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Case No: ZC21P00650

Neutral Citation Number: [2024] EWFC 123 (B)

IN THE FAMILY COURT AT EAST LONDON

11 Westferry Circus,
Canary Wharf, London, E14 4HD

Date: 26th March 2024

Start Time: 11.25 am Finish Time: 14.30 pm

Before:

HER HONOUR JUDGE SUH

Between:

A Mother

Applicant

- and -

A Father

Respondent

MR PRICE-ROWLANDS and MS CARPENTER (instructed by **Barnes & Partners**) for
the **Applicant**

MR LANGFORD (instructed by **EDS Law**) for the **Respondent**

MS KANG (instructed by **HMB Solicitors**) for the **Children's Guardian**

Approved Judgment

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HER HONOUR JUDGE SUH :

1. Today I am concerned with H, born in 2015. Her mother and father are both in court and she currently lives with her father and spends time with her mother. The school holidays are shared equally and in term time H stays at her mother's house every other weekend and sees her on the Thursday in the intervening week and is dropped back to school on a Friday. This is an application by the mother for a shared care order. Ideally she would like a week on and a week off, or alternatively an additional weekday overnight. I also have the guardian's application for a section 91(14) order. I heard this case on the 19th, 21st and 22nd March and give judgment today, 26th March 2024.
2. The mother was represented last week by Mr Price-Rowlands and, Mr Price-Rowlands, I am very grateful for Ms Carpenter taking a note of judgment today and being at the court to represent the mother for judgment. Mr Langford represents the father and Ms Kang represents H through her guardian, Ms V, who I am glad to see is on the link.

Parties' positions

3. The positions at the final hearing were as follows. The guardian recommends that a child arrangements order is made for H to live with her father and for H to spend time with her mother, as she is doing, alternate weekends and intervening Thursdays. She suggests that holidays be shared but she says if I find that H was coached by her mother to make allegations about her father, her time with her mother should be limited to no more than five consecutive days.
4. She recommends the parents attend the Planning Together for Children and I think that is a good idea. She supports F attending Calm Parents, Calm Children. She recommends a prohibited steps order in relation to overseas travel for the mother but she does not think one is necessary for the father. She thinks the father should retain H's UK passport and any other travel documents obtained in her name. She recommends a section 91(14) order for three years to prevent further applications by the mother without the court's permission.
5. The father broadly agrees but seeks that section 91(14) order for five years and says that Thursdays should not continue because the mother does not take H swimming as she said she would. He suggests attaching a penal notice to the order and is concerned that overnight should take place at the grandparents' house to avoid H needing to share or co-sleep with her stepfather. He says that holidays should be 70-30 in his favour.

Chronology

6. I am going to set out, and I am afraid it will take me some time so forgive me, the chronology that led to these proceedings. In part, that is important because although the parents were clearly there for all of these previous court hearings, I as the judge was not. By way of background in 2016 Edmonton County Court made a non-molestation order on application of the mother. In July 2016 the father applied for a child arrangements order.

7. In 2016 the father breached the non-molestation order by sending emails to the mother. He was convicted of the breach in 2016. Now, here I pause to remind myself that the breach of a non-molestation order is a specified offence, the evidence of which is evidence of domestic abuse for legal aid purposes but that is a separate issue as to whether the court later finds domestic abuse proved as a fact.
8. On 26th January 2017 proceedings concluded by consent. On 5th April 2017 the father made an enforcement application and on 22nd May 2017 the mother applied to vary the child arrangements order. On 1st June 2017 the mother applied for a prohibited steps order, which I understand was granted. On 27th June 2017 the father gave an undertaking and the prohibited steps order was discharged.
9. There was a fact-finding hearing in September 2017 by DJ Prevatt sitting in the family court in relation to the mother's allegations of domestic abuse against the father. No findings were made against the father and the court found issues with the mother's credibility and inconsistency in the mother's evidence. The judge found the father to be very excitable and the relationship between the parents to be "volatile". It is not clear to me if she had evidence of the breach of the non-molestation order in front of her.
10. At a final hearing in September 2018 DJ Prevatt ordered that contact with the father build up to being unsupervised alternate weekend contact. The court then made a series of enforcement orders which suggests that the mother did not comply with the order DJ Prevatt made and DJ Prevatt made suspended unpaid work orders.
11. The mother in June 2019 stopped contact with the father on the grounds that H had told a doctor at the hospital on 20th June 2019 that she had been hit by her father. No record of this was found in the hospital notes. A guardian was then appointed for H and the guardian applied for a psychiatric assessment of the mother and that application was granted in October 2019. The mother applied in July 2019 to discharge the child arrangements order and made an application for a non-molestation order. The father applied to activate the suspended unpaid work requirement. The order of DJ Prevatt in 2019 in October seemed to activate that unpaid work order.
12. Following a pre-trial review in December 2019 contact was stopped by the mother in December 2019 on the basis that H alleged that her father had sexually abused her over the Christmas period by kissing her genitalia. This was not initially corroborated by H when she was interviewed by police and social services but she did make an allegation to the nursery on 16th January 2020 and then to her social worker. A section 37 direction was made to the London Borough of Waltham Forest.
13. Contact with the father was continued but on a supervised basis only. H was subject to a child protection plan in February 2020 on the basis of emotional abuse and on 12th February 2020 the mother agreed that unsupervised contact could resume at a child protection conference but then it seemed that she objected and removed H from nursery before she was collected by her father. On 19th March 2020 the section 37 report from Waltham Forest was received and stated the social worker was of the view that H was experiencing significant harm in her mother's care and recommended a move to her father's care.

