

IN THE FAMILY COURT AT CARLISLE

Carlisle Combined Court
Earl Street
Carlisle

Before HIS HONOUR JUDGE BAKER

IN THE MATTER OF THE CHILD, MARY

ALICE (Applicant)

-v-

CUMBRIA COUNTY COUNCIL (First Respondent)

BETHANY (Second Respondent)

THE CHILDREN'S GUARDIAN (Third Respondent)

MISS J DOYLE appeared on behalf of the Applicant

MS K AKERMAN appeared on behalf of the First Respondent

The Second Respondent not attending

**MR P GILMORE appeared on behalf of the Third Respondent instructed by the
Solicitor for the Child via the Children's Guardian, Mr Moray**

FINAL HEARING (29th, 30th April and 2nd May 2024)

[DRAFT] JUDGMENT - 2nd MAY 2024

WARNING: This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. This includes publication on or relating this judgment to any form of social media content leading to the identification of the family members. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

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Anonymisation

1. To protect the anonymity of the parties and family members in this matter the names used in this judgment are not their real names.

Introduction

2. This is my judgment in the final hearing of this matter.
3. On 13th April 2023 I gave judgment at an interim hearing of this matter *Re M (A Child) (No. 1)* [2023] EWFC 312 (B). In that judgment I set out a detailed recitation of the history and circumstances of this matter. I do not intend to repeat those details here but refer to the content of that judgment by way of background. I think it is fair to observe that this judgment cannot be understood without first having read my earlier decision.
4. In that earlier judgment I sanctioned Mary being placed in foster care for the reasons set out. Mary had already been made the subject of a Care Order in favour of the local authority in October 2018. The matter was before the Court by reason of Alice's application for contact to a child in care issued on 9th February 2023. In fact, as that judgment relates, the local authority came to the view that the care plan for Mary should change to one whereby Mary was removed from Bethany's care.

Summary of Events since April 2023

5. Following my decision to sanction the placement of Mary in foster care a further case Management Hearing was held on 2nd May 2023. Bethany was represented at that hearing but did not attend. It is recorded on the order for that hearing:

“[Bethany] was not in attendance but was represented. The Court has considered carefully the witness statement prepared on behalf of [Bethany] and her explanation for non-attendance at the hearing today, that being the traumatic experience that she envisages. The Court has emphasised the importance and necessity of [Bethany's] engagement and attendance at all

future hearings. Her participation is vital for the future decision making for [Mary] and the Court has expressed the clear view that it needs [Bethany's] evidence and engagement to make fully informed decisions.

...

The Court has made it clear today that a full range of participation measures are available to [Bethany] to make attendance at future hearings possible for her. This includes, but is not limited to remote attendance or hybrid hearings. Any future proposed non-attendance at hearings on the grounds of trauma will have to be supported by medical evidence not less than 72 hours before the listed hearing.

6. A feature of the April hearing had been Bethany's activities on social media (as set out in the previous judgment). The 2nd May order records:

“[Alice] is concerned about the lack of action with regards to [Bethany's] ongoing social media campaign which places herself and other individuals named as being connected to her, at risk of harm within the local community.

...

The Court has noted that [Bethany] continues to express her views on social media and is therefore very much aware that she has a position and matters to contribute to these proceedings. The Court has already been disadvantaged by not having direct evidence from [Bethany] when having to make an important decision about the interim arrangements for [Mary] and the Court wants to ensure that future decisions are made with the positions and evidence of all parties being heard.”

7. At the hearing on 2nd May 2023 I gave permission for the instruction of an Independent Social Worker to assess both Alice and Bethany. I had raised questions at the April hearing about the local authorities' prior decision making and considered it necessary for an assessment to be undertaken by an independent expert.
8. I adjourned an application for a psychological assessment of Bethany until the next hearing.

9. A further Case Management hearing took place on 8th June 2023. It is recorded on that order:

“[Bethany] did not attend today’s hearing. Her counsel informed the Court that [Bethany] does not intend to engage further with the proceedings, with professionals or further assessments, or to attend contact with [Mary] other than in accordance with her proposals as set out in her statement dated 23rd May 2023.”

10. On 3rd July 2023 Bethany made an application for contact with Mary. I listed that application on 13th July 2023. By this time the solicitors who had until that time been representing Bethany had ceased acting for her. Prior to the Hearing on 13th July Bethany twice applied to attend that hearing by video link.

