also queried why the Court could not simply call the Team Manager since each party wished to cross examine him, and why any updating evidence could not be given by the Team Manager by way of the Court asking him if he had any update since his last statement when confirming his written evidence. Counsel was clearly in a very difficult position as a result of the unusual actions of the Local Authority in this regard, and I was also anxious to avoid her being placed in a position of professional embarrassment. Having given her time to take instructions, Counsel confirmed that there was no application for party status by the Local Authority and that she simply sought permission to remain to take a note of the evidence, something that no party objected to, so this was permitted. I would point out, as I did during the hearing, that instructing counsel in this way was perhaps not the best use of public funds and also risked adding to the time required for the hearing so may not have been in compliance with the overriding objective either. I appreciate that it may have been done with the good intention of assisting the court and other parties, but it risked not being helpful and potentially confusing the forensic examination of the evidence, in my view.

Parties' positions

6. The positions of the parties altered considerably on the first morning of the final hearing.

The parents are to be commended for this because it demonstrated a potential ability to work together in the best interests of A, as the Guardian told me in her evidence, and significantly narrowed the issues to be determined by the Court. In addition to agreeing with the Guardian's recommendations for term time arrangements, they have agreed to continue to communicate via a parenting app as their primary method of communication, to continue the undertakings they each gave to the Court on 14th February 2024 to 4pm on 17th December 2026, and not to discuss the court proceedings with A, indicate any negative or diverging views on her final care arrangements or refer negatively to the parenting provided by the other parent in front of or within earshot of A. They have agreed that they will conduct the majority of handovers, but if they have to use a third party such as a grandparent, they will ensure the third parties behave in a child-focused manner and will not speak negatively about the other parent or family member in front of or within earshot of A. They agreed to communicate openly with each other about significant events in A's life, and a host of other recitals that essentially enshrine the position that A should have a consistent routine in both households now and in future, that they will take professional advice, will actively take proactive opportunities to express positive regard for the other parent and their value to A's life, and generally to start from a position that assumes the other parent is a positive, safe and competent parent unless specifically notified of risk by professionals. Significantly, given the level and duration of parental conflict in this case, they have agreed that if there is any future dispute about arrangements or parenting of A, they will first attempt to agree a way forward together, and if this is not possible, they will seek professional input for support in a collaborative manner and that they will act on any advice given. All of this is very welcome evidence of both finally approaching issues of co-parenting A in a collaborative and child-focused

manner, and a significant improvement from the situation that led to the fact-finding hearing and both parents are to be commended for having made such progress.

7. M's final position was that she agreed with the recommendations of the Guardian for there to be a shared lives with Child Arrangements Order and accepted the Guardian's recommendations for those arrangements during term time. She also accepted the Guardian's recommendations for there to be a section 91(14) order and for a Family Assistance Order requiring Oxfordshire County Council to make an officer available in accordance with the provisions of section 16 of the Children Act 1989. M did not accept the recommendations of the Guardian with regard to arrangements for A during school holidays, submitting through her counsel Ms Lavis that what was proposed would be too fast a progression for A. M's case is that A needs a period of stability before there is any increase and that A should have a return to formal education before significant progression of the time that A spends with F. Arrangements for 24th-26th December 2024 and 2025 have also been agreed with F and the Guardian but have not been agreed for the remainder of those holidays or for future years given the issues about holiday arrangements.
8. F's final position was that he also agreed with the recommendations of the Guardian in relation to a shared lives with order and for arrangements during term time. He also accepted the recommendation of the Guardian in relation to a section 91(14) order and would consent to a Family Assistance Order if the Court felt that order was necessary in this case. He did not agree with the Guardian's recommendations in relation to arrangements for A during school holidays, seeking a more rapid progression to A spending half of holidays with him. F did accept that any progression of holiday time for A with him was subject to A coping well and her behaviour being managed. As noted in respect of M above, F has agreed arrangements for 24th-26th December 2024 and 2025 but arrangements for the remainder of those holidays and subsequent years are not agreed.