14. DJ Prevatt had a final hearing in July 2020 and she heard from Dr C who was the instructed psychiatrist who diagnosed the mother with a severe anxiety disorder with post traumatic symptoms and overvalued ideas which resulted in a marked emotional misinterpretation of neutral events by the mother who had strongly held but usually temporary false beliefs. DJ Prevatt records in her judgment that Dr C confirmed there were three ongoing concerns: (1) in relation to the mother's ongoing false allegations of abuse; (2) her marked difficulty in accepting the fact there was no evidence for those allegations; and (3) her acting upon her concerns by preventing contact. He confirmed that this was an ongoing condition and without treatment there was a risk of further deterioration in the future. He thought that the mother might benefit from medication but she would be unlikely to accept it but would also benefit from therapy which might result in a marked improvement in the mother's ability to contain her anxieties. He said without this assistance it might take considerably longer to change her views. He also suggested a reduction in stress would assist the mother.
15. From reading DJ Prevatt's judgment, it is clear that the mother did not accept Dr C's evidence and did not consider that she had any mental illness. The judge, however, did accept the expert's evidence. The judge changed H's residence and placed her in the care of her father and a spend time with order was made in favour of the mother. A family assistance order was made to Waltham Forest for a period of twelve months and the judge urged the mother to obtain therapeutic help. The judge set out in a recital to her order that in the event that further allegations were made, the child should not be moved to her mother's care until the outcome of the investigation was known and any investigation should happen quickly.
16. The mother made a prohibited steps order preventing each parent leaving the UK without the consent of the other or an order of the court. The reason she gave for this were:

“I accept that both parents have fears that the other may remove H from the UK. I will therefore leave in place a prohibited steps order which is already in place so neither of them can remove H from the UK without the written consent of the other or an order of the court.”

The judge made findings that the father had not hit or sexually abused H and that H was encouraged to make the latter allegation against the father and was coached to make the other allegations against the father, either directly or indirectly. The judge did not find that these allegations were made for malicious reasons but borne out of an honest, mistaken believe.
17. Proceedings then began in East London in March 2021 when the mother returned the matter to court seeking an increase of her time with H pending her application for a shared care order. I do not know why the matter was not transferred to DJ Prevatt but it seems to have then been under the case management of East London judges.
18. By way of completeness in the chronology, I will explain what information came in during the course of these proceedings. In May 2021 we have a letter from Dr B, who is a psychiatrist that the mother saw privately. He says:

“From the evidence presented to me, which is all history, I see no evidence of emotional instability. Clearly the whole court case has been a very stressful process for you and quite traumatic. I certainly think you need some help around this and I have suggested a referral to [name of Psychology Group].”

Then we have in June 2021 a GP letter:

“The mother has not reported any form of anxiety or depressive symptoms following a detailed private psychiatric report by Dr C in December 2019. She has not received any antidepressant medications from us according to her available medical notes.”

19. In June 2021 [name of psychology group] provide a letter. The scores of the tests that they administered indicated that:

“The mother is likely to be within the non-clinical range for depression and her anxiety is at a minimal (non-clinical) level. The mother was quite clear she did not think she needed therapy at this time. Based on the content of her discussion, I did agree with her. Her presentation did not warrant further psychological intervention at this time.”