11. In response to that application I first made an administrative order setting out the following:

a. The Court has considered this request carefully. For the following reasons the court wishes [Bethany] to attend Court in person for the following reasons:

- i. [Bethany] has not attended any of the hearings listed in this matter to date (by any means). This means that the judge making important decisions about the child in this case has never met one of the significant parties in the case (i.e. the child’s mother). The issues in this matter are likely to require an evaluation by the court of the lay parties and the ability so to do is assisted by the presence of the relevant parties in person;
- ii. The court has listed the hearing in [another court in Cumbria] deliberately, noting where [Bethany] lives and choosing the closest court to her place of residence so as to assist with her attendance;
- iii. The Court notes that there have been allegations made of material from the family proceedings being posted on the internet in contravention of section 12 of the Administration of Justice Act 1960 and not in compliance with the currently extant Transparency Order made by this court. The court considers that the risk of such material (including

recordings of the hearing itself) being made available publicly is appreciably greater when hearings are conducted by video hearing;

- iv. The application is not accompanied by any medical evidence indicating that [Bethany] has any impairment preventing her attendance at court;
- v. [Bethany] can be assisted to best participate in the hearing by (a) providing for a separate waiting area and (b) providing screens in court so that [Bethany] does not have to see or be seen by any of the other parties; and
- vi. The hearing is listed to consider [Bethany]'s application for contact to a child in care. In the absence of cogent reasons, the court would wish the applicant to attend court to advance her own application in particular in light of some of the issues previously highlighted in this matter.

12. I ordered that the Court manager should arrange for Bethany:

- a. A waiting area that is separate from the other parties;
- b. Screens in court so that [Bethany]'s seat in Court cannot see or be seen by the other parties during the hearing; and
- c. In the event that [Bethany] has any other request for 'Special Measures' (i.e. arrangements that assist her whilst attending court) she is invited to speak to the court administration to see if any other practical and/or possible arrangements can be made.

13. Bethany made a further application to attend the forthcoming hearing remotely. I made a further administrative order in which I set out:

- a. Notwithstanding the special measures already put in place by the court to allow [Bethany] to attend court and taking note of the assertions [Bethany] makes in her statement, and in an attempt to assist her further, the court is directing that no other party will be present in the court (or court building) during this hearing (the court noting that all of the other parties in this matter have previously attended court during past attended hearings).

- b. The court understands that [Bethany] is reluctant to attend court. However, the court does not have any objective third party evidence before it that indicates an inability by [Bethany] to attend court or participate appropriately or fairly in the proceedings.
- c. The case concerns the welfare of [Bethany]'s child. Thus far [Bethany] has not attended any previous hearings (by any means) to assist the court in determining the difficult decisions that the court is making with respect to her child. The court has never met [Bethany]. It is exceptional for the court to be in a situation where it is tasked with making welfare decisions of the nature and significance relevant to these proceedings without having had the opportunity to meet and evaluate, in person, one of the parents involved.
- d. There are significant allegations of [Bethany] publishing material on social media that, irrespective of the law and rules governing family proceedings in general, breaches the anonymity of both the child concerned in this matter and the other parent. [Bethany]'s statement is silent on this issue despite it being identified in the court's previous order as being a factor in the court's decision to require [Bethany]'s attendance at court at this hearing.

14. Bethany did attend the hearing on 13th July 2023. I recorded the following matters on the order:

- a. This matter was listed at 2pm and commenced at 2.26pm. [Bethany] attended court in person at 3.26pm and left before the hearing ended. [Bethany] is aware that the Children's Guardian invited the Court to direct that she takes down all social media posts that relate to [Mary] and/or [Alice] and/or these proceedings. Whilst the Court was not sitting pursuant to s9 Senior Courts Act 1981 it did encourage [Bethany] to engage with this request, made on [Mary]'s behalf.
- b. The Court strongly encouraged [Bethany] to engage in contact with [Mary] and emphasised that in the Courts analysis no contact, which is the current position, is detrimental to [Mary]'s welfare. [Bethany] confirmed that she would not attend for the contact as she felt supervised contact in a centre would be more harmful to [Mary].

15. In July 2023 Bethany underwent an assessment for ADHD. The only documentation before the court in relation to this diagnosis is a report from “Psychiatry-UK” an online service that assessed Bethany on 20th June 2023. This was consequent upon a referral from Bethany’s GP.
16. The matter was next before the Court on 4th September 2023. At that hearing Bethany was represented by a new solicitor. Bethany herself did not attend the hearing. The court was informed that she had a medical appointment.
17. The order from that hearing records that:
 - a. [Bethany]’s solicitor informed the Court that active and urgent consideration is being given to a Part 25 application for a suitably qualified expert to assess [Bethany] having regard to any medical evidence of neurodiversity or other condition and their impact on [Bethany]’s functioning, and participation with professionals and this process. The Court indicated a willingness to list any such application before the next hearing and if made in a timely manner.
18. No such application was ever made during these proceedings.
19. The Independent Social Worker, Ms Becky Clark reported by way of an assessment dated 24th September 2023. I shall detail the content of that assessment below. However, at this stage it is appropriate to mention that Alice co-operated fully with the assessment. Unfortunately Bethany did not.
20. The next hearing took place on 13th October 2023. Bethany did not attend the hearing and she was represented by the same solicitor who attended on 4th September 2023.
21. At this hearing the local authority indicated that it planned to amend the care plan to provide for the rehabilitation of Mary to the full-time care of Alice during the October half term holiday. That rehabilitation took place successfully.
22. On the order from that hearing, the following is recorded:

- a. The local authority is mindful of [Bethany]’s diagnosis of ADHD. [Bethany] is welcome to bring an appropriately qualified support person to her meetings with the local authority.
 - b. The local authority invited the court to consider appointing an intermediary to assess [Bethany]’s communication needs within the context of the court proceedings. This has been raised previously [by the Court] with [Bethany] when she attended at Court [on 13th July 2023]. The Court reminded all that it strongly encouraged any participation directions that would support [Bethany] to attend Court.
23. In that order I directed an intermediary assessment of Bethany and gave directions for (a) a period of ‘testing’ of Mary’s return to the care of Alice and (b) statements from the parents. In respect of the latter, the order spelt out “The court observed that in order to have an effective IRH, the parties must raise all issues - both factual and welfare - they seek to be determined well in advance of the hearing. To that end, the court has provided a further opportunity for the parents to set out in a statement the specific allegations each makes against the other with regard to their care of [Mary]. The court made it clear that it will not entertain any additional allegations raised by either parent at a later stage and that any allegations made must be in writing so that all parties can consider them and have a chance to respond to them.”
24. On 27th November 2023 an application was made on behalf of Bethany. This application was made by Bethany’s newly instructed solicitors (her third during these proceedings). The application was to seek further time for the preparation and filing of Bethany’s statement pursuant to the previous direction. The application was granted. Following this a further extension was also granted.
25. On 29th November 2023 Bethany underwent an intermediary assessment by Communicourt via a remote meeting. That assessment made recommendations which could easily be accommodated by the court at any hearing and referred to matters that could certainly be accommodated by an advocate familiar with the Advocates Gateway (<https://www.theadvocatesgateway.org>) and in particular, Toolkit 13.

26. On 30th January 2024 an Application was made on Bethany’s behalf to, amongst other things, seek “permission to file 63 audio recordings of conversations with professionals that are referred to in the timeline which was attached to my statement of evidence dated 26 Jan 2024. I believe they need to be listened to in order that the Court can properly consider the evidence in the case” and to list the matter for consideration of the contact situation.

27. As a consequence of this application I directed on 30th January 2024 that:

- a. The contact application be adjourned until the Issues Resolution Hearing (listed for 14th March 2024);
- b. [Bethany] does not have permission to file and serve 63 audio recordings – the court having no clear understanding of how listening to the entirety of such evidence is relevant or proportionate to the issues in this matter. This direction will be reviewed at the IRH [Issues Resolution Hearing] subject to compliance with paragraph [below];
- c. [Bethany] has permission to file and serve (to be included as a separate section of the court bundle) transcripts of the recordings she wishes to rely, in chronological order and ‘certified’ as accurate transcripts by either the mother’s solicitor or an independent transcription company. Any transcription must indicate the length of each recording. Any such transcripts must also be filed and served by 4pm on 1st March 2024 [the date of the statement due from Bethany].

28. The Issues Resolution Hearing [IRH] took place on 14th March 2024 as directed.

29. By the time of the IRH the previous order for final statements pursuant to the previous orders had not been complied with by Bethany. Neither had any transcripts of recordings made by Bethany been filed.

30. Bethany did not attend the IRH on 14th March 2024 either in person or remotely.

31. The solicitors representing Bethany made a formal application to be removed from the court record citing “We are unable to continue to represent the Respondent Mother as we have been professionally embarrassed.” That application was granted.
32. Bethany had sent an email to her solicitors indicating that she would not be attending the IRH because of “ADHD overwhelm” and asking for the hearing to be adjourned so that she could “manage my overwhelm and gently start again next week.”
33. The order of 14th March 2024 set out:
 - a. [Bethany] within the email has made a request for participation directions. Those participation directions will be determined in the presence of [Bethany] at the adjourned IRH on 3 April 2024, in order to assist [Bethany] to participate in the final hearing on 29 April 2024.
 - b. In the event that [Bethany] seeks to instruct alternative legal representation then she is urged to do so as a matter of urgency given that the court has fixed the final hearing for 29 April 2024 – 3 May 2024, at which stage it intends to make final decisions and orders in respect of [Mary].
 - c. an extension of time to 4.00pm on 28 March 2024 for [Bethany] to file and serve a statement setting out her response to the local authority’s plan for [Mary] to reside with [Alice] pursuant to a supervision order, and its proposals for contact between [Bethany] and [Mary].
 - d. The proceedings are listed for an adjourned IRH on 3 April 2024 at 2pm before HHJ Baker, DFJ, sitting at Carlisle ELH 2 hours. This is an attended hearing and all parties, save for the children’s guardian, are directed to attend. In the event that either party does not attend then the court will proceed to make decisions and orders in their absence. In the event that [Bethany] does not attend to progress her case then the time estimate of the final hearing will be reduced at the IRH. The parties and their legal representative must attend by 1 hour before the time listed for pre-hearing discussions.
34. Bethany did not attend the adjourned IRH on 3rd April 2024. The order from that specifies, amongst other things:

- a. An email was sent [to the court] by [Bethany] dated 21 March 2024 at 9.10am with a request for more time to obtain legal representation and prepare a statement notwithstanding the court had already acceded to her request for a period of three weeks on 14 March 2024. The court replied to said correspondence to confirm it was vitally important that [Bethany] attend today's hearing so that the timetabling of the matter could be considered in light of the contents of her email and in the presence of the other parties.
- b. [Bethany] failed to attend court without reason being provided. The Court determined the matter shall remain listed for a final hearing commencing 29 April 2024. It is not clear what steps have been taken by [Bethany] to secure new legal representation to date and proper timescales have not been provided. There is no evidence at all before the court that indicates [Bethany] requires an intermediary to assist her in understanding correspondence. She is capable of understanding and articulating her views. The contents of [Bethany]'s email of 21 March 2024 is detailed, fluent and complex in terms of concepts engaged with. At present, the Court is not persuaded that adjourning the final hearing will produce a situation in which [Bethany] will be represented within any realistic timescale. If between now and 29 April [Bethany] engages solicitors and they wish to make a formal application on notice to the other parties for an adjournment with supporting evidence as to why the hearing cannot go ahead then the Court will consider it.
- c. This Order shall provide for provisions to be made by the court office to book an intermediary for the final hearing. If a formal application is made on behalf of [Bethany] for an adjournment the matter can be listed very quickly to consider that application.
- d. The Court is not persuaded today that adjourning is in the child's best interests. The Court has to consider both the impact upon both the child and the other parties in allowing any adjournment.
- e. In [Bethany]'s absence today participation directions could not be finalised. They will be determined in the presence of [Bethany] on day one of the final hearing on 29 April 2024.
- f. In the event that [Bethany] seeks to instruct alternative legal representation then she is urged to do so as a matter of urgency given that the court has fixed

the final hearing for 29 April 2024 – 3 May 2024, at which stage it intends to make final decisions and orders in respect of [Mary].

- g. An extension of time for Bethany to file her final statement was given until 24th April 2024.
- h. The proceedings remain listed for a final hearing on 29 April 2024 – 3 May 2024 (5 days) at 10am each day before HHJ Baker, DFJ, sitting at Carlisle in person. This is an attended hearing and all parties are directed to attend in person. In the event that any party does not attend then the court will proceed to make final decisions and final orders in their absence. The parties and their legal representative must attend by 1 hour before the time listed for pre-hearing discussions.

35. Bethany was personally served with a copy of the order of 3rd April 2024 on 10th April 2024.

The Final Hearing

36. Bethany has not communicated with the court since the hearing on 3rd April 2024.

37. Bethany did not attend the final hearing as listed. On the first day of the final hearing I asked the social worker and the Guardian to try to make contact with Bethany. I was subsequently told the following day that phone calls and emails have not been answered. Bethany has not attended the subsequent days.

38. I have proceeded with the final hearing in Bethany's absence for the following reasons:

- a. I am entirely satisfied that Bethany is aware of the final hearing and the need for her to attend;
- b. Bethany has a history of not attending hearings which pre-dates these proceedings (see my previous judgment);
- c. During these proceedings Bethany has only attended one hearing (as set out above);
- d. These proceedings have been extant for over 14 months;

- e. Bethany has not cooperated with the independent social work assessment and has not sought any other assessment despite (i) being represented for the majority of these proceedings and (ii) the court indicating a willingness to consider such an application;
- f. Bethany refused to meet with the Children’s Guardian (see para 28 of the Guardian’s final analysis);
- g. The evidence supplied, both in the form of the ADHD assessment and the intermediary assessment do not reveal any disability or impediment that prevents either her attendance or participation (with appropriate adaptations) at court;
- h. Bethany has provided no explanation for her failure to attend the final or previous hearings (save for one where the court was told she had a medical appointment) and no evidence of specific or general inability to attend or participate has been provided;
- i. I am satisfied that Bethany has *chosen* not to attend the final hearing;
- j. I have had regard to the ‘Overriding Objective’;
- k. Bethany has been represented by 3 separate firms of solicitors during these proceedings. In such circumstances the court would need detailed evidence of the likely timescales (and indeed prospects of success) of transferring Bethany’s legal aid certificate again in order to reach a decision as to the timescales and purpose of any adjournment. It is notable that legal aid in proceedings concerning applications for contact to a child in care and/or discharge of a care order do not attract ‘non-means non-merits’ legal aid and therefore there is no guarantee at all that Bethany would receive continued public funding for a further transfer of her certificate or for a final hearing of such applications. No evidence addressing the likelihood of an adjournment giving rise to future legal representation has been provided by Bethany; and
- l. Mary has been the subject of court proceedings and/or state intervention for the majority of her life. An adjournment is wholly against her welfare interests.

The Issues

39. In the order of 13th October 2023 I summarised the issues in this matter as follows:

- a. The court identifies the following issues are to be determined if not agreed and all parties must address each of the identified issues in their final evidence.
- b. The court does not require any party to submit a formal or further application in respect of any of the following matters:
 - i. Whether [Mary] should remain subject to a care order.
 - ii. If the court is minded to discharge the care order, what if any private law orders are required and in [Mary]'s welfare interests?
 - iii. Contact between [Mary] and [Bethany]: does the court need to exercise its powers under ss34(2), (3) or under s8 Children Act 1989?
 - iv. Whether the court should extend the s91(14) order to restrict the ability of one or both parents to pursue applications in respect of [Mary] for a further period of time.

The Parties Positions

40. Alice, the local authority and the Guardian are agreed as to the orders the court should make.

41. In general terms they agree:

- a. The care order should be discharged;
- b. That Mary should live with Alice;
- c. That restrictions should be placed on the exercise of some aspects of Bethany's Parental responsibility with respect to Mary;
- d. That Mary should have contact with Bethany but that such contact should be carefully supervised; and
- e. That a section 91(14) Order should be made for a period of 5 years.

42. Although Bethany has not filed a final statement she has made clear in previous statements that she does not think that Mary should live with Alice. She objects to her contact with Mary being supervised and wants Mary to return to live with her.

The Evidence

43. As the parties in attendance do not disagree with any of the evidence filed by professionals in this matter, no party sought to cross-examine any professional witness. In light of the fact that Bethany did not attend the final hearing my conclusions are of course based on the written evidence and submissions I have heard from the attending parties. I have also taken account of Bethany's written evidence.

The Independent Social Work Assessment

44. Ms Clark is an experienced independent social worker. She in fact attended the final hearing in case she was required to answer questions from any of the parties.

45. For the purposes of this judgment it is worthwhile relating her conclusions following her assessment of (i) the papers, (ii) Mary and (iii) Alice. Of course it is remembered that Bethany refused to co-operate with Ms Clarke despite the fact that she was independent of the local authority.

46. Ms Clarke summarises her assessment as follows:

“8. [Mary] has been involved with the local authority and the family courts since 2017, which is most of her life. She has known little other than a life of parental conflict, disruption, and interference from professionals at the highest level (care order). The most stable period for [Mary] appears to be when she was living with [Alice] between 2018 and 2022. Information from this period of time [F1-F95] shows that [Mary]'s needs were met consistently and to a good standard.

9. At the end of proceedings in 2018, Safeguards were put in place to manage the risks identified within the previous assessments, those being risks that [Bethany] posed and which needed to be addressed by way of [Mary] residing outside of her care and limitations being put in place in respect of her relationship with [Mary].

10. While [Mary] remained subject to a care order, she was relatively settled and accessing a relationship with both [Bethany] and [Alice], albeit her time with [Bethany] was limited. Importantly, [Mary] held a positive view of her parents at that time and she shared this consistently with many professionals. The information shows that whilst not ideal, the safeguards maintained stability for [Mary].

11. In 2022, the local authority removed the safeguards. This resulted in an immediate disruption to [Mary] and [Alice]'s relationship, which ultimately led to a total rejection of [Alice] by [Mary]. The issues raised regarding [Bethany] in previous assessments, namely the psychological and parenting assessments, quickly emerged as predicted.

12. When considering the history and the circumstances which led to the breakdown in [Mary] and [Alice]'s relationship in 2022, the evidence points to this being due to [Bethany]'s influence. I accept it is for the court to determine what and who was responsible for the breakdown of relationships.

13. [Bethany] has never concealed her feelings about [Alice] from professionals; they are documented extensively in various documents and have been shared on social media and directly with me during my limited communication with her.

14. Likely, [Bethany] has not been able to contain her feelings, and as she spent more (unsupervised) time with [Mary], her feelings have been projected onto her, who in turn has aligned herself with [Bethany]. [Mary]'s response, as evidenced, is indicative of her being alienated. [Mary]'s rejection of [Alice] will have been an attempt to protect herself from the difficulties of managing her relationship with [Bethany] and [Alice] simultaneously. It is evidence of emotional and possible psychological harm (splitting).

15. Given the history of this case, the local authority should have been alive to the risks in this case as they are set out clearly in the numerous assessments and court judgments. It appears that the local authority has played a significant role in enabling [Bethany]'s behaviours. Their decision-making has contributed heavily to the current situation and the harm and disruption [Mary] has suffered and continues to suffer.

16. When I became involved with [Mary], she was somewhat surprisingly emotionally/psychologically ready to be reintroduced to [Alice]. The court's decision for [Mary] to move to foster care likely gave her the emotional space and freedom to make sense of her experiences and contemplate relationships freely and without influence. The support [Mary] has been provided by her foster carer has been and continues to be excellent and underpins much of [Mary]'s progress.

17. My role was facilitation, offering reassurance and explicit permission for [Mary] to access a relationship with [Alice], which successfully moved matters forward quickly. It is within the context of how quickly relationships

were re-established that provides, in my view, firm evidence of [Bethany]'s influence over [Mary].

18. Reunification of [Mary]'s relationship with [Alice] has been straightforward. This is likely due to the strength of their relationship and a lack of interference from [Bethany]. [Mary] is a remarkable young girl who shows an exceptional level of resilience. She is, however, emotionally fragile. She has faced and continues to face significant instability and uncertainty. This has compromised her emotional and psychological welfare and will continue to do so, until matters are resolved to finality. Any further and ongoing intervention and litigation will likely compound the harm she has suffered and compromise her future development.

19. [Mary] continues showing some signs of being conflicted and she worries about what [Bethany] thinks. She has voiced these worries to me, her foster carer and other professionals. It is likely that with further support, [Mary] will continue to talk about her experiences, make sense of them and overcome them. [Mary]'s feelings are currently contained and managed by her limited relationship with [Bethany]. If [Mary] and [Bethany]'s relationship progresses, there will likely be some adverse impact. In my view, this impact will be significant.

20. For [Mary] to access a safe relationship with [Bethany], she must demonstrate her ability to genuinely support [Mary]'s relationship with [Alice] through acknowledgement, acceptance, and a commitment to change. This must start with meaningful engagement with the court, local authority, and [Mary]. It must be on terms set by professionals and not directed/controlled by herself. Perhaps one of the best indicators of change that [Bethany] can show is her ability to hand over control to others.

21. In looking at what the future holds for [Mary], it is my clear view that she desperately needs permanence, a finality to the court proceedings and some finality to the local authority involvement. The risk from future court proceedings will be significant and cause cumulative harm to [Mary]. The impact of harm should not be underestimated and will likely result in lifelong and irreparable, emotional and psychological harm.

22. In terms of the future involvement of the local authority. Ongoing involvement, particularly if [Mary] is going to be subject to a care order, will be intrusive, set her apart from her peers, and prevent her from achieving secure permanence. It will create an ongoing situation of uncertainty, likely increasing as she grows and tries to affect her autonomy and independence within the restrictions of being subject to a care order.

23. There will need to be careful consideration of whether a care order is necessary and proportionate. Consideration will need to be given to whether [Bethany] can meaningfully engage and have a role in [Mary]’s life. If it is found that [Bethany] cannot genuinely support [Mary] or work towards the same, then consideration will need to be given to limiting her role. Under this circumstance, a care order may not be necessary, and consideration should be given to other, less restrictive orders.

24. My assessment of [Alice], which will be discussed later, effectively concludes that she can affect parental responsibility in line with [Mary]’s interests. The only complicating factor is the management of [Bethany]’s involvement. Therefore, her involvement and what that looks like will determine the appropriate final order. The court must clearly determine and define [Bethany]’s future role to support [Mary]’s welfare and safety.”

47. With respect to the issue of Bethany’s influence on Mary her foster carers have provided a statement and logs that relate their recordings of Mary’s comments during her time in their care. That statement reports Mary was worried about being on ‘the internet’ (undoubtedly a reference to Bethany’s numerous posts about Mary, Alice and this matter in general) and reporting to the carers that Bethany had told her things to say to the social worker which were not true. Mary has also been worried that seeing Alice will upset Bethany.

48. Bethany denies adversely influencing Mary. Rather she alleges ‘abuse’ by Alice of Mary. However, that ‘abuse’ is, as the direction set out at paragraph 23 above observes has never crystallised into concrete or coherent particularised allegations.

49. In the judgment I gave in April 2023 at the hearing undertaken to determine Mary’s placement I identified a number of risks that *may* be present in the circumstances of this family. They can be summarised as follows:

- a. The risk that Mary had been adversely influenced by Bethany to the detriment of Alice;
- b. The risk that Mary’s sudden negativity about Alice was causatively linked to the sudden relaxation of supervision and increase in time spent by Mary with Bethany; and

- c. The risk that the assessments undertaken during the previous proceedings, the conclusions of which are set out in my earlier judgment, remain a fair reflection of the situation that exists now.
50. With respect to the first two risks identified at that early stage of the proceedings I am satisfied on the balance of probabilities that in fact the primary cause of the cessation in contact between Mary and Alice in 2022 was Bethany's influence on Mary.
51. With respect to the latter point, the Guardian observes in his final analysis as follows:
- “there is no evidence before the court that she has made any significant changes since the original set of care proceedings were completed. In particular I have considered the psychological report that was completed during those proceedings and the judgements by the court made against [Bethany] when the care order was made with a care plan that [Mary] should be placed in [Alice]'s care... I believe there is no substantial evidence before the court that [Bethany] has made any significant changes, indeed I feel there is a substantial case that with the alleged abduction by [Bethany] and the posting on the Internet of the video of [Mary] during the initial hearing would indicate that at the very least her ability to meet [Mary]'s emotional needs has not progressed since the original care proceedings. In light of this I do feel that [Bethany] continues to pose significant risks to [Mary]'s emotional well-being that means she cannot be placed back in her care.”
52. The reference to an ‘alleged’ abduction by Bethany relates to Bethany taking Mary away from the area after the decision to place her in foster care, necessitating the need for a recovery order, doubtless with a view to her avoiding Mary being placed in foster care.
53. I agree with the Guardian's analysis. As set out in my April 2023 judgment, the expert assessments undertaken in the previous sets of proceedings concluded that Bethany was unable to promote a relationship between Mary and Alice; that she would appear to cooperate but then undermine that relationship; and that her personality characteristics are histrionic, turbulent and domineering. In my assessment not only is there no evidence to suggest that such assessments are now incorrect but in fact the events that have taken place during these proceedings positively contribute to the conclusion that they remain highly relevant and accurate.

54. I have little doubt that Bethany's conduct during these proceedings has been, deliberately or as a function of her personality that she cannot regulate, designed to dominate and exert control. Her posting on social media, her failure to attend court, periods of refusal to attend contact unless it takes place precisely on her terms and her lack of co-operation with the ISW and the Guardian are all, in my opinion, manifestations of those personality characteristics and behaviours identified as long ago as 2017.
55. It is a matter of regret that in 2022 the local authority allowed itself to be manipulated by Bethany in circumstances where a clearer examination of the *evidence* and conclusions of the court in the previous proceeding would have highlighted the risks in the steps that were taken by the local authority and could have prevented Mary suffering the harm that she was clearly exposed to.
56. It is also a matter of considerable regret that Bethany has not been able to change her approach. All the evidence suggests that when Mary has contact with Bethany in a supervised setting the experience for Mary is positive. Likewise, I have no doubt at all that Mary and Bethany share a loving bond that is reciprocal and, absent the risks identified, could be very positive for Mary.
57. However, this is a set of circumstances where both assessments and history have shown that successful supervised contact is not the predictor of future appropriate behaviour and care than it may in other circumstances.
58. I am entirely satisfied that without demonstrable change *from Bethany* the risk that history will repeat itself (again) very shortly after any relaxation in the supervision of contact remains high.
59. The evidence shows that Alice is a very capable parent. She has needed to be. Through no fault of her own she lost contact with Mary for extended periods of time and has had to endure years of court proceedings. At times, despite numerous judgments and assessments that have endorsed her position as a capable, attuned and appropriate parent, it must have seemed as if they were not worth the paper they were

written on. Despite that, Alice has never objected to contact between Mary and Bethany. She has in the past been criticised for being too focused on the past. History has shown that she was right to highlight her concerns when the local authority was exercising its parental responsibility in a way that was in ignorance of the risks and was not in Mary's welfare interests.

60. In my opinion contact between Mary and Bethany will need to remain supervised until such time as either (i) Bethany can demonstrate change or (ii) Mary is of an age and understanding such that by reason of her characteristics the risks have reduced or can be ameliorated.

Discharge of Care Order

61. As identified by all the professionals in these proceedings there is nothing about either Alice or Mary that directly necessitates the need for a care order. Alice is a capable parent and all the evidence substantiates (going back years) that Alice can and will meet Mary's welfare needs. The continued imposition of a care order in such circumstances is an unwarranted intrusion and indeed restriction on Mary's life.
62. There is only one factor in this case that could possibly justify the continuation of the care order. Nevertheless, it is a factor of such weight that it has given me pause for thought. That factor is of course the need for Mary to continue to have a relationship with Bethany in circumstances where the risks presented by Bethany are ameliorated.
63. Largely those risks are ameliorated by supervision of that contact. It would, in my view, be wrong to continue a care order just to ensure that a particular resource from the local authority (i.e. contact supervisors) remains available. The local authority have at present given a somewhat open-ended commitment to continue to supervise contact, at least for the duration of a supervision order and possibly beyond. However, there will come a time when that resource may no longer be available.
64. However, even that possible future difficulty does not in my view necessitate the continuation of the care order and I discharge it.

65. For all the reasons set out by the local authority in their final evidence, endorsed by the Guardian I do consider it in Mary's welfare interests to make a Supervision Order. It is inevitable that Mary will continue to need advice, befriending and assisting (as set out in the Supervision Order Support plan) for the next 12 months.
66. I make a 'live with' order that Mary lives with Alice.
67. For the avoidance of doubt, I currently consider it in Mary's welfare interests that whilst contact remains supervised it is for Alice to have the final say when exercising parental responsibility with respect to the identity of supervisors.
68. Accordingly I make a Child Arrangements Order providing for reasonable contact between Alice and Mary on the condition that it is supervised by individuals approved by Alice. For the medium term this will be the local authority however there may come a time when some other resource or individual can take over. Bethany is not in my view in a position to be the best judge of who supervises contact.
69. Likewise, noting as I do the numerous arguments that have arisen with respect to contact venue – arguments that have in my assessment been far more about Bethany's need to control the situation than Mary's welfare interest, the order shall make it clear that Alice is the final arbiter of the venue for supervised contact in the event of a dispute.

Section 91(14)

70. HHJ Forrester had previously made a section 91(14) order for a period of three years.
71. I have reviewed Practice Direction 12Q which sets out the parameters of an order requiring a party to seek the leave of the court before issuing a further application.
72. This is a case where Mary has spent more of her young life being the subject of state intervention or court proceedings than not.

73. Further, those court proceedings have been characterised by one party choosing when and how they will participate (or not) in circumstances where the necessity for the proceedings and state intervention has been consequent primarily on the actions of one of the parents only and has been to the detriment of the other both directly and indirectly.
74. There is an overwhelming welfare imperative for Mary to have stability and ‘peace’ in her life given recent and long-term events and disturbances. I note and accept the evidence of the independent social worker, set out above.
75. Furthermore, this (and previous) judgments have identified clearly the nature and extent of change likely to be required to warrant re-evaluation of the child arrangements order being put in place today.
76. Accordingly, I am entirely satisfied that an order pursuant to section 91(14) is appropriate.
77. In submissions Mr Gilmore on behalf of the Guardian expanded upon the Guardian’s reasoning for suggesting 5 years. First, the imposition of a leave requirement should no longer be thought of as presumptively disproportionate when viewed in light of PD12Q and the amendments to the Children Act. Secondly, such a period would cover the transition from primary school to secondary school. Thirdly, the evidence of harm and disruption to Mary is such that a longer period of recovery and stability is warranted. Mr Gilmore also referred me to the observations of Lord Justice Jackson made on Bethany’s appeal application in previous proceedings, which are set out in my earlier judgment.
78. I agree with Mr Gilmore’s submissions as do the local authority and Alice.
79. I will order that there shall be a section 91(14) order requiring Bethany to obtain leave of the court with respect to any Children Act application with respect to Mary for a period of 5 years. Further I order that any application made should not be served upon the other parties until the court has made an initial determination of the merits of such an application.

Alice's Exercise of Parental Responsibility

80. In order to ensure that Alice can exercise appropriate Parental Responsibility with respect to Mary in circumstances where certain third parties may consider that consent of both parents is required, I will also make the following Specific Issue Orders:

81. Alice has permission to:

- a. Take [Mary] on holiday for a period of up to 28 days (whether out of the jurisdiction or not and for the avoidance of doubt that includes [a specified country]) without the consent of [Bethany], provided always that [Mary] is returned to the jurisdiction at the end of the holiday. This Order can be presented to the [authorities of another country] as may be required as evidence of the Court sanctioning this travel with [Mary], provided that she notifies [Bethany] 14 days in advance of her travel plans including the destination and the length of the proposed trip.
- b. Make decisions about [Mary]'s health including routine vaccinations and any medical treatment as may be required without the consent of [Bethany]. This does not remove the duty upon [Alice] to notify [Bethany] in the event of a medical emergency, serious illness or pre-planned or foreseeable significant medical treatment.
- c. Make decisions about [Mary]'s education, including which future High school she should attend, attendance on trips, excursions, school residential and any educational activities or learning opportunities without the consent of [Bethany]. For the avoidance of doubt this means that the consent of [Bethany] is not required to any of the above matters.

HHJ C Baker

2nd May 2024