9. The Guardian recommended a shared lives with order, and for arrangements for A during term time to be that she lives with F during alternate weekends from either 2pm or after school on Fridays until 3pm on Sundays commencing 13th December 2024. On the weekends that A is not with F, M should facilitate a video call on the alternate Friday to commence between 5-5.15pm unless agreed otherwise, and that the call should last for between 20-30 minutes unless A becomes dysregulated. Her recommendation for arrangements during school holidays was that half terms should continue as during term time, that the time A spends with F during Easter should be extended Friday to Tuesday, Christmas should be agreed between the parents but where it could not be agreed that care should be taken not to destabilise A before returning to school and that this was best achieved by allowing her some time with each parent over the key festive dates since this would give her a special event to focus on. Summer holidays for 2025 would see A spending time with F in alternate weeks. If F's usual weekend caring for A fell at the start of the holidays, he would care for A between Friday and Tuesday in weeks 2 and 4. From summer 2026 onwards, these would be increased to full weeks, in the same pattern. Handovers are to be handled in the same way as term-time unless agreed otherwise in writing. She also recommended a number of recitals to enable a structure to be in place to assist the parents and Local Authority moving forwards. The Guardian had also applied for there to be a section 91(14) order preventing any Children Act applications in respect of A for a period of two years and recommended that there should be a Family Assistance Order appointing Oxfordshire County Council for a period of 12 months. The Guardian has also expressed considerable concern about the actions of the Local Authority in this matter and, although the Local Authority propose working with the family under a Child in Need Plan, the Guardian remained of the view that a Family Assistance Order was necessary and proportionate to ensure that the case was not again closed prematurely and that the family receive support for the period that will support permanent change to avoid future conflict about A.

Relevant legal considerations

10. A final hearing such as this is concerned with A's welfare and that is my paramount consideration. Although both parents in this case have their own vulnerabilities, their welfare does not override that of A. In considering what is in A's welfare interests the Court must apply any relevant criteria from the welfare checklist contained in section 1(3) of the Children Act 1989.
11. The factual basis for considering what is in A's welfare interests was determined by the outcome of the fact-finding hearing. Section 1(2A) of the Children Act is also relevant given the outcome of the fact-finding hearing. This requires a Court to presume that the involvement of each parent in A's life will further her welfare, unless the contrary is shown, and the outcome of the fact-finding hearing did not show the contrary in this case.
12. As was accepted by Ms Henry for F in closing submissions, a Court must have good reasons, founded in the evidence before it, to depart from the recommendations of a Guardian.
13. In considering whether to make an order under section 91(14), the court must consider the provisions of section 91A and Practice Direction 12Q.
14. In relation to a Family Assistance Order, the provisions of s16 must be adhered to, and the consent to the making of an order by anyone named in the order (other than the child) is required, though this only applies to any parent, guardian or special guardian or person with whom the child is or will be living, or the child (section 16(2) and (3)). The consent of the Local Authority is not required if the child concerned lives or will live within their area (section 16(7)(b)). If an order is made at the same time as a Child Arrangements Order containing contact provisions, the order may direct the officer concerned to give advice and assistance as regards improving and maintaining contact between A and her parents (section 16(4A)), and this includes where an order "regulates arrangements relating to (a) with whom a child is to spend time or otherwise have contact, or (b) when a child is to spend time or otherwise have contact with any person" (subsection 4B). Unless a shorter

period is specified a Family Assistance Order shall last for a period of twelve months beginning with the day on which it is made (section 15(5)).

Analysis

15. A's wishes and feelings are not in dispute at this point in the proceedings. She has consistently indicated to professionals and to Dr Schoeman that she wants to spend time with F and has also said that she wants more time with F than she has had at times. Her wishes and feelings are to be considered in light of her age and understanding, though, and it is of note that she is only 8 years old, has been exposed to harmful conflict between her parents for a significant proportion of her young life (which will have coloured her understanding), and she has some significant vulnerabilities. Her wishes and feelings are not therefore determinative, though in fairness no party seeks to argue otherwise at this point. F submitted through his counsel Ms Henry, that A has reacted negatively to reductions in time with F in the past. However, as the professional and expert evidence shows in this case, the complexities arising from A's vulnerabilities, the impact of parental conflict and the harm that has caused A mean that it is not possible to attribute negative reactions from A to just one cause. What I can conclude from the evidence before me is that A has a very close and loving bond with both parents and wants to spend time with both of them.

