



Neutral Citation Number: [2021] EWFC 18

Case No: FD18P0XXX

IN THE FAMILY COURT

Date: 26 February 2021

Before :

ELIZABETH ISAACS QC SITTING AS A DEPUTY HIGH COURT JUDGE

Between :

F

Applicant

- and -

M

1st Respondent

- and -

X, Y and Z

**2nd-4th
Respondents**

(by their guardian, Mr T)

(CHILDREN) (AGREED TRANSFER OF RESIDENCE)

Ms Anarkali Musgrave, counsel (via Direct Access) for the
Applicant

Ms Dorothea Gartland, counsel (via Direct Access) for the **1st
Respondent**

Mr Nick Jack, counsel for the **Children's Guardian**

Hearing dates: 15-18 February 2021

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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ELIZABETH ISAACS QC SITTING AS A DEPUTY HIGH COURT JUDGE

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. 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.

Elizabeth Isaacs QC :

INTRODUCTION

1. This is the saddest of cases illustrating the desperate and lasting damage that can be done to children when their parents separate.
2. The case involves three children all aged under 12 – X (now aged 12 years, Y (now aged 10 years 1 month) and Z (now aged 8 years 4 months). It is beyond doubt that all three children have been caused persistent and significant harm as a direct result of the actions of both parents, separately and jointly, arising from the discord between the parents. Whether the harm caused to the children is irreparable remains to be seen. It is also an extraordinary and highly unusual case in which a father who has been found to have significantly alienated his children from their mother over several years, suddenly and completely unexpectedly changed position part way through the final hearing and now agrees to the children transferring to live with their mother. Dr Mark Berelowitz, the expert child and adolescent psychiatrist jointly instructed in the case, described this as one of the most intriguing and difficult changes he has come across. I agree.
3. The children’s parents are F and M who were previously married but are now divorced. M has recently remarried to Mr M who has a 5 year old daughter, VM. F is now 45 and M is now 43. They share parental responsibility for the children who have lived solely with F since August 2018.

RELEVANT BACKGROUND HISTORY

4. The case has a very long and complex history, including various types of dispute between the parents that have now been ongoing for several years. For the purposes of the current issues that I have to decide, the salient and relevant background facts are these.
5. On 16 February 2009 X was born and in July 2009 the parents married. On 26 January 2011 Y was born, and on 3 October 2012 Z was born.
6. The children have been subject to court proceedings since March 2015. This is the fourth final hearing in the matter. The children are part of an extended and supportive maternal blended family which appears generally to have managed marital separation well and constructively, save in the case of these parents.

The first legal proceedings

7. The first set of legal proceedings were commenced by F on 28 March 2015. These led to a final order for a shared care arrangement being made on 30 March 2016.
8. In August 2015 the parents separated following allegations by M against F. These allegations led to him being excluded from the family home, although he was later acquitted in the criminal proceedings.

The second legal proceedings

9. The second set of legal proceedings were commenced by F on 6 September 2016. These led to the suspension of the shared care order and to supervised contact, and concluded at a final hearing on 16 March 2017 with a view to returning to the previous shared care order over a period of six months. These proceedings concluded at a final hearing on 22 May 2018 with shared care arrangements to remain in place. A s91(14) order was also made for two years.

The third legal proceedings

10. In August 2018 an incident occurred in Cornwall (“the Cornwall incident”) whereby M was under the influence of alcohol whilst caring for the children. This led to the involvement of police and the local authority, and the children were removed from M’s care. The shared care arrangement ceased and the children began living with F and stopped having contact with M. It is beyond doubt that the Cornwall incident has played or appears to have played such a significant part in these children’s understanding and narrative about their mother.
11. On 6 November 2018 F applied to vary the shared care order. Although his application was refused, that decision was subsequently overturned on appeal and F’s application was allowed by MacDonald J on 16 November 2018. At that hearing the children were joined as parties under r16.4 and the case was listed for further hearing.
12. On 13 December 2018 the case came before Newton J and various case management directions were made, including provision for applications to be made for expert evidence. On 25 January 2019 the court granted the guardian’s Part 25 application for there to be a psychological assessment of the family by Dr Martinez.
13. On 18 February 2019 the local authority confirmed that they had now completed parenting assessments and would be closing their file.
14. On 9 April 2019 final judgment was given in the matrimonial finance proceedings. Some of her conclusions and findings bear repetition here because they are of direct relevance to the matters and issues that have been raised in these proceedings relating to the children.
15. Part of the matrimonial finance judgment at paragraph 95 dealt with M’s allegations that –

F is intent on destroying her and has done hitherto all in his power to achieve that by way of his constant complaints to outside agencies.

16. In respect of that part of M’s case, the judge said –

Her case is he has lost her clients, reported two of her staff to the police, reported her and her family numerous times to the police, Children’s Services, the HMRC and more. Whether that is true or not in some ways doesn’t matter as I am left in now doubt from listening to her, not just what she said but the

manner in which she said it, and watching her physical reactions, that she absolutely believes it to be true.

17. At that hearing it was confirmed that M had been summonsed to appear at Town A Magistrates Court on 23 April 2019 to answer a charge contrary to s1(1) and (3) of the Computer Misuse Act 1990. MGM and her husband, Mr MGM, were also charged with the same offences.

18. At paragraphs 112 and 113 of the matrimonial finance judgment, the judge concluded that F –

...is a man determined to remain in litigation with the Wife at all costs and he tries to make her life as difficult as possible. I have formed the impression his actions are all consuming for him but also that he has lost sight of the bigger picture. Whatever the rights and wrongs of the computer charge, and I have no idea of what evidence there is to support it, and whilst not condoning criminal activity should it be proved, the net effect of being charged I am told will be her professional suspension and if convicted, it is in all likelihood going to result in a permanent bar on work in the insurance field...I am quite satisfied the various investigations by outside agencies have had a profound effect on the Wife and the impending prosecution is likely to have a significant impact on her earning capacity in the short and the long term...

19. At paragraph 177 the judge concluded that –

In my view this is actually a very straightforward case if one leaves aside the complexities the Husband has sought to bring into it, either deliberately, or in my view more likely, because he is unable to bring himself to accept the reality of the situation.

20. And at paragraph 179 the judge went on –

The difficulty for the Husband is he is simply unable to accept any responsibility for the situation the family found itself in. He is completely blinkered as to his role in this and seeks to put the blame entirely on the Wife. His case has always been that I am to look at what he has put into the family in isolation, but not whether that was enough in light of their outgoings, or indeed what he has taken out. His sense of injustice in what has happened is entirely dependent on that scenario in his own mind. The sad reality is these parties played an equal part in their financial downfall...

21. F has subsequently stated that he accepts the findings made in the matrimonial finance judgment.

22. In May 2019 M, MGM and Mr MGM were notified by the CPS that the criminal case against them was to be discontinued. The reason provided by the CPS was that there was not enough evidence to support a realistic prospect of conviction.
23. At an interim hearing on 14 June 2019 an order was made by consent that the children should live with F. Various recitals were made as to interim contact. The parties agreed that enquiries were to be made of family therapists to undertake the family therapy work as recommended by Dr Martinez. The case was timetabled through to a final hearing in December 2019.
24. On 10 July 2019 the court refused M's application to instruct the Family Separation Clinic but indicated that a therapist, B, should undertake the therapeutic work with the family that had been recommended by Dr Martinez.
25. At the next hearing on 23 Sept 2019 it was planned to review the progress of B's work with the family. F said the therapeutic work was progressing satisfactorily, but that further work was needed to enable further progress to be made. However, M said no real progress was being made with the therapeutic work, that contact was not progressing or being promoted, and she raised concerns about the way in which B was carrying out her work with the family. The court concluded that B lacked the necessary expertise to undertake the work recommended by Dr Martinez and agreed that a further professional would need to assess and work with the family. MGM was joined as a party.
26. On 26 September 2019 the court ordered that the Family Separation Clinic, on M's application, should be instructed to undertake an assessment and to carry out therapeutic work with the family. The Family Separation Clinic was directed to provide a report about progress by 5 December 2019. However, by 12 November 2019 it had become clear that the Family Separation Clinic was conflicted because it had previously undertaken some work on the case with MGM earlier in 2019. They therefore formally withdrew from the case.
27. On 19 November 2019 the court ordered the instruction of Dr Berelowitz in place of the Family Separation Clinic. He was to provide his report by 30 March 2020. It was also agreed that the guardian would convene a family meeting with members of both the maternal and paternal extended families about the issue of progressing contact between the children and members of the maternal family. That meeting took place on 16 January 2020 although M was not present; F and members of the extended maternal and paternal families were present. The meeting failed to achieve any agreement about how contact could progress between the children and the extended maternal family.
28. On 3 April 2020 the case was heard again. Dr Berelowitz's report was now available and highlighted his serious concerns for the children, including the concern that neither of the parents was able to promote a relationship between the children and the other parent. Dr Berelowitz is a consultant child and adolescent psychiatrist at the Royal Free Hospital. He had been instructed to undertake an holistic assessment as to why the children are refusing contact with M and MGM. He was invited to carry out assessment and therapy as he saw fit. Dr Berelowitz summarised the historical positions taken by both parents, as well as the opinions of various professionals who

have worked with the family. He carried out various interviews with family members including the parents, children and MGM.

29. At that stage Dr Berelowitz concluded that all of the children were clear that F's attitude was that he would support contact if they wanted it, but not that he was actively trying to promote it. Dr Berelowitz's view at that stage was that the children had not been given the impression by F that he thought that contact is firmly in their interests, and overall they had a shared narrative with F about how they came to be where they are.
30. Dr Berelowitz described this as a case involving a level of discord and suspicion that is striking even by the unusual standards of contested family law proceedings. He recommended a fact-finding hearing to consider the allegations that were made to him by both parents during his meetings with them. A fact-finding hearing was therefore listed for 24 August 2020.
31. In April 2020 the guardian began regular video calls with the parents with a view to progressing the issue of contact. At that stage M's last contact with the children had been in August 2018, almost two years previously. The guardian had consistently made it clear to the parents that the video calls were entirely voluntary, were not directed by the court and could be stopped at any time should either parent wish. The guardian noted that at times the calls were extremely difficult and progress had often been slow due to the very evident levels of hostility and suspicion that both parents continued to exhibit towards one another. Both parents told the guardian at various times that they felt bullied and intimidated by the other parent, and each regarded themselves as a victim of domestic abuse by the other. However, the guardian reported to the hearing on 4 August 2020 that notwithstanding these concerns, both parents had continued to engage with him over the past few months with a view to progressing the issue of contact.
32. Since April 2020 some small progress with contact was therefore made, although at times it appeared to the guardian as somewhat slow and frustrating. However, efforts to reintroduce M's contact appeared to have started very well and good progress was made initially with an exchange of letters and the more recent video messages.
33. On 26 June 2020 the guardian discussed with both parents starting direct contact at the Town B Centre. This is a contact services facilitator commissioned by CAFCASS in private law and r16.4 cases to facilitate contact where it is deemed necessary to reintroduce contact with the non-resident parent. In this case the guardian had commissioned six sessions in which the Town B Centre would try to work with the children and the parents to overcome any fears they may have about seeing M. The aim of this work was to reduce anxiety for the children.

The fact-finding hearing

34. I conducted a five day fact-finding hearing in person in August 2020 and heard evidence from both parents and various members of both extended families. At that hearing F represented himself, very ably, in person. I did not hear evidence from the guardian who, although being involved for two years at that stage, had managed to avoid being drawn into any factual dispute upon which he was required to give evidence.

35. By the time of the fact-finding hearing the children had had no contact with M or the maternal extended family since August 2018. Following the fact-finding hearing but before handing down judgment, I directed that contact should resume as quickly as possible between the children and M.
36. The scope of the fact-finding hearing was limited to determining allegations made by both parents since May 2018. In my judgment dated 30 September 2020 (“the fact-finding judgment”) I made the following findings about F –
- F deliberately lied about M and MGM having ‘knobbed’ a judge when talking to Q (a family friend) in order to harm M’s case.
 - F has deliberately lied about the children having exhibited sexualised behaviour, following unsupervised contact with M in 2016, in order to harm M’s case.
 - F has demonstrated and continues to demonstrate hostility towards M causing her frustration, upset and distress and placing her under an intolerable level of stress.
 - F has damaged the children’s relationship with M.
 - F failed to support the children in relationships with the wider maternal family thereby alienating them from their maternal family.
 - F has excluded M from exercising parental responsibility for the children since they have been in his care.
 - F deliberately sought to curtail M’s exercise of parental responsibility in respect of X’s proposed school move.
 - F deliberately sought to cut M out of the decision making in respect of Z’s proposed school change until as late as possible and deliberately sought to conceal the information from the parties or to the court when he had every opportunity to do so at the hearing on 3 April 2020.
37. For the avoidance of doubt, I did find that there had been clear signs of alienation in this case on the part of F; this included portraying M in an unduly negative light to the children and making unfounded allegations or insinuations. I concluded the fact-finding judgment by saying this about F –

331. Ultimately it is for parents to make decisions about their children acting in their best interests, at least for children of this age. It was for F, as a father, to have promoted, encouraged and ultimately facilitated the children’s contact with their mother.

332. I accept that F may feel that he has done his best, and I appreciate that the Cornwall incident must have had a devastating effect on not just the children, but also on F himself. However, it is now two years later and it has been F’s responsibility throughout that time to provide a secure, firm set

of boundaries around the children. Ultimately he has failed to do that. His failings have resulted, or at least significantly contributed, to the current parlous state of the children's relationship with M. In his written submissions F states that the foremost reason for contact not happening is the clearly voiced and consistent wishes of the children, and he says that had the children been willing to go to contact then there would be no issue. I do not accept that submission because an important decision about contact with their mother was not and is not a decision for the children; it was and is a decision for him. I also do not accept that he gave the children too much power simply in good faith; he is too intelligent a man for that who should and ought have realised the devastating effect on his children of the loss of their mother in their lives.

333. *As the parent with whom the children were living, it was his responsibility to take control and to fix the problem. Instead he has undoubtedly allowed his deep seated hostility towards M to affect his decision making – to the detriment of the children and to the detriment of M. In his recent statement he still can go no further than to say he now accepts that he needs to convey something much stronger to the children than a sense that he will support them in placement if they wish it.*

334. *Only time will tell if he is truly able to demonstrate a change in that attitude and behaviour.*

38. I also considered various allegations made by F against M, which although not reduced to schedule form, were clearly being advanced by him (and had been for some time). Those allegations were that one of the children had made an unspecified 'disclosure' to F in confidence, that M and MGM were capable of 'knobbling' a judge in City C which was very easy for them to do, and that, following unsupervised contact with M in 2016, the children had exhibited sexualised behaviour. I found that there was no cogent evidence to support any such findings, and dismissed all of F's allegations against M as unproven.

The final hearing

39. The final hearing has taken place remotely over four days on 15-18 February 2021, during which I have considered all the relevant documentary evidence and also heard oral evidence from Dr Berelowitz.
40. Both parents instructed counsel on a Direct Access basis for this hearing, and the guardian has also been represented by counsel and the children's solicitor. I am very grateful to all involved for their assistance in what has been a dynamic, fast-changing and exceptionally sensitive hearing, and in particular to the parents who have continued to conduct themselves in a dignified and respectful manner throughout.
41. By the time of the final hearing, Dr Berelowitz had provided two further expert reports dated January and February 2021. He was asked to meet the parents again and to consider the fact finding judgments. He was instructed to consider what the impact

has been upon each of the parents, in terms of their acceptance and response, to the fact finding judgment. He was also asked in light of the court's findings to comment as to F's capacity now to promote and encourage contacts between the children and M. Finally he was asked to comment upon whether any of his conclusions and recommendations as outlined in his initial report have changed at all.

42. The guardian had also provided his final report dated 10 February 2021 in which he recommended, with a heavy heart, that it was in the children's best interests to be split, with X remaining with F, and Y and Z transferring to live with M.

ISSUES IN DISPUTE AND POSITIONS OF THE PARTIES

43. The scope of the final hearing has been to determine the living and contact arrangements for the children, in light of the previous findings of the court and the relevant evidence. This court is not required to deal with every issue in the case. I have endeavoured to remain focused in this hearing on the relevant issues before the court and to deal with the case justly.
44. The position of the parties shifted in various ways during the hearing.

M's position

45. M is now in a loving, stable relationship with her second husband, Mr M, and is step-mother to his daughter, VM. She accepts completely that her actions in August 2018 and the Cornwall incident have had a catastrophic effect on the children, feels ashamed and wants the children to know they can trust her again. M's primary position (as set out in her application dated 1 April 2020) has consistently been to seek a transfer of residence of all three children to her care. The reasons for her position are set out in her statement dated 8 February 2021. In essence, her case is that the children have suffered and are suffering emotional harm as a result of F's ongoing inability to allow them to have a full relationship with her and the maternal family. M also seeks an order that, in the event that a transfer of residence is ordered, then X's school should be changed.
46. However, in the event that a shared care arrangement was determined to be in the children's best interests, then M proposed an alternating weekend arrangement which is similar to the shared care arrangement that is successfully in operation for VM. This arrangement effectively splits each week into 2:3:2.
47. M also proposed that the holidays and other key dates should be shared equally.

F's position

48. In his statement dated 8 February 2021, F's primary position was to oppose change of residence on the basis that it was the most draconian option available to the court. To use his words, he says he has –

...made significant changes, worked really hard and moved contact forward as much as I have been able to. The children are now in a significantly better position than they were a few months ago.

49. At the start of the hearing, F proposed that the children would benefit the most from having meaningful relationships with both parents under a shared care order, and said it is important for the children to know that their parents are both parenting them together. He thought a shared care arrangement would help the children to settle into the contact pattern with both parents more quickly. He also thought that this was already happening with Y and Z and that they are doing well with this pattern. He said he thought that if X could see Y and Z settled into this routine and coming and going happily between the parents, then that would assist her in moving to that pattern. He confirmed he agreed with M's proposals for the shared care arrangement. F said he was committed to doing his best to make a shared parenting arrangement work as it would cause the children least disruption and they stand to gain the most from it in the long term. He said he feels guilty that his own behaviour has harmed them.
50. F acknowledged that a transfer of residence of the children to M is something the court could order, although he did not agree with this plan. However, his case was that if such an order was made, then he would do his best to facilitate the order and not make things harder for the children.
51. However, at the start of Day 2 of the hearing, as Dr Berelowitz was part through his evidence, in an entirely unexpected turn of events, Ms Musgrave indicated that F's position had now changed. That position was subsequently set out in a position statement lodged on his behalf in which he concluded that the best interests of all three children would be met by all of them moving to live with M, and hoped this might break the impasse. He said he is worried about any split in the children's living arrangements causing a rupture in their relationships with each other, and accepts and understands that X needs to have a more meaningful relationship with M.

The guardian's position

52. The guardian has had extensive involvement in this case since being allocated as the rule 16.4 guardian on 29 November 2018 and I have been greatly assisted by a chronology of his involvement provided by his counsel. It is clear that he has devoted far beyond the normal time and effort to try to effect contact in this case. I am exceptionally grateful to him. Dr Berelowitz has specifically praised his involvement, and I endorse that. He has had extensive discussions with parents via telephone, video calls and emails on an almost weekly basis, and often on a daily basis including at weekends. He has visited and spoken to the children on many occasions during his involvement to ascertain their views. This included telephone calls with the children at F's home, and more recently at M's home. He most recently spoke to Y and Z at school on 20 January 2021. Additionally X was given an opportunity to write a letter to the judge at school; I have seen her letter and will refer to it in due course.
53. The guardian attended this hearing remotely throughout. He also prepared a final analysis dated the 10th of February and attended two meetings with Dr Berelowitz on 12 February and 17 February 2021 to which I will refer to in more detail below.
54. After considering F's changed position, the guardian confirmed that he supports all three children transferring to live with M. His revised position has also now been set out in a position statement lodged on his behalf dated 17 February 2021.

LEGAL FRAMEWORK

55. The relevant law is uncontentious and can be stated reasonably shortly.
56. The court must take into account all of the evidence and consider each piece of evidence in the context of all the other evidence and look at the overall canvas. Evidence should not be assessed in separate compartments. The judge must assess and evaluate the evidence in its totality.

57. Parental responsibility is defined by s3(1) CA 1989 as –

‘all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property.’

58. However, as Munby P (as he then was) said in **Re H-B (Contact) [2015] EWCA Civ 389** at paragraph 72 –

72. However, and I wish to emphasise this, parental responsibility is more, much more than a mere lawyer’s concept or a principle of law. It is a fundamentally important reflection of the realities of the human condition, of the very essence of the relationship of parent and child. Parental responsibility exists outsider and anterior to the law. Parental responsibility involves duties owed by the parent not just to the court. First and foremost, and even more importantly, parental responsibility involves duties owed by each parent to the child.

59. It is an integral aspect of parental responsibility that parents should work to put aside differences and ensure that their children have relationships with both parents. The issue is not ‘parental rights’, but ‘parental responsibility’. In **Re H-B (Contact) [2015] EWCA Civ 389** at paragraph 74 Munby P (as he then was) endorsed what was said by McFarlane LJ (as he then was) in **Re W (Direct Contact) [2012] EWCA Civ 999** –

74. In relation to contact, McFarlane LJ said this (paras 77-78):

“77 Where there are significant difficulties in the way of establishing safe and beneficial contact, the parents share the primary responsibility of addressing those difficulties so that, in time, and maybe with outside help, the child can benefit from being in a full relationship with each parent ... the only interests that either parent should have ... in mind [are] those of each of their two children.

[78] Parents, both those who have primary care and those who seek to spend time with their child, have a responsibility to do their best to meet their child’s needs in relation to the provision of contact, just as they do in every other regard. It is not, at face value, acceptable for a parent to shirk that responsibility

and simply to say ‘no’ to reasonable strategies designed to improve the situation in this regard.”

Nor, I should add, is it acceptable for a parent to shirk their responsibility by sheltering behind the assertion that the child will not do, or even that the child is adamantly opposed to doing, something – and this, I emphasise, is so whatever the age of the child.

75. As McFarlane LJ observed (para 75), the responsibility of being a parent can be tough, it may be ‘a very big ask’. But that is what parenting is all about. There are many things which they ought to do that children may not want to do or even refuse to do: going to the dentist, going to visit some ‘boring’ elderly relative, going to school, doing homework or sitting an examination, the list is endless. The parent’s job, exercising all their parental skills, techniques and stratagems – which may include use of both the carrot and the stick and, in the case of the older child, reason and argument –, is to get the child to do what it does not want to do. That the child’s refusal cannot as such be a justification for parental failure is clear: after all, children whose education or health is prejudiced by parental shortcomings may be taken away from their parents and put into public care.

60. In a case where the court is determining any question with respect to the upbringing of a child, the child’s welfare shall be the court’s paramount consideration. The court must have regard to the general principles that any delay in determining the question is likely to prejudice the welfare of the child, and that the court shall not make an order unless it considers that doing so would be better for the child than making no order at all.
61. In contested cases where the court is considering whether to make, vary or discharge a section 8 order, the court shall have regard in particular to the factors in the welfare checklist set out in s1(3) CA 1989, namely the ascertainable wishes and feelings of the child concerned (considered in the light of the child’s age and understanding); the child’s physical, emotional and educational needs; the likely effect on the child of any change in his or her circumstances; the child’s age, sex, background and any characteristics which the court considers relevant; any harm which the child has suffered or is at risk of suffering; how capable each of the parents are of meeting the child’s needs; and the range of powers available to the court under the CA 1989. However, this is not an exhaustive or hierarchical list of factors to be considered by the court; no one factor is more important than another, and the court may consider other factors as it sees relevant. In particular, whilst it is a fundamental principle, applicable to every case, that the child who is the subject of the proceedings shall be heard, the manner and the degree to which the child is heard will vary from cases to case – see **Re L (A Child) [2019] EWHC 867 (Fam)**.
62. The court should presume, in such circumstances, that, unless the contrary is shown, the involvement of each parent in the life of the child concerned will further the

child's welfare. In that context, 'involvement' means involvement of some kind, either direct or indirect, but not any particular division of a child's time.

63. At all times the court must have regard to the Article 6 and Article 8 rights of the child and of the parent, but must bear in mind that where there is a tension between the Article 8 rights of a child, on the one hand, and of the parent, on the other, the rights of the child prevail – see **Yousef v The Netherlands** [2003] 1 FLR 210.

Parental alienation

64. In **Re S (Parental Alienation: Cult)** [2020] EWCA Civ 568, Peter Jackson LJ observed, in relation to the law concerning parental alienation –

7. At the outset, it must be acknowledged that, whether a family is united or divided, it is not uncommon for there to be difficulties in a parent-child relationship that cannot fairly be laid at the door of the other parent. Children have their own feelings and needs and where their parents are polarised they are bound to feel the effects. Situations of this kind, where the concerned parent is being no more than properly supportive, must obviously be distinguished from those where an emotionally abusive process is taking place. For that reason, the value of early fact-finding has repeatedly been emphasised.

8. As to alienation, we do not intend to add to the issue about labels. We agree with Sir Andrew McFarlane (see [2018] Fam Law 988) that where behaviour is abusive, protective action must be considered whether or not the behaviour arises from a syndrome or diagnosed condition. It is nevertheless necessary to identify in broad terms what we are speaking about. For working purposes, the CAFCASS definition of alienation is sufficient:

“When a child's resistance/hostility towards one parent is not justified and is the result of psychological manipulation by the other parent.”

To that may be added that the manipulation of the child by the other parent need not be malicious or even deliberate. It is the process that matters, not the motive.

9. Where a child's relationship with one parent is not working for no apparent good reason, signs of alienation may be found on the part of the other parent. These may include portraying the other parent in an unduly negative light to the child, suggesting that the other parent does not love the child, providing unnecessary reassurance to the child about time with the other parent, contacting the child excessively when with the other parent, and making unfounded allegations or insinuations, particularly of sexual abuse.

10. Where a process of alienation is found to exist, there is a spectrum of severity and the remedy will depend upon an assessment of all aspects of the child's welfare, and not merely those that concern the relationship that may be under threat. The court's first inclination will be to reason with parents and see to persuade them to take the right course for their child's sake, and it will only make orders when it is better than not to do so. Once orders are required, the court's powers include those provided by sections 11A to 11O of the Children Act 1989, and extend to consideration of a more fundamental revision of the arrangements for the child. We agree that whilst a change in the child's main home is a highly significant alteration in that child's circumstances, such a change is not regarded as "a last resort" *Re L (A Child)* [2019] EWHC 867 (Fam) at [53] to [59] per Sir Andrew McFarlane P. The judge must consider all the circumstances and choose the best welfare solution.

11. Cases at the upper end of the spectrum of alienation place exceptional demands on the court. It will recognise that the more distant the relationship with the unfavoured parent becomes, the more limited its powers become. It must take a medium to long term view and not afford excessive weight to short-term problems: *Re O (Contact: Imposition of Conditions)* [1995] 2 FLR 124 per Sir Thomas Bingham MR at 129. It must, in short, take action when and where it can do so to the child's advantage. As McFarlane LJ said in *Re A (Intractable Contact Dispute: Human Rights Violations)* [2013] EWCA Civ 1104; [2014] 1 FLR 1185 at 53:

"53. The conduct of human relationships, particularly following the breakdown in the relationship between the parents of a child, are not readily conducive to organisation and dictat by court order; nor are they the responsibility of the courts or the judges. But, courts and judges do have a responsibility to utilise such substantive and procedural resources as are available to them to determine issues relating to children in a manner which affords paramount consideration to the welfare of those children and to do so in a manner, within the limits of the court's powers, which is likely to be effective as opposed to ineffective."

and

13. In summary, in a situation of parental alienation the obligation on the court is to respond with exceptional diligence and take whatever effective measures are available. The situation calls for judicial resolve because the line of least resistance is likely to be less stressful for the child and for the court in the short term. But it does not represent a solution to

the problem. Inaction will probably reinforce the position of the stronger party at the expense of the weaker party and the bar will be raised for the next attempt at intervention. Above all, the obligation on the court is to keep the child's medium to long term welfare at the forefront of its mind and wherever possible to uphold the child and parent's right to respect for family life before it is breached. In making its overall welfare decision the court must therefore be alert to early signs of alienation. What will amount to effective action will be a matter of judgement, but it is emphatically not necessary to wait for serious, worse still irreparable, harm to be done before appropriate action is taken. It is easier to conclude that decisive action was needed after it has become too late to take it.

65. In **Re H-B (Contact)** [2015] EWCA Civ 389 at paragraph 79 Munby P (as he then was) identified what was needed, to move an intractable case forward, of a mother who had been found to have alienated children from their father. In this case, where I have made findings that it is F who has alienated the children from M, those principles can be distilled and restated in relation to what is needed of F, what is his parental duty to his children, and what the children need of him, as follows –
1. Recognition, and at least internal acknowledgement, that he has failed his children.
 2. Recognition, and at least internal acknowledgment, that the children have already suffered significant harm and, unless something is done, are likely to continue to suffer significant harm for the remainder of their childhood and into adulthood.
 3. Recognition that everything must be done to restore his children's relationship with their mother.
 4. Recognition that, at least initially, the entire responsibility for trying to achieve that rests with him.

Transfer of residence

66. In **Re L (A Child)** [2019] EWHC 867 (Fam) the President sought to distance himself from any characterisation of the transfer of residence as being a '*judicial weapon of last resort*' (as previously employed by Thorpe LJ and Coleridge J in **Re A (Residence Order)** [2009] EWCA Civ 1141, saying –

54. *Whilst having the greatest respect for the two judges who gave judgments in **Re A**, I would wish to distance myself from the language used insofar as it refers to a decision to change the residence of a child as being 'a weapon' or 'a tool'. Whilst such language may be apt in discussion between one lawyer and another in the context of consideration of the forensic options available to a judge who is seeking to move a case on, such language, in my view, risks moving the focus of the decision-making away from the welfare of the child which must be the court's paramount consideration.*

and

59. *...there is, in my view, a danger in placing too much emphasis on the phrase ‘last resort’ used by Thorpe LJ and Coleridge J in **Re A**. It is well established that the court cannot put a gloss on to the paramountcy principle in CA 1989 s1. I do not read the judgments in **Re A** as purporting to do that. The test is, and must always be, based on a comprehensive analysis of the child’s welfare and a determination of where the welfare balance points in terms of outcome. It is important to note that the welfare provisions in CA 1989 s1 are precisely the same as those applying in public law children cases where a local authority may seek the court’s authorisation to remove a child from parental care either to place them with another relative or in alternative care arrangements. Where, in private law proceedings, the choice, as here, is between care by one parent and care by another parent against whom there are no significant findings, one might anticipate that the threshold triggering a change of residence would, if anything, be lower than that justifying the permanent removal of a child from a family into foster care. Use of phrases such as ‘last resort’ or ‘draconian’ cannot and should not indicate a different or enhanced welfare test. What is required is for the judge to consider all the circumstances in the case that are relevant to the issue of welfare, consider those elements in the s1(3) welfare checklist which apply on the facts of the case and then, taking all those matters into account, determine which of the various options best meets the child’s welfare needs.*

67. In **Re F (A Child) (International Relocation Case) [2015] EWCA Civ 882** Ryder LJ confirmed the way in which the welfare balancing exercise applies just as much to private law cases as it does to public law cases –

28. *...The re-crafting of section 8 orders from residence and contact into child arrangements orders has inter alia the benefit of emphasising, absent adverse circumstances and welfare conclusions, the equality of parental responsibility that each parent has. Parents are to be expected to exercise their autonomy and to respect the autonomy of their children by entering into arrangements that plan for their children’s long term welfare by providing for a meaningful relationship between each adult and each child. Where they cannot agree there is likely to be more than one proposal for the court to consider.*

29. *In **Re W (Care Plans) [2013] EWCA Civ 1227, [2014] 2 FLR 431** at [76 - 78] I held that in relation to public law children proceedings the welfare analysis of realistic options that is required would be facilitated by a balancing exercise*

first recommended by Thorpe LJ in the different context of a medical treatment case in Re A (Male Sterilisation) [2000] 1 FLR 549 at 560. That approach had been identified by my Lord, McFarlane LJ in Re G (Care Proceedings: Welfare Evaluation) [2013] EWCA Civ 965, [2014] 1 FLR 670 at [54]:

“What is required is a balancing exercise in which each option is evaluated to the degree of detail necessary to analyse and weigh its own internal positives and negatives and each option is then compared, side by side, against the competing option or options.”

It was subsequently approved by Sir James Munby P in this court in Re B-S (Children) [2013] EWCA Civ 1146, [2014] 1 FLR 1935 at [36] and at [46] where the approach was described by him in these terms:

"We emphasise the words 'global, holistic evaluation'. This point is crucial. The judicial task is to evaluate all the options, undertaking a global, holistic and ... multi-faceted evaluation of the child's welfare which takes into account all the negatives and the positives, all the pros and cons, of each option".

30. *That approach is no more than a reiteration of good practice. Where there is more than one proposal before the court, a welfare analysis of each proposal will be necessary. That is neither a new approach nor is it an option. A welfare analysis is a requirement in any decision about a child's upbringing. The sophistication of that analysis will depend on the facts of the case. Each realistic option for the welfare of a child should be validly considered on its own internal merits (i.e. an analysis of the welfare factors relating to each option should be undertaken). That prevents one option (often in a relocation case the proposals from the absent or 'left behind' parent) from being side-lined in a linear analysis. Not only is it necessary to consider both parents' proposals on their own merits and by reference to what the child has to say but it is also necessary to consider the options side by side in a comparative evaluation. A proposal that may have some but no particular merit on its own may still be better than the only other alternative which is worse.*

THE EVIDENCE

Events since the fact-finding hearing

68. At the fact-finding hearing F represented himself, prepared his case thoroughly and at all times presented respectfully and with dignity. However, in the fact-finding judgment I observed that, although he began his oral evidence as articulately and clearly as one might expect in light of his professional background and experience,

the strength of his hostility and negative feelings about M and the maternal family pervaded his evidence. I found that he appeared worryingly unable to accept responsibility for his own actions and his evidence was largely self-serving. Where his evidence in respect of factual matters differed from that of various other family members, I preferred their evidence to his.

69. At the hearing on 3 April 2020 F informed the court and the parties that the report of Dr Berelowitz had served as a ‘*wakeup call*’ for him, which had allowed him to see how he can meet the need for the children to have meaningful, direct contact with M and will use his best endeavours to achieve the same. In evidence at the fact-finding hearing he said that Dr Berelowitz had told him he needed to push more strongly and reassured him that he would not give the children long term mental health issues by doing so.
70. However, as F’s evidence progressed and was tested in cross-examination at the fact-finding hearing, his answers became more concerning because of their contradictory and dissembling nature.
71. Since the fact-finding hearing, F has been undertaking therapeutic work with Dr D who is a consultant family and systemic psychotherapist. Although he is not an instructed expert in the case, I granted permission for Dr D to be given the fact-finding judgment, which he has used as the basis for his work with F. Dr D has not seen any of the other documentation in the case, but provided a very helpful report dated 24 January 2021 summarising his therapeutic work with F. F appears to have engaged well with the therapeutic work, is described as presenting as well-motivated and wanting the best for his children. He also presents as highly motivated to continue the work.
72. After the fact-finding hearing the guardian visited the children regarding the involvement of the Town B Centre to support them to resume contact with M and the children attended a preparation session at the Town B Centre. On 12 September 2020 there was then a preparation session at the Town B Centre with M, followed by her supervised contact with all three children for the first time in two years.
73. The next day M emailed the guardian as follows –

Dear Mr T

I am emailing to update you on contact which went really well considering all of the barriers put up initially, including F being late. I cannot put it into words what it was like being with the children again other than I felt complete, something I have not felt in two years. I know the children felt like this, only because I know them and I recognise the look of relief they gave me especially Z. They could see I was not a monster but Mummy and it was as if they suddenly remembered this, it was like we had not been apart. Z in particular was so present, I wanted to hug and kiss all three but I was very aware that I did not want to overwhelm them.

74. A further contact session at the Town B Centre then took place on 19 September 2020. I have seen the notes prepared by the Town B Centre which describe a very positive session. Even though the children were reluctant to enter the room, once they were in there they were observed to enjoy spending time with M, demonstrated through their interactions and body language which were positive at all times. M was observed as being able to give each of the children equal attention, and was sensitive towards them, including when X left the room.
75. Further equally positive sessions between M and all three children then took place at the Town B Centre on 19 September, 26 September, 3 October, and 10 October.
76. On 17 October 2020 the first contact at M's home took place, facilitated by the guardian. This was also the first time the children had met Mr M and his daughter, VM. The guardian's observations were that it went largely well and that all the children appeared happy, relaxed and content, especially in the first hour. However, in the last hour, X appeared to want to isolate herself. The guardian continued to advise both parents about how they could work to improve the situation for the children in contact.

The independent social worker

77. On 1 October 2020 I granted permission for the joint instruction of an independent social worker, ISW, to complete an assessment of the family, to include the paternal grandparents, and maternal grandmother and maternal step-grandfather. The assessment was deliberately broad in scope in light of the nature of the family dynamics which had emerged during the fact-finding hearing. ISW was directed to meet the parents individually, as well as any member of the extended family she felt was appropriate; however, there were not to be any joint meetings involving the parents at that stage. She was directed to file an interim report by 15 November 2020, and a final report by 8 January 2021.
78. On 24 October 2020 ISW carried out her first assessment interview with M at M's home; her colleague, ASW, attended to assist in supervising the children. During that interview M discussed various personal issues with ISW, including her therapy, her marriage to F and the treatment she had been receiving. It became clear to M after the discussion was finished that X had overheard some, if not all, of the conversation. M's account is that she said as such to ISW who dismissed the possibility. M noticed an immediate and visible change in X's behaviour towards her; whereas previously she had run happily into the house, now she said she immediately wanted to go home and would not look at M.
79. On 29 October 2020 X told her counsellor, U, about what she had overheard. The note reads –

She said that she had done a bad thing, and explained that during the visit, she and her siblings were watching TV. She said that she had got bored and wandered to the kitchen (I think it was the kitchen, but certainly another room) and as she approached, she could hear her mother talking to the social worker. She said that the bad thing was that as she over-heard her mother say that her father had controlled her in relation to

seeing her mother, she had felt angry and decided to continue to listen. X was saying that she knew it was bad to listen outside doors to people talking but that she couldn't help herself...X said that what made her so angry, was that her mother continued to lie. X became animated in both manner and volume, saying it makes her feel so angry inside that her mother tells other people this lie. She said that her father has always tried to encourage her and her siblings to see or have contact with her mother – even more so recently. She explained that she is a girl who has made up her own mind about her mother. She said that she is old enough to know and notice things that make her have her own opinion...

80. Unfortunately it remains unclear how X was able to listen for some time to this conversation without having been discovered by ASW whose specific role it had been to supervise the children during ISW's assessment interview with M.
81. For whatever reason, and whatever X may or may not have overheard, it is beyond doubt that there then followed a sharp shift downwards in her attitude and wish to have contact with M. On 31 October X refused to attend a Halloween contact with M, Mr M, VM and the MGM; unless a support worker was present; however, ISW informed M that no support worker could be made available.
82. On 7 November 2020 all three children had contact for the day at M's home, supervised by ASW; no issues appeared to arise. On 14 November 2020 a further day's contact took place at M's home, supervised by a different colleague of ISW.
83. On 16 November 2020 ISW provided her interim report. The purpose of that report was specifically to provide an update about the progression of contact and to make recommendations as to how it might continue to develop, as well as progress until the final hearing. By that stage ISW had carried out three separate interviews with M, F and Mr M. However, she had not seen any of the extended family on either side. She had also been sent, as part of the bundle, a copy of the lengthy fact-finding judgment.
84. ISW appeared not to have completely understood the role of the fact-finding judgment in providing a binary, unequivocal factual base for her assessment because at paragraph 33, in describing her conversation with, M, she wrote –

33. M has however developed a narrative that in itself makes sense.

She feels that F is actively abusing and alienating them from her. She therefore in seeking to 'rescue' them from the abusive situation they are in, is doing the opposite of harming them and is in fact acting to ameliorate their situation and to protect them. If seen through this lens, her actions are rational and protection. This narrative is one that the whole maternal family holds to and thus we are once again faced with a schism, where the children are caught between their parents who hold to completely opposing views of what is in their best interests.

85. Regrettably this analysis demonstrates a lack of understanding by ISW about the status of facts determined by the court; given the facts that I had found, M – and the maternal family – were entitled to view F in that way. It was not a matter of M having developed a ‘narrative’; it was fact.
86. Unfortunately, ISW went on to consider M’s ability to promote contact with F from that flawed perspective, saying (emphasis provided) –

35. *...She is applying to have the children in her sole care, with some time spent with their father. She feels that this is the best thing for the children as in her view as they are being actively alienated from her so in effect she is seeking a transfer of residence.*

36. *My issue with this is that M is clear with me that she feels F is abusing the children, that he is ‘poisoning their minds’, ‘brainwashing them’ and her husband is if anything even more vehement in his views of the harm being occasioned to the children whilst in their father’s care. He used very strong terms in his discussion with me and was condemning of both him and his parenting. Both M and her husband feel him to be mendacious and manipulative, and M has the analysis that what X is ‘going through’ now is what she herself was put through, that is a form of brainwashing. She said to me when discussing X’s not wishing to see her at the moment and her protectiveness of her father “I know what it’s like to be everything to him, to be that important. That’s where X is now”. [emphasis provided]*

37. *My difficulty is that if she and the maternal family do indeed feel this strongly about F as a person and his parenting...then what incentive is there for them to encourage the relationship with F? How can you promote someone you genuinely believe to be harming your children?*

87. This analysis is particularly concerning, because it demonstrates no understanding of the fact that M and the maternal family were perfectly entitled, indeed obliged, to maintain such a view of F because it was the view confirmed in the factual findings of the court.
88. Unfortunately, ISW also then went on to carry out an assessment interview with F, without really analysing the court’s findings with him in any meaningful depth. For example, she simply said this –

50. *F told me he felt that M was still - despite therapy and several assessments detailing the harm the children had come to in her care tending to minimise her part in both the breakdown of the marriage and the trauma the children had been through and that he really wasn’t and isn’t the abusive manipulative character portrayed by the maternal family. He*

said he felt that that he had just fallen out of favour with them and they had all then just closed ranks against him.

and

57. *I gave him some coaching- style advice about how to speak to them at handovers, how to be brisk and business like and upbeat, how not to drag out goodbyes etc and I advised that he needed to have 'a busy day' planned so that the children don't think he's sitting at home missing them, as there is some evidence that Z holds to this view currently.*

58. *On an intellectual level F comprehended this, on an emotional one he struggled and may well continue to struggle, he has a very real fear, quite palpable to this assessor, of the children coming to further harm in M's care.*

89. In her summary ISW appears specifically to have ignored the fact that the court made findings of alienation on the part of F. On the contrary, she said –

69. *These parents both love their children, the children love both their parents but they are also acutely aware of the levels of distrust and disharmony between them. There is although no evidence of overt alienation that I have as assessor have seen, there is evidence that the children feel torn between their parents. And that F struggles at times to feel confident that the children are safe. As an example, Z's body language at a recent handover changes from the lively child leaving Mum to putting his head down when walking towards dad, as if to present as sad and as not having had a good time.*

and

77. *I fear that as much as they might wish to be open to working on issues, both parents are still holding onto a very negative view of the character and motivations of the other and this is equally risky to the development and maintenance of a healthy co-parenting alliance. They will need continued assistance with this due to the longevity of the conflict.*

90. ISW was specifically asked to provide an opinion about the level of insight held by both parents into what had taken place to date, and its effect on the children in terms of the turbulence and the many changes that they have been subjected to as a result of the separation and the proceedings. Her answer to this question in respect of F was singularly unhelpful, and far from providing the forensic assistance to the court that had had been envisaged –

60. *F presents as very clear sighted about the history for the children, he spoke openly and with much emotion about the harm he feels they have been subjected to both by turbulence in the couple relationship for which he bears some responsibility (he told me he attempted to protect them but it wasn't always*

possible to 'scoop them up and take them to the beach') and by the actions and inactions of M. I would concur with both Dr Berelowitz and Dr Martinez when they speak about his attunement to the children and this was very obvious when we discussed the timeline for them in terms of care arrangements and changes to those arrangements. This clear sightedness and empathy can and does spill over into overprotectiveness at times but this is something that he acknowledges and about which he has taken specific advice.

91. She concluded her interim report dated 16 November 2020, notwithstanding these deficiencies and notwithstanding the fact that she had not yet seen any member of the extended family as instructed by the court, by recommending the children should remain living with F –

88. I am currently of the view that the children need to retain their home base with the father in the light of the long and troubled history and the many disruptions they have faced. It would in my professional opinion be contrary to their best interests to have to be uprooted from this secure base. The task in my view is to mend the damaged attachment with the maternal family and that is I feel possible without causing them yet again to move their main home base.

92. At the next hearing on 18 November 2020 I was informed of the difficulties arising from X having overheard some, if not all, of the discussion between M and ISW. I directed that ISW was to provide the court with a reassurance, via an email to the children's solicitor, that such an incident would not happen again. I also directed that the children's solicitor was to communicate to ISW the court's concern and disappointment about the situation, and asking for her proposals about how she sought to rectify the matter with X as soon as possible.

93. Shortly afterwards, the following reply was received from ISW –

X OVERHEARING INTERVIEW

I would like to state that it was not in fact my plan to see M with the children in the house and suggested to her in a phone call on 28th October that I would bring ASW so that she could take the children out while we spoke.

She told me very clearly not to worry about that, that the house was 'huge' and there was no possibility of our being overheard. I still took ASW so that she could be an additional precaution and also to meet the children.

ASW joined the children variously in the sitting room and upstairs, staying with them the whole time I was speaking to M in the kitchen. ASW told me X went off to the loo and it was

clearly at this point that by her own admission...she deliberately listened at the door.

With the greatest respect we were not supervising to the extent that ASW was required to follow a child of this age to the toilet. I would also add that this was our first visit to the home, we had no idea of the layout of the house or where the loo was in relation to the kitchen etc, M however was aware and it might be expected that she would be mindful of this when choosing to permit the children to remain in the house.

Please also see the contact notes from that day where the FSW refers to X's mood, jumpy and anxious. 'Tightly wound' was the phrase used which in a subsequent email was described as accurate by M.

This will not happen again as I am not planning further face to face interviews with the parents.

I am very concerned that I am expected to 'rectify the matter' and yet not advised what I am being asked to do.

I am frankly am unsure what is expected of me. I cannot return to a time when X didn't hear her mother describing her father as 'gaslighting' her.

What specifically am I explaining to her?

I wonder if you as Children's solicitor can assist me here as I assume you or counsel will be able to elucidate on this point having been at the hearing?

94. On 8 December 2020 ISW sent an email to the children's solicitor which demonstrated a further lack of understanding about the function of the fact-finding exercise and the definitive, unequivocal role of the judge (emphasis provided) –

Hi

*I have been thinking since the recent correspondence in this matter and am worried in particular about the disparity between my analysis of the children's behaviour, my considering it as likely to be a demonstration of loyalty conflict (most extreme in X and exacerbated by her more vivid memories of maternal neglect) and **this conflicting with the judge's 'finding' of alienation.***

First of all, I would appreciate you passing on to the judge that I mean no disrespect to the court and the judge herself by my not having – following my assessment – completely concurred with this view.

I realise I think why we are some way apart on this, it's in fact a question of definition.

I think we hold to completely different notions of what alienation is and I think this is possibly behind much of the perennial academic argument of which I am sure you are aware.

There is not as yet an accepted definition of alienation.

I suppose given my decade of experience specialising in this area I have developed my own definition...

95. At the next hearing on 9 December 2020 the children’s solicitor confirmed that having assessed and evaluated X, he continued to find that she did not have capacity to conduct these proceedings. I considered ISW’s interim report most carefully, and the events arising as a result (at least in part) of X having overheard ISW’s assessment interview with M. I also considered ISW’s responses to the children’s solicitor and the contents of her email set out above. In all the circumstances, I considered she would no longer provide a useful service to the court, directed that she should forthwith cease contact with the children and the parents, and released her from the obligation to file any further report.

The development of the contact with M

96. At the hearing on 18 November 2020, in view of the progress that had already been made with resuming contact, I ordered that contact should now become unsupervised, and should progress to overnight contact.
97. The first overnight contact took place for Y and Z on Saturday 28 November 2020; however, X refused to attend. M described X as being a totally different girl to the one she had been making progress with before the interview with ISW; she described it as a ‘seismic shift’. M’s notes describe a mostly successful visit, with both children getting on well with her and Mr M and VM.
98. Z and Y then continued to spend time with M including overnight stays as ordered by the court over Christmas and new year and recently an extended stay for five nights. The guardian’s opinion is that, having spoken to the children and the parents, Z’s and Y’s contact has progressed well and handovers, in recent weeks, can now be described as smooth in that they are taking less time with less resistance from Z. However this is not the case for X who has only spent a total of three nights at M’s home for one night at a time.

The Town B Centre incident on 19 December 2020

99. On Saturday 19 December 2020 the first two-night overnight stay was planned to take place for all three children. I have read a detailed email sent by F to Dr Berelowitz about what happened on that day (“the Town B Centre incident”), and I have also read a shorter account in his recent statement. While I make no findings about what actually happened or did not happen on this occasion, the importance of this issue for present purposes is the fact that an incident of some sort took place which had a distressing effect, whether intentional or not, on all the family.
100. F’s account is that he arrived at the contact centre with all three children having had difficulty getting them into the car before leaving home. He said that when he arrived the children were resistant so he thought it best to deal with them individually. He got Y out of the car and into the centre but X and Z then took the opportunity to lock themselves in; when he returned to the car to try and get them out they used there is an override button inside the car to keep the doors locked.

101. In a subsequent letter to Dr Berelowitz F made a very serious allegation against Mr E, the Town B Centre manager –

‘Mr E became very aggressive with me. He stated that he had taken ‘legal advice’ and that he could ‘use all means necessary including physical force’ ‘to make sure the order happened.’ I said we all wanted the order to happen and I would get the children out of the car. Within 15 minutes of us being there he threatened to phone the police as he said I was breaching a court order and his ‘legal adviser’ had told him to do this. He then changed this to say he would phone the police as I had two children in a locked car. These threats to call the police were made in front of the children (including Y who had by this point returned). Given the history of police involvement with the children I found this disappointing and incredibly stressful for all and made the handover far more difficult than it could have been. He made 7 such threats to have me arrested, all bar one of these was in front of our children.’

102. F went on to describe in graphic and harrowing terms his allegations about the way in which Mr E continued to speak and act, including resulting in injury to Z by trying to get him out of the back of the car causing the skin on the back of Z’s leg to break and rip off. He alleged that Mr E seemed to pay no regard to this and was adamant that physical force should be used to remove Z from the car. F also accused Mr E of refusing to bring a first aid kit to the car.
103. F said in his letter to Dr Berelowitz that following the incident he telephoned Dr D because he did not know what else to do. He said the guardian was not there and he did not know who else to turn to for advice on how to approach this issue with X which had been very distressing to everyone. He said that as part of his discussion with Dr D the suggestion of calling the NSPCC arose and that F resolved the best thing he could do would be to obtain advice on what had happened and how best to move forward. F says in his statement that he was not aware that the NSPCC is a safeguarding charity and was not aware that they may have referred this issue as a safeguarding concern. He said he was not aware they have this remit and he said all he wanted was advice after a very stressful morning. In his statement he says he accepts it would have been better if he had not rung the NSPCC for advice on dealing with Z, but emphasises that he did not know when he rang that they could or would initiate an investigation.
104. The matter was ultimately referred to the police. F said he was shocked to hear from the police and does not support the prosecution. He says he does not believe it is helpful to anyone to have this criminal investigation going forward. F said when talking to Dr Berelowitz that he thought he had acted responsibly to ensure contact happened and kept happening in what were very difficult circumstances.
105. I disagree. It was incumbent on F to diffuse the difficult situation and to try and calm matters down. Instead the situation escalated whereby the children could not have avoided seeing or hearing some form of disagreement between him and Mr E, some

form of disagreement between him and M, and resulted in an escalation rather than diffusing of the situation.

106. The situation that occurred on this day, just two months ago, makes harrowing and dismal reading. I have contrasted F's account with M's own recording and the account given by Mr E in his notes.
107. All parties are agreed that F took the children to the centre and Y got out of the car first, leaving X and Z in the car. Mr E's record indicates that he and his colleague, Ms B, asked F several times to open the car door. They described him ignoring the requests, taking his time, and then eventually being unable to do so because X had locked the car door from the inside. Mr E observed that F did very little to give appropriate boundaries to the children or to encourage them to leave the car. It was recorded that F did not listen to staff when advised that he needed to encourage the children to get out of the car, and to give the children appropriate boundaries, and that by not doing this he was causing the children further upset. Mr E's record then reads as follows –

F walked away from the car at this point and tried to cause a scene in front of other parents in the front carpark, walking around the centre to the car park, speaking in a very loud voice that could be overheard by others close by, holding his phone up as if recording and asking the workers what they want him to do. He was asked by Mr E to stop recording and asked again to encourage children to get out of his car and give them appropriate parental boundaries.

108. After several further attempts by the Town B Centre staff to encourage F to use his best efforts to get the children out of the car, there then ensued a dreadful incident involving M, X, and Z. Mr E's account of that part of the pickup as follows – and I have set out his description in full because I can think of no better way to convey exactly how distressing and awful this situation must have been; I note that the accounts from both M and the Town B Centre confirm that the whole pickup lasted for over four hours –

As M got into the back of the car Z started to kick out at M and X started to swing punches at M across from the front seat. Mr E was standing by the car door and always had sight of M and Z – at no time did Mr E enter the car or touch the children, also at no point was Mr E punched or kicked by the children. The children only assaulted M. F does not intervene when the children punch and kick him and stands by watching. X was screaming get off him, when M had to hold Z by the ankle and by the shoe to stop him kicking out and assaulting her. M then moved out of the vehicle. Z very quickly shut the car door and locked it. During this situation M received a hard-fisted punch to the side of her face from X and a number of hard kicks by Z (with shoes on).

Both children were told that this was not acceptable behaviour by Mr E who witnessed the situation from outside of the car. F

says nothing to the children but gets into the back of the car with Z, who was now looking out of the window and sticking his tongue out at M and Mr E.

At no point during the whole situation does Mr E get into the car or have any physical contact with the children. Mr E observes the whole situation from outside of the car and for most of the time at a distance.

109. Mr E also described how M responded to the repeated comments by X that she did not want to see her. M is described as remaining calm, saying that she just wanted to talk to her to explain things, and that there are two sides to every story. By contrast, the staff described F as being away from the car across the car park for most of the time on his telephone, and being unable to encourage the children. He was described as showing no emotional support or permission for the children in having contact and did not demonstrate an ability to set parental boundaries or to challenge poor behaviour from the children. Most notably, Mr E said this of X –

It was observed that X was very much in control of the situation at times and given various choices from F, rather than being given clear expectations or any guidance.

110. M's account is equally graphic and distressing, particularly in terms of the things X said to her. Again it is important to set out exactly what M was required to deal with on this day, particularly in the context of the above analysis about a lack of encouragement or proper guidance from F about boundaries –

I said hello to X and asked her to please come out of the car. She stated the following whilst crying.

- *She hated me, that she did not want to see me. That daddy said it was her choice to see me or not. It was not for the judge to make the decision.*
- *She did not want me in her life, Daddy had other women who could do the jobs a mummy did, like his friends and granny. She did not need me.*
- *She wanted nothing to do with me, I was to leave her alone forever.*
- *I had thrown her father out of the house and told her he had gone to Australia. That I had tried to replace him.*
- *I was an evil witch and should not be around children.*
- *I had hit Z a lot around the head with a bed post.*
- *I had not seen them for four years and that she had brought Z up. She knew Z better than me, that I did not know any of them.*
- *The judge did not know what she was talking about, she was being bribed.*
- *She did not need her maternal family, she had all the family she needed.*
- *Nobody understood her like daddy. All she needed was her daddy.*

111. M's note went on to describe F softly saying to the children that they should get out of the car and how naughty they were, but described him as having absolutely no

authority with them. He also said to X that she should see her, he had chosen her to be her mummy, and therefore she must be nice.

112. The combined and net effect of this body of evidence portrays a situation that cannot be underestimated in terms of the likely and/or actual emotional impact on all three children. Just because Y was not at the centre of the incident, does not mean in any way that she is or was unaffected. What is even more concerning about this incident is that once M finally got Z into her car, she described driving him home with him acting as if nothing had happened. She said Z said he hated her, that dad was right about her but would not be pressed as to why.

113. This is a graphic example of the passivity in F's approach that Dr Berelowitz had foreshadowed almost a year ago when he said in his March 2020 report that –

...if the children reside with F and contact with M and her family is thought to be desirable, F will need to convey something much stronger to the children than a sense that he will support them in relation to contact if they wish for it.

114. It is difficult not to conclude F would have been unaware of the likely results or outcome of him contacting the NSPCC. As I remarked in the fact finding judgment, F is a highly articulate intelligent adult with full knowledge of the progress of these proceedings which have continued for several years, and which at various times have involved the police and the local authority. As Dr Berelowitz observed, there is an unprecedentedly high number of complaints about third parties and other professionals in this case by F.

115. The real difficulty with the Town B Centre incident is not whether or not F has reflected on his own role, or whether he now accepts he should have played a more active role in enabling X's contact. The issue is rather that he did nothing to de-escalate the situation, and why, even when this inevitably highly distressing episode was more or less over, he then called the NSPCC. It is difficult to think of any truly reasonable explanation for F to have called the NSPCC on that morning. There is also no indication in Dr D's report that it was he who suggested that F contact the NSPCC. Dr Berelowitz considers that it is not easy for him to reconcile F's declaration that in relation to the Town B Centre incident all he wanted was not to lose the momentum of contact, with him then calling the NSPCC and talking about actual bodily harm.

116. F is a highly intelligent adult who is well supported by his own family. There is no reason why he could not have sought to take advice from the guardian later or from his own parents, and of course even to discuss the matter with them. It is difficult to understand why Y was sent into the centre first, it being reasonably foreseeable that leaving X and Z in the car alone might well have resulted in them playing up. This is another good example of F's passivity in the situation as described so clearly by Dr Berelowitz. While it is encouraging that F now sees he should have played a more active role, this incident happened just two months ago. The Town B Centre incident is strong support for why it is difficult to feel confident that F will suddenly be able to progress or change at a sufficiently fast rate to make M feel confident that there will not be a repetition of such an incident in the future.

117. In his second report dated February 2021 Dr Berelowitz dealt in more detail with the Town B Centre incident. He had by that stage read the recordings, and the report from Dr D. He observed as follows –

That is the sort of incident that is profoundly undermining of trust, and which also exposed the children to discord. If for example, F believes that M or a contact manager would be willing to damage a child's skin in order to get him out of the car and into contact, and if M believes that F will miss no opportunity to undermine contact, then the situation is very unpromising.

118. On 21 December 2020 the Town B Centre wrote to both parents setting out expectations for the next day's contact, in light of what they described as the very difficult session on 19 December.

119. On 22 December 2020 there is a note provided by Mr E which has not been substantially challenged, and I accept its contents as accurate. It is right to say that F did bring X to the Town B Centre on time. However, she was also heard to be in conversation with F in the car park. Two particular conversations of note were recorded by Mr E; I repeat them here because they provide graphic illustration of the same passivity on the part of F to which I have already referred above –

F was observed through the window to be in the front car park with X who had attempted to walk off from the centre. X looked tearful and F was observed to give her a cuddle.

*I went around to open the door so that X could then come into the building. F was talking with X. 'I don't want to listen to the lies' said X, to which F replied '**she can't take your memories away, it is what has happened in your life**'. [emphasis provided]. F is heard telling X that he will come into the centre with her.*

I then went to the door again, where F asks if there was another worker. F was advised that I was currently only one available.

*F tells X '**I cannot do anything about this, there is a judge who has made a decision and I need you to do this for me.**' [emphasis provided]*

120. Shortly after this it became clear that X had entered the Town B Centre but had locked herself in the toilet. She came out at the point that M had entered. Mr E recorded X as saying the following –

As I stood speaking with M, X did come out of the toilet and said 'I don't want to be anywhere near her, she is just going to lie. I wish I didn't have a mother. I just want to be with my dad, and just my dad.'

121. X also said some things to M that have a distinctly adult flavour; it is difficult not to draw the obvious inference that she has been told about these things by either F or a member of his family. Mr E's note continued –

'You do not even have the correct medical scissors to treat Z, X said...I asked X how she knew about the scissors, as she was locked in the car. 'Dad told me' was X's reply.

and

'You stole all dad's money and left him with nothing, and he had to go to live somewhere else.'

122. However, as the session got underway M and X were then described as having some lovely conversations about school and memories of school and friends. X's initial tears stopped, and she was described by Mr E as engaging very well in conversation with M. However, this session only lasted for about half an hour and when X later saw F at the waiting room door she became tearful. Mr E tried to explain to F that X had engaged well with the session, but described F as continuing to walk away to catch up with X.
123. Regrettably, later on 22 December 2020 the children's solicitor informed the parties that, following the Town B Centre incident, a complaint had been made to the local authority, was being investigated in the usual way and that in the meantime, contact could no longer take place at the Town B Centre. Whilst it may not be the case that F deliberately sought to undermine the progress in contact that was slowly being made at this point, the fact remains that it was as a direct result of his actions and inactions on 19 December 2020 which contributed to the difficulties experienced by the children, the Town B Centre staff and M on that day. It is quite unacceptable that a pickup should have had to take four hours, or that M should have had to endure physical assault at the hands of the children in F's presence. Either F felt he could do nothing, or chose to do nothing; it matters not. Whatever his motivation, he clearly did not or could not exercise his clear responsibility and role to play in supporting M on that occasion.
124. On 4 February 2021 it was confirmed that the safeguarding investigation into the Town B Centre incident had been completed, concluding that Mr E did not harm any of the children.
125. The next contact took place at Christmas. On 24 December 2020 all the children got out of the car and into the back of M's car with absolutely no issues. Although X refused to give M a hug initially, she later linked arms with M and the contact appeared to M to be going reasonably well. However, at suppertime X was refusing to put her mobile phone away and was constantly texting F. M's notes (which I accept as an accurate contemporaneous record) describe the sort of texts that X received in reply from F –

I wish he would not reciprocate as it does not allow X to settle. It also brings us into conflict as parents because we have some rules at home about phones etc at mealtimes. If I ask her not to do this, she says that she must reply to Dad and I am denying her human rights. He sends her messages (I know as she

showed me) saying how proud he is of her, how brave she is being, how much he misses her, and it is only one sleep until she is back. I found X taking pictures of the house again and sending them back to her dad. Mr M caught Z doing the same and he said brashly to Mr M that he was 'snooping' for Dad.

126. The situation relaxed once X's phone was put away. However, the following morning (Christmas Day) it was returned to her at about 09:00 and the texting began again. M describes that from this point X became more withdrawn as she started to call and text F again. In all other respects, the overnight Christmas contact appeared to go smoothly.
127. The next overnight contact was due to take place on 30 December 2020; this had been planned to be a two-night stay. However, when M went to collect the children X was not present. F explained that if she returned at 10:30 the following day, she could collect X, but did not provide any explanation about why she did not attend as planned. The contact with Y and Z went smoothly. The next morning M took Y with her to collect X. Her note of this incident makes instructive reading, particularly in terms of F's continued behaviour and also in terms of the ongoing impact on Y of the situation with X –

*I asked Y if she got sad when X is not here and she said she did not, she said X made it hard work for her and she bullies her...The next morning, Y was insistent that she came with me to pick up X. Whilst in the car she was texting her. We got to the car park and Y did not want to get out of the car. **X stood with F whilst he hugged and kept telling her he loved her. It seemed very dramatic for an overnight stay and eventually he let her go. He continued to text her in the car. She was not happy to see me at all.** [emphasis provided]*

128. However, as the day and evening progressed, it is clear that X began to feel more relaxed and settled and the descriptions of her conversations with M are a delight to read.
129. It is clear that by this stage Y was becoming very settled and happy about going to contact. However, on 31 December M described an important incident which illustrates just how deeply Y has been affected by having been separated from her –

Unfortunately on the way back [from a bike ride] Y fell off and grazed her knee...I bathed and bandaged Y's knee. She said she never cried but then broke down into hysterical sobs whilst hugging me tightly. She was crying over much more than hurting her knee and I just let her get it all out for about half an hour. She kept telling me she loved me and had missed me so much. I said I had not gone anywhere, but she said I had gone for two years, that I had got on with my life without her. I explained that I had tried so hard to see her all this time, had she got all my letters, she said she had got one or two. She thought I had forgotten her. It was utterly and absolutely heart-

breaking. I promised her I had and never would leave her or forget her as long as I lived. She slowly seemed to be soothed and calmed down.

130. A similar event happened with Z on 23 January 2021 (again during a bike ride). Again the record demonstrates the impact on him of having been separated from M for so long –

As VM rode off and I was trying to get his helmet done up securely he had a huge temper tantrum. Stating he hated VM, he wanted his helmet back; the problem was they had gone off into the distance and he was refusing to cycle. He was upset with me saying he did not think I loved him and he did not matter to me and where had I gone for 2 years. This was very similar to what Y was saying a few weeks ago. I told him how much I loved him and I had not ever stopped thinking about him, that every day I prayed I would see him again soon. He was my special little boy and my absolute world. I said I had a picture next to my sink in the bathroom which he is aware of which he drew me in 2016. It is in a frame, is a picture of me that he drew me. I said I had it there so he and X and Y were the first things I thought of when I woke up and the last thing when I went to sleep. This seemed to cheer him up.

131. Meanwhile, despite the obvious positive progress being made by Y and Z, F continued to report concerns. On 4 January 2021 he told the guardian that he was concerned M was not managing the children’s skin properly, and that risks associated with this may increase with increased overnight stays. I accept the guardian’s written evidence about this. By asserting to the guardian that M was somehow unable to manage the children’s skin condition properly, F seeks to resurrect concerns that were dismissed as being unfounded and unsupported by evidence at the fact-finding hearing. In the fact-finding judgment I said this about the issue –

237. *Similarly, in the matrimonial finance judgment dated 25 May 2018 the judge found that –*

‘Y and Z suffer from a lifelong skin condition. This requires daily treatment... F and the paternal grandfather also suffer from the condition, and both are highly expert in the treatment of the condition. I also find M is also confident in the care and treatment of this condition.’

238. *It is all the more concerning therefore to read in the transcript of the 3 January 2020 conversation that F is still asserting that –*

‘M doesn’t need to be drunk to hit people’ and ‘M’s skin care regime is not good, and we know that.’

132. In his recent statement dated 8 February 2021 F seeks to pull back from his criticisms of M as made to the guardian a month earlier, by saying that he makes no criticism of

M's care of the children as he knows she will be doing her best to look after them. He now says –

It is not a question of M not caring for it (although I understand there may be an issue with Z at times not letting M do his skin routine which since being made aware of, I am working on). It is simply that the children will benefit from having regular access to someone who has been dealing with it for years and years to assist them with it and how it can occasionally manifest itself in different ways. There was a deterioration in the children's skin during the extended stay of 6 nights. This could have been caused by many factors (such as Z's refusal to allow his mother to help him). I simply state the fact.

133. For the avoidance of doubt, I say this – again. There is absolutely no evidence before the court to support any proposition that M is unable to manage the children's skin condition properly. M is clear that she can look after the children's skin condition and has done so since they were young. The guardian has previously spoken to hospital staff who confirmed that both parents were competent to manage their children's skin and could train others. In evidence at the fact-finding F confirmed that he had no concerns about M's ability to care appropriately for the children's skin.
134. The fact that he now seeks – yet again – to resurrect completely unfounded concerns about M only serves to increase, rather than reduce, concern about whether he has made any meaningful progress since the fact-finding hearing in understanding his own role in having alienated the children from their mother. It matters not whether he acts intentionally or from genuine belief in raising such 'concerns'; the fact is that he continues to raise the issue despite there being absolutely no evidence at all that M cannot manage the children's skin conditions properly. It is obviously a matter for F, but it may well be helpful if his continuing belief – whatever and however caused – can be the subject of part of his ongoing discussions with Dr D.
135. In his oral evidence Dr Berelowitz also raised concerns about matters raised by F in his 8 February 2021 statement. Dr Berelowitz was particularly troubled about paragraph 4 of that statement which I reproduce in full as follows (emphasis provided) –

*4. X is significantly more complex currently and I am working really hard with her on several fronts. She is worried by her perception of her mother's behaviour at the Town B Centre on the 19th December. I wish it to be noted that I did get her to go for overnight stays following that on the 24th Dec and 31st Dec and 9th Jan. **X felt that the things that happened on those stays justified her in stepping back from further stays.** She was uneasy about staying and having done it, she became more so. Her worries appear well known. One issue that particularly unnerved her was being cut off from any ability to contact anyone while at her mother's. She also did not enjoy not being allowed out into the garden except under supervision. **She***

*found Mr M made her uneasy and uncomfortable and was worried about getting undressed there. She seemed to find the entire experience very stressful, she stated due to her mother's behaviour. I tried to find things that had happened that might be considered fun – her time with K the dog for example and focus her on the positives. The 6 night stay that began on the 19th Jan was too much for X and confirmed her often stated view that if she says yes to seeing her mother for one night it always turns into more which she does not want. It is difficult for me to know exactly what to do to help her in the best way because on the one hand I know she would benefit from seeing her mother more but on the other hand she gets incredibly upset at the prospect of this and it is hard to know how to manage this. The guardian gave her an assurance that contact would not go against her own wishes but she stated that many previous social workers have said this and they've all been wrong. The 6 night stay on the 19th confirmed her view that the goalposts keep moving. I continue to work on this but **there have been issues between X and the Guardian at several points previously and this has not helped. I have explained that situations change and the Guardian is doing a difficult job.***

136. Dr Berelowitz was particularly concerned about the passages highlighted in bold above. He described the passage relating to Mr M as having a whiff of sexual discomfort and impropriety and being the sort of 'hanging remark' that is really undermining and pushes him towards concluding that a transfer for all three children is warranted. He said he was concerned that F is not really recognising or acknowledging – to himself or to the court – that this is exactly an indication of how strong X's alienation is. He said that, while he does not expect F to cover himself in 'sackcloth', there is a need for F to convey that he understands the impact of him having filmed the handovers and having constantly texted and phoned the children during contact will have had the effect of making them unhappy. He said F could simply decline messages from X. He said that F's very difficult job now is to help X understand where her feelings might have come from, and he said he recognises this is a very difficult job that he hopes Dr D is helping him with. He said F needs help to understand that he has got a part to play in that history for the children. He said that the first thing F needs to do is stop any kind of 'case building' and stop accumulating evidence about how hard things are for X.
137. Dr Berelowitz was concerned that F does not appear to recognise that statements made by X are from the perspective of being an alienated child. In short, Dr Berelowitz considered that this lack of understanding and awareness by F lies at the nub of the problem and he remains worried about how much F has actually changed. He said that what really matters is whether F accepts for himself that he has been insufficiently supportive to the children in resuming their relationship with M.
138. I accept Dr Berelowitz's analysis. This part of F's evidence is particularly concerning because, despite by this time having had several sessions with Dr D, this part of the

statement still lacks any real sense of F having accepted that he alienated X, and lacks any acknowledgment that X's state of mind is due to him and his behaviour.

139. On Wednesday 6 January 2021 Y and Z stayed overnight again with M, so that home schooling could begin at her house. X did not attend, and M was told that she was with her grandfather.
140. Contact since then has progressed smoothly for Y and Z, but X's attendance has been patchy. She has continued to speak both abusively and affectionately to M. Indeed one of M's main concerns has been about how quickly X appears able to switch between two completely contradictory emotional states. For example, on 9 January 2021 M recorded as follows –

She rounded on me, allegations of hurting Z and the Town B Centre and how she hated me, did not want to be there, she would not care if she never saw me again. I then talked to her a little about where this anger was coming from. She said I had tried to beat Z with a piece of wood, that my family were liars, that I was a liar. That I had drunk alcohol and I was violent and a horrible person like her Great Grandfather. The bizarre thing about this was that she showed no visible distress, no fear and was almost robotic in repeating it, it was as if what she was saying she had heard and was repeating it. When I tried to dig down into the detail, she is unable to give detail...Then the next sentence she was talking about her friends at school, this swift move to a totally different subject is worrying, her ability to be so switched off to the emotional content of what she is saying deeply concerns me. It is astonishing that a child of her age can say such awful things emotionless and I am aware that this is not really her. X then unpacked her bag with the pyjamas I had got her on Christmas Eve, she said she had not washed them since then but had worn them every night, please could I wash them for her...

141. On 12 January 2021 X made a number of allegations to her counsellor, U, that she was physically and emotionally abused on New Year's Day when she was with M and the maternal family. X alleged she was trapped in the car and that M had pushed her into the car seat. She used the words 'child abuse' when talking about this alleged incident. As a result of this, U made a safeguarding referral about X. The guardian later spoke to MGM and X about these allegations, and did not consider that any physical or emotional abuse had taken place, but that what was clear was that X had not wanted to spend any time with the maternal family and was unhappy with MGM. He was quite clear that this incident needed to be seen in the context of the family conflict that had led to the children previously rejecting their maternal family.
142. In his January report Dr Berelowitz sounded a note of caution about U's involvement. In referring to her discussion with X on 29 October 2020 (about having listened at the door and overhead M's discussion with ISW), he said –

U's note relating to 29/10/20 is a powerful and disconcerting example of the impact of parental alienation, not only on the

child but also on the well-intentioned professional network. The court was clear that F has alienated the children and F has been clear that he did not do nearly enough to promote their relationship with their mother. But here we have a record of X disagreeing not only with the court but also with her father, so powerfully that a professional agency wishes for her to have independent representation on a point that, on the face of it, puts her at odds not only with her mother but also with her father. To put it differently, U wishes for her to be better heard on a set of thoughts and feelings that are consequent upon the alienation, rather than getting help with the consequences of the alienation. I make absolutely no criticism of U – this is what happens in these situations.

The related point is that I wonder why, in such a complicated case, X is being supported by a volunteer, to what end, and what the boundaries are. Any person in whom X confides and who is not aware of the detail of the case is vulnerable to reinforcing the alienation.

143. In his oral evidence he developed the point, explaining that if a plan of X staying with F was still being contemplated, the goal of any therapy for X should be to help undo the consequences of alienation for her. However, he explained that the big problem with this is that of course X's consent to such therapy is required, and such therapy only becomes appropriate if she wants to change and needs help to do so. He was quite clear that it would be unethical and inappropriate to place X into therapy that seeks to pull her in a direction in which she does not want to go. He said – *'that's why the U counselling got people into deep water'*. He said X has a more vulnerable profile than the other children, describing her as having been *'filled up more'* with the alienation, and said she does get involved in the family conflict – with catastrophic effect.

THE CHILDREN'S WISHES AND FEELINGS

144. Dr Berelowitz describes each of the children as expressing different wishes and feelings. It is his expert opinion that the extent to which they have been alienated greatly affects their ascertainable wishes and feelings. Thus, the more the child is alienated, the less their ascertainable wishes and feelings should be taken at face value, and the more need there is for a comprehensive and holistic approach to helping them with their alienation. Put simply, in this case, that would mean that I should pay less regard to X's wishes and feelings about contact with M than I should to those of the other children. Dr Berelowitz also observes that when a child is alienated from one parent, they often become much more dependent on the parent with whom they reside.
145. The guardian has extensively consulted the children and sought their views about their living and contact arrangements. He has also had extensive contact with the parents during the period of his involvement. He observes that although at times F asserts that he is just passing on what the children are telling him, in his experience of working with the family in the past two years, it is very difficult to separate F's views from

those of the children and at times it seems that F's narrative is so often the same as that of the children. The guardian considers that given the findings of alienation, it is therefore likely that the children's view of M is still being heavily influenced by F. The guardian says that the children's wishes and feelings are not formed in a vacuum, and a question therefore arises as to how much weight should be given to their views. He says –

I respect and acknowledge the views expressed by the children, but these views must be seen in the context of their previous experiences and the fact that they have been significantly alienated against their mother.

146. The guardian is concerned that if decision-making is led by the children's wishes alone, which is largely what F said he was doing and following between August 2018 and September 2020, they will continue to suffer psychological harm due to alienation from M, which consequently risks further mental health problems as they grow older.
147. That analysis is endorsed by Dr Berelowitz, and I accept their combined evidence on this point about how much weight should be attached to the wishes and feelings of alienated children in general, and to these children in particular. Thus the approach I have taken in this case is that the more the child is alienated, the less I should take their ascertainable wishes and feelings at face value, and the more I need to apply a comprehensive and holistic approach to helping them with their alienation.

X

148. The guardian describes X as having been consistent and very vocal about wanting to live with F. Of the three children, she has always been the strongest in resisting spending time with M and saying that she does not want to live with her. She has persistently and consistently said that she did not want to see M and the maternal family. She feels frustrated that the guardian is not listening to her as she is clear about her wishes. She is very rigid in her thinking, according to the guardian, and would not accept anything negative being said about F, whereas by contrast she is very negative about M, describing her as a bully, and says she does not deserve the title 'mum'. The guardian's conclusion is that X appears to be aligned to F as a way of protecting herself from the trauma of what happened in the past, and her fears are then compounded by the alienation she has experienced. X does not accept that F contributed to the harm that the children suffered by alienating them against M and her family. Dr Berelowitz advises that it is important to recognise that she is the most alienated, and that it will be hardest of all for her to move on from the feelings of alienation. He describes her having ended up with entrenched negative views about her mother and an idealised view of her father. He says she is very persuasive about this, to herself and also to other people, hence his concern about the work with U. He considers that she may also have become quite dependent upon F.
149. X says that she does not want to see M and wants to run away from everything except F. She told the guardian that she tried to run away from M on two occasions around New Year's Eve and New Year's Day, but was persuaded to return by F. In essence, X demonstrates very concrete and polarised thinking about her family, whereby she thinks that everything is good with F and his family, and that everything is bad with M and her family. X's refusal to spend time with M has been a consistent theme

throughout the guardian's involvement with her. However he notes that on the few occasions she has actually been with M, then she appears to have had some positive experiences.

150. I have read a letter written to me by X at school recently as exhibited to the guardian's report. In that letter she gives five reasons why she really does not want to see M. Firstly she does not feel safe around her. Secondly M lies a lot about X's memories and tries to hide what happened. Thirdly, she doesn't want to see M because she knows the days will expand and go for longer until she has to live with her. She says she is not comfortable staying overnight with M. Fourthly she feels she is being treated exactly the same as Y and Z but they're not the same they are different people with different thoughts. She said she does not want to see M but her brother and sister do. Finally, she says she really does not like Mr M and she does not feel safe around him. She said he scares her. She said she feels that Mr M and VM are just people who live with M and have no relation to her. She says that she should not be forced to see M as she feels worried and scared, but that if she had a choice about seeing her now, maybe she will want to see her in the future.
151. Dr Berelowitz has considered the Cafcass guidance on parental alienation and advises that it is vital to look at the whole picture and also the severity of the alienation. He describes X as being the child who was most strongly affected at the time by M's health issues and who is the child who is most alienated. He describes her as challenging and aggressive to M and seems to believe that she needs one parent only. She has also at times set herself up as the protector of the younger children and/or F. Furthermore, Dr Berelowitz notes the unfortunate consequence for X of taking such an entrenched position; in other words she pays a price for taking that position which means she has less time with her siblings, but she still cannot readily change.

Y

152. When the guardian first started working with Y she did not want to see M and expressed strong views against spending time with the maternal family. However she was the first to take significant steps to resuming contact with M, including writing letters, recording videos, and talking on video. The guardian describes Y as appearing to be 'the shining light' in leading the way to resuming contact with M. She has always been the most amenable to resuming contact, and the guardian was not surprised that she was the first one of the children to engage in a video call with M and was the first of the children to see her at the first Town B Centre session.
153. The guardian reports that Y continues to be positive about spending time with M, and Dr Berelowitz is of the opinion that Y is much less alienated than the other children.
154. It seems to the guardian that Y was in fact ready to see M as far back as March 2019 when she wrote her Mother's Day cards but in his view she probably did not have emotional permission from F who maintained, when the guardian suggested that she was perhaps ready for contact, that he was not reading her intentions correctly. In March 2020 Dr Berelowitz observed that she was the child who was perhaps most open to contact.

Z

155. The guardian describes Z as a child who is very confused about everything that has happened to him and what is now happening. When the guardian talked to Z about his views about his living arrangements, he expressed – as he always has done – that he wants to live with F and doesn't want to see M. He alleged that M was bargaining by allowing the children their screens and phones and threatening to take them away if they did not do what she wants. He was very negative about M stating that if there was one irritating person who had ruined his life, it was her. Yet at the same time, he has said that while he does not want to see M, he also said that he wants to help her.
156. Dr Berelowitz is of the opinion that Z falls between X and Y in terms of the extent to which he is or is not alienated from M. There is a lack of congruence between what Z says and what he does. Z's expressed views are clear: he does not want to live with or spend time with M. However, his behaviour when he is with her seems different to what he tells professionals. He appears to enjoy spending time with her and has attended every session as ordered by the court, albeit with some difficult handovers.
157. The guardian's view is that this indicates that Z is struggling with loyalty, conflict and wanting to please F, a situation compounded by the fact that the children were alienated against M which involved psychological manipulation. Dr Berelowitz describes Z's language as putting him closer to X, but his behaviour puts him closer to Y. Both he and the guardian are clear that Z's views should be taken in the context of parental alienation and the significant harm to which he was exposed.

THE CHILDREN'S NEEDS

158. Both the guardian and Dr Berelowitz agree that, optimally, what all three children need is to have a rich and full relationship with both parents. All three children also need to feel safe when in the care of their parents. For the period they have been in the care of F there have not been any substantiated concerns about their physical safety. As I have already identified, Y and Z have a skin condition and it is critical that they are given appropriate support to look after their skin.
159. In considering the children's needs, the guardian relies on the professional definition of resilience as being the ability to persevere and thrive in the face of exposure to adverse situations. They are a sibling group who very much love each other, but they are also individuals with different personalities. And although by and large they were exposed to the same to the same or similar traumatic events in 2016 and 2018, their levels of resilience are different. Dr Berelowitz explained that in this situation where there are three children who have been alienated from their mother, they will tend not to follow the same paths. He said that each makes their own adjustments, and for each of them a different narrative exists. That can continue even if their relationship with the alienated parent, in this case M, improves. He advised strongly that it is therefore important to look at the children as individuals, and said it would be a mistake to treat them as a 'job lot'. He cautioned against assuming that they are all the same.
160. Despite the trauma that the children have suffered as a result of M being intoxicated with alcohol, poor mental health and neglecting their needs in August 2018, it is clear that Y and Z have now been able to take significant steps towards rebuilding their

relationship with M, including prior to this hearing an extended stay in contact for five nights. The guardian's view is that this contact appears to have gone largely well.

161. However, Dr Berelowitz cautioned that the success in contact for Y and Z is only relatively recent. He said the discord in the parents causes contact to hang by a thread. He advised that if the discord persists and there remains an 'open psychological wound' for the children, then the situation will continue to remain very fragile. While Y is relatively settled, the situation with Z fluctuates and is fragile, and with X, it is exceptionally fragile and also worrying. Dr Berelowitz's opinion is that this is to be expected given the finding of alienation.
162. Dr Berelowitz also advised during any period of protective separation from F the children will need not to have too many contacts in order to help them settle.
163. Both Dr Berelowitz and the guardian have analysed X's needs very carefully. She is extremely entrenched in refusing contact with M. This could be as a result of the previous harm caused to her and the younger children by M which should not be minimised. However, it is also clear that the parental alienation caused by F is an ongoing significant risk factor that is impacting on her relationship with M.
164. Dr Berelowitz describes X as being somewhat stuck. The description of M that she gave to U, as well as her demonstrated ongoing uncertainty about contact with M, gives real cause for concern. He considers that X will struggle to rebuild her relationship with M while her entrenched negative views about M and her idealisation of F persist. He frankly explained that there is little agreement in his field about whether or not psychological interventions with a child can reverse or undo X's current state of mind.
165. If there is no transfer of residence, then it is crucial that X receives the right help, but it is also very important to avoid a process that reinforces the status quo which would be contrary to her interests. It might be that the passage of time with increasingly successful contact with M, including staying contact, could provide sufficient positive experiences such that X's uncertainty would diminish over time. F might be able, with the help of a suitable therapist, to give X a more comprehensive message about how his own behaviour impacted upon the evolution of her feelings about M. The same could apply to M. So there may be scope for X and the parents to have a modified form of systemic therapy, in which X and F, and X and M, have joint sessions with the same therapist.
166. In terms of possible therapeutic work for X in the future, Dr Berelowitz said that the challenge is to identify the purpose of the therapy. He said that what X needs is a clear expression by F that it is the conduct of the adults that has made things harder for her, and his unwavering commitment must be to help get her to understand that point. He also advised that for any shared care arrangement to work, F needs to convey to X that he knows she is apprehensive because of him for which he is sorry and that he wants to do whatever he can to help her. He said it is clear that F has the capacity to influence the children a very great deal and that F needs to acknowledge his power and influence.
167. Dr Berelowitz confirmed in evidence that in this type of very complex and forensically and psychologically challenging case, the court should take a medium to

long-term view of the likely impact on the children of any change, rather than a short-term view.

168. If the children are separated from each other, whereby Y and Z move to live with M, it is likely they will miss each other in the short-term. It is also reasonable to assume that such separation is likely to have a lasting effect on their relationships in the future. However, Dr Berelowitz advised that it is impossible to predict what the effect on X would be of X and Y beginning to improve their relationships with M in those circumstances, and of cleaving more to M. He advised that there is likely to be no obviously positive outcome for X in the short-term. He explained she might dig her heels in and become even more obdurate in her resistance to contact with M. Alternatively, she might have her eyes opened. Dr Berewolitz explained it would be very unwise for him to predict a specific outcome, because not all children have the same opinions about the qualities of their parents. His concern for these children is that if the situation remains polarised, then X's own life story will become mutually incompatible with her siblings. This could lead to a 'wedge' between the children, and he was quite frank that he cannot explain how he, as a psychiatrist, would deal with that situation.
169. After F had confirmed that he now agreed to all three children transferring to live with M, Dr Berelowitz gave further evidence about the likely impact on the children of such a situation. He advised that, in the short term it is reasonable to assume that, in light of their expressed wishes and feelings, they will experience trauma and distress. They will also inevitably miss F to whom they are very closely attached. For X, it is likely that this will be very acute indeed, and things are likely to be very hard for her and M. M is likely to find X very variable.
170. He also advised that, because the history of constructive working between the parents as well as that the improvement in contact for Y and Z is so recent, it is very difficult to predict the success of shared care in this case at this stage. He explained that most transfers of residence take place in the absence of successful contact. He explained that the duration of the period of protective separation from F depends on the success of the transfer.

THE RISK OF HARM

171. In May 2019 Dr Martinez described the relationship between F and X as follows –

F sometimes struggled to keep his descriptions of affection and pleasure of his children moderate; for example, he said of X, "it's like watching a tiny saint or something, she's lovely." And "she's incredible. I'm so lucky to be associated with her. She's amazing. Just amazing.". This hyperbole sometimes had the effect of making the interview seem quite intense. However, F's descriptions and understandings of his children tempered this intensity. There were some moments in which F displayed some indications of enmeshment with his children, in particular with X, such as saying, "we'll say the same thing. We'll finish each other's sentences. We'll have the same emotion." This indicates an aligning of the child with his own character, rather than allowing her agency of her own. He was, however, able to give

examples of behaviour he does not like in the children, including X, such as "I don't like it when she is sharp with her sister," which indicates that he is able to be balanced in his descriptions of her.

172. In evidence, Dr Berelowitz characterised this alignment and enmeshment as concerning; he said it demonstrates an inability by both X and F to separate from each other which leads him to feel concerned about how difficult it would be for them to develop separate views from each other. While this may not have been deliberate or intentional behaviour on F's part, Dr Berelowitz is also clear that things have not improved and are significantly worse now.
173. F asserts that he is doing his best to promote contact and has been inspired by Dr Berelowitz's first report to be more firm in pushing the children to see their mother. However, I accept the guardian's analysis that, while F may be genuinely trying to do his best to promote contact, it should not be ignored that he either intentionally or unintentionally instilled in the children such a fear of their mother due to past events, that they initially were absolutely adamant they did not want to have contact with her or her wider family. The guardian's view is that F has exploited this to his advantage. I also accept that analysis, although it is impossible to reach any conclusion about F's motivation or intention in this regard.
174. The guardian has plainly considered very carefully the risks to the children of having suffered alienation as I have found. He said this –

Alienation of a child can be compared to a non-accidental injury of the mind and it raises significant concern about risk of harm. Alienation causes psychological harm to a child, which although may not be too obvious compared to physical abuse, should still be treated as an abusive behaviour. It violates a child's sense of self, their right to choose, their identity and relationships with significant others. While I do not seek to minimise the harm caused to the children by their mother, I also do not seek to minimise the harm caused by their father either.

175. Z and X did not talk to M until direct contact was eventually ordered by the court in September 2020. Due to concerns regarding X's alleged vomiting and nightmares that F was reporting, the guardian was by then very concerned about X's mental health, although no expert recommendation was made for her to undertake therapeutic work at that time. It was therefore in that context that the guardian suggested a befriending service for X with U where she could talk to someone who was not a family member about issues that were affecting her and also lessen her anxieties about seeing M and the maternal family. Both parents agreed with his suggestion and agreed to pay for the service, although F was initially opposed as he did not think that X had any mental health issues. The guardian made it clear to the parents that he was not making any diagnosis of mental health problems because he was not qualified to do so, but did feel that X needed support in one way or another. Although U helped X to have someone to talk to, however it clearly did not help to move contact forward.

176. As discussed above, Dr Berelowitz highlighted that U's note relating to 29 October 2020 is a powerful and disconcerting example of the impact of parental alienation, not only on the child but also on the well intentioned professional network.
177. Dr Berelowitz wondered why in such a complicated case X was indeed even being supported by a volunteer, to what ends, and what the boundaries are. He said that any person in whom X confides and who is not aware of the detail of the case is vulnerable to reinforcing the alienation.
178. Dr Berelowitz has considered ways in which the harm to the children that has already occurred could be ameliorated in the future. He said that unfortunately the level of mistrust in this case is so great that he does not think that the family can see any professional person with whom one of them has already had privileged conversations. It is for that reason he does not think Dr D is an option for providing systemic family therapy. Dr Berelowitz also commented that the state of play between the parents is such that it seems unlikely that mediation or therapy for the parents together, with or without the children, is currently possible. That echoes the view that I expressed at an earlier stage in these proceedings. Dr Berelowitz says he would very much like to be wrong about this and that it would be wonderful if a suggestion of systemic therapy could be taken up. He says that the great thing about systemic therapy is that it is a blame-free approach which looks at ways of nudging people out of entrenched patterns. He says however that he just does not think these parents are there yet. I agree.
179. X appears to have been severely affected by alienation, in that she is rejecting of M and the maternal family. The guardian agrees with Dr Berelowitz that there is a risk of being diverted from the most significant factor that is causing X to reject M, namely the alienation caused by F, towards too great a focus on presenting 'symptoms' such as vomiting and the emotional distress that she is displaying. It is well documented that the children suffered previous harm in M's care, including neglect of their basic needs and being physically hurt when she was intoxicated with alcohol and suffering from poor mental health in 2016 and 2018. That was confirmed in the local authority assessment completed in 2018. However, the guardian evaluates M's alcohol use as a static risk factor and observes that she accepted she is an alcoholic during the fact-finding hearing. She knows she must abstain from alcohol and there is no evidence to suggest that she has relapsed since these proceedings have been underway.
180. The guardian rightly stresses that this is not to say that the children have no memories of what happened with their mother in the past (albeit that M says many of these memories are distorted), but it is the harm caused by the established alienation that must not be ignored. He identifies two problems that the children need to be supported to deal with; firstly their memories of neglect and harm in their care of M, and secondly alienation by F.

THE CAPACITY OF THE PARENTS

181. M has continued to accept that she has had real difficulties with alcohol, and identifies unequivocally as an alcoholic. In her previous oral evidence at the fact finding hearing she explained some of the context to her drinking was the problematic marital relationship with F. She is clear that her journey to sobriety started with the Cornwall incident. She says that the resulting grief, guilt and shame is what has driven her to

make significant changes in her life. She has completed treatment for PTSD which she says served as a debilitating feature of her daily life prior to August 2018. M also said in evidence at the fact-finding hearing that between August 2018 and May 2019 she was treated with a therapeutic dose of an antidepressant, sertraline, and started EMDR treatment. She has been seeing a psychologist twice weekly, previously to treat the PTSD but now to deal more generally with the emotional and physical pressures caused by separation from the children. She says she has focused in her recovery as an abuser of alcohol and has insight into the anxiety that caused her to abuse alcohol. She says she has had extensive treatment and therapy which has at times been difficult to work through. She locates much of the cause of her previous alcohol problem in her unhappiness in the marriage to F.

182. The alcohol testing reports cover the period to date since the end of January 2020 and confirm that M had not chronically consumed excessive amounts of alcohol in that period. I accept that evidence and proceed on the basis that M has not drunk since end January 2020; although she stated in evidence that she has not actually drunk since 31 August 2018, there is no independent, expert evidence to corroborate or contradict her account.
183. M is now happily remarried, enjoys a close and loving relationship with her family, and she no longer has to work full-time. She continues to work part-time through her own choice. She describes her entire focus as being to re-establish her relationship with her children, in which task she is supported by her husband and her family. She says – *‘Although I cannot reverse what has happened, I can work to rebuild a brighter future with and for them.’*
184. The guardian identifies that one result of parental alienation may be that a child may internalise the emotional abuse that they have suffered which can lead to mental health and attachment problems. The guardian questions whether F has been doing enough to correct some distortions held by X. The guardian is concerned about the type of language that X uses; for example, accusing M of emotional blackmail and bargaining by wanting sympathy for events of the past. She appears to justify her rejection of M by saying that forcing her to spend time with them will cause her mental health problems and means that she will require therapy when she is older. The guardian describes her language as being very adult like for her age. She has talked of ‘child abuse’ at the Town B Centre, which in the guardian’s view is very much aligned to F’s narrative and raises questions about whether X is being exposed to inappropriate adult conversations.
185. Dr Berelowitz has seen M on two occasions in 2021 - he saw her alone on 11 January and with Mr M on 12 February. M was very positive, and said the key thing for her arising from the fact-finding judgment was that she had been heard and believed. She said it put into sharp focus the impact on the children of her own behaviour. She is very clear that the children have been badly affected by the conflict. Dr Berelowitz asked them why she seeks a transfer of residence, rather than a 50:50 split. She feels that whatever progress they make rapidly becomes undone by F. She described how X comes to stay with her and Mr M and then reports to F constantly, she feels X needs time to be pulled away from him and repair. Otherwise she feels when the court exits, she and the maternal family will never have a relationship with X. Both M and Mr M told Dr Berelowitz about their fears that when the court process is ended they will still

have to face years of manipulation and bullying. They describe numerous professionals having been reported by F and subsequently withdrawing from the case.

186. M told Dr Berelowitz that every point of contact is an issue and that F's target appears to be disruption. He is late and he videos them all the time, visibly so. She feels the children need time and space to be children again. Both M and Mr M were clear that a shared care arrangement will not resolve this, not least because F cannot bear for the relationship between M and X to be repaired. They described him as being the 'master' and X as being the 'ringmaster'.
187. In terms of M's acknowledgement of the judgment Dr Berelowitz rightly observes that of course the judgment laid down fewer challenges for her. However he notes that from the descriptions M has conducted herself extremely well in contact and been very child focused, by which he means she has successfully put the needs of the children ahead of her own feelings. However, he also cautions that M needs to be wary of concluding that the Cornwall incident was traumatic for the children only because they had been weaponised by F because this appears to have been traumatic for the children in their own rights. He is also clear that the children are likely to have been affected by the Cornwall incident and also that the parents continue to have significant misgivings about one another.
188. Dr Berelowitz does not consider M's application for transfer of residence to demonstrate a lack of understanding of the children's needs. He says –

While there has undoubtedly been a degree of progress that exceeded expectations, there are also still reasons for concern, especially in regard to X. Furthermore, most of us, including M in this situation, tend to conduct our lives on the basis of the famous forensic aphorism that the best predictor of future behaviour is past behaviour. It would be way too soon for M to be expected to conclude that there is now sufficient new (positive) past behaviour to outweigh the previous past behaviour.

189. Dr Berelowitz met F on 12 and 15 January 2021. F repeated what he has told the court, namely that his report was a 'wake up' call. He said it was the first time that an expert said to push the children harder and it will be okay. He says he has begun to push the children significantly harder. While F does seem to accept that he needed to have done more in the past to promote and safeguard the children's relationship with M, and thinks he is indeed now trying significantly harder, Dr Berelowitz does not think that F fully accepts the consequences of the court finding that he made it hard for the children to be in a relationship with M in the first place. His reasoning for this is because he does not think that F fully accepts that the current difficulties in making things work arise substantially from the way in which he previously conducted himself. Dr Berelowitz was particularly troubled by the use of videoing of sessions by F. He said he thought that if F truly accepted that M does not present a risk to the children then he would not be video recording handovers or allowing X to communicate with him so very often when she is with M.
190. In his recent statement F says that he has taken the fact-finding judgment on board. He says it was not at all easy hearing what the court had to say about him as it was

almost entirely highly critical. He said the worst thing about it is the knowledge that he has damaged the children which has distressed him deeply. He says he would never wish to have harmed them and knowing that he has done has made him feel very regretful about actions he has taken and feelings he has prioritised. He says he wishes to put this right and is working hard to do this. F says that one of the reasons he is doing so much work is because he recognises that he has a lot to put right and this will take time and will be ongoing. However he believes he has begun a significant part of that and the progress to date is proof of it. He points to the fact that Z has changed his view significantly even since Dr Berelowitz reported it.

191. F accepts he has damaged the relationship between M, the maternal family and the children but is doing all he can to restore and deepen it; in summary, he says he is trying really hard to move forward listen and change. Since the fact finding hearing F has attended seven appointments with Dr D who is a highly experienced consultant family and systemic psychotherapist. He was contacted by F following the fact finding hearing and asked if he would undertake therapeutic work with him based on the recommendations highlighted in the judgment. Dr D read the judgment but has not read any other material connected with the case. He is not an instructed expert in the case and I have not heard evidence from him. However he has written a very thorough report dated 24 January 2021 which I have considered very carefully.
192. Dr D sets out clearly the nature of the concerns arising from the courts findings and his initial focus with F was on exploring those issues. Dr D describes much of F's decision-making as having appeared to have stemmed from a wish to protect the children from what he and they experienced as extremely upsetting events, associated with M having drunk too much alcohol.
193. He says, significantly –
- I would suggest that it is F's desire to protect Z, Y and X that led to F unhelpfully placing too many of the 'decision-making powers' about contact with their mother on their shoulders. Importantly, he now acknowledges that he should have done this differently by doing more to promote and rebuild the children's relationship with her by taking a kind but firm role in relation to her, rather than a passive one.*
194. He is committed to continuing to work with Dr D for as long as necessary and is prepared to be guarded by professionals in that regard. He says he is battling hard to be less passive but says this is often the hangover when people have experienced the complicated issues that happened to him during the marriage.
195. However Dr Berelowitz states that while of course he must take into account Dr D's views, it is not clear to him that F fully accepts the extent to which he has been found by the court to have brought about the alienated state of mind in X. He says if he is right about this, then both F and X will struggle to move forward with the idealisation of him and with the preoccupation with M's failings.
196. Dr Berelowitz cautioned that the Town B Centre incident happened only two months ago – it is in the very recent past. He is also concerned about many of the things F has included in his recent statement (dated 8 February 2021) as suggesting that something

is not good enough for the children in M's care. In evidence he described F as continuing to provide a 'drip-drip of things not being good enough' which makes him worry about the sustainability of F being able to change.

197. It is clear that there has remained and continued to be an ongoing dispute between the parents about contact. As the guardian says, there have been countless other matters raised during these proceedings that have taken up considerable amounts of time and correspondence. One vivid example of this relates to X's medical records which M previously tried to obtain, but was prevented from doing so by the GP surgery due to them being under the impression that she was not entitled to see them. Last year a Caldecott Guardian assessed X as being Gillick competent to decide who should see her records. X then instructed the GP surgery that she did not consent to M seeing the records. I subsequently directed that the guardian should view those records and that copies should be sent to the children's solicitor in order for him to do so. Those records have not been shared with anyone else and I have not seen them. The guardian confirms that he does not believe the notes contain a great deal of information that is not already known about, although he cannot say for certain. What is important, however, is that it is clear from the notes that the surgery was indeed told previously not to disclose information to M. In the guardian's view it is also clear from the notes that M was again excluded from exercising her parental responsibility as F is the only parent listed on the form. This is a reflection of the previous findings made by the court in relation to F excluding M from decisions about the children's schooling and represents yet a further example of him seeking to restrict M's exercise of her parental responsibility.
198. The fact that this issue even required a court order and had come to the attention of the court and the guardian is another example of the way in which F's actions, whether inadvertent or deliberate, have undermined M's role as the children's mother and as a parent with parental responsibility, as well as also causing upheaval and unnecessary work for professionals involved in the case.
199. In terms of F's progress, ultimately Dr Berelowitz poses three questions that needs to be answered about his apparent progress following the fact finding hearing. Firstly, he asks if F is indeed progressing in the right direction, and if he is progressing fast enough. Dr Berelowitz essentially answers in the negative, by saying although there has been considerable progress latterly, X's and Z's relationships with M are far from being well enough established. Secondly he asks if F is indisputably moving in one direction only. Again, he answers in the negative, saying that in his view F is not and that he is still sometimes pulled in the opposite direction with consequences. Thirdly, he asks if F's progress will be sustained. He says unequivocally that in his own view this is too early to tell and the discord between the parents does not help.
200. In terms of whether any of his conclusions and recommendations as initially outlined in his first report had changed, he said his concerns about the hostility between the parents still apply. His previous concerns still apply most of all to X but also to Z –

The absence of a rich and full relationship with their mother increases the long-term risk of psychological problems, as does the exposure to discord.

The more complicated worry is in relation to M's arguments, namely that F has amplified any anxiety that the children might have about M, to suit his own ends. If this were to be true, then the children will end up with an entrenched negative view of M and also a set of false memories about M's behaviour, combined with an idealisation of F.

ANALYSIS OF THE REALISTIC OPTIONS FOR THE CHILDREN

201. Dr Berelowitz is of the opinion that the degree of alienation is such and the stakes are so high for the parents and the children that the range of effective solutions is now limited. He is also refreshingly frank when he says it is important to be clear that within his wider professional field there is little research and little agreement about what would constitute the best way forward at such a time. To the best of his knowledge there is no good quality information available about the outcomes of particular interventions and/or about the outcome of not intervening.
202. Dr Berelowitz is clear that X cannot undertake psychotherapy aimed at taking her in a direction to which she has not agreed to go. However he says it is reasonable to expect her to attend joint sessions with a parent to work on the issues relating to that parent and on the need not to undermine her siblings, but that intervention is likely to take time to be effective and may in any event work only partially. While the work is incomplete the impact on the siblings is likely to persist.
203. Dr Berelowitz advises that such work with X and F should not be attempted unless the court can be confident to a very high degree that F can be relied upon unequivocally and wholeheartedly to support the work and that furthermore his other actions do not pull X in the opposite direction. At this point having listened to F in evidence in August 2020 very carefully and having considered all the evidence available at this time, I do not consider that it is possible to find that F could be relied upon unequivocally and wholeheartedly to support such work. He may not intend that his actions would pull X in the opposite direction, however I think the likelihood of him doing so, even in the most well-meaning way at best or deliberately at worst, presents a greater risk.
204. Dr Berelowitz is also clear that it is not possible to separate X from her siblings while they reside in the same home. However he says it is possible to keep her much more separate than has been in the past when it comes to specific contact arrangements.
205. The guardian accepts that X is suffering alienation in F's care, but at the same time needs to balance this against the risk of causing further harm if she is forced to live with M. This is undoubtedly a difficult balancing exercise. The guardian also takes into consideration that X is about to turn 12 and is therefore older than her siblings. She appears to be doing well in school and has made friends with her peers. It is with these factors in mind that the guardian therefore proposes a cautious and measured approach is needed when dealing with X's situation.
206. Dr Berelowitz was asked in evidence about whether there should be a child arrangements order in favour of M regarding the children's living arrangements. He said that, while the parent to whom residence is transferred has to be able to demonstrate they are 'good enough', almost equally important in his opinion is that

parent's ability to promote contact with the non-resident parent. When he was asked about the impact of the change in F's position to agreeing to the transfer of all three children to M's care, he said the history of constructiveness is so recent in this case, that it is very difficult to predict the success of shared care in this case at this stage.

207. At the start of this hearing there appeared to be four realistic options available to the court. These were as follows –

Option 1

All the children continuing to live with F.

Option 2

A shared care arrangement for all three children (both parents ultimately agreeing to an equal 50:50 sharing of residence and contact arrangements).

Option 3

All the children transferring to live with M

Option 4

Splitting the children so that Y and Z transfer to live with M, and X remains living with F.

208. However, on Day 1 of the hearing, Ms Musgrave who now represents F confirmed that, having given matters great thought, F was now likely to be advocating Option 2 as his primary position, but that he wanted to hear Dr Berelowitz's evidence before completely confirming his position.
209. Dr Berelowitz commenced but did not complete his evidence on the afternoon of Day 1. Just before he resumed on the morning of Day 2, Ms Musgrave confirmed that F now agreed the children should not be separated; as such, he accepted that all three children should be placed into M's care for a period of protected separation. This represented a very significant and unprecedented change in F's case. It was acknowledged by all involved, including Dr Berelowitz and the guardian, that his decision has involved considerable fortitude and courage. Through counsel, F has given his commitment to making the transfer of residence work. It was said on his behalf that F had concluded that the transfer might break the impasse, and he was also very concerned that splitting the children could lead to a rupture in the children's relationships with each other. He accepts that the children need to have a more meaningful relationship with M.
210. In a position statement submitted on his behalf, F confirmed that he did not oppose an order transferring residence to M at this hearing, although ultimately still seeks a shared care arrangement with M, where the children can move between the parents easily and have full relationships with both of them.
211. Dr Berelowitz was then able to give his opinion about the change in F's position from the witness box. He said that F's agreement created an opportunity for a dialogue with the children about the history of alienation, and an opportunity to explain that this is the best way for the children to settle with M. He said it provides an opportunity for the children to have positive relationships with both parents, and it is much easier to

explain things to the children if it is agreed between them, rather than being ordered by the court. He described this as ‘*exquisitely difficult territory*’. In light of F’s changed position, he was quite clear that, while there should be a period of ‘protective separation’, this should not be a punitive experience for F. He said that F needs to explain to X that he will not be responding to her texts or phone calls, and said that there must be no secret or back channels of communication to the children. He also said that any evidence that F later reneges on his commitment to making this arrangement work could be seen as a form of emotional abuse. He said that secrets between pairs of family members should be avoided, and that secrets should not be used to create intimacy between family members.

212. Dr Berelowitz confirmed that this could be the sea change in F for which all parties and professionals have been waiting, provided that the period of transfer and protective separation is used well.
213. I adjourned the case overnight to enable the parties to draw up a proposed transfer plan which was then sent to Dr Berelowitz to consider. The following morning, Dr Berelowitz and the guardian discussed and slightly revised the plan, and Dr Berelowitz then resumed his evidence for a third day to explain the thinking behind the revised proposal. Both he and the guardian agreed that the children should not be told about the plan until they were in M’s care. He agreed that the children could feel ‘tricked’ and that it could make things worse, at least in the short term for M; however, he was clear that this was the best option in an imperfect situation. He did say that in fact the words used with the children were less critically important than the actions afterwards. He advised that M should tell the children together, followed by a remote meeting with F and the guardian. He advised there should be no contact for at least three weeks with F, but that M should contact F by email once or twice a week in that period to update him on how the children were doing. He was clear that he could not set out a roadmap for resuming contact at this stage but said that because the guardian has such a good feel for the issues in this case, the parents should be guided by his judgment. However, he was clear that there should be no direct contact until the matter has been reviewed by the court after three months. He advised that X and M will need immediate therapeutic support during the transition period and has considered names suggested to him and advised M on recommended family therapists who can carry out that work.
214. The guardian’s view had been that in the absence of total commitment from F, then a transfer of all three children would be unlikely to be successful. He has plainly given a great deal of thought to the best outcome for the children. In his final report he stated that –

Whilst I would ideally like for X to move to the care of her mother with her two younger siblings and whilst I believe that doing so would ultimately give her the best chance of having a meaningful relationship with both parents, I have to take into account the very real risk of X undermining that placement for Y and Z, particularly in the early days, and the fact that trying to force her to live with her mother will cause a huge amount of distress and upset to her.

215. On Day 3 of this hearing he confirmed his cautiously revised opinion as follows –

It has always been the guardian's preference that all 3 children remain living together. The guardian has had to consider this in the context of X's entrenched negative views of her mother and the impact this may have on the other children. further the guardian has to consider the very limited contact X has had with her mother, in contrast to her younger siblings. A significant consideration had been F's opposition to X living with her mother and the impact this would have on her.

Whilst these concerns have not evaporated the guardian believes that the potential opportunity for X to join her siblings in M's care should be explored. The significance of F's support of this plan is a critical development which leads the guardian to favour the revised approach, albeit cautiously so.

216. Therefore, in light of the change in F's position, the endorsement of a transfer sooner rather than later by Dr Berelowitz, and confirmation of support by the guardian, I agreed that it was in the children's best interests for all three of them to transfer to live with M without delay. I therefore ordered the transfer of all three children to take place in the afternoon of Day 3 of the hearing. F agreed not to discuss the issues with the children or the paternal grandparents, from whom he collected the children. F then successfully delivered all three children, including X, to M in the late afternoon.

217. On the morning of Day 4 of the hearing, the children were told of the transfer by both parents – M in person, and F joining remotely. The guardian also joined this meeting remotely. The guardian has prepared a note of that meeting, some parts of which are disputed by F. There is no need to descend into the detail of this here. What is important is that the children are now successfully transferred to the care of M. With everyone's agreement I have made a Child Arrangements Order for the children to live with M.

218. However, it is still vitally important in the interests of clarity and transparency that everyone involved in this complex and protracted case understands the reasons for the making of the order, and why it is the realistic option that is in their best interests. I have therefore considered the benefits and detriments for the children's welfare of each of the four realistic options as follows.

Option 1 – all the children continue to live with F

219. The obvious benefit of this option would be that there would be no change and consequent unsettling of the children because the status quo would remain. They had been living consistently with F, albeit with periods of contact with M until August 2018. Between that time and September 2020 they then continued to live with F and had no contact at all with M. It is only since September 2020 that they resumed contact with M, and only since November 2020 that they began to have overnight staying contact with her. Therefore they are used to living with F in his home, they are settled at schools near his home, and this option would not entail any upheaval at all for them. The other obvious benefit of this option is that it accords with the children's

stated wishes and feelings. And of course it enables the children to remain together as a sibling group.

220. The detriments of this option are that the children's contact with M is highly unlikely to be maintained, certainly once the involvement of the guardian and the court is at an end. There is a high risk, based on the history, that F will be unable to promote contact consistently and predictably. Dr Berelowitz reminded the court that the best predictor of future behaviour is past behaviour. He cautioned that of course this must be viewed through the prism of a belief within the family justice system that people can change. But the fact remains that the children's journey to resuming contact with their mother has been tortuously slow and beset with difficulty, even as recently as this month. It is right to say that F's progress is still very much in its infancy. The combination of F's inability and/or unwillingness (whichever it is matters not) with the obvious impact of the alienation on all three children, albeit to different degrees in each child, vastly increases the likelihood that the continued path of contact will not be smooth. If the children remain living with F, it is likely they will be deprived of the optimum opportunity to enjoy a full and rich relationship with M also.
221. No party in fact now actively seeks this option. But for the avoidance of doubt, in my consideration the detriments of this option far outweigh the benefits. All parties are agreed, and Dr Berelowitz and the guardian advise, that it is in the children's best interests to enjoy a full and rich relationship with both parents. The likely detrimental effect on the children of this option is that it will prevent them having such a relationship with M. That cannot be in their best interests and so this option cannot be said to be realistic for that reason.

Option 2 – a shared care arrangement for all three children

222. The benefit of a shared care arrangement would be that it removes the burden of responsibility from the children. It places the locus of control firmly and equally in the hands of the parents. That in turn is likely to reinforce to the children that both parents have equal status in terms of their parental powers and responsibilities. This option would also enable all three children to stay together. Finally a shared care arrangement would enable all three children to have equal contact with both parents in a predictable and stable routine.
223. M's case is that if the court makes a shared care arrangement F will very quickly find an excuse to stop contact and reinforcing the children that she is a risk to them. Her concern is that F will continue to create false memories in the children that she did something wrong. For example, he has told the children that the reason they have not seen her for two years was because she left to concentrate upon her career and did not love them. She describes sending the children many, many letters over that period, almost all of which they did not receive. She greatly fears that the children will grow up with no contact with her or the maternal family which will cause them emotional harm in the long term. In short, she says they will learn from F how to cause chaos and destruction and harm to other people which will make them unhappy and unpopular individuals. These are bold submissions on her part but indicate the very great strength of her feeling.
224. She firmly believes that if the court now orders that there should be a shared care arrangement it will breakdown very quickly. She says F does not trust her and has

demonstrated since 1 October 2020 through his behaviour that he will do anything to undermine her relationship with the children. She says he has convinced himself that she will relapse and start to abuse alcohol and will put the children at risk. M's case is that there is no cogent evidence to support F's concerns. The reality is she has now not drunk alcohol for two years and five months. She is also now in a very different emotional place and is happily married to a loving and caring husband.

225. The risk of a shared care arrangement is that it will involve yet more chaos and upheaval for the children. The previous two shared care arrangements, ordered by the court, have failed in the past. The shared care arrangement to which both parents subscribe would involve also a fair amount of weekly upheaval and is likely to be unsettling for all three children. The proposed shared care arrangement would require the children to move between the houses every three or four days. A further detriment of this option is that it is contrary to the expressed wishes and feelings of all three children, particularly X.
226. Again I find that the likely detriments of this option far outweigh any likely positives. In the context of such a long protracted history of acrimony and discord between the parents, it seems highly unlikely, if not impossible, that these parents could make such an arrangement work successfully, at least in the medium to long-term. Such regular transition between the households provide simply too many opportunities for things to go wrong in what remains an incredibly fragile, finely balanced and delicate situation. F needs to demonstrate needs to demonstrate significant and sustained shift in his actions and behaviour, not just his words and language. That cannot be done quickly, and needs to be tested and proven over time. I therefore do not consider this option to be realistic at this stage of these children's lives.

Option 3 – all the children transferring to live with M

227. This option involves a change of residence for the children so that they can live with M and spend time with F. M proposes a three month rehabilitation period of protective separation from F which would allow all the children to settle, and would enable M and X to obtain therapeutic support from a family therapist.
228. The benefit of this option is that it would enable the children to begin to take steps in repairing and restoring their relationship with M. It would offer an opportunity to heal the impacts of the alienation caused by F. If this option is combined with a period of up to three months protective separation from F, the prospects of success in achieving these goals is greatly increased. It would enable the children to be free, at least for a short while, from the destructively alienating effect of F. And of course it would enable the children to stay together.
229. Another benefit of this option would be that X, Y and Z could resume good quality relationships with their extended maternal family which have, as I have already found, been fractured and damaged by F. M thinks this option will provide the children with stability in the long term. She has already begun to create scrapbooks of their lives with photographs in to give them a true account of their past lives which she says has been misrepresented by F, but she accepts there is a lot more work to do about this. She describes in her statement how she would reinforce to the children that they are loved by both parents but that not everyone can get along all the time.

230. The detriments of this option are that it is expressly contrary to the children's expressed wishes and feelings, particularly X's, and necessarily imposes a period of protective separation from F. There is a risk that the children will feel punished, which could have a further detrimental effect on restoring their relationship with M and could increase their feelings of negativity towards her. If this option is combined with a period of protective separation from F, there is also the risk that their relationship with F could deteriorate. As Dr Berelowitz said, there is no point in replacing one alienating relationship with another. There is also a possibility that at least for X she could run away which is harmful to her, and risks destabilising Y and Z.
231. This option inevitably cannot avoid causing a degree of emotional harm to the children. However, Dr Berelowitz also advised that sometimes the perfect solution for a child simply cannot be attainable, and that seeking a good enough solution is the only realistic option.
232. That is ultimately why in this option, taking account of all the history and evidence that I have considered, the benefits do outweigh the negatives.

Option 4 – splitting the children so that Y and Z transfer to live with M, and X remains living with F

233. The benefit of this option would be that Y and Z, who are already now enjoying or appearing to enjoy quality contact with M, could continue to improve and restore the relationship with her. Another benefit is that there is no evidence to suggest that M would not promote their contact with F and X, and so the court could be confident with this option that Y and Z would continue to have the opportunity to enjoy a relationship with him. Another benefit of this option would be that Y and Z could resume good quality relationships with their extended maternal family which have, as I have already found, been fractured and damaged by F. Another benefit of this option, which cannot be overlooked, is that it provokes less opportunity for X to undermine Y's and Z's relationships with M because she will get what she wants, namely to stay with F.
234. The obvious detriment of this option is that the children would be separated from each other, and in all likelihood the impact of this on their sibling relationship would be damaged in the medium to longer term. This option also risks polarising the alliances within the family which is not in the children's best interests. It is highly likely that X's relationships with M and the maternal extended family will remain damaged and fractured, if not indeed non-existent. There is a real risk that X never re-establishes her relationship with M. And there is a very real and significant risk that this option would cause significant harm to all three children. All the concerns I have previously highlighted about F's inability to promote contact would apply to X here. There is also a very real risk of the concern already expressed by the guardian and Dr Berelowitz of the enmeshed and intense relationship between F and X continuing. This cannot be in X's best interests because she needs to separate emotionally, as all children do, from her parents. The chance of this happening for X if she remains living with F, particularly without her siblings, seems highly likely.
235. Having eliminated Option 1 and Option 2 as being unrealistic for these children at this stage in their lives, I have then weighed and balanced Option 3 and Option 4 against

each other. This has been a difficult and finely balanced exercise. Until F's dramatic and significant shift in position on Day 2 of the hearing, Option 4 was the option reluctantly favoured by the guardian and by Dr Berelowitz.

236. However as Dr Berelowitz has said, F's agreement shifts the balance sufficiently, such that the detriments of this option outweigh the benefits. I agree. Option 3 is not without its risks as already identified, particularly in the short term. However, I must also consider the medium and long-term situation for these children. Dr Berelowitz reiterated that F's attitude is an important factor; the more F supports the plan the more likely a move to a more shared care arrangement in the future will be. However the less supportive F is, the more artificial the plan will be. He thinks F understands this. He said that in summary Y and Z are likely to settle with M. He said he expects they will be sad from time to time but they will settle, but they need to be protected from the undermining that could happen. However, he said one possible outcome which is challenging and sad is that Y and Z settle well, but that X becomes ever dependent on F and evermore isolated. He has considered whether it would be possible to transfer residence for Y and Z, but leave X in F's care. He thinks this would leave X vulnerable.
237. However on the other hand if she also moves to live with them, she could disrupt everything; he says there are lots of questions about the pros and cons of moving X. If she moves and one says to her that if it doesn't work then she can go back to F, then we are setting up a 'hostage to fortune' situation where she may undermine the plan in order to go back to F. At the time of meeting the guardian, Dr Berelowitz's mind was not made up. However, he thought that splitting the children as a proposal would certainly safeguard Y and Z. He said in his opinion a lot still depends on F's capacity to change. If this works well and he manages to change, this will be a magnet that draws X into a relationship with him and her siblings. However if it does not work F and X could become more isolated, she could move away and have nothing to do with M and the siblings. Dr Berelowitz cannot predict whether it will be one or the other. In his opinion a lot will also depend on how M proposes that it would work and would be managed if X was to move as well.
238. I find that, in all the circumstances, the risks of Option 4 are greater than the risks of Option 3 in terms of the likelihood of harm to the children in the medium and short-term.

THE TRANSFER OF RESIDENCE

239. Dr Berelowitz was asked in terms to advise how any change of residence should be managed, including whether there should be a period of no contact between the children and F, and, if so, for how long and how contact should be re-introduced at the end of it. He was also asked to give his view as to what each of the children should be told about a change of residence. Finally he was asked to give his opinion, based on his previous assessment of them and the updating evidence with which he had been provided, how each child is likely to respond emotionally to a change of residence. Dr Berelowitz advised that this is an area for which there is little published evidence and about which there is little professional discourse and so his opinions are offered very much with caution in mind. He observes that the usual practice is to transfer children without notice and from a neutral venue if at all possible. He said

that where contact is already taking place, the contact should simply be extended and converted into residence. He said that telling children in advance that they are going to move increases the likelihood of a traumatic incident.

240. Dr Berelowitz advised that during and in the period immediately after the transfer M will need support from a family therapist to help her with challenges from X. Steps are already underway to identify such a therapist.
241. In respect of what the children should be told, Dr Berelowitz said that the children need to be advised in terms that the court has found that F has made it psychologically impossible for them to relax into a rich and full relationship with M. He said X and Z may also need to be told that the consequence of F's approach has been that they will find it very difficult to accept the judgment of the court.
242. Dr Berelowitz was asked how the children would each be likely to respond to an order for transfer of residence. He advised that there is no data available from any source on outcomes of change of residence. He could speak anecdotally of the cases with which he has been involved, which he thinks are about 20, and he said that in all of those cases all of the children settled more readily than he feared they might. The one case where it did not work was a case in which he had not been involved from the outset. That was a case of the most extreme alienation that he had come across where the child had no contact with their father for five years. In another case where he knows that the transfer did not work that was due to undermining by the other parent. In that case there were secret telephones and secret meetings at school and a phone was even found under the child's pillow.

DECISION

243. For all the reasons analysed herein, and taking account of the children's welfare as my paramount consideration, I have therefore concluded that Option 3 is the option that is in the children's best interests and that the children should transfer to live with M as soon as possible.
244. I have therefore made the children subject of a child arrangements order whereby they shall live with M, with a period of protective separation of three months from F. At the time of writing, the transfer appears to have been effected smoothly and without major incident.
245. That is my judgment.