

IN THE FAMILY COURT AT NOTTINGHAM

NEUTRAL CITATION: [2023] EWFC 54 (B)

Heard on 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 14<sup>th</sup> March 2023

Judgment given on 30<sup>th</sup> March 2023

Before:  
MR RECORDER O'GRADY

B E T W E E N:

A MOTHER

Applicant

and

A FATHER

Respondent

Representation

For the Applicant: MISS PASKINS (instructed by Sills & Betteridge LLP)

For the Respondent: MR PULLEN (instructed by Public Access Scheme)

JUDGMENT

*This judgment was handed down remotely by the Judge by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:30am on 30<sup>th</sup> March 2023.*

*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.*

**Precis**

1. Over the course of three days the court has traversed the unhappy scene that is the lives of three young children, whose parents have been locked in litigation about their

welfare for more than two-and-a-half years – a period of time that amounts to a very substantial share of each of their young lives.

2. Their parents find common ground on almost nothing about the history of their relationship or anything about the children’s welfare. They present to the court a voluminous list of issues, touching on almost every part of the children’s lives. The sad reality of this situation, the court will find, is that each of the parents has compromised their children’s best interests and there is a very real risk each will continue to do so.

## **Introduction**

3. This case is about three children. Child A, who is 8 years old (“**Child A**”); Child B, who is 6 years (“**Child B**”); and Child C, who is 6 years old (“**Child C**”).
4. I will refer to Child A, Child B and Child C collectively as “**the children**”.
5. The children’s mother is A Mother (“**the Mother**”). The Mother was born in non-Hague Convention County (“**Country Q**”). She is the Applicant.
6. The children’s father is A Father (“**the Father**”). The Father was born in the United Kingdom. He is the Respondent.
7. I will refer to the Mother and Father collectively as “**the parents**”.
8. The Mother was represented by Miss Paskins, of counsel. The Father was represented by Mr Pullen, of counsel. I am grateful to counsel for their assistance during this hearing. This case would have been much more challenging without their pragmatic and measured representation of their clients.

## **Preliminary Issues**

### Participation Arrangements

9. On 2 February 2023 the Mother applied for participation arrangements, specifically: separate entrances, separate waiting areas and to have a screen whilst giving evidence. These arrangements have been accommodated. In addition, a screen has separated the Mother and Father during the hearing.
10. Both counsel informed the court that they were satisfied with the arrangements made for their clients. I am satisfied that the arrangements have allowed each party to participate fully in the hearing having regard to the court’s obligations to ensure presumptively vulnerable parties are safeguarded. I have been mindful not to prejudge the issues by the existence of such arrangements.

### Enforcement Application

11. The Father alleges “hundreds” of breaches of the court’s orders by the Mother. I determined the most proportionate approach was to focus on the breaches alleged within the Father’s enforcement application.

## Background

12. The parents married 2010. I am told by the Mother that the relationship was difficult because the Father was controlling. The Father denies committing domestic abuse.
13. Who the children's main caregiver was prior to their separation is disputed. On his version of events, the Father was at the heart of the children's routines. He took them for walks and shopping most days. He says he took and collected Child A from school, took Child A to after school clubs and usually took children to medical appointments. He did these things, he said, because the mother went to work most days.
14. The Mother rejects this. She says, and it was common ground, that each of the children was breastfed for significant periods of time. The Mother took maternity leave for 1 year after Child A was born (the Father says this was 9 months). It is agreed she then returned to work part-time. It is common ground that after Child B and Child C were born the Mother again went on maternity leave (she says for 2 years, the Father says for 1 year). The Mother tells me she was made redundant whilst on maternity leave. The Father says the Mother returned to work for a couple of months before being made redundant.
15. The Father worked as a consultant. His work involved travel overseas. After 2016 he travelled to Qatar for an interview for a single day and travelled to China for 7 days. He believes he travelled to Country Q for work 5 times during the relationship.
16. The Mother contends the Father's frequent travel, his expenditure on that travel and his fruitless business ventures were a cause of tension in the relationship. She alleges the Father often asked her to translate documents for his trips to Country Q. In January 2020 he asked again and the Mother refused. That, she says and the Father denies, led the Father to give her 'the silent treatment'. The Mother tells me that silence lasted for weeks and months.
17. The relationship ended in August 2020 when the Mother left the home with the children whilst the Father was shopping. The Mother says she fled abusive behaviour. The Father says the relationship was happy and the causes of conflict centred on the Mother's own mother, who lived with the parents.
18. These proceedings were commenced by the Mother filing a C100 on an 'urgent' basis as long ago on 16 September 2020. Within that application the Mother sought orders that the children live with her and that the father be prohibited from removing the children from her care. She asserted within her application that the parties had recently separated and that the Father was attending Child A's school daily trying to make arrangements with him.
19. The Father contends it is significant that the application was not accompanied by a C1A. Further, the application states that although direct contact had not occurred between the children and the Father since the recent separation, 'This was not because

the [Mother] had not allowed it but because the [Father] had not requested such even though direct contact had been offered to him.’

20. The Mother’s application came before the court on 25 September 2020. At that short-notice hearing the Father consented to an order which restrained him from removing the children from the mother’s care, attending the children’s school and removing the children from the United Kingdom. An arrangement was noted in the order that the children would see the Father unsupervised every Sunday for 3 hours.
21. Cafcass safeguarding checks were filed on 2 November 2020.
22. The court vacated the FHDRA administratively on 11 December 2020 and ordered the preparation of a section 7 report by 19 March 2021.
23. On 12 February 2021 the Father filed a C1A. The C1A alleges the children experienced emotional and psychological abuse at the Mother’s hands. That abuse was alleged to include, ‘abduction from the martial home’, breach of COVID-19 regulations and the children being left with their maternal grandmother. The Father alleged the mother regularly threatened to abduct the children from the United Kingdom. He alleged the Mother failed to comply with COVID-19 regulations and engaged in ‘reckless and irresponsible behaviour that warrants [the Mother’s] parental responsibility being removed.’
24. The matter was before the court on 26 February 2021. An order was made prohibiting the Mother from removing the children from the jurisdiction. It was agreed that the existing arrangements for the children to spend time with the Father for 3 hours each week would continue pending the section 7 report being received.
25. LR, an ‘Associate Family Court Adviser’, (“**the FCA**”) filed a section 7 report on 19 March 2021. The FCA recommended that a Fact-Finding Hearing would be unnecessary and the risk of domestic abuse is low. She identified the parties to be “caught in situational, post-separation conflict with deep levels of trust and lack of communication.” The FCA recommended the children’s time with the Father progress to three consecutive overnight stays each fortnight as well as an evening after school each week.
26. The proceedings were heard by District Judge Wylie by telephone on 13 April 2021. An order was made for the children to live with the Mother and spend time with the Father every other weekend from Friday after school until the start of school the following Monday as well as every Tuesday after school until 7:00pm. This was the first occasion since separation that the children’s time with the Father was greater than 3 hours on Sundays. The Mother had not permitted or allowed any other contact to take place by agreement. Orders were made for indirect contact.
27. The prohibited steps order restraining the father from attending the children’s school was discharged with immediate effect. Both parents remained restrained from removing the children from the jurisdiction. An addendum Cafcass report was ordered to be filed by 13 August 2021.

28. On 7 May 2021 the Mother emailed the court for District Judge's Wylie's attention. The Mother complained that the order contained orders which were not discussed during the hearing. It is apparent the court maintained its orders, despite the Mother's objections.
29. The FCA's (first) addendum report was filed on 13 August 2021. The FCA found the parents remained 'extremely polarised' and that the children are placed in the middle of their conflict. The FCA recommended the Father have extended periods with the children in holidays. She maintained her earlier recommendation for the division of term time.
30. District Judge Wylie conducted a further telephone hearing on 16 September 2021. The child arrangements order of 13 April 2021 was varied to enable the children to spend more time with the Father. It is common ground that up to that point both parents were recording each other and the children at handovers using mobile phones. A recital records the court's expectation that recordings of that kind should not take place because the behaviour is likely to be harmful to the children.
31. The case was set down for a final hearing on 21 and 22 December 2021. That final hearing had to be vacated because the FCA ceased to be available.
32. Events took an unhappy turn at the end of 2021. It is common ground that the children's arrangements were disrupted on X Date. On that day (which so happens to be the youngest children's birthday), the Mother retained the children overnight and failed to deliver them to the Father's care until noon the following day, contrary to the terms of the child arrangements order. The Father then retained the children overnight contrary to the terms of the child arrangements order.
33. There followed several weeks of disruption to the children's arrangements. It is admitted by the Mother that between 5 February 2022 and 5 May 2022 the children did not spend any time with the Father at weekends. The children were not taken to school, which had the result that they could not be collected by the Father. At the time she said they were unwell. In addition, one or all of the children did not spend time with the Father on Tuesday evenings for a period of weeks.
34. On 4 April 2022 the Father filed an application to enforce District Judge Wylie's order. The application alleges 12 breaches of the order by the Mother. It further alleges an exhausting list of "video call breaches" from the children being on their games consoles during calls to there being disconnections and the calls being mere minutes short in duration to what the Father perceived should occur.
35. Just a day later, and despite the fact contact had been interrupted much earlier, on 5 April 2022, the Mother filed an application to vary the interim child arrangements orders. The application was supported by a lengthy narrative. In her application the Mother sought for the children's time with the Father to reduce to one night every other weekend.
36. The application for enforcement and the application to vary came before District Judge Wylie on 9 May 2022. Both parents were represented by counsel. The Mother was represented by Miss Paskins. The learned judge refused to vary the arrangements

he had previously ordered. The order records the Mother was “unable” to agree occasions for the children to spend time with the Father in the holidays “because they are currently refusing to go to any overnight contact and to do so would set the mother up to fail.”

37. The experienced District Judge ordered the Mother to make sure the children spent time with the Father for extended periods in the May half-term holiday and for two 7 day blocks of overnight contact in the summer. Despite her contentions before District Judge Wylie and in her variation application, the mother did not seek leave to appeal the court’s order of 9 May 2022. The court was again told that both parents were recording each other at handovers.
38. The court ordered the preparation of an additional addendum section 7 report by 19 August 2022. The proceedings were set down for a 3-day hearing on 26 September 2022. That hearing was vacated administratively on 22 September 2022 because the court did not receive the hearing bundles and there was no judicial capacity to hear the matter.
39. Case management directions were made on 28 September 2022 in addition to agreed child arrangements over the then forthcoming holidays. The parties agreed the children would spend several uninterrupted days of time with the father, including week blocks over Christmas. A Cafcass report on the availability of unpaid work was ordered to be filed by 2 November 2022.
40. On 24 October 2022 the proceedings were listed before me for final hearing. At the time of this hearing the children live with the Mother. They spend time with the Father every other Friday after school until the following Monday as well as every Tuesday after school until 7:00pm.

### **The Issues**

41. The issues I must determine are:
  - a. The appropriate division of the children’s time during the school term and school holidays.
  - b. What orders should underpin the division of the children’s time.
  - c. What arrangements there should be for indirect contact.
  - d. Where handover of the children should take place.
  - e. What, if any, conditions should accompany the child arrangements order, in particular whether the Mother should be prohibited from allowing the children to be with A Grandmother (“**the maternal grandmother**”) unsupervised.
  - f. What restraints, if any, should be placed on the Mother to minimise the alleged risk of abduction by her, including whether a bond should be imposed on overseas travel.

- g. What, if any, prohibitions should be placed on the Mother's and Father's exercise of their parental responsibility, particularly in the areas of medical care and extra-curricular activities.
- h. Whether either of the parties should be subject to restrictions under section 91(14) of the Children Act 1989 and, if so, on what terms.
- i. Whether the Mother has a reasonable excuse for breaching the court's orders.
- j. How the court should exercise its enforcement discretion, if the Mother does not have a reasonable excuse for breaching the court's orders.

## **Positions of the Parties**

### Child Arrangements

- 42. Up until the first day of the hearing, it was the Mother's position that the children should live with her and the time they spend time with the Father should reduce to occurring only from Friday after school until 12 noon on Sunday every fortnight along with every Tuesday from 3:00pm to 7:00pm. I was informed during the hearing that her position was that the existing arrangements should continue, rather than reduce. The Mother agreed with holiday periods being shared broadly equally with longer blocks of time taking place in 2024.
- 43. The Father invites the court to order that the children should live with each parent equally (on whatever combination of time the court thinks appropriate) with the children living with both parents. The Father wishes holidays to be divided equally.

### Video Calls

- 44. The Mother wishes video calls with the Father to take place on Mondays, Wednesdays and Thursdays and with herself on Fridays Saturdays and Sundays.
- 45. If I divide the children's time equally the Father wishes video calls with each parent to take place twice per week.
- 46. Each parent has different permeations of these arrangements during school holidays.

### Parental Responsibility

- 47. It is common ground they should each be prohibited from arranging any extracurricular activities for the children in the other's time.
- 48. Each parent wishes to be solely responsible for the children's routine health needs to the exclusion of the other and seeks that the other's parental responsibility be limited to give effect to that outcome.

### Overseas Travel

49. The Father says overseas travel by the Mother should be subject to her paying a £10,000 bond. The Mother opposes such restriction. Each parent wishes to hold all of the children's passports.

#### Maternal Grandmother

50. The Father wishes there to be restraint on the Mother allowing the children to be unsupervised with the Maternal Grandmother. The Mother opposes this.

#### Enforcement

51. The Mother contends she has a reasonable excuse for breaching the court's orders. The Father seeks the imposition of unpaid work on the Mother.

#### **Key Features of the Written and Oral Evidence**

52. The court has been presented with 4 full lever arch files of written evidence. The order of 28 September 2022 required the parties to reduce the size of the bundle to 'relevant documents only'. If that exercise was undertaken, it was not done adequately.
53. The first morning of the hearing was allocated for reading. The first afternoon was allocated for the FCA's evidence. Regrettably, the FCA did not attend because she had made appointments elsewhere. Neither party wished to give evidence before the FCA and were content to reduce their time for cross-examination to accommodate the shorter hearing time. Accordingly, I had the entirety of the first day to familiarise myself with all the written material.
54. The FCA, the Mother and the Father gave evidence during the hearing. The Mother did so from behind a screen.
55. I have read all the written evidence carefully. I similarly listened carefully to the oral evidence. This judgment is not intended to be a repetition of everything I considered and my failure to recite a particular part of the evidence does not reflect a failure on my part to consider it. What follows is only intended to be a summary.

#### The Family Court Adviser

56. The FCA interviewed both parents a number of times. She never met the children in the Father's care. The FCA found her dealings with the Father very difficult. His behaviour was oppressive. He insisted on knowing how much time the FCA spent in his interview with the Mother. The Father told the FCA he wanted their meetings recorded. He followed up the FCA's interviews with requests the FCA contact various professional agencies. He made a series of complaints about the FCA for which she received some guidance.
57. The FCA told me the Father's behaviour during the proceedings has been controlling, that he risks using his parental authority to assert superiority over the Mother and that



the Father will not allow the Mother to be of equal status because he believes what he thinks is right.

58. The FCA did not have similar challenges in her dealings with the Mother. The FCA was told by the Mother that the children struggle to spend time with the Father and she wishes the time they spend with him to reduce in line with their wishes and feelings. In the FCA's opinion the children were likely resisting post-separation time with the Father "due to justifiable resistance, affinity and attachment to the Mother, alignment with her anxieties, exposure to harmful conflict and intermittent alienation". The reason for that conclusion was grounded in the Mother's behaviour because "she will not make the children do something they don't want to do; uses negatively loaded terms such as not forcing or dragging the children to contact; [and] she has applied to reduce the amount of time the children spend with [the Father] ...".
59. Despite identifying the possibility that the Mother's behaviour's may be impacting upon the children, the FCA did not provide any meaningful analysis of the long-term impacts on each of the children of that behaviour and how it informed the appropriate welfare outcome for each of the children. I was told by the FCA that even if the court found the Mother breached the court's orders without reasonable excuse that would have no impact on her analysis of the children's welfare.
60. The FCA considered that the Mother and Father are so caught up in the conflict that they are in danger of losing sight of their children. It is a situation the FCA described as "toxic and highly conflicted".
61. The FCA is opposed to a shared care arrangement. In her opinion, the relationship between the parents would make such an arrangement impractical and unrealistic. She considered it would need effective communication between the parents. In addition, she considers it should not be implemented because it is not something the children are used to.
62. Instead, the FCA recommended the children live with the Mother and spend time with the Father every other week from Friday after school until the start of school on Monday as well as every Tuesday evening.
63. The FCA has my considerable sympathy. She faced a destructive parenting dynamic in which the parents are locked in high conflict through the litigation process. They have each engaged in 'case building' and both have at times relegated their children's best interests as secondary to the conflict.
64. Preparing reports in these circumstances will have been very challenging. Unfortunately, the necessary holistic analysis has not penetrated the conflict. Whilst the FCA correctly identified four options for the division of the children's time, The subsequent analysis was inadequate. The analysis focusses on the relative merits of shared care and rules it out as an option without meaningfully engaging with the relative long-term advantages and disadvantages of the alternative options, particularly the impacts of maintaining or reducing the children's time with the Father in circumstances where the Mother is proved to have breached the court's orders without reasonable excuse.

65. Whilst the FCA identified a very real possibility that the children have reacted negatively to time with the Father as a result of the Mother's behaviour, the FCA has not satisfactorily weighed that into the balance when evaluating the suitability of maintaining the current arrangements. The FCA's suggestion that a finding the Mother breached the order without reasonable excuse would have no bearing on the welfare analysis cannot, in my judgment, be right. Insufficient consideration has been given to this aspect. Her conclusions are a feature of the linear approach that has started from the existing arrangements and not tested them alongside the other options.
66. It follows that I must be cautious in assessing the weight I give to the FCA recommendations.

### The Mother

67. The Mother is in A Professional Occupation. She presented as intelligent, articulate and sophisticated. She told me the relationship with the Father was controlling, although her account as to when that occurred was inconsistent. In her first witness statement the Mother told me that in the months preceding the end of the relationship the Father was intolerable and it was impossible to discuss parenting issues with him. She described the Father to be transactional. The Mother referred to the Father giving her the silent treatment at times for weeks and months on end.
68. In her oral evidence the Mother suggested the Father directly abused the children by encouraging rivalry between them, encouraging them to 'grass' on each other when they did wrong and keeping Child A in his high chair to finish his food.
69. The Mother accepted she had not complied with the court's orders as alleged by the Father. She said that she did all she could to get the children to spend time with the Father and that, whilst they enjoyed and managed 2 nights with him, they could not manage 3 nights.
70. Her defence to the enforcement application was their alleged resistance to attending. The Mother's case in her oral evidence was that the children were reluctant to attend contact with the Father from June 2021. There was no satisfactory explanation why it then took until April 2022 (and a day after the Father's enforcement application) for the Mother to apply to vary the orders.
71. So concerned was a doctor examining the children in April 2022 that they referred the children to social care. The doctor's referral record offers considerable insight to the reality of the parental discord on the ground for the children:

"We were initially concerned regarding fabricated illness by Mum to prevent contact by Dad as she was reporting the children were too unwell to attend school but now Mum has informed school that children are not unwell just do not want to see Dad.

We are concerned about these children's ability to access medical care due to issues between their parents and are concerned they are being prevented from being examined for medical problems ...

Mum denies the children have health needs and will not bring them to the surgery. We are unsure which story is true but are concerned that we have not been able to see the children for examination ... at this point we are becoming concerned about barriers to healthcare and schooling and the effect this may have on the children.”

72. A second doctor made a referral to social services in May 2022 ostensibly on the basis that the children reported they did not feel safe with the Father. Yet the referral noted no physical health symptoms and that there were concerns about “whether the information about feeling unsafe is coming from Mum or the children ...”.
73. The Mother told me that she could not remember whether or not she told the children’s school that the children were too unwell to attend on days they were to spend time with the Father. She rejected the accuracy of a social worker’s record that noted the Mother admitted withholding the children from school on days they were to spend time with the Father and that she did not comply with the court’s orders because she did not think it in the children’s best interests to see the Father.
74. The Mother’s suggestion that the records of different professionals were consistently inaccurate was not credible. Her explanations for her failure to comply with the court’s orders and the children’s absences from school were not satisfactory. The Mother was not candid in her evidence.
75. Whilst contact resumed shortly after the Father filed his enforcement application, this was achieved at a price to the children’s emotional wellbeing. The Mother informed me that she told the children that if they did not go to their Father then she would get into trouble. It is difficult to imagine these young children having the emotional maturity to adequately process what the Mother told them.
76. After contact resumed in May 2022, the children’s school reported they held no concerns about either of the parents and that the children go with the Father happily. They reported the children said being with the Father was fun. The Mother dismissed this as being ‘opinion rather than fact’ and told me the school are selective in what they see.
77. I am driven to conclude that the Mother is not a reliable historian of the children’s experiences of contact with their Father. She rejects all views that conflict with her narrative that the children struggle, do not enjoy it or do not cope with the contact. I have little doubt the Mother’s perceptions of the children’s relationship with the Father are affected by the toxic post-separation conflict she is embroiled in.

#### Witness RE

78. RE is the Mother’s friend. She told me she saw the children upset when collected by the Father and that he appeared impatient. RE said she saw the children clinging to teachers when collected by the Father. That observation is inconsistent with the school’s experiences. I prefer the evidence of the members of school staff who are independent to the parties.

## The Father

79. The Father's background is in consultancy. He denied any abuse of the Mother whatsoever and claimed to have been the children's primary carer. He told me that he did 'everything' for the children and had in fact been a stay at home father after the Mother became pregnant in 2013. That did not sit comfortably with his history of his business work and overseas travel.
80. The Father failed to convincingly account for the end of the relationship. He believed the marriage was happy and deteriorated because of the presence of the Maternal Grandmother in their home. He said to me, "As Princess Diana said, there were three people in the marriage." He thought the Maternal Grandmother was interfering and let the Mother know his views. The Father was critical of the Maternal Grandmother and her breach of COVID-19 regulations.
81. His first statement in these proceedings evidences that the Father was detached from the new reality of his and the Mother's separation from him. He expressed that he *and* the Mother still held feelings for each other. He believed he and the Mother – who was at that point living in a undisclosed location and not communicating with the Father – could reconcile and that the marriage could be salvaged.
82. After the separation and before the court's orders, he attended the school gates in the mornings and afternoons to see the children. The Father denied being controlling or having an authoritarian parenting style. He claimed to be totally misunderstood by the FCA.
83. The Father accepted his communication with the Mother was 'sometimes' inappropriate. Having studied his Our Family Wizard messages to the Mother, this description understated his communication style. On any view the Father's messages were persistently harassing.
84. I was told by the Father that he was totally frustrated by the whole court process. He has been frustrated by Cafcass. He believes it is unjust that the Mother can escape punishment for breaching the court's orders. He told me his frustration has overwhelmed him.
85. The Father reiterated that he believes the children were abducted from him. He accepted he told this to the children, but did not believe raising that with them was inappropriate because they needed to know the truth. He accepted recording the Mother at contact and that when asked by the children why he was doing it he told them, 'Daddy likes the truth to come out'. Reflecting on that, apparently for the first time in the witness box, he conceded it was 'a bit inappropriate'. As recently as 2 March 2023 the Father messaged the Mother to accuse her of telling a pack of lies, funding illegitimate activities and alienating the children. He brushed this away, telling me, "I think I got annoyed."
86. On each occasion the Father was confronted with his questionable behaviour he claimed to be frustrated with the circumstances he faced or that the context needed to be understood more fully. He remains convinced the Mother is alienating the children from him and that he is the "better parent".

87. I recognise that giving evidence, especially about your children, is extremely challenging. It is not lost on me that the stress and anxiety of proceedings can result in witnesses falling short of reflecting their best selves and much can be lost in the true picture of a person by the cut and thrust of the adversarial process. However, even making full allowances for the challenges the Father faced in these proceedings and cross-examination, he was a deeply unimpressive witness.
88. His evidence was littered with monologues that were self-serving, minimised his behaviour, failed to demonstrate any meaningful insight into his conduct and often bore only passing relevance to the issues at hand. He demonstrated an obsession with minutiae, rigid thinking and questionable skills of self-restraint. It is regrettable that the Father has completely surrendered to a victim mentality, believing everyone is against him and that he is “fighting the system”. Through this mentality he has found a way to abdicate responsibility for his actions.

## **The Law**

### Factual Determinations

89. When a fact is in dispute, the burden is on the party alleging the fact to be true to prove it is true. The standard of proof is a simple balance of probabilities. Whether an assertion of fact is true is binary. If the standard of proof is met, then the assertion is fact and treated so for my decision-making. If the standard of proof is not met, then the assertion is not a fact for my decision-making. There is no room for treating suspicion as fact for the purposes of my decision-making.
90. Any findings I make must be based on evidence, including inferences reasonably drawn from the evidence and not speculation. That evidence can be written or oral and I can rely on hearsay evidence from witnesses who have not given oral evidence. However, I must consider carefully what weight to give that hearsay evidence as I have not had the opportunity to consider how it would have stood up to challenge by cross-examination.
91. Baroness Hale cautioned on fact-finding in private law proceedings in *Re B* [2008] UKHL 35 at [29]:

“...there are specific risks to which the court must be alive. Allegations of abuse are not being made by a neutral and expert Local Authority which has nothing to gain by making them, but by a parent who is seeking to gain an advantage in the battle against the other parent. This does not mean that they are false, but it does increase the risk of misinterpretation, exaggeration or downright fabrication”.
92. The Court must take into account all the evidence, considering each piece of evidence in the context of the other evidence – surveying a wide landscape – and must avoid compartmentalising.

93. I direct myself in accordance with the case of *R v Lucas* [1981] QB 720 and subsequent Family Court case of *ABC* [2021] EWCA 451 in the event that I consider that any of the evidence I have read or heard contains inaccuracies or lies –

“[that a lie] may be probative of guilt. A lie is only capable of supporting other evidence against [the person telling the lie] if the [court is satisfied] that: (1) it is shown, by other evidence in the case, to be a deliberate untruth; i.e. it did not arise from confusion or mistake; (2) it relates to a significant issue; (3) it was not told for a reason advanced by or on behalf of [the person telling the lie], or for some other reason arising from the evidence, which does not point to [the person telling the lie]'s guilt.” And “... only if [the Court is satisfied] that these criteria are satisfied can [the person telling the lie]'s lie be used as some support for the [case against him], but that the lie itself cannot prove guilt. ...”

### Domestic Abuse

94. I am mindful of the definition of domestic abuse under section 1 of the Domestic Abuse Act 2021. Domestic abuse includes any single incident or pattern of incidents of controlling, coercive, threatening behaviour, violence or abuse between those aged 16 or over who are personally connected within the meaning of section 2 of the Domestic Abuse Act 2021.
95. Abuse can encompass, but is not limited to, psychological, physical, sexual, economic or emotional abuse. Economic abuse means any behaviour that has a substantial adverse effect on the other's person's ability to acquire, use or maintain money or other property, goods or services.
96. Coercive behaviour includes an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim.
97. Controlling behaviour includes 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.
98. The circumstances encompassed by the definition of domestic abuse in Practice Direction 12J recognises that coercive and/or controlling behaviour by one party may cause serious emotional and psychological harm to members of the family unit, whether or not there has been any actual episode of violence or sexual abuse.
99. In short, a pattern of coercive and/or controlling behaviour can be as abusive or more abusive than any particular factual incident that might be written down and included in a schedule in court proceedings. It follows that the harm to a child in an abusive household is not limited to cases of actual violence to the child or to the parents. A pattern of abusive behaviour is as relevant to the child as to the adult victim. A child can be harmed in any one or a combination of ways, for example, where the abusive behaviour:

- a. Is directly against or witnessed by the child.
  - b. Causes the victim of the abuse to be so frightened of provoking an outburst or reaction from the perpetrator that she or he is unable to give priority to the needs of his or her child.
  - c. Creates an atmosphere of fear and anxiety in the home which is inimicable to the welfare of the child.
  - d. Risks inoculating, particularly in boys, a set of values which involves treating women as being inferior to men.
100. It is equally important to be clear that not all directive, assertive, stubborn or selfish behaviour, will be 'abuse' in the context of proceedings concerning the welfare of a child. Much will turn on the intention of the perpetrator of the alleged abuse and on the harmful impact of the behaviour. There is no bright line that defines what kind of behaviour can properly be characterised as coercive and controlling.

### Welfare

101. Each child's welfare individually has been my paramount consideration. I assess each child's best interests within the context of the considerations in section 1(4) of the Children Act 1989.
102. I remind myself that when considering whether to make a section 8 order, I must presume unless the contrary is shown, that the involvement of each parent in the child's life will further each child's welfare. A parent will be treated as benefiting from that presumption unless there is some evidence before the court to suggest that the involvement of the parent in the child's life would put the child at risk of suffering harm.
103. The court must not make an order pursuant to its powers under the Children Act 1989, unless it considers that doing so would be better for the child than making no order at all, or no less draconian order.
104. I am invited to make orders that result in the children's care being shared equally with the children being ordered to live with each parent. It is not necessary to show that exceptional circumstances exist before orders for shared living arrangements may be granted (*D v D (Shared Residence Order)* [2001] 1 FLR 495; *Re F (Shared Residence Order)* [2003] 2 FLR 397). What is required is a demonstration that the order is in the best interests of the children in accordance with the requirements of section 1(1) of the Children Act 1989.
105. The failure of the parents to co-operate is not a bar to the making of an order for shared living arrangements where this would in all other respects be the right order (*Re R (Residence: Shared Care: Children's Views)* [2006] 1 FLR 491; *Re W (Shared Residence Order)* [2009] 2 FLR 436).
106. An order for shared living arrangements might serve the interests of the child even where the division of time between the two homes was not equal. I must first consider

what division of the children's time is appropriate and then go on to consider what order is in their best interests. An order for equal time and shared living arrangements do not stand or fall together (*Re K (Shared Residence Order)* [2008] 2 FLR 380; *Re W (Shared Residence Order)* (above)).

107. A shared order may be appropriate where parents are incapable of working in harmony because it avoids the risk that a sole residence order is misinterpreted as enabling control by one parent when co-operation is required (*Re L (Relocation: Second Appeal)* [2018] 2 FLR 608).

### Enforcement

108. If a court is satisfied beyond reasonable doubt that a person has failed (without reasonable excuse) to comply with the provisions of a section 8 child arrangements order, it may make an enforcement order imposing on the person a requirement to undertake between 40 and 200 hours of unpaid work. An enforcement order cannot be made if the court is persuaded the respondent to the application had a reasonable excuse for not complying with the order. The burden of proving the reasonable excuse rests on the respondent to the application for an enforcement order and the standard of proof is the balance of probabilities.
109. An enforcement order may be suspended for such period as the court thinks fit. The court's powers on an application under section 11J of the Children Act 1989 are limited to making an enforcement order and, in the absence of any separate application to commit, do not extend to making a committal order.
110. In making an enforcement order in relation to a child arrangements order, a court must take into account the welfare of the children who are the subject of the order.
111. Before making an enforcement order in respect of a person in breach of a child arrangements order, the court must be satisfied that making the enforcement order proposed is necessary to secure the person's compliance with the order and that the likely effect on the person of the enforcement order proposed to be made is proportionate to the seriousness of the breach of the order.
112. The court must satisfy itself that provision for the person to work under an unpaid work requirement imposed by an enforcement order can be made in the local justice area in which the person in breach resides and obtain and consider information about the person and the likely effect of the enforcement order on him. Information about the likely effect of the enforcement order may, in particular, include information as to any conflict with the person's religious beliefs and any interference with the times (if any) at which he normally works or attends an educational establishment.

### Section 91(14)

113. At the beginning of the hearing the court indicated to counsel that it was considering subjecting the parties to restrictions on future litigation under section 91(14) of the Children Act 1989.
114. In *Re P (Section 91(14) Guidelines) (Residence and Religious Heritage)* [1999] 2



FLR 573, Butler-Sloss LJ (as she then was) observed:

‘41. A number of guidelines may be drawn from the cases to which I have referred above, and I am also indebted to Wall J for the helpful summary of propositions set out in Part III of his judgment. It is however important to remember that these are only guidelines intended to assist and not to replace the wording of the section.  
Guidelines

- 1) Section 91(14) should be read in conjunction with section 1(1) which makes the welfare of the child the paramount consideration.
- 2) The power to restrict applications to the court is discretionary and in the exercise of its’ discretion the court must weigh in the balance all the relevant circumstances.
- 3) An important consideration is that to impose a restriction is a statutory intrusion into the right of a party to bring proceedings before the court and to be heard in matters affecting his/her child.
- 4) The power is therefore to be used with great care and sparingly, the exception and not the rule.
- 5) It is generally to be seen as an useful weapon of last resort in cases of repeated and unreasonable applications.
- 6) In suitable circumstances (and on clear evidence), a court may, impose the leave restriction in cases where the welfare of the child requires it, although there is no past history of making unreasonable applications.
- 7) In cases under paragraph 6 above, the court will need to be satisfied first that the facts go beyond the commonly encountered need for a time to settle to a regime ordered by the Court and the all too common situation where there is animosity between the adults in dispute or between the local authority and the family and secondly that there is a serious risk that, without the imposition of the restriction, the child or the primary carers will be subject to unacceptable strain.
- 8) A court may impose the restriction on making applications in the absence of a request from any of the parties, subject, of course, to the rules of natural justice such as an opportunity for the parties to be heard on the point.
- 9) A restriction may be imposed with or without limitation of time.
- 10) The degree of restriction should be proportionate to the harm it is intended to avoid. Therefore the court imposing the restriction should carefully consider the extent of the restriction to be imposed

and specify, where appropriate, the type of application to be restrained and the duration of the order

11) It would be undesirable in other than the most exceptional cases to make the order ex parte.’

115. The landscape has developed with the passing of the Domestic Abuse Act 2021, which inserted section 91A into the Children Act 1989. It states:

“(2) The circumstances in which the court may make a section 91(14) order include, among others, where the court is satisfied that the making of an application for an order under this Act of a specified kind by any person who is to be named in the section 91(14) order would put—

(a) the child concerned, or

(b) another individual (“the relevant individual”),

at risk of harm.”

116. I have had regard to Practice Direction 12Q. Of note:

“2.2 The court has a discretion to determine the circumstances in which an order would be appropriate. These circumstances may be many and varied. They include circumstances where an application would put the child concerned, or another individual, at risk of harm (as provided in section 91A), such as psychological or emotional harm. The welfare of the child is paramount.

2.3 These circumstances can also include where one party has made repeated and unreasonable applications; where a period of respite is needed following litigation; where a period of time is needed for certain actions to be taken for the protection of the child or other person; or where a person’s conduct overall is such that an order is merited to protect the welfare of the child directly, or indirectly due to damaging effects on a parent carer. Such conduct could include harassment, or other oppressive or distressing behaviour beyond or within the proceedings including via social media and e-mail, and via third parties. Such conduct might also constitute domestic abuse.

The duration of such a restriction should be not more than is necessary to secure the aim of attaining the children’s best interests, i.e. it should be proportionate to the identified harm or risk of harm.

4.1. Sections 91(14) and 91A are silent on the duration of a section 91(14) order. The court therefore has a discretion as to the appropriate duration of the order. Any time limit imposed should be proportionate to the harm it is seeking to avoid. If the court decides to make a section 91(14) order, the court should explain its reasons for the duration ordered.”

117. In *F v M* [2023] EWFC 5, Hayden J identified the changed landscape upon which the court now operates in imposing section 91(14) restrictions:

“The provisions within Section 91A are transformative. The section provides a powerful tool with which Judges can protect both children and the parent with whom they live, from corrosive, demoralising and controlling applications which have an insidious impact on their general welfare and wellbeing and can cause real emotional harm. This amended provision strikes me as properly recognising the very significant toll protracted litigation can take on children and individuals who may already have become vulnerable, for a variety of reasons. It also dovetails with our enhanced understanding of the nature of controlling and coercive behaviour. When all other avenues are lost, too often the Court process becomes the only weapon available. Lawyers and Judges must be assiduous to identify when this occurs, in order to ensure that the Court is not manipulated into becoming a source of harm but a guarantee of protection.”

## **Discussion and Analysis**

### The Parents' Relationship

118. The Mother and Father each contend they were the primary carer of the children to the exclusion of the other. There is little doubt, in my judgment, that the Mother, who was breastfeeding the children, was primarily responsible for meeting the children's immediate care needs in their early months and years.

119. As Child A grew older, and particularly once the family had twins, it was inevitable that the Mother's capacity to primarily meet all the children's needs simultaneously diminished and the Father was required to assume a greater role in their care. I accept the Father played an important part in meeting their needs alongside the Maternal Grandmother whilst the Mother worked and that the caring dynamic was fluid. I reject the Father's suggestion that he was ever their primary carer for any sustained period of time. His account of his business activities persuades me that he was not consistently available to undertake that role.

### Coercion and Control

120. The Mother contends she was subjected to individual instances alongside a pattern of coercive and controlling behaviour. It was alleged to include periods of silence, control of car keys and comments that made the Mother feel as though the family home was not her home.

121. In evaluating the claims made by the Mother I take account of the fact that victims of abuse may not consistently or promptly report their experiences and that the absence of reporting to police, health professionals and others is not indicative of a false account. I also remind myself that simply because a person has a degree of freedom in one or other aspects of their life does not mean that they are not subject to coercion and control.
122. The Mother had her own income in the form of £1,800 net per month as well as Child Benefit. She paid the Child Benefit to the Father to contribute to their joint outgoings. The parents' finances were otherwise kept separate and the Mother, not the Father, had control of her own bank cards and accounts. It was accepted that the Mother spent many days at work and often visited family at weekends in Sheffield. The Father was often away with work and the money he wasted on his endeavours was a source of conflict. I have little doubt the Mother communicated her frustration to the Father in no uncertain terms.
123. I am not persuaded there were periods of silence lasting weeks or months. Nor am I satisfied that the Mother's ability to travel outside the home was restricted in the way she has alleged. I am satisfied that an unhealthy dynamic existed between the parents that was exacerbated in the relationship's later months by the confinement of the parents, the Maternal Grandmother and the three young children under one roof. The Father's rigid thinking likely made him a difficult person to live with.
124. When I stand back and survey their relationship, I conclude there were likely times of robust exchanges between two articulate people. There were sometimes occasions of high tension. I am not, however, satisfied that the selfish and stubborn behaviour the Father sometimes indulged in during the relationship can properly be characterised as coercive or controlling whether seen individually or in the context of being a pattern of behaviour. I concur with the FCA that the risk of domestic abuse is low.

### Welfare Findings

125. **The ascertainable wishes and feelings of the children concerned (considered in light of their ages and understanding):** The children's express wishes have not been consistent over time. In the FCA's report of 19 March 2021 Child A said he wanted to stay with the Father and did not speak negatively about either parent. His school teacher would not have known his parents were separated if she had not been told.
126. By the time of the FCA's 16 September 2021 report matters deteriorated. The Mother reported the children complained and were resistant when contact approached. The Mother asked Child A if he had told the Father that he does not want to go. Behaviour of that kind was not attuned to their emotional needs and will have served to undermine his relationship with his Father. The Mother's version of Child A's behaviour contrasted with the school's, which reported that Child A always looked forward to seeing the Father.
127. The Mother stopped the children seeing their Father in early 2022 claiming they were resistant to it. Child A and Child B reported to have said they did not feel safe with the Father, but could not articulate why. After a hiatus in contact, in the 19 August 2022 report the FCA noted the children's school reported no complaints by the

children in seeing their Father and no purported tummy aches. Child B told the FCA he does not like going to the Father's, he misses the Mother and there are no fun times. Child B said he loves the Mother, but not the Father. He said he has never loved the Father.

128. Child C told the FCA that staying with the Father is bad, but could not say why. He became very distressed when discussing seeing the Father. Child A said it is good staying with the Mother and the Father. He said he would like to see the Father for 2 nights every other weekend and not see the Father on Tuesdays, but could not say why.
129. The progressive deterioration in the children's view of the Father over the course of this litigation is notable. These children have found themselves locked in a harmful dynamic in which the parents have each promoted their success in the litigation over consistently promoting the children's best interests. The children have aligned themselves in the conflict to the Mother and met with little resistance from her in that choice.
130. I hold no confidence that the children's expressed wishes to the parents or the FCA reflect an informed understanding of what is best for them. Each of the children's wishes is affected by the parental conflict. I consider the children have secure and loving attachments to each of their parents, that they wish to have a meaningful relationship with each of them and that this is being stifled by the parental conflict.
131. The FCA placed notable weight on her understanding the children's wishes. I find the weight the FCA has given to the children's expressed wishes is too great considering the conflict surrounding them.
132. **Physical, emotional and educational needs:** The children require meaningful relationships with each of their parents. They need to attend school.
133. **Likely effect of any change in circumstances:** Change in the children's arrangements will cause disruption to their routines. They understand the pattern of their current arrangements and change will likely be unsettling and confusing. That will likely manifest itself in unsettled behaviour and them expressing themselves to be unhappy and upset. I accept such change may well be harmful.
134. However, in the context of the next decade of the children's lives, that is likely to be short-term harm and disruption. I consider it is likely the children will come to adjust to new arrangements, just as they effectively adjusted to their parents' separation. Change that reinforces meaningful relationships with each parent is likely to be change that promotes their long-term emotional and psychological well-being. Conversely, change which empowers one parent to subjugate the status of the other is likely to be change that causes long-term harm. Similarly, the absence of change carries with it the risk that one parent will be empowered over the other.
135. **Age, sex, background and any characteristics of which the court considers relevant:** Child A, Child B and Child C are young boys of primary school age. They are raised in A Religion and I accept their faith is an important part of their identity.

136. **Any harm which they have suffered or are at risk of suffering:** The children are suffering emotional harm because of the conflict between their parents. They have been exposed to the conflict by both parents, including: the Mother failing to emotionally support the children having a full relationship with the Father, the Father deploying a narrative that the children are not safe with the Mother and both parents recording the children at handover. Both parents have used the children as objects in their battle to win the litigation. The magnitude of the harm is serious because it is likely to produce long-term damage to the children's capacity to form their own relationships as adults and to parent effectively.
137. The Mother failed to prioritise the children's educational needs by enabling them not to attend school, so that they did not spend time with the Father. There is a risk their educational needs will suffer long-term detriment if the conflict is prioritised over their educational needs.
138. The parents have failed to parent collaboratively regarding the children's health. They do not communicate effectively and act unilaterally at times, rather than in concert. There is a real risk the children will suffer emotional harm by being repeatedly exposed to different medical professionals as well as a risk of suffering physical harm by receiving multiple tests or treatments.
139. **How capable each of the parents is of meeting their needs:** The Mother loves Child A, Child B and Child C dearly. However, she has not always supported and valued the children's need for a meaningful relationship with the Father. Had the Mother stepped back from the conflict she was in, she should have identified much sooner than she did that a mere 3 hours of contact between the children and Father each week was harmful to that relationship. In strictly limiting the contact she restricted the relationship for several months when it was unnecessary. Even as recently as the morning of the first day of this hearing she sought a reduction in contact when the FCA recommended otherwise. The Mother ultimately failed to promote contact when she did not agree with its progression.
140. I am unconvinced the Mother genuinely supports a relationship between the children and the Father other than on her terms. She is unduly deferential to what the children say to her. That has manifested in a failure to consistently meet the children's educational needs by keeping them from school when they were due to see the Father to such an extent that they have been recorded as persistent absentees. The risk that their educational needs will not always be met in her care continues to exist.
141. However, it is to the Mother's credit that she has complied with the orders in the more recent past. Whether that will remain true in the long-term is an outstanding question. There is sufficient doubt, based on the Mother's past behaviour and attitude to contact, that I must find there is a real risk she will not fully support arrangements that are not consistent with what she believes is appropriate.
142. I turn to the Father.
143. The Father loves Child A, Child B and Child C dearly. However, the Father is significantly affected by this litigation. He is enmeshed in it. It pervades most aspects of his thinking and it often prevents him from approaching the children's welfare in a

child-focussed way. It is seen best in his attitude towards the Mother.

144. The Father's attitude towards the Mother is unacceptable and falls well below the standard expected of a parent going through separation. He perceives resolutely that he is a better parent than the Mother and acts consistently with that belief. He has repeatedly failed to meet the children's emotional needs by his confrontational communication style, exposing the children to conflict by recording them and making comments to the children that undermine the Mother's status.
145. The Father's belief that he is a better parent is wrong. He is not a better parent than the Mother. He is an equal parent with strengths and weakness, just as the Mother has strengths and weaknesses. If he does not change his attitude and how he acts on his beliefs, the children will suffer a high level of emotional harm.
146. Unhappily, the Father has greater distance to travel than the Mother does in coming to terms with the reality of equal parenting. I find his capacity to support the children's need for a meaningful relationship with the Mother is compromised. I judge his capacity to treat the Mother as a person of equal importance in the children's lives is worryingly diminished. There is a real risk, if his application for equal time is acceded to, that he will perceive himself to be victorious in what King LJ described as "lawfare" (*Re A (A Child) (Supervised Contact) (s91(14) Children Act 1989)* [2021] EWCA Civ 1749). If the Father perceives he has succeeded it is very likely he will feel vindicated for his approach to the litigation and cause long-term harm to the children by persistently elevating himself to the exclusion of the Mother.

#### Enforcement Findings

147. Through her counsel the Mother accepted that the orders sought to be enforced by the Father unambiguously imposed obligations on her to make sure the children spent time with the Father. It was conceded that there was no complication with the language of the orders that might cause the enforcement application to fail.
148. The Mother accepted that she breached the court's orders on 31 December 2021, 15 February 2022, 18 February 2022, 22 February 2022, 1 March 2022, 4 March 2022, 18-21 March 2022, 22 March 2022, 29 March 2022 and 1 April 2022. The Father sought to allege "hundreds" of other breaches, but I directed he confine his allegations to those in his enforcement application to ensure the proportionate and efficient management of the issues.
149. The Mother's defence to the breaches is that the children did not want to spend time with the Father and even physically resisted attending. It was the case, she told me, that they were happy to spend 2 nights with him, but not happy to spend 3 nights.
150. The Mother has not persuaded me she had a reasonable excuse on the balance of probabilities:
  - a. She was able to cause the children's attendance at contact very shortly after the Father applied to enforce the orders, notwithstanding her claims – contraindicating she had done what was required to make sure they attended when they did not.

- b. I do not accept the children were unwell and unable to attend school prior to seeing the Father. I do not consider the Mother was candid when she described that ill-health. First, I find she did tell A Doctor around 19 April 2022 that the children were in fact not unwell. Secondly, I find that she did tell A Social Worker around 21 April 2022 that she was deliberately withholding the children from attending school when the Father was to collect them. Thirdly, I find the Mother failed to report any physical health symptoms to A Doctor on 5 May 2022.
  - c. I do not accept the children did not wish to spend time with their Father. There were ‘no concerns’ about the children being with either parent according to their school. Child A and Child C would happily go with the Father and, even after the significant break in contact, Child B quickly moved past reluctance to see the Father. Although they complained of ‘tummy pains’, the Mother has not proved what that was attributable to.
  - d. The Mother’s was dissatisfied with the court ordered arrangements. She always thought the arrangements went too far too fast. The children likely perceived that.
151. I have given anxious consideration to the impact the Father’s oppressive behaviour may have had on the children’s willingness to attend contact both by the direct exposure to it and it affecting them indirectly by it harming the Mother. I have, on balance, concluded that the children’s failure to attend was attributable to Mother’s acts and omissions, rather than the Father’s conduct. In my judgment the Mother was disposed to being resistant to contact progressing before the Father engaged in his oppressive behaviour. Whilst his behaviour and the children’s purported resistance are correlated, it was not causative and I have found they did in fact wish to spend time with their father.
152. It follows I am satisfied beyond reasonable doubt that the Mother breached the court’s orders and she has not proved on the balance of probabilities that she did so with reasonable excuse.

### Welfare Options

#### *Division of Term Time*

153. **Maintaining current arrangements, advantages:** If I maintain the current arrangements the children will not be harmed by the disruption change will cause. The children are familiar with the current arrangements. The children will have less exposure to the Father. This will reduce the magnitude of harm caused to them by the Father undermining the Mother. The children will have most of their needs met by the Mother.
154. **Maintaining current arrangements, disadvantages:** The Mother will perceive she has succeeded in the litigation and preserved the ‘upper hand’, which carries a real risk she will feel vindicated in marginalising the Father’s role in the children’s lives. It is likely the children’s relationship with the Father will deteriorate and the time they



spend with him will be interrupted. The limited arrangements proposed by the Mother are not consistent with what I consider to be the children's true desire to have a meaningful relationship with both parents.

155. **Equal division of time, advantages:** The division will reinforce the equal status of the parents in their lives. It will afford maximum opportunity for the children to enjoy life with each parent. If the children are with the parents for whole weeks at a time the need for communication (and therefore conflict) may in fact be far less because there will be less need for messages about school to pass between the parents. The parents will have equal opportunity to be involved with the children's school lives.
156. **Equal division of time, disadvantages:** A change to the current arrangements is not expected by the children. They have never divided their time equally between their parents. There will be disruption whilst they settle into their new arrangements. The children will be significantly more exposed to the Father during term time, when they most need to avoid exposure to conflict. He will feel totally vindicated in his approach to the Mother and this litigation. It is highly unlikely he will behave as an equal, but believe that he has succeeded in his litigation strategy and is therefore in fact superior to the Mother. In his mind, it would serve to reinforce the merits in his rigid, high-conflict approach to the Mother. If the Father perceives he has been 'successful', it is likely to lock-in his attitude to the Mother going forwards.
157. I am therefore confronted with a Sophie's Choice. Each of the parents' proposals carries significant disadvantages for the children. I have therefore stepped back to evaluate what is in the children's best interests. Alongside the parents' proposals, I have considered different divisions of the children's time.
158. **Blocks of time (4-10, 5-9, 6-8 nights per fortnight), advantages:** Blocks of time would allow the children to have significant and meaningful periods with each parent. Each parent would be able to have a substantial involvement in the children's school lives. The children would travel between the homes less frequently and be less exposed to direct conflict between the parents because handovers would always happen at school. It would not be an equal division of time. It would therefore deny the Father the victory in the litigation that he craves. It would reduce the risk of him feeling emboldened in his behaviour and thereby reduce the risk of him emotionally harming the children. Blocks of time greater than the current arrangements would reinforce the importance of the Father to the children and counteract the Mother's perceptions of the Father's role. It would be consistent with the children's wishes, as I find them to be, to have meaningful time with both parents.
159. **Blocks of time (4-10, 5-9, 6-8 nights per fortnight), disadvantages:** Of the few things the parents agree, they agree an alternate weekend arrangement and a Tuesday evening pattern. I should be slow to reject an approach that the parents agree because such agreement intuitively promotes the children's welfare. The children would go longer periods of time without seeing the other parent (although the Father believes the children can manage 7 nights without him). Without indirect contact, they risk being upset by not seeing the other parent for longer periods. Better communication will be needed for such an arrangement to work. It is questionable whether they have the capacity to do that at this moment. The children will be disrupted by the change to their current arrangements. The disruption is likely to be unsettling and take time to

adapt to.

160. In evaluating all the options, I have concluded that this is that unhappy case where the court is presented with options that all carry significant disadvantages and none of which presents the court with the 'right answer'.
161. Each option risks long-term emotional harm. In weighing these options against the alternatives, I have on balance concluded that greater advantages and fewer harms exist for the children in a division of their time in single separate blocks of time. I accept this will mean the children will go longer periods of time without seeing the other parent in-person. However, in my judgment there is a marked increase in the risk of harm to the children by more frequent movement between the two homes.
162. The division of time that I find is best for the children is 5 nights with the Father followed by 9 nights the Mother. That in my judgment strikes the right balance between meeting the children's needs and reducing the risk of harm that exists in the care of each of them. I accept this will be disruptive, possibly significantly disruptive. However, I judge that disruption and the harm that the disruption will cause will be short-term in nature. That short-term harm is greatly outweighed by the long-term advantages of the change.
163. I reject an equal division of the children's time and a maintenance of the current arrangements because the disadvantages to the children's long-term welfare are greater than the advantages. Each of these options would probably result in the status of one parent being subjugated to the other in the children's eyes as a result of each parents' actions.
164. I have considered whether the separate block arrangement should be gradually stepped over time given its introduction will be disruptive. On balance, I consider there is a greater risk of harm by a gradual transition because of the risk the Mother will resist the change to the point at which the children are unwilling to take the final step. I am satisfied the children have a strong and secure relationship with the Father and will adapt to the change being introduced with limited delay.

#### *Holiday Time*

165. There was no dispute that the children's time in the holidays should be divided equally. The issue I must determine is how it should be divided. If I grant extended blocks of up to 2 weeks in duration the children will have the opportunity for extended time with that parent. That will have the advantage of the children being able to travel for longer overseas and experience more of that parent's life. However, it also means the children will be exposed to the risks of emotional harm that I have identified from each parent for longer periods of time.
166. I hope in the fullness of time the parents will come to accept the importance of each other in the children's lives. However, until they truly do, I do not consider blocks of time as long as 2 weeks in duration are in the children's best interests, even though shorter blocks of time mean there will be more handovers between the parents. The risk of them being emotionally harmed by the parents undermining the other parent in longer blocks of time is presently too great.

167. I recognise that the way in which I have structured my order means there is a risk that there may be periods around the beginning and end of holidays where handovers occur more frequently. It also does not accord with the common ground the parents have reached on the division of some holidays. I also accept that should the holiday period flow into a term period, the children may spend an even longer block with one parent. Although, this latter scenario is unlikely to occur frequently. I find these disadvantages are outweighed by the need to ensure the effective implementation of the 5 night-9 night arrangement.
168. With the exception of the new school year, I do not consider there is any adequate reason why the Mother needs to take the children to school at the beginning of the new terms. It is a role the Father is capable of undertaking if the continuation of the 5 night-9 night arrangement requires it.

#### *Significant Religious Days*

169. The Father wishes the children to spend time with him on each Significant Religious Day so that he can take them to A Place of Worship. That would be a significant benefit to the children's welfare. However, I judge this advantage is outweighed by the disadvantage of the children having to experience a handover with the parents and the risk of them being exposed to conflict. It is better in my judgment for each Significant Religious Day to alternate every year.

#### *Indirect Contact*

170. Indirect contact can serve to maintain connection between the children and their parents over the longer periods of separation that my orders will require. It can help the children adjust and settle into the arrangements. However, I am not satisfied indirect contact has always worked in the children's best interests. It can be intrusive into the other's home and has been a source of great conflict between the parents. A high level of indirect contact is likely to be overly disruptive. I judge the children have struggled with indirect contact up to 30 minutes in duration. They have understandably been distracted at times. In my judgment shorter periods of 15 minutes where the children are more focussed are likely to be better for the children. I have ordered a division that balances the need to give the children space to enjoy time with the other parent without undue disruption, particularly at weekends, with the benefits that come from maintaining regular connection.

#### *Type of Order*

171. The appropriate order is that which reinforces the equal status of the parents and best reflects the reality of their lives. During term times they will move between two homes on a 5 night-9 night basis. They will spend equal periods with each parent during holidays. In my judgment the order which achieves these ends is an order the children live with both parents. An order the children live with both parents in combination with an unequal division of their time is likely to promote an equality of status.

#### *Medical Issues*

172. Each parent wishes to make routine medical decisions to the exclusion of the other. That has some initial attraction given it will reduce the scope for conflict on the children's health care and the harms I have previously identified.
173. However, I do not have confidence that granting either of these parents what would amount to sole parental responsibility for routine medical issues is in the children's best interests. For her part the Mother's inaccurate reporting of health concerns gives me pause to doubt that she can always be trusted to make appropriate decisions alone. If I were to grant the Father the authority to exclusively make decisions about the children's routine health care to the Mother's exclusion, there is a real risk he would marginalise the Mother. It would also serve to elevate his status to the Mother's exclusion, which is what the court is endeavouring to avoid.
174. I will make a series of orders confining the places where the children can be registered for medical treatment and judge that to be a proportionate response to the harm I am seeking to avoid.

#### Overseas Travel

175. The Father is convinced the Mother will abduct the children. Despite this, he does not seek an order prohibiting all overseas travel. He seeks the imposition of a bond. The Mother has lived in the United Kingdom for 17 years. She is a British Citizen. Her own mother is permanently settled in the United Kingdom. The Mother has an established life in the United Kingdom. The parties' children are deeply connected to life in the United Kingdom. There is nothing to suggest the Mother would have anything other than the most spurious motivations for moving to Country Q once she completes her current work. No evidence – other than the Father's bare assertions – has been put before the court to demonstrate there are opportunities in Country Q that would be attractive to the Mother.
176. I have no doubt that the abduction of the children to Country Q would cause grave harm to the children. However, I assess the risk of that harm materialising is low because of the Mother's strong ties to the United Kingdom. Furthermore, I consider it improbable the Mother would subject the children to the grave harm of abducting them from the United Kingdom.
177. I judge a bond is unnecessary in the circumstances and I dismiss the application. My orders provide a proportionate response to the low risk that does exist.

#### Maternal Grandmother

178. The Father relies upon findings about the Maternal Grandmother by the First-Tier Tribunal (Immigration & Asylum Chamber) to say the children should not be left with her unsupervised. The Father has not persuaded me the risk to the children is as great as he alleged. Furthermore, I consider it is unlikely the Mother will allow them to be exposed to such a risk.
179. An order is unnecessary and the application is dismissed.

## Section 91(14) Orders

180. At the beginning of the hearing I made counsel aware I was considering imposing section 91(14) restraints on each of the parents. I had regard to the FCA's observations that there is a risk of the case coming back to court on either of the parents' applications and the children need to avoid repeated court applications. The FCA supported such restrictions.
181. Even though neither has issued repeated applications, the parents' evidence served to reinforce the need for each of them to be subject to the restriction.
182. **The Father:** The Father has engaged in lawfare. His behaviour is oppressive. He considers he is superior in his parenting to the Mother. He will very likely issue applications to vary my orders in very short order when the point arrives where he believes the Mother has fallen short of his standards.
183. **The Mother:** The Mother does not fully accept the importance of the Father in the children's lives. She places far too much weight on the children's wishes. I find she is likely to issue applications to reduce the children's time with the Father when they communicate even trivial levels of unhappiness or she believes the orders have run their course.
184. These children have been subject to a high level of emotional harm through these proceedings. They have had little peace in two-and-a-half years of litigation. They have been objects of the parents' conflict. I consider there is a real risk each of the parents will apply to vary my child arrangements orders in the coming months and years. New proceedings will likely be significantly harmful to the children's emotional wellbeing. It would be highly disruptive for their parents to once again be locked in conflict. The children's welfare requires they have peace from litigation so they can get on with their lives and adjust to the change I am ordering. The harm this litigation has already caused the children and the harm future litigation risks causing goes beyond the usual acrimony in cases of this kind.
185. The children's welfare requires I restrict their parents' abilities to apply to the court to vary my orders. The minimum period of restriction necessary is a time that allows the children to complete two full academic years of school. I judge that to be the least amount of time the children will need to move on from the conflict they have faced.
186. It would be disproportionate at this time to restrict anything other than applications in respect of the child arrangements orders.

## Enforcement Orders

187. Having found the Mother to have breached the court's orders without reasonable excuse I must consider how the court should exercise its discretion.
188. **Aggravating features:** There were multiple breaches of the court's orders over a sustained period, including on the youngest children's birthdays. The effect of the non-compliance was to undermine the children's relationship with the Father. This risked long-term harm. I am not satisfied the Mother wholly subscribes to the Father's

importance in the children's lives. There is a real risk once these proceedings conclude that my orders will be breached.

189. **Mitigating features:** The Mother admitted her breaches and did not require time to be spent proving them. The Mother has complied with the orders for several months. She has attended a Separated Parenting Information Programme. These are the Mother's first breaches (although the weight to be given to this feature is limited given how many breaches have been admitted).
190. I have regard to the fact that any Enforcement Order I make is likely to disrupt the children if that order is implemented when the children are in the Mother's care. However, it is likely an order could be implemented when the children are in the Father's care and limit this disruption. There is a risk the children's welfare will be harmed by the Father communicating to the children that the Mother has been "punished" and he may weaponise any order which is suspended for a lengthy period.
191. An enforcement order risks disrupting the Mother's work and thereby reduce her income. She is in modestly paid work and has limited surplus income. However, it appears likely to me that an order could be implemented on days when the Mother is neither working nor has the children in her care. I note that the FCA's report identifies several Unpaid Work options which could fall outside the time the children are in her care and also outside her work 'fitting around [the Mother's] own commitments'. The Mother has not made any submission in respect of her religious commitments that would make an enforcement order inappropriate.
192. Having regard to all these circumstances I have concluded that making an enforcement order is necessary to ensure the Mother complies with my orders and is deterred from further breaches. I have endeavoured to make an order that is proportionate to the breaches (applying the principle of totality) and the need to promote the children's best interests. In particular, I find the Mother's most recent compliance with the court's orders permits my enforcement order to be wholly suspended.
193. I order the Mother to undertake 48 hours of unpaid work. This order is wholly suspended for 6 months upon compliance with the court's order.

## **Conclusion**

194. It is with a heavy heart that I have found myself compelled to draw an order more detailed and specific than any order I have previously seen. I fear the effect will be to lock the parents into their positions and give limited scope for flexibility and collaborative parenting. However, I have come to the unhappy conclusion that the FCA is right that the parents require the most prescriptive orders that do not afford flexibility. Ambiguity will likely be fertile ground for conflict. I must also ensure my order can be enforced.
195. It is my sincere hope that in the fullness of time these parents can course correct for the sake of their children's long-term wellbeing. I fear they are close to a point of no return in the harm they are causing. The Mother and Father should each be left in no doubt that if temperatures do not reduce, the court will likely have little option but to

consider inviting social services to investigate whether it should take protective action to safeguard the children from the emotional harm caused to them.

196. That is the judgment of the court. Orders accordingly.

### **Post-Script**

197. I provided embargoed copies of this draft judgment and my proposed order to counsel ahead of 14 March 2023. I am grateful to them for their sensible corrections to both documents. After I released the draft documents to the lay parties, counsel requested additional time to consider the documents with their clients and an opportunity to submit any further matters.

198. I afforded the parties until the end of Monday 27 March to do that with it being made clear I was inviting technical improvements to the language of the order and any corrections before I hand down final versions of the documents. The lay parties have put several issues before me through their counsel. I now attend to those matters.

199. **School holidays:** The draft order reads:

“15. The school holidays shall be accounted for as follows:

- a. Only days on which the children do not attend school at any time shall be part of the school holiday; and
- b. Weekend days, Bank Holidays, school administration days, and school training days on which the children do not attend school shall be part of the school holiday.”

200. I will add the words ‘INSET days’ to avoid future conflict.

201. There is said to be confusion about how Bank Holidays and INSET days are to be treated. I do not consider there is ambiguity. All INSET days and Bank Holidays are as much a part of the holiday as any other day and the whole of the holiday should be divided equally taking account of how many holiday days there are in total.

202. The equal division is determined in accordance with:

“17. Parent 2 must do all things necessary to deliver the children into the care of Parent 1 at the handover location as follows:

- a. When there are an even number of days during the school holiday, at 2:00pm on the last day of the first half of those days; and
- b. When there are an odd number of days during the school holiday, at 2:00pm on the middle day.”

203. The usual term pattern then resumes where it left off once term begins with the children spending the night before term resumes with the parent who has them for the first night of the school term.
204. The proposed change to account for a possible 6 week, rather than 5 week, summer holiday is sensible and I adopt it.
205. **Significant Religious Days:** The Father sought to relitigate my decision on the division of Significant Religious Days. I decline to entertain his argument. It remains my judgment that the significant advantages of the children participating in religious activity with the Father on those days as opposed to only one are outweighed by the disadvantages. Whilst that does not sit consistently with my determination on birthdays, I am satisfied that the children's welfare can be promoted by dividing the Significant Religious Days in the way I have whereas I cannot so divide the children's birthdays.
206. **Indirect Contact:** The Father invites me to order that each of the parents should immediately leave the room after setting up the video call and then not 'interfere' with the call. I do not consider this is practical given the children's ages, but I urge the parents – without ordering them – to give the children the space so far as is possible to enjoy the time with the other parent as they would want for themselves.
207. **Recording of Handovers:** The Father wishes me to exempt any recording he makes by CCTV from his home should handovers take place there. I decline to order this. I have ordered a neutral location for handovers unless the parents agree a different place. It is open to the Father not to agree to his home being the place where handovers take place. Perhaps in the fullness of time, when temperatures cool, other arrangements will be possible and the significance of a recording by a piece of existing CCTV equipment will be less prominent. Regrettably, these parties are not yet in that place.
208. **Overseas Travel:** The Mother wishes me to alter the notification period before travel from 42 days to 21 days. I decline to do this. I consider 42 days is a proportionate measure to manage the risk I have identified and to ensure each parent is appropriately informed of the children's travel plans.
209. **Travel Documents:** The Father wishes to hold the United Kingdom rather than the passports of Country Q. I decline to change my order. The Father invites me to order that the 'Country Q Family Book' be delivered up to the Father. I heard no evidence about this. Nothing was put to the Mother about this document in her evidence. I heard no argument about it. I decline to order what is sought by the Father.
210. The Mother tells me she requires the children's Country Q passports as well as their United Kingdom passports to travel to Country Q and to renew their Country Q passports. I heard no evidence or argument on this. I decline to make any orders in this regard, save each party must do all acts and things required to renew the passports when those renewals are due. When the renewals are due the Mother can present the Father with the information she says supports her understanding of the steps required for the renewal of the Country Q passports. If a party does not do all the acts required



of them then, sadly, there may need to be recourse to the court with costs consequences for the defaulting party.

211. The parties agree that passport renewals should take place not less than 56 days before the passports expire. However, I take judicial notice that international travel usually requires a passport to have at least 6 months remaining before it expires. I will order renewals take place not less than 9 months before expiry.
212. I am asked to order that the Mother's address be used to renew passports if only one address can be provided. I agree that is appropriate because the children live with her for the majority of the year.
213. **Medical Care:** The Father invites me to order that each of parties must inform the other in advance of and 'immediately on booking' *any* medical appointment. He invites me to order that they must each use their best endeavours to give prescribed medications to completion. I find these provisions to be entirely unnecessary.
214. I fear, with these proceedings concluded, advance notice risks taking this conflict from the court room to the doctor's surgery. I wish to spare the children's doctors and nurses that despairing experience so far as is possible. The children's welfare requires no more than each parent be informed within 24 hours of attendance. It is not necessary in the children's welfare interests that the Father attend all medical appointments. He does not need that control. My order authorising each parent to obtain information about the children's medical records will enable each parent to be kept informed.
215. I intended by my draft order to ensure the children only have one set of medical professionals they attend, rather than competing professionals whom they are taken to separately by each parent (as has occurred in the past). It need only be said to recognise how such an arrangement would be contrary to the children's best interests. My draft order did not ensure that and my perfected order will.
216. I worry the children will be subject to competing appointments and tests. My orders require the Mother and Father to de-register the children from medical practitioners outside England. The children will then be registered by the Mother and once registered, both parties will be prohibited from registering the children elsewhere without the other's consent. This will not stop the Father causing the children to attend upon those professionals, but will ensure that only one set of professionals has oversight of these children.