We then have a letter from Dr B dated 25th February 2022:

“When I examined the mother there was not evidence of any major mental illness and she has not been treated for any mental illness [he writes]. I confirm I have not seen any documentation from this case.”

20. DJ Landes made an order on 28th February 2022 and as part of that order it is recorded the mother is willing to take H to swimming and piano if they fall on a Thursday and her Saturday drama classes when they start next month.

21. 27th September 2022 sees a GP letter provided. The GP writes:

“I can see no consultations that indicate a diagnosis of a mental health disorder. She, the mother, additionally reports to me that she has never suffered from any mental health disorder symptoms, nor has she received treatment for any mental health disorders.”

I note in passing this does not sit very easily with Dr C’s summary of the mother’s medical notes that suggest in 2010 and 2013 she reported anxiety.

22. On 28th September Dr B writes that he sees no evidence of any major mental illness and she has not been treated for any such illness. In his December letter Dr B makes it clear that he first saw Dr C’s report in November 2022. He provides his own analysis of Dr C’s conclusions and notes that it is now three years on since Dr C reported. In short, he still holds the views set out in earlier reports.

23. At the final hearing of the 10th and 11th January 2023 DJ Landes heard oral evidence from Ms P who was the social worker at Waltham Forest. She conceded she needed to undertake a new assessment because she had not taken into account Dr C's report when finalising her addendum report and her risk assessment and that her report and her recommendations dated 22nd June 2022 were flawed.
24. The matter was referred to Her Honour Judge Atkinson for consideration of what further action should be taken with Waltham Forest on the basis that the social worker had not appeared to appreciate that the factual matrix for making welfare recommendations had already been established by the court. It was directed that Waltham Forest should take no further part in undertaking the welfare assessment in the case and the matter was timetabled with a further section 7 report to be prepared by CAFCASS. The judge did not vary the arrangements for H, school holidays were to be shared equally and the every other weekend and Thursday pattern was continued.
25. On 10th May 2023 H's school made a referral to Waltham Forest because she had expressed concerns about her mother and stepfather arguing. The father also spoke to the school and raised a concern that H was sharing a bed with the mother and her partner, her stepfather. On 6th June 2023 the guardian provided a report for a final hearing. The allocated social worker, Ms O, indicated on 18th July 2023 to the guardian that she would be recommending a child in need plan and would be seeking an adjournment of the final hearing. On 21st July 2023, which I think was the working day before the resumed final hearing, filed an assessment that sets out allegations that H had made both against the father that he hit her and shouted and against the mother that she and her partner argued.
26. At the resumed final hearing on 24th July 2023 the matter was not effective because of these further allegations and it seems that the mother was considering an application to re-open the previous findings. The guardian was appointed and the court invited the local authority to change the social work team given the criticisms expressed of Ms P who continued to be the team manager responsible for H. On 27th July allocated social worker met H and we now have her case note.
27. On 28th July the guardian received an email from Ms O which confirmed that H had repeated her allegations, including that her father hits her, shouts at her and she was afraid to return home. The guardian reports the local authority's stated position was that H should remain in the mother's care until their investigation was complete. The guardian in an email to the local authority identified that the assessment and concerns were before the court on 24th July and that no changes were made to the interim arrangements and asked the local authority to clarify whether they intended to issue public law proceedings in the light of their position.
28. On 30th July 2023 the father made a C2 application because the mother had not returned H to his care. On 31st July the local authority indicated that they did not have sufficient evidence to prevent H returning to the care of the father and at the hearing on 2nd August listed on the father's application, DJ Landes directed that H be returned to the father's care that evening by the newly allocated social worker, Mr A.
29. The court recited that they were concerned that the local authority were seeking that the children and family assessment filed on or around 24th July was to be retracted.

The court did not agree to that proposal and determined that it would remain in evidence in these proceedings and that the local authority may complete an updating assessment which may additionally be filed. On 25th September Mr A filed that further children and family assessment and that recommended no further action be taken and that statutory support for H should end. The report noted H did not make any allegations to Mr A.

30. On 26th September 2023 the matter came before Her Honour Judge Atkinson. Directions were given and the parties were put on notice that the guardian may seek a section 91(14) order at the conclusion of these proceedings. On 21st November 2023 the parties were informed that the matter would be re-listed before myself due to court timetabling pressures and on 15th February 2024 the matter was re-timetabled to this final hearing by the parties' consent.