16. A's physical, emotional and educational needs is the next relevant welfare checklist heading. I have already noted that A has some vulnerabilities which are beyond those which would be usual for a child of her age. She has been exposed to harmful parental conflict which will have had an impact on her emotionally, and risked her emotional need for a relationship with both parents not being met at points. She has significant issues around ensuring that her educational needs are met at present, having had to leave her previous school and currently is not in mainstream education, though she is in receipt of home schooling. All parties agree that it would be better for her educational needs if she were to be able to return to a school environment. The Guardian provided compelling

evidence about the importance of avoiding arrangements for A that made it more likely that she would be dysregulated at a point that she should be returning to school. She told me that A will always be more likely to struggle to deal with change, so it will be important that transitions between M and F's homes are managed carefully to minimise the potential for this to prompt dysregulated behaviour from A and, in turn, for that dysregulation to impact on her preparation for school. The Guardian's words were that A will need "a buffer" between the end of time with F and then going to school. Her evidence to me was clear that this is not a criticism of F, but there is considerable evidence of A struggling to cope with changes even where those changes are associated with positive things such as spending time with a parent. I note, as did the Guardian, that F's written evidence suggests that he does not experience the sort of dysregulation with A that M has described, but A has become dysregulated during video contact with F and I accept the Guardian's evidence that F is underplaying that dysregulation in his accounts and does seem to struggle to appreciate the impact on A of her dysregulation subsequently when she returns to the care of M. Ms Henry cross examined the Guardian about why she had not observed face to face contact between A and F. The Guardian gave compelling evidence about her professional judgment being that her presence in face-to-face contact would not be in A's welfare interests, and she could only observe video contact as a result. She also very fairly noted that video contact is inherently more difficult for a child like A and carries some difficulties for F in spotting triggers for A becoming dysregulated, although it is difficult in general to identify what triggers A's dysregulated behaviour. She also accepted it is more difficult for F to manage those behaviours through a video call compared to if A and F were in the same room. The Guardian has now given F some indicators to watch for. The Guardian was very clear that A needs time to settle and be in a routine with carefully managed transitions, including ensuring that the arrangements support regulation for A on return to M and in readiness for school, and I find that this is in A's welfare interests. Such are the challenges of A having a heightened level of need arising from her vulnerabilities, that she has an EHCP and all professionals and Dr Schoeman have concluded that the

family would benefit from additional professional support in ensuring that A's needs are met.

17. The likely effect on A of any change in circumstances is the next relevant welfare checklist heading in this case. As I have already noted, A's vulnerabilities mean that she struggles to deal with any change unless it is carefully managed and planned to mitigate the impact of that change on her. Both parents accept the evidence of Dr Schoeman, and the Guardian, that A needs consistency and stability. Dr Schoeman in particular noted that A responds well to structure. Dr Schoeman did not recommend that alternate week contact would be in A's welfare interests, concluding that A would *"need one main care base to attend school and regulate daily transfers and living processes. She needs a predictable and familiar routine. Maybe there can be long weekends or longer holidays spent in Father's care. This will need to be considered and tailored to A's need and not Father's"* (para 26 page D12). Dr Schoeman also noted that A *"responds very well to consistent and repetitive structure – she relies on it"* (para 23 D18). Her opinion about the impact on A of a 50/50 shared care arrangement was that *"it is recommended that her contact with her Father is given careful consideration as it is not considered that a 50/50 shared care arrangement would benefit her need for routinised schooling experience. However – consideration of extending her time with her Father is a consideration and I may mean that he has extended weekends- chunks of consistent time"* (para 39 D 20). Based on this evidence and her own observations and enquiries, the Guardian was also of the view that an equal division of time for A would be a change that was not in her welfare interests. The Guardian carefully analysed the impact of change on A, both in her Final Analysis and Recommendations at D277-278 and in her oral evidence to me. As she noted at para 28 D278 *"in relation to holidays, I have reviewed my recommendations to support F to continue to have extended periods of time with A but provide a more significant buffer for A through initial stepped progression to larger weekly blocks of time to coincide with the family having benefitted from the period of professional involvement under FAO"*. In his written evidence and as highlighted in closing by Ms Henry, F highlighted the fact that A

spending three nights with him during half term as being very positive and good evidence to show that A could cope well with longer periods of time with him, and was evidence that change could be managed positively in a way that mitigated any adverse impact on A. But, of course, this evidence is silent about the impact on A of the change in returning to live with M and A has not been in formal school provision since October this year, so the impact on any formal schooling, which both Dr Schoeman and the Guardian highlight as a concern, is not currently identifiable.

18. The next relevant welfare checklist heading is any harm which A has suffered or is at risk of suffering. My judgment in the fact-finding hearing was quite clear that the lengthy and extremely acrimonious parental conflict has caused harm to A and is at risk of causing her further harm unless her parents are able to stop that conflict. Dr Schoeman and the Guardian are also both very clear about the harm that A has suffered from the parental conflict, and the need for both parents to make changes. Dr Schoeman summarised her recommendations for the work that each parent needs to complete at D29 and again in response to further questions at D149 and D158. The Guardian, both in her final report and oral evidence to me, was very clear that the parents need to complete the recommended work and will need the professional support of the Local Authority as part of ensuring that they make the required changes to avoid A yet again being exposed to harmful parental conflict. It is very encouraging to read that the parents reached such a large amount of agreement at this final hearing, and that they are willing to work with the Local Authority. In F's case, that is despite his final written evidence and conversations with the Guardian for her final report setting out that he mainly blames the Court proceedings and actions of the Local Authority for the harm that A has suffered. I hope that his changed position at this final hearing (presumably as a result of reflecting on the evidence before me) indicates that he does now realise that he has some responsibility both for what has happened to A in the past and for avoiding future harm to her. I have also noted that, somewhat unusually in a case of this type, Dr Schoeman also commented about how much of the acrimony between the parents seems to be spent and how they

have responded positively to the outcome of the fact-finding hearing (D5). That is again greatly to the credit of the parents in this case and not something that is common where there have been years of extremely acrimonious conflict about arrangements for their child.

19. The capability of A's parents to meet her needs is the next relevant heading. Since the fact-finding, as Dr Schoeman noted at para 32 D5 and the Guardian in her oral evidence, the parents have made considerable progress in moving on from positions of constantly criticising the parenting of the other and making allegations that this parenting was causing A harm. As things stand at this final hearing, neither parent sought to argue that the other was not capable of meeting A's needs and the professional and expert evidence also supports this conclusion.
20. The range of powers available to the Court under the Act in the proceedings in question is the final relevant heading in this case. All agree that an order setting out where A should live and the time she should spend with each of her parents is necessary and proportionate given the long history of extreme parental acrimony. As I have noted earlier in this judgment, the parents now agree with the recommendations of the Guardian about term time arrangements. They have also agreed arrangements for Christmas this year and next. They also support the making of the section 91(14) order and Family Assistance Order sought by the Guardian.
21. In light of my conclusions in relation to the relevant welfare checklist headings above, I find that there is no good evidence to justify departing from the recommendations of the Guardian in relation to holiday arrangements for A. Dr Schoeman identified that, for A, the priority must be to about 'chunking' and 'linking' her time with each parent regardless of whether that is in term time or not, because A struggles with time orientation and with transitions (D155 & D156). She was also very clear at that point in her written evidence that the parents will *"continue to need to learn, to implement and support each other to neutralize A's environmental linking"* (D156). This, and the unequivocal evidence of the Guardian, demonstrates that there is an interplay between term time arrangements and

holiday arrangements for A which means that she does, as the Guardian told me, need a sufficient buffer between a transition and her schooling whether that is at the end of the weekend or at the end of a holiday period. And, of course, it perhaps goes without saying that whether A is spending alternating weekends with F but the school week with M, or is spending longer time with F during school holidays, both involve many transitions for a child such as A who clearly struggles with even carefully managed transitions and who struggles despite clearly loving spending time with each of her parents. Equally, M's case that A needs more time before there is increased time with F during school holidays is not one that is justified on the evidence before me. There is no evidence in support of her case to justify departing from the recommendations of the Guardian in relation to school holidays either. I do appreciate that the Guardian's recommendations do not currently allow A to immediately be able to go on longer holidays with F and her wider paternal family. I accept that part of her identity needs requires her to spend time with both her father and her paternal family, just as they require her to spend time with her mother and wider maternal family. However, the Guardian is not recommending that A should never spend weeks of time with F. At D278 she is clear that her recommendations are designed *"to support F to continue to have extended periods of time with A but provide a more significant buffer for A through initial stepped progression to larger weekly blocks of time"*

The argument by both parents in this case is really, therefore, about the pace of change to A spending longer time with F and I find that what is recommended by the Guardian accords with Dr Schoeman's opinions of what A needs and is in A's welfare interests. I will therefore order that holiday arrangements should be as recommended by the Guardian as follows:

- a) Summer holidays – where the time that A spends with F during term time flows into week 1 of the school summer holidays, A will spend Friday to Tuesday of that weekend with F, and then of weeks 3 and 5. Where the weekend that A spends with F during term time flows into week 2 of the summer holidays, she will spend Friday to Tuesday or weeks 2 and 4. From summer 2026 this will continue in the same pattern as to

which week she spends with F but will extend to a full week in the same pattern. The parties were unable to agree the start times for summer holidays, though the time for A to return to live with M is agreed as 3pm. F proposed a 9am start time, M and the Guardian 2pm. Noting that there is actually an absence of evidence about the potential welfare impact on A of any of the proposals, but F submits that his suggested time was used in summer and October this year, I will order that the difference between the proposed times is broadly split to allow for there to be a properly planned transition for A from the care of M to that of F. The start time for A spending time with F for the summer holidays will therefore be 11.30am.

- b) Easter holidays are not agreed between the parties, but I agree that what the Guardian has proposed at D280 is in A's welfare interests. In particular, it links to a major holiday that both M and F agree A really enjoys and F submitted can include "epic" Easter Egg hunts. This addresses the recommendation of the Guardian in her oral evidence to me about the need to link and focus special occasion contact for A to a special event or action as a way of mitigating the impact of further change on her. Therefore, the order will be that the usual term-time alternate weekend with F that falls during the Easter holidays will be extended to run Friday to Tuesday. This is the minimum arrangement for A spending time with F from 2025 onwards, if the summer holiday arrangements above have provided settled arrangements for A then the time A spends with F from Easter 2027 will extend to one week with F by way of an extension to the usual term-time alternate weekend time that A spends with F to run from Friday to Friday, subject to the same 'buffer' time that is specified in relation to Christmas holidays at para e) below.
- c) Half-term holidays shall also be as recommended by the Guardian and therefore shall continue as during term time to avoid a reduction in the important 'buffer' time that both Dr Schoeman and the Guardian's evidence demonstrates A needs.
- d) In terms of Christmas arrangements, for the key Christmas dates the parties have agreed 26th to 29th December 2024 and 24th December 2025 to 26th December 2025

but have not agreed the remainder of those holidays. Taking into account my findings earlier, for 2024 the time that A will spend with F will be by way of an extension to the time that she would normally spend with him under the term-time alternating weekend pattern, so from 9am on 26th December 2024 to 3pm on 29th December 2024. For 2025 this will be A spending time from 2pm on 24th December 2025 to 9am on 26th December 2025 with F. For the remainder of the Christmas holidays in 2025 the time with F will follow the usual term-time alternating weekend pattern. From 2026 onwards, since by that point A should have moved to spending a week at a time with F during the summer, she should be able to spend longer with him at Christmas providing she has a sufficient buffer between the end of the time that she spends with F and her return to what is hoped to be receiving education in a formal setting. To strike this balance, and noting that school holidays will also normally encompass the new year public holiday, I find that arrangements for Christmas 2026 onwards should allow A to both alternate spending Christmas with each parent (though she should also be able to see her other parent either on Christmas Eve or Boxing Day to exchange gifts and fulfil her need to celebrate Christmas with both of her parents), and be able to spend up to a week with F during the Christmas school holidays but that she must return to live with her mother at least 48 hours prior to the start of the school term to try to provide her with the sort of buffer she needs prior to the start of school. The normal alternating weekend term-time arrangements for A to spend time with F will thus be suspended for the Christmas period from 2026 onwards.

22. I agree that the shared lives with order as recommended by the Guardian and agreed by both M and F is also in A's welfare interests, as are the agreed arrangements for term time ie A living with M during the week and living with F during alternate weekends from 2pm or after school on Fridays until 3pm on Sundays, otherwise for A to live with M when not specified that she is with F under this order, and arrangements for indirect video contact that the parties have agreed for term time weekends when A is not living with F on a Friday

from between 5-5.15pm for between 20-30 minutes but to end at any point if A becomes dysregulated.

23. In terms of these arrangements for A, I have noted how frequently both Dr Schoeman and the Guardian concluded that both M and F, and A, will need professional help and support to enable them to make the changes that A needs and to protect her from future risk of harm arising from parental conflict. The Local Authority clearly also accepts that there is a need for some professional input beyond the end of these proceedings because the Team Manager has provided evidence that they propose working with the family under a Child In Need Plan. The Local Authority is very clear, though, that they do not view a Family Assistance Order as necessary or proportionate and, effectively, question what it would add to the Child In Need Planning.

24. I must note that the Team Manager was not the most compelling witness. He accepted deficiencies in the historic actions of the Local Authority in relation to this family, and was clear that, as far as he was concerned, he did appreciate the seriousness of this case and would ensure that the case would not be prematurely closed again. However, as submitted by Ms Davies, the Guardian has highlighted significant concerns about the actions of the Local Authority in this case. The Guardian is of the view that the evidence from the Local Authority still does not demonstrate that they have grasped the seriousness of the situation for this family. She has had significant difficulties contacting the allocated social worker. The Team Manager was not able to provide any evidence to counter this. The Guardian is the one who has coordinated the work with LINK, rather than the Local Authority, and this is a concerning lack of coordination of services in a case where one of the main concerns that one would expect to underpin the necessity of a Child In Need Plan is the need for multi-disciplinary and professional input for the family in light of A's complex needs. The Guardian also noted that the most recent Child and Family Assessment (CAFA) at E9-E20, completed on 25th November 2024, does not accurately reflect work done and focuses heavily on the need for the parents to engage with professionals. As I noted when seeking to clarify the Team Manager's evidence to me, that CAFA also seems

to still refer to concerns that were found not to exist in the fact-finding part of the proceedings, for example allegations of physical abuse of A. I heard nothing from the Team Manager to explain those deficiencies, and I was appalled to hear from him that neither he nor the social worker were aware of the fact-finding judgment or outcome in this case. The Guardian in fact told me that the solicitor for A and she herself had sent that judgment to the Local Authority at least three times. The CAFA also failed to acknowledge that M has been engaging in the therapy recommended for her. In a case of high conflict and with parents who focus on inaccurate details it is really not helpful to A to have these sorts of errors, but it is more concerning in terms of what it suggests about a lack of robustness on the part of the Local Authority plan. Put bluntly, if they are not aware of the factual context, they are risking drawing the wrong conclusions about what work is needed to protect A. The Team Manager conceded in cross examination by Ms Davies that a Child In Need Plan normally lasts for up to three months, and there is no guarantee that it would not be closed sooner if the Local Authority assessed that the work required under that Plan had been completed. The Guardian in this case recommends that A and her parents need a longer period of professional support to ensure that arrangements for her are settled and that her parents make the necessary changes to protect her from future harm. As noted by the Guardian in her evidence, and by Ms Davies in her submissions, this is a Local Authority who have also failed to provide required assistance before and the CAFA has failed to include relevant information and input from other professionals and the Plan proposed identifies actions which have already been addressed. As a result of this evidence, and having heard from the Team Manager myself and read the evidence in section E and the two statements produced by the Team Manager, I agree with the Guardian that this family needs robust support from the Local Authority for longer than a Child In Need Plan would usually provide. I also have concerns that the Local Authority needs to ensure that any social worker allocated to work with this family has the right level of experience and expertise in working with complex families and with multiple professional and agency input. A Family Assistance Order is not just to ensure that a family are

assisted with contact arrangements - it is also about the Local Authority advising, assisting and (where appropriate) befriending the family. Strikingly, those words of advising and assisting a child are identical to the words used in section 35 of the Children Act when a Supervision Order is made. And the evidence in this case overwhelmingly shows that this family need professional advice and support to tackle the issues that have led to the conflict which has been so harmful for A. In light of this, I have no hesitation in concluding that a Family Assistance Order is necessary and proportionate in this case, appointing the Local Authority to assign an officer under that order, and that the duration of the order should be for the maximum 12 months given the length of these proceedings and the duration of the conflict between the parents. M consents to the making of this order and, since I have found it necessary, F was also clear through Ms Henry that he consents too. A lives in the area of Oxfordshire County Council so the consent of the Local Authority is not required to make the order.

25. Finally, the question of the Guardian's application for a section 91(14) order needs to be considered. No party opposes the making of such an order, accepting that the evidence of Dr Schoeman and the Guardian is very clear about the potential for A to be harmed by future proceedings. I also agree that section 91A is clearly applicable in this case because of that evidence and the extraordinary length of time that there have been disputes about arrangements for A between M and F, and the very lengthy duration of these proceedings too. In accordance with PD12Q, I have considered the length of the order. The Guardian was clear in her final report and oral evidence to me that it should be for two years, and no party challenged that. I agree that a two year order is proportionate to the duration of these proceedings, the length of time the family will need to work with the Local Authority to make the required changes under the Family Assistance Order, and the need for there to be a period of stability and for those changes to be embedded as the Guardian's evidence made clear. I have also concluded that the order should cover any application under the Children Act 1989, including enforcement applications. Again, no party objects to this, but the evidence is again clear that there is a real risk to A of proceedings resuming

without justification in the next two years, I find. I have also considered whether there should be service on the other parties of any application for leave to apply during the currency of the section 91(14) order. No party sought to be served, and there are considerable practical funding implications for a CAFCASS Guardian in terms of their ability to instruct a solicitor for the child in those circumstances, I gather. I do not find it appropriate for any application to be served on all parties prior to consideration by the Court in these circumstances. Finally, I have considered whether any application for leave to apply should be dealt with by the court making an initial determination of the merits of the application without an oral hearing. Noting the provisions of part 6 of PD12Q, I have concluded that any application for leave should be considered on the papers initially. The applicant has the right under para 6.6 to seek an oral hearing within 7 days of that determination on the papers, so this would protect their article 6 rights. Any application for leave must comply with the provisions of Part 18 and rule 6.2 and, in a case of this type, as the Guardian told me in her oral evidence, should only be made if there is a legitimate safeguarding concern which is ideally identified or supported by a professional supporting the family, or if the applicant has completed the recommended work including with the Local Authority but arrangements for A to spend time with either parent have broken down for a prolonged period (as opposed to the sorts of ups and downs that are to be expected for a child such as A and to which the Guardian alluded in her evidence to me, especially if they are also handling other difficult transitions or life events).

Conclusions

26. This has been a very prolonged set of proceedings, with a level of parental acrimony that has caused A harm as I found at the end of the fact-finding part of the process. I started this judgment by noting the parties' positions, and commending the parents for reaching positions that not only narrowed the issues considerably but provide evidence of them finally starting to co-parent in a way that A needs them to. They will need considerable help and support to develop their co-parenting abilities and to learn to work together in a

way that protects A from future harm, but I have no concerns at this point about the parents' future engagement with professionals. This is not always the case, and again the parents are to be commended for this. I would also urge the Local Authority to provide this family with the support that they clearly need, and I hope that the Local Authority accepts that if they provide that support for the duration of the Family Assistance Order this is likely to reduce the need for Local Authority input to this family in future.

A handwritten signature in black ink, appearing to read 'HHJ Owens', written in a cursive style.

HHJ Owens

17th December 2024