

*This approved judgment was handed down by the Judge remotely at a hearing and by circulation to the parties' representatives by email. The time and date of hand down is deemed to be 11.00 a.m. on 30 August 2023. The children's names have been changed.*

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Neutral Citation Number: [2023] EWFC 153 (B)

**IN THE FAMILY COURT AT [OXFORD]**

**IN THE MATTER OF THE CHILDREN ACT AND IN THE MATTER OF [SOPHIE],  
[ANNA], AND [EMMA]**

Date: 30 August 2023

**Before : HHJ Vincent**

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**Between :**

**AF (A FATHER)**

**Applicant**

**- and -**

**AM (A MOTHER)**

**Respondent**

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**Lee Kelleher** instructed by **Family First solicitors for the applicant father**  
**Henry Pargeter** instructed by **National Legal Service Ltd, solicitors for the respondent mother**

Hearing dates: 29 and 30 August 2023  
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**APPROVED JUDGMENT**

## Introduction and background

1. I am concerned with three sisters, Sophie (eleven), Anna (nine) and Emma (four). [*The children's names have been changed.*]
2. Their parents are [AF] and [AM], who I shall call the father and the mother in this judgment.
3. The mother is originally from [City A]. The father's family are from [redacted]. The parents entered into a relationship in 2009 and were married in January 2012. [Sophie] and [Anna] were born when the family was living in [country name redacted], but thereafter they moved to live in [City A].
4. The parties separated for a short time in February 2017, when the mother left the family home with [Sophie] and [Anna]. There were proceedings in the Family Court at [City A], but they concluded by agreement. The parents were reconciled, and the mother and the girls returned home. [Emma] was born in October 2018.
5. In October 2020, the family moved to [Oxfordshire].
6. On 17 November 2022 the mother left the family home with all three girls and moved to a refuge in Bournemouth.
7. On 29 November 2022 the father issued an urgent application to the Family Court in Oxford seeking immediate return of the children. I am not sure why, but the application was not listed for an urgent hearing, but instead was listed for a first hearing dispute resolution appointment in March 2023.
8. On 15 December 2022 the mother applied to the Family Court in Bournemouth for a non-molestation order. In the statement filed in support of her application she alleged the following:
  - She had left the home with the children due to the father's abusive and controlling behaviour. She said his behaviour was escalating, the longer she and the children were away from him;
  - She was in fear that he would threaten to kill her and her parents unless she and the girls came back. She alleged he had made a similar threat in 2016 when she had tried to leave him;

- She said that the father could not accept that the relationship was over, did not accept that his behaviour had been abusive, and she feared that if she were to return to him, the previous patterns of behaviour would continue;
  - The alleged controlling behaviours included the father having to know where the mother was at all times, calling her repeatedly through different social media or messaging sites until she answered, and seeking to check her phone;
  - She alleged that the father had put her down, and had been degrading and denigrating of her;
  - She alleged that the father was paranoid about her talking to men, would become very jealous if a man spoke to her, and would blame her for his own behaviour towards her;
  - She said he prevented her from having open conversations with friends by taking the phone from her, and involving himself in the conversation, talking loudly so her friends knew he was there;
  - the mother alleged that the respondent isolated her from her mother and other family members, blaming her mother for her part in providing a home to her and the girls in 2016, when she first tried to leave the relationship;
  - it was alleged that the father controlled the money and finances in the relationship, that the universal credit payments were made to his account, and the mother was unable to withdraw money from it without his permission. She said when she did buy things for herself and the children, he would complain to her about how much she had spent. She alleged that she had to ask him for money if she wanted to buy a train ticket, and that she had no means of saving money that might have enabled her to leave him;
  - in her statement she alleged that she would try to avoid arguing to keep the peace, but he would keep going, pressing her, until she agreed with him.
9. If these allegations had been found to be proved in Court, it is likely that they would be found to amount to a pattern of coercive and controlling behaviour, consistent with the definition within the Domestic Abuse Act 2021, and Practice 12J of the Family Procedure Rules 2010:

*“coercive behaviour” means an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten the victim;*

*“controlling behaviour” means an act or pattern of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour;*

10. The application was referred to a Recorder on the papers. The Recorder determined that the allegations were not sufficiently serious to warrant an ex parte hearing. The mother’s application for a non-molestation order was listed on notice to the Respondent for hearing, a month later, on 13 January 2023.
11. The Respondent attended the hearing (which took place remotely) on 13 January 2023, and denied all the allegations against him. The District Judge directed statements be filed and listed a final hearing of the application on 14 April 2023. No protective order was made in the meantime.
12. On 15 February 2023 the father made a further application to the Family Court at Oxford for an urgent hearing in respect of his Children Act application, but again it was not listed.
13. At or about this time the father was notified by the children’s school in Bournemouth of the mother and children’s address. The mother then relocated with the children to Hampshire. In March 2023 the mother and the children relocated to [City A], where they continue to live in a refuge. The refuge is a large home they share with one other family.
14. At the FHDRA in Oxford on 14 March 2023 the magistrates recorded that issues of domestic abuse had been raised by the mother in her response to the father’s application. Those issues were the same as those raised within the Family Law Act application. They made an order consolidating the two sets of proceedings, with a request to the Family Court at Bournemouth to transfer its file to Oxford. An order was made prohibiting the father from removing the children from their mother’s care. The order provided for video contact between him and the girls to start. The parties were directed to file statements and to return to Court on 28 April 2023, by when it was anticipated that the application for a non-molestation order would have been resolved in Bournemouth.

15. That hearing took place on 14 April 2023. Both parties were represented. In the event, the Court did not hear evidence or submissions, as the parties had come to an agreement. It was recorded on the recital to the order that the Respondent made no admissions on the contents of the application and the Court had made no findings. The Respondent gave undertakings not to use or threaten violence against the applicant, not to intimidate harass or pester the applicant, nor to contact her, *'except for the purpose of any ongoing legal proceedings or relating to the parties' children*, so in effect allowing the father to contact the mother. The undertaking was to remain in place until 14 October 2023.
16. Following that hearing the parties agreed that the girls could have regular contact with their father and in April 2023 they saw him for the first time since November 2022. There is no dispute that the contact has gone extremely well. The girls love spending time with their father.
17. It is unfortunate that the application for a non-molestation order was not dealt with more speedily. Had a protective order been made, or undertakings been accepted sooner, there is prospect that contact between the girls and their father could have got up and running much earlier than eventually happened in this case.
18. The status of the mother's allegations of domestic abuse is that they were raised, but not pursued within the Family Law Act proceedings. They have not been tested in evidence by a Court. They remain allegations, unproven in a Court of law. They cannot be disregarded as they would be if they had been made and found not to be proved by a judge. There has been no finding that the mother has put forward a 'false narrative', as asserted by the father.
19. However, it is right to stress that the father denies them in their entirety, and no findings have been made against him in respect of any of the allegations of domestic abuse.
20. The hearing that was supposed to take place on 28 April 2023 did not happen. From my review of the papers, I have not been able to find out why.
21. On 26 May 2023 the father applied again to Oxford for an urgent hearing. Again, his application was issued, but no hearing was listed.
22. I have not carried out any kind of investigation into why the urgent hearings applied for were not listed, but I have apologised to the parties for the delays in this case, which do not have an obvious explanation, and which are not acceptable.

23. Finally, on 11 August 2023, a directions hearing took place before District Judge Devlin.
24. The girls had been on a two-week holiday with their father to [*country name redacted*] in July and then stayed on with him in [Oxfordshire] for a further couple of weeks. By agreement the girls then returned to [City A] with their mother after the hearing on 11 August 2023 which is where they are currently.
25. By the time of the hearing on 11 August 2023 the parties had agreed a child arrangements order in principle, which provided for the children to spend a week on/week off with each parent during term time, and for the children to split their time equally between their parents in the school holidays. However, while the mother lives in [City A] and the father lives in [Oxfordshire], this order would not be workable. The parties were not in agreement about whether the girls should live in [City A] or in [Oxfordshire].
26. This is essentially the question I have to decide.
27. The father's position is that the girls' welfare needs are better met in all respects if they were to return to [Oxfordshire] and live with him.
28. If the Court directed that the children live in [City A], he would make plans to relocate there, so that the shared care arrangement could be put into effect. He thinks that could happen within the next year. However, his first position is that the girls should live in [Oxfordshire]shire with him.
29. The mother asks the Court to order that the girls remain in [City A] with her. She would agree to the children seeing their father every other weekend and for the school holidays to be shared equally. In the event that the father relocated to [City A], she would accept the shared care agreement previously agreed.
30. If the Court decides the children should return to [Oxfordshire], then the mother would accept an order that provided she saw the children every other weekend and for the holidays to be split. She would wish to see the girls every other week, but she does not feel able to return to live in [Oxfordshire] herself. She says this is because she would be concerned about how she would cope with the respondent's behaviour towards her. She would find it too difficult to deal with if she was living somewhere away from her family, friends and other networks of support, which she has in [City A].

31. Sophie is due to start secondary school in [City A] in September. Emma is due to start at reception class in the primary school where Anna is a pupil, and where Sophie also went to school.
32. If the girls were to move to [Oxfordshire] to live with their father, it is anticipated that Anna could return to the primary school she attended up to November 2022, Emma could join her in reception, and Sophie would have a place at a local secondary school.
33. Given the imminent start of the new school year, District Judge Devlin considered that there was some urgency to determining the question of where the girls should live.
34. He directed the parties to file detailed statements, and listed this final hearing before me on 29 August 2023, for me to determine the question of where the children should live and the arrangements for spending time with the other parent, having heard submissions.
35. I have read the contents of the bundle and the Court files, from both the Children Act 1989 application and the Family Law Act application, which include application forms, previous orders, Cafcass safeguarding reports and witness statements.
36. I have been assisted by the written and oral submissions of Mr Lee Kelleher for the applicant father and Mr Henry Pargeter for the respondent mother.
37. After hearing submissions I spent the rest of the day considering and preparing this judgment, which I sent by email to the parties the following morning, having given them a brief summary of my decision and reasons at a short video hearing.

## **The law**

38. In my conclusions I have regard for the welfare checklist as set out in Section 1 (3) of the Children Act 1989.
39. In reaching my decision the welfare of the children is paramount and their welfare has been at the forefront of my mind throughout this hearing.
40. There is no additional principle or approach to consider when determining an application for relocation of the children to another part of the country.
41. The court must carry out a ‘global, holistic evaluation’, weighing in the balance the different options for the children, consider the positives and

negatives of each option on their own, and then when compared against the other options.

42. Case law (in particular Re TC and JC (children: relocation) [2013] EWHC 292 (Fam) per Mostyn J), reiterates that there is no presumption in favour of a 'primary carer':

*'The hearing must not get mired in taxonomical arguments or preliminary skirmishes as to what label should be applied to the case by virtue of either the time spent with each of the parents or other aspects of the care arrangements.'*

43. I have been referred to a number of cases concerning applications to relocate abroad, which are helpful but should be distinguished from this case, where the parties agree that whatever the final decision, the girls should spend regular, quality time with the other parent. There is no 'left behind parent' in this scenario, as is envisaged in those applications where one parent is seeking to relocate with the children to another part of the world entirely.
44. Practice Direction 12J of the Family Procedure Rules 2010 directs the Court to consider whether domestic abuse has been raised as an issue, and if so, whether it is likely to be relevant to any decision relating to the welfare of the child, specifically whether the child or parent would be at risk of harm in the making of the child arrangements order.
45. The magistrates properly identified this as an issue, and intended to await the outcome of the Family Law Act proceedings before proceeding further with the Children Act 1989 application.
46. Once the Family Law Act proceedings were concluded, the Children Act proceedings have continued on the basis that the issue of domestic abuse is not relevant to the decisions in respect of the welfare of the children. This is the position that the mother has put forward to the Court today. However, at the same time, the mother has not resiled from the allegations she has previously made. She has continued to say that the actions she has taken, separating from the father and taking the children with her, are in response to her treatment at his hands. She has a diagnosis of anxiety and depression, and again she asserts her mental health deteriorated due to the impact of the father's behaviour towards her.
47. The position of both parties that it is appropriate for me to make final decisions in respect of the welfare these children on the basis of submissions only. However, there is a tension between that position, and my underlying



concern that domestic abuse has been raised as an issue in these proceedings, but has not been properly considered.

48. The mother's allegations were serious, but it is arguable that they have not been taken seriously by the Family Court, which did not list an urgent hearing upon her application, and then delayed the decision about whether or not to make a protective order (or accept undertakings) for a further three months. It is arguable that as a result the mother felt unable to rely upon the Court for protection, and chose instead to negotiate a safer position for herself with the father directly, at a cost of not formally pursuing the allegations of domestic abuse within these proceedings, and re-establishing direct contact with him, which she had initially sought to avoid.
49. If the allegations of domestic abuse were to be proved true, the Court would need to consider the potential risk of harm to the girls of a father who has demonstrated patterns of controlling behaviour towards their mother. For example, there may be a risk that he would continue to exert control over her through arrangements for contact, or that he would expect to control the girls in similar ways. Without the allegations and consequential risk being fully explored, there is a risk that the Court is being asked to make welfare decisions about the girls, without having the full picture.
50. Not dealing with the allegations causes a different, but still significant concern from the father's perspective. He maintains the allegations of domestic abuse are false, but he has not had the opportunity to defend himself against them in Court. Instead of having been tested in court and proved to be without foundation, as he would wish them to be, the allegations have lingered and have been allowed to form part of the narrative placed before the Court.
51. In all those circumstances, is it appropriate for me to reach a conclusion on the applications today? I have considered this carefully. On balance, I have decided that it is, for the following reasons:
  - The decision to proceed to a final hearing on submissions was made by District Judge Devlin at a directions hearing at which both parties were represented. Neither party has sought to appeal that decision, which is not therefore up for review by me;
  - Both parties are legally represented. Neither party has sought to adjourn the hearing, but has had sight of the other's detailed statement and exhibits, and made submissions to the Court, advancing their own case and responding to the other's case;

- These proceedings are coming up to their first anniversary. The new school year starts next week and the parties agree that it is vitally important for decisions to be made as soon as possible, so that they know where they will live and where they will go to school. Delay in order to prepare for a fact-find, or for a section 7 report from Cafcass is not in the children's best interests;
- This is a private law application. The parents share parental responsibility for their children and are free and entitled to make the decisions about the arrangements for their children. They have asked for the Court's assistance in determining the question of where the children should live, but neither of them is asking the Court to explore the allegations of domestic abuse. The mother asserts that it is not relevant to her application, because she has no concerns about the girls' welfare in their father's care. She is legally represented and entitled to respect that she can make her own judgements about the girls' safety, to decide for herself how she puts her case, and what decisions she wishes the Court to make.

52. I have not been asked to make findings of fact in respect of matters where the parties have put forward differing accounts, and it would not be right to do so without having heard evidence from each of them.

53. However, it is my role to assess the evidence that has been put in front of me and that is the basis for my welfare evaluation, although I must of course exercise some caution in respect of evidence that is disputed and untested.

### **Analysis**

54. Before I turn to consider the welfare checklist and the parties' proposals, I record some general observations.

55. There were elements of the father's case that have caused me some concern. Consistently, he appears to be 'on the attack' towards the mother. He has portrayed issues with her mental health as character defects, been quick to criticise her, and has questioned her abilities as a parent. His case has been presented very much as a competition between him and the children's mother, in which he presents himself as better than her, a better parent, a better earner, and, he says, living in a better city.

56. Exhibited to his witness statement are some photos and videos, and audio recordings. Many of these show the children having a lovely time with each other, their friends and family in [Oxfordshire] and with their father. There are a number of TikTok videos with subtitles highlighting the father's excellent qualities as a dad.

57. I was concerned by two separate videos of handovers. One, called ‘pick up by daddy’ shows the children rushing to the arms of their father, smiling and laughing. It is not clear who took the video, they are at some distance, the father looks up to the camera after kissing the girls on the head. The impression is that the video is being taken as an evidence-gathering exercise, to show the children’s love for their father, which of course is not challenged in these proceedings. In comparison in the video showing a handover to the mother the children could perhaps be said to be dragging their feet a bit, Emma is tearful and her dad calls to her to go and say hello to her mum, although she is already heading towards her, and is lifted into her mum’s arms for a big hug. The inference I am asked to draw from this is the children are less happy to go to their mother because she is less well-equipped as a parent than their father. I am concerned at why the father is standing filming the girls in this way, rather than focusing on supporting them emotionally. If indeed there was an issue with handovers, I question why the father was not supporting the children, encouraging them, working with the mother to find a way to make things go better.
58. I listened to some very brief audio clips of the girls. Emma says in a tearful voice that she loves her daddy and she misses him, and is crying, and then says something about her mummy, but can’t get the words out. She repeats mummy, says mummy send to your house, and then asks, is everything ok. I was not given the full conversation.
59. In the clip of Sophie she sounds upset and hesitatingly says she wants to live in [Oxfordshire] with her dad, but she doesn’t want to hurt her mum’s feelings. She describes her mum as ‘*a very sensitive woman*’, and asks her father to tell the Courts to, ‘say [Oxfordshire]’.
60. In the clip of Anna I can just about hear a tearful and very quiet voice saying, ‘*I wanna go to you*’.
61. I do not know what was said to the girls just before these extracts to lead to them saying what they did. I do not know what was said to them afterwards. I don’t know whether the recordings come from conversations, or were voice messages left by the girls, or whether they were being asked to state their wishes for recordings taken while their father was with them. In the circumstances, I must be very cautious about the weight that I give to these expressed wishes, because I do not know how the girls came to say what they did.
62. The children’s distress is concerning. The father is clear in his evidence that their distress is only explained by their wanting to be with him and not with

their mother. However, it is clear from Sophie's clip that she is also worried for her mother's feelings. She appears to be torn between her parents. She is plainly aware of these Court proceedings.

63. I have seen text messages between the father and Sophie in which he tells her he is doing everything he can to get the girls back to [Oxfordshire]. I am concerned that he has involved her in the parental conflict in this way.
64. The children's mother acknowledges that the girls have said to her at times that they would like to live with their dad in [Oxfordshire]. I accept that they have said so, and that is consistent with what is heard in the brief audio clips. However, for the reasons given, these clips give rise to concern in my mind in respect of the conversations the father is having with the girls and the recordings he is making of them, apparently for the purpose of evidence gathering.
65. The father continued to characterise the mother as having abducted the children. He does not accept that she could have acted in response to his behaviour towards her, but characterises her as impulsive, careless for the girls' welfare, and someone who has form on this, having done the same in 2016-2017. The mother initially moved to stay in a refuge, taking only minimal possessions for her and the girls, and without telling anyone of her plans. She relocated immediately she found out he knew where they were in Bournemouth. She relocated again to live in a refuge in [City A] with the girls, where she continues to live. On the face of it these actions are consistent with a person who is genuinely fearful, as she says.
66. The mother's evidence that she had received only £300 in total from the father since she had separated from him, was not challenged. The father said he had given her money as and when she asked him. He said because she had prevented him from seeing the children between November 2022 and April 2023, and he was not allowed to be in touch with her before then, he had no way of giving her money. However, the father was served with the application for a non-molestation order in December 2022. He knew that the mother had a solicitor. Had he wished to set up a means of providing some money for the children's benefit he could have done so through her solicitors, or through the child maintenance service. He earns £42,000 a year as a senior manager within the NHS.
67. The mother has not sought to criticise or attack the father, but has sought to defend her parenting of the girls and their circumstances in [City A], and put forward the reasons that she says she feels it would be better for them to remain living there. She has made it clear that she does not consider the father

poses any risk to the girls and that she thinks he is an excellent, capable and loving father.

68. I turn now to consider each of the factors on the welfare checklist.

### **The welfare checklist**

#### ***the ascertainable wishes and feelings of the children concerned (considered in the light of their age and understanding.***

69. The children's wishes and feelings are of course important, but they are not determinative. I accept that the children have made statements to the effect that they love and miss their father and that they would like to live with him in [Oxfordshire]. However, for reasons given above, I am cautious about the weight that I attach to the three very short recordings. The children have loving relationships with each of their parents and it can be presumed that they would wish their relationships with each of their parents to be supported and nurtured.

#### **their physical, emotional and educational needs.**

70. The children have had a disruptive few years, moving from [City A] to [Oxfordshire] in October 2020, experiencing periods of lockdown and home-schooling just at the time they would be needing to integrate into their new schools and nursery. Just two years after moving to [Oxfordshire] they have experienced their parents' separation, and a number of moves with their mother, first to Bournemouth, then [Hampshire], then [City A]. They did not see their father for many months, when they were used to seeing him every day. They have been to new schools, had to make new friends, then say goodbye to them, and they have faced continuing uncertainty about their future. They have a need for stability, certainty, and for support from each of their parents to understand that although they no longer live together, they are still their parents, able to take care of them, be interested in them and protect them. They need to be supported in their education, nurturing friendships and their own interests out of school.

71. It is to the girls' great credit, and credit to the parenting they have received from their mother and father, that despite all these challenges, the school reports from [City A] describe them so positively. They are kind and caring girls, try hard in their school work, behave well, have made friends and look out for one another. I understand that this was also the case when they were at school in [Oxfordshire].

**the likely effect on them of any change in their circumstances.**

72. A move back to [Oxfordshire] now will represent another shift and change from a situation they have come to know and in which they have settled. They have been preparing themselves for the new school year. If they go back to [Oxfordshire] they will have to adapt and change once again.
73. However, they would be returning to an environment with which they are already familiar, so it is not the same as moving to a completely new area.
74. Sophie will be starting a new secondary school and Emma is starting in reception class. It is arguable that they are facing a change in any event, so it does not make much difference to them if that is a new school in [Oxfordshire] or [City A]. Sophie would know some pupils in [Oxfordshire] from her previous primary school who would be moving up to secondary school with her. Anna would have to leave her current primary school in [City A], but she would be returning back to a school where she has been a pupil before. Again, it is arguable this would not represent a significant shift for her in all the circumstances.
75. It is perhaps old-fashioned to talk of ‘primary carers’, and case law is clear that there should be no presumption in favour of children remaining with a parent who is identified as such. Each case is explored on its own particular facts. In this case the father is very much ‘hands-on’, capable of taking care of the girls on his own, and historically he has always played a full role in their lives. But the mother has not worked since she has had the children, while the father has. Her primary responsibility for the children has been their day-to-day care and taking care of the household. For the last year she has been their sole parent. It would represent a significant change, and a significant loss for the girls to move to live with their father and to leave her behind. At the same time, before they left in November 2022, they were used to seeing their father every day and not living with him has been a significant loss for them as well. If they continue to live with their mother and see their father on alternate weekends and for half the holidays this will continue to affect them. It is very positive to know that despite the long break from not seeing him, when they were reunited, they were able nonetheless to step back into a positive and happy relationship and to spend quality time together over the summer holidays.

**their age, sex, background and any characteristics of theirs which the court considers relevant.**

76. There are no specific additional factors to consider under this heading.

**any harm which they have suffered or are at risk of suffering.**

77. The mother does not suggest that the father poses any risk to the children. No adverse findings have been made against him in this respect.
78. The father does criticise the mother, and suggests her parenting has fallen short on occasions. He queries the girls' attendance record at school in [City A] which is around the 90% mark. He raises questions about the impact of the mother's poor mental health upon the children. He suggests that the refuge where they live does not constitute suitable housing, as they are sharing a bathroom with another family, and he raises a concern about some of the children and families they are encountering there, citing an assault by another child as an example. He is concerned that therapeutic work the children are having to help them process their parents' separation and the changes that has brought about is feeding them a 'false narrative' about him. He characterises the mother as impulsive and putting her own needs before those of the girls, in moving them to different homes around the country without warning, and causing them to suffer the disruption of leaving schools and friends and having to start all over again, and above all, separating them from their father.
79. These matters have not been explored in evidence. However, I accept that the attendance record is in part influenced by the girls being taken out of school a week early to go on holiday with their father, and by illness. The school reports raise no concerns about non-attendance or lateness, and no issues about the care provided to the girls by their mother. There was an incident in the refuge where another child carried out an assault, but that appears to have been dealt with swiftly and appropriately. The child and family were moved to another placement immediately. There is no evidence to support the father's assertion that the mother has been speaking to the children about the proceedings or feeding them a 'false narrative'. No findings have been made in court to that effect. The evidence in respect of the mother's health is that she is under the care of her general practitioner, is following a course of prescription drugs, and there is no evidence to suggest that the girls' care has or is at risk of being impacted by this.
80. I have not made findings about the reasons that the mother left the marriage with the children, and whether there has been domestic abuse.
81. I can say that there is no evidence to support the father's assertion that the mother abducted the girls maliciously, or on an impulse.
82. For all these reasons, I do not find the father's criticisms of the mother to be justified on the evidence I have read. Her children are not at risk of harm as a result of the parenting they receive from her.

**how capable each of their parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting their needs;**

83. Both the mother and the father love their children more than anything, and are capable of caring for them, meeting all their daily needs, providing for them, and supporting them in their education.
84. As a result of the way the father has presented his case to the Court, I do have some level of concern that he has, and may continue to, involve the children in the dispute between him and the mother. I am also concerned that consciously or unconsciously, he will wish the children's views to align with his, including, or most particularly in respect of his very negative views of the mother and what he sees as her vulnerabilities and deficits as a parent.
85. It is of concern to me that he has not always been able to support the mother as a parent away from him. He has not taken any proactive steps to provide financially for the girls when they were away from him. He does not appear to have been able to reflect in any way on what the mother says her experience has been of him in their marriage, but appears to have only sought to blame the mother for leaving. He blamed her for not asking him for money, and has sought to criticise her for staying in the refuge, rather than offer her support to find alternative housing.
86. The father suggested the mother's plans for work were unplanned and unrealistic, and she was unlikely to be able to get a job that would enable her to care for the children. By comparison, he has a steady job, and has secured agreement from his employer to work flexibly.
87. In my judgement, the mother's plans to start volunteering at the girls' primary school, with a view to training on site to become a teaching assistant, are realistic, sensible and achievable. A primary school is a very good environment for a person in her position, with a history of anxiety and eleven years out of the work place, to build up confidence and experience as she moves back into working life. It would enable her to care for the children out of school hours, because she would be working when they are at school, and free when they are not, including in school holidays.
88. The father questioned whether the mother really did have a network of friends and family in [City A] as she suggested. I am satisfied on the evidence I read, and the submissions made on her behalf, that she does. She has a close friend with children the same age who she sees very regularly. She has reconnected with her mother who lives in [*place name redacted*] – not at all close, but



marginally closer than she would be to her in [Oxfordshire]. The mother has re-established a relationship with her daughter from a previous relationship. She has the support of workers from the refuge.

89. If the children were in [Oxfordshire], the father would be able to work flexibly so that he could drop off and pick up the children, but he is still committed to working 37.5 hours a week so may need some additional childcare, particularly while the girls are still in primary school. However, this would be very manageable with help from wrap around care at school, child minders or his network of family in the area.

**the range of powers available to the court under this Act in the proceedings in question.**

90. I have had regard to all the circumstances, and each of the factors on the welfare checklist.

91. The children could live happily either in [City A] or in [Oxfordshire], and would still be able to see the other parent regularly. The significant disadvantage of either option is their separation from the other parent.

92. I do not accept that [Oxfordshire] is inherently a better or more stable place for the children to live than [City A]. The father's tenancy in [Oxfordshire] is coming to an end, so the children would face another move shortly after returning back to his care if they returned to [Oxfordshire]. In [City A] they live in a large house, and are six to twelve months away from being allocated permanent housing. It is arguable that they may find better accommodation there than in [Oxfordshire] which is one of the most expensive areas in the country.

93. The children have experience of living in [Oxfordshire] before, but they were there only for two years and during the pandemic, which was disruptive in itself. The significance of [Oxfordshire] is that their father lives there and some members of his extended family are relatively close by in [*place name redacted*].

94. Having weighed the respective options in the balance, I have come to the conclusion that the children should live with their mother in [City A], and spend regular time with the father. I have considered all the circumstances, but in summary, my reasons are as follows:

- The children have had a disrupted few years, but are currently settled in [City A] where they have a home, have made friends, are doing well at school, and could continue on that path with no further disruption;

- Although a return to [Oxfordshire] is a return to an environment that they know well, it would still represent a further uprooting, and a shift from what they become used to in [City A]. Separation from their mother who has cared for the children in the home for all their lives would be difficult for them emotionally (I accept that leaving their father in November 2022 and continuing to be separated from him will also have been difficult);
- I accept the girls have at times said they want to live with their father in [Oxfordshire], but, for reasons given, I have concerns about the evidence that has been put before me about that. In any event, the girls are not of an age to take responsibility for making such a momentous decision. Their wishes and feelings are important, but not determinative of the application;
- I do not have any concerns about the mother's ability to care for the children. She has cared for them since their birth, and she is in a position to continue to prioritise their needs and to fit her work around childcare and support them with out of school activities;
- The father has played a full part in the children's lives. He would be able to care for the children as a single parent. Compared to the mother, he is marginally less able to prioritise their needs, as there will be times when work calls upon him first;
- I have no concerns about the mother's ability to promote the children's relationship with their father if they remain in her care;
- I do have some concerns that the father may consciously or unconsciously have a need to align the children with his own views, and given his negative views of the mother, this does amount to a concern that he would be less able than her to promote their relationship with her if they were spending the majority of time in his care;
- I accept the mother's evidence that she would find it intolerable to move to [Oxfordshire], and needs to remain in [City A] to continue to receive the support she is getting. This means that if the children move to [Oxfordshire] there is no prospect of the parents reaching the shared care agreement that they have both agreed they would like to happen;
- Should the children remain in [City A] the father has expressed the intention to return to the area so that in time they may put the shared care arrangement into effect. This option therefore represents the best opportunity for the children to split their time equally with both parents;

- Of course I acknowledge the father has missed the children desperately and would wish them to live with him all the time. But I have confidence that he has an ability to maintain a loving relationship with them even if they don't live in the same household. This confidence comes from hearing of the ease with which their relationship was re-established after a break of months, and the loving bond that they share.
95. I will make a child arrangements order providing that the children shall live with their mother and spend time with their father on alternate weekends and for half the holidays.
96. I suggest a direction that the parents attend a separated parents information programme (I believe now called a Planning Together for Children course.)
97. It is of course a matter for the parents to decide how often the children should be speaking to the other parent on the phone or by facetime or similar, but I do have some concern that daily contact could become an obligation and constitute an interference of their co-parent's parenting, particularly if that call is coming at bed time when children can sometimes be tired and emotional and may unconsciously find themselves playing one parent off against another.
98. I would whole-heartedly agree with the mother that the provision in the working draft for shared parenting about new partners should come out. It is admirable that the parties are acknowledging that they may form new relationships, and have given thought to how introductions to the girls may be made. However, I would not consider it appropriate for one party to exercise a veto over that introduction ever taking place.
99. I appreciate that the parties' parenting plan, agreed only recently, and on the basis that they are both living in the same area, is for the children to spend half their time with each parent, a week on, a week off during term time, and for school holidays to be split equally. Such arrangements can work extremely well for children whose parents are separated, particularly where there is a good relationship between the parents, good communication, and the children are able to move seamlessly between the two homes with ease. Such an arrangement may well come to pass in this case. I would not endorse making a stepped order towards that, or an order conditional on the father moving to the area, when I do not know when the move is going to happen. Before making such an order, I would want to know of all the circumstances that existed at the time, carry out a welfare checklist analysis and then consider what would meet the girls' welfare needs.

100. The parties are of course free to make their own arrangements in line with their shared parenting plan in due course, without applying back to the Court.

HHJ Joanna Vincent  
Family Court, Oxford  
30 August 2023

### **Post-script**

1. By email sent on Sunday 3 September 2023, the parties submitted a draft order for my approval. The father intends to move to [City A] by the end of this month. On that basis the parties have agreed that the children should spend a week with each parent, handover taking place at the end of the school day on a Monday. They have agreed that the children should spend half of their school holidays with each parent.
2. For the intervening weeks until the father moves to [City A], the parties have agreed that the girls will spend every other weekend with their father.
3. This outcome of shared care was one that the parties originally intended and recorded in the draft order they produced before the hearing on 11 August 2023. Both parties have had the benefit of legal advice, both at the time they first entered into the agreement and following receipt of my draft judgment.
4. The mother has not sought findings of domestic abuse against the father within these proceedings. No findings have been made against him. For the last five months, the parties report that the time the girls have spent with their father has been happy. No concerns have been raised about his behaviour towards the mother at handovers or otherwise. By agreement, the undertakings he has given remain in place until October. The mother will no doubt take advice as to whether or not she should seek agreement to an extension of those undertakings or otherwise apply to the Court.
5. Having regard to all the circumstances, and to the factors on the welfare checklist, I am satisfied that the proposed order does meet the children's welfare needs. It enables the children to spend time with both parents, but to remain in the place where they are settled, stable and secure.
6. I wish the girls and their parents the best for the start of the new school year, and for the future.

HHJ Joanna Vincent  
Family Court, Oxford  
4 September 2023