Issues for the final hearing

31. I was careful at the pre-trial review to set out the issues for this hearing. The father alleges that the mother has coached H to make the allegations against him in the summer of 2023. Neither party thinks that the court should make findings in relation to whether the father did hit H or whether the mother and her husband did have the arguments that H reported. The mother maintains that she is a victim of domestic abuse and provided evidence of that breach of the non-molestation order. She alleges that the father is angry and confrontational with professionals and that this is in front of H and that he behaves this way at times at home. She says this is reflective of her experience of him.
32. This is captured in the issues which the social workers would be asked to address on the face of my pre-trial review order. They are asked to give evidence of their observations of, and work with, the parents and child. At pre-trial review, the evidence of the non-molestation order breach had not been provided but a copy of that conviction is now in the bundle. The father gave evidence he breached the non-molestation order because H, it was her birthday and he felt emotional and wanted to send a gift. He understood that it was wrong to breach the order.
33. I made it clear at the pre-trial review that if the parties wished to put matters pertaining to Ms O's professional conduct in respect of these proceedings, that she should have advanced written notice of this. She was not given advanced written notice but, rather, sent a copy of the order which flags the possibility of her being asked such questions but does not make it clear that she will be asked them. I therefore agreed with Mr Langford that I would stop or flag any questions that I thought were unfair and I would focus on the issues in hand. I allowed questions in relation to whether Ms O had received gifts from the mother because this was an issue that was expressly flagged on the face of my pre-trial review order.
34. In giving this judgment and looking at the issues I have to resolve, I am not going to go behind DJ Prevatt's judgment. It has not been successfully appealed and there is no application to re-open it. She did not find domestic abuse on the balance of probabilities, so in law it has not happened. I am not going to give a commentary or express a view on the social work practice of Waltham Forest. Previous judges have clearly addressed this issue with Waltham Forest and the social workers were not put on formal written notice of the intention of the court to look at their conduct and,

indeed, it is not necessary for me to express a view on social work practice in order to make decisions justly for H. Insofar as I address the events of summer 2023 it is through the lens of the parents' reactions to them and to provide an analysis of the weight that may be put on documents from that period and the issues that I have to resolve.

Law

35. I remind myself of the law. H's welfare is my paramount consideration and I must consider whether making an order for her is better than making no order at all. I remind myself of the no delay principle. Mr Price-Rowlands cited cases in which the courts in the past had made shared care orders. It seems to me that each of these cases turned on their facts and did not create a presumption in law of shared care. Each case, having read them all, was an exercise of judicial discretion on the basis of the facts before the judge.
36. I have looked at the case of *A v A* [2004] 1 FLR 1195. This, said Mr Price-Rowlands, established that parents are equal in the eyes of the law. He said that sole residence orders could be misinterpreted and what was needed was cooperation and a shared residence order reflected this. Having read the case of *A v A*, this was a case in which the mother made allegations that the father was a risk to the child which were not substantiated but sought a sole residence order at the final hearing. By the time of that final hearing the children were spending 50 percent of their time with each parent and the issue at that final hearing was what label to put on the arrangements. So this factual background was quite different from the case which appears before me now.
37. Mr Price-Rowlands cites the case of *Re F* [2003] 1 FLR 295. The judge on the facts of this case exercised her discretion to make a shared care order but again it was on a particular set of facts. The father wanted a sole residence order in the light of the mother's potential to reduce his contact with the child. The judge, however, found that a shared care order was in the child's best interests.
38. Mr Price-Rowlands cites *Re R* [2006] 1 FLR 495 as authority for the proposition that a harmonious relationship is not a pre-requisite for the children living with both parents. This case of *Re R* is also cited in the case of *Re A (A Child) (Joint Residence: Parental Responsibility)* [2008] EWCA Civ 867 in which the Court of Appeal says it is not the case, for example, that conflict and parental acrimony are grounds to refuse to make an order for shared residence. The Court of Appeal then cites the case of *A v A* [2004] 1 FLR 1195 in which the judge made a shared residence order against the background of tremendous conflict between the parents which resulted in frequent applications to the court.
39. Mr Price-Rowlands cited the case of *Y* [2014] EWCA Civ 1287. I read that case but it did not seem to me to be on point. It was about relocation to the USA and the removal of the child from the jurisdiction.
40. Mr Price-Rowlands submitted that no one has addressed the equality principle. My understanding is that none of these cases establish a principle that the child's time should be shared equally between the parents. Section 1 of the Children Act 1989 sets out that there is a presumption that the involvement of a parent in the life of the child is likely to further that child's welfare unless the contrary is shown but involvement

means involvement of some kind, either direct or indirect, but not any particular division of the child's time.

41. Mr Langford helpfully cited the case of *D v D* [2001] 1 FLR 495 which says that contrary to earlier case law, it is not necessary to show that exceptional circumstances exist before a shared residence order may be granted, nor is it probably necessary to show a positive benefit for the child. What is required is to demonstrate that an order is in the interests of a child in accordance with the requirements of section 1 of the Children Act 1989. While guidance from the Court of Appeal should be valuable to first instance judges setting out the principles to be followed, it should not inhibit them from making the right decision on the individual facts of each case where the judge exercises his discretion and decides what is best for the child in the particular case.
42. So I have to look at the facts of H's situation and make a decision about what is best for her. There is no case that it is exactly like the facts which I am required to look at and there is no child who is identical to H and I have to look at what is best for her.
43. I have been asked to make a finding about whether the mother coached H, so I remind myself of the law about findings of fact. The burden of proof is on the person who alleges something happened; the standard of proof the balance of probabilities. I remind myself in accordance with the case of *Re T* [2004] 2 FLR 838, I need to consider all the evidence in this case. Evidence cannot be evaluated, assessed in separate compartments and a judge in these difficult cases must have regard to the relevance of each piece of evidence to the other and exercise an overview of the totality of the evidence to come to a conclusion. Findings of fact must be based on evidence, including inferences that may be drawn but not on suspicion or speculation.
44. I remind myself that people are not always truthful and people may lie for different reasons but just because somebody has lied about one thing does not mean they have lied about everything. Mr Langford suggested that I may need to give myself a *Lucas* direction but he did not take me through the systematic approach in *ABC (A Children) [2021] EWCA Civ 451* setting out the deliberate lie he seeks to rely on, the significant issue to which it goes and the basis on which the only explanation is guilt.

Evidence

45. In relation to evidence, I may not mention every bit of evidence in what is already an overlong judgment but I bear it all well in mind. I have had the benefit of the written bundles which have been provided, I have had the notes that I have taken in court which I have been able to refer to when crafting this judgment and I have had the benefit of submissions. I remind myself that some of the evidence in this bundle is hearsay. That means that the makers of some of these statements have not been called to come to court and give evidence and be cross-examined on them, so the weakness of this type of evidence is that it has not been tested by cross-examination and the weight to be attached to it is for me to decide. Specifically, H has not been called and no one has asked for her to come to court.
46. I am going to summarise some of the main points of the oral evidence that I heard and the impressions that those giving oral evidence made on me. Ms O became the social worker on joining Waltham Forest in April 2023 and she was given the job of doing a

safeguarding check on the mother's partner which was outstanding. There was then the MASH referral from the school about the mother and her partner having arguments in May 2023.

47. In the witness box Ms O did not seem to grasp the point that the fact-finding hearing did not find domestic abuse, nor did she give me confidence that she had read and digested either DJ Prevatt's judgment or Dr C's reports. She was unclear as to whether she had seen DJ Prevatt's order about exercising caution when exploring future allegations. she says:

“I've not seen that before. Maybe I have seen it but maybe I did not really look into it properly.”.

48. Her evidence fluctuated and shifted in relation to whether she knew before speaking to H that coaching was a risk she needed to bear in mind. Her recollection of exactly what she said to the mother and when was unclear and confusing and she often responded “I can't recall” when asked about that. She gave evidence that she wrote up her notes on the visit of 27th July that evening going past midnight and therefore into 28th July 2023. Whatever else you may say about her evidence, she came across as passionate about listening to the child and about H being her main focus.

49. I am not asked to make findings about whether the father hit H and about whether the mother and her partner have had arguments but in case the 2023 assessment is picked up in future by other professionals, I make it clear that Waltham Forest tried to retract this assessment and that I can attach limited weight to it due to the following factors:

- i) The social worker uses the word “disclosure” throughout. That is not now good practice because it seems to suggest that what somebody says is taken as automatically being true.
- ii) Leading questions are asked by both the school and the social worker from the reports that I have read.
- iii) Discussions seemed to go beyond getting the basic elements of an allegation and become more of a discussion and comments are made by the social worker in school in a directional manner.
- iv) The format in which the children and family assessment is written, namely the social worker writing it as if she is speaking directly to H, does not always make it clear what H herself said verbatim and what is the social work interpretation on it.
- v) There is only one case note provided by Waltham Forest and when the court ordered the disclosure of all the primary evidence that underpinned the report, that was all that was forthcoming.
- vi) The dates, details and specific circumstances about what H says about both parents are sparse.
- vii) The dates on which the social worker spoke to H and who exactly was there on each occasion are sometimes unclear in the report. I can add further detail if necessary and I think I look at this slightly later on in my judgment but, for

example, the social worker on page D158 gives two separate days three days apart for her conversations with the school. Now, maybe there were two separate conversations three days apart but it is also possible, reading it in context, that this is a typo. In short, I found it really incredibly hard to construct a reliable chronology of exactly what happened on what date and who was present from reading the local authority evidence.

- viii) The local authority were directed to file a statement setting out the circumstances in which advice was given by the local authority which had the effect that the mother breached the court order and their statement sets out the following factors: the assessment was unauthorised and unapproved by the team manager and should not have been shared with the parents or the court; Ms O accepts she said to H during the visit on 27th July that no one should be hit and she would work to keep her safe; at no time did H allege any specific incident had occurred, nor had she been reported with or seen as suffering from any injury; on 28th July the head of service determined that the section 47 threshold was not met and this was supported by the police who had considered the information and the case history and on 31st July, as I have already mentioned, the local authority attempted to recall the assessment.

That, I trust, puts the assessment in its full context.

50. Mr A was an impressive and thoughtful witness. He highlighted the strengths of each parent. He said the father was more about attainment and progressing and getting skills and the mother was more about the fun side of childhood and the emotional side. He thought that H was a bit more wary about what she said in front of her father and more relaxed in front of her mother.
51. I want to say before I talk about the evidence of the parents that I gained the impression that court proceedings and dealings with social services over the years has been a deeply bruising experience for both of them and I am sorry that they have seen so many judges over so many years. It may well be that the matter was not re-listed before DJ Prevatt because she sits now some distance away from where they live but I think it would have been better if there had been judicial continuity throughout and I am sorry that I am a new judge for this final hearing but by the time the matter reached me at pre-trial review, any delay in that final hearing would have not been good for H and, indeed, nobody asked me to adjourn matters and send it back to DJ Prevatt. I am sorry too that it took us so long to get hold of DJ Prevatt's original judgment. I am going to try and make sure by putting it on the face of my order today that we have a clear list of all the documents should a judge in the future ever need to understand the background for H.
52. I look at the parents' evidence and the mother gave her evidence calmly and clearly. She did not agree with the judgment of DJ Prevatt but was not vitriolic and was measured and balanced in explaining that her life had moved on and she was now thinking about what was best for H. She also struck me as balanced in her assessment of the father by saying he was a good parent. She spoke of him being strict but she did not try and badmouth him. She does not seek a finding that he hit H. When she was asked if the father's contact with H should be supervised, she said no and was content to leave the decision to professionals and the experts.

53. She said she was penalised in 2020 by the removal of H from her care and is just not getting involved in future issues and she tried to draw a line very clearly between what had happened in the past. However, the impression this gave me is that she did not accept what had happened in the past was emotionally damaging for H or that past behaviour can be an indicator of future behaviour and I got the impression she was trying to shut down the discussion of the past and to a certain extent that she had a line to take in response to certain questions and stuck to it quite firmly.
54. The father naturally speaks more loudly than the mother and he struck me as a focused and determined personality. His exchanges with mother's counsel were ill-tempered on both sides with instances of them speaking over each other. His evidence was suffused with a sense of injustice for the time he had not seen his daughter and the experience he had at the hands of Waltham Forest which was a theme that he returned to. He was critical of the mother and repeatedly said she did not meet H's needs in the time she already had and he did not trust her to return H after longer periods of time in her care.
55. I bear in mind that English is not his first language. Although he is fluent and does not need an interpreter, some of the way he expresses himself may arise from this factor but his language was very black and white, lacking nuance. For example, he often used the words "never" and "always". For example, "The mother *never* takes her to any places. I attend *all* events", and another example is Waltham Forest are "against him". Another example of this was that he said he *never* raised his voice to his daughter, which seems slightly unlikely to me. Parenting is a really hard job and it would be surprising if a parent never raised their voice at times over the many hard years of raising a child.
56. He had an encyclopaedic knowledge of the court orders and was quoting them verbatim with the date of the hearing and the judge and he wanted the court to look at the big picture and stressed that the improvements of the mother's ability to get H to school were very recent but what also struck me about his evidence is that he was very respectful of court orders. If the court ordered something, he made sure it happened and he understood exactly why it was wrong to breach the non-molestation order, for example, and he has not breached a court order since.
57. The guardian was an impressive witness who was thoughtful and courteous in response to robust cross-examination. I felt it necessary to pause the cross-examination at one point because it was becoming ill-tempered but this, I would observe, was not due to the guardian's responses. She remained flexible and able to explore her thinking. She was focused on the child's welfare and composed and courteous throughout her evidence.

Coaching

58. Before I look at welfare issues, I will deal with the allegation that the mother coached H to say that her dad hit her and, of course, it is very important to look at the whole of the evidence I have got in the bundle. I start with DJ Prevatt's judgment and the judge was clearly concerned that there may be future allegations against the father when she concluded proceedings in 2020. She found that H was coached to make disclosures, that is the word she used, against the father either directly or indirectly

and there have been previous allegations of hitting which have not resulted in findings of the court and Mr Langford took the witnesses to them systematically.

59. I look at what has been said over the period of years by H. So, for example, a school email of 12th March 2021 records this:

“H has made comments to teachers such as she was at her mum’s house this morning and daddy wants full custody, he wants me to live with him but I don’t want to.”

It is fair to note, as Mr Langford put to the mother, that she uses the phrase “full custody” in a conversation with the school around this time, and the reference for that is E46 of the bundle, and that what H said was said on return from her mother’s but I must remind myself that this was now three years ago, so I look at more recent records of what H has been saying.

60. I look at Ms P’s section 7 report of 2022. Many criticisms have been made of Ms P’s report but I cannot find any record of anyone suggesting that her recording of what H herself said was inaccurate. She records that:

“[H] said her dad told her to tell me he wants her to spend holidays with her mum and school days with her dad. [H] said her dad will ask her what she said to me when I visited her at school and he will tell her to tell the truth. This makes her worried. She said when she goes home her dad will keep asking her what she told me and tell her to tell the truth. [H] said she is scared dad will get mad if she says she wants 50-50 time with her mum and dad. [H] said she heard when I was talking to her dad on the phone one day when her dad got mad at her saying she wanted 50-50. [H] says she does not know what she wants because both parents are telling her what they want so she wants me, the social worker, to make a decision.”

It is clear from that record that H is very conscious of what her parents think and that at times, even as far back as 2022, terms like “50-50” has become part of her vocabulary and it is against all of this background I approach the hitting allegation of summer 2023.

61. The final hearing was part-heard before DJ Landes and due to conclude on the 24th, 25th, I think 26th July but before that a referral was made to the school on 11th May 2023 and that reads as follows:

“11.5.2023. The local authority received a referral from the school stated below. We have been advised by the duty social worker to mark as protection. [F] spoke to the head teacher regarding sleeping arrangements for [H] when she is staying with her mother. [F] reported that [H] has disclosed to her auntie at dad’s house she was sleeping in the same bed as mother’s new partner/husband. We are not clear if they have recently married. DB and class teacher explored with [H]. [H] reported, [H]: mummy bought a new house for her partner who

came to live in UK from Pakistan. [H]: mummy's new partner looks at her bank account and was asking her for money to be sent to his sister in Pakistan. [H]: mummy sometimes cries and this makes me sad and angry. DB: who do you feel sad and angry with? Mum's new partner, says [H], because he makes mummy sad and cry. [H] goes on to say further things, he fights with mummy, I hear them shouting, he says 'shh' but I hear mummy crying. Do you have your own bedroom, she is asked by DB. No, I sleep in bed with mummy and her new partner sleeps on the floor next to us."

62. The guardian's report is dated 6th June 2023 and it was the guardian who advised the school to seek advice from the MASH team on 10th May and it seems that this resulted in that 11th May referral. The guardian herself met with H on the 11th and 16th May and she tells the guardian what she told the school about the mother and her partner fighting. So:

"[H] is recorded as saying, 'Can we talk?' and I advised her I was ready to listen. In a quiet voice she said, 'You know my mum has a husband. They fight.' I asked her what happens when they fight and she said, 'Shouting and then be quiet, he says be quiet.' [H] confirmed that her mother's husband, [J], tells her mother to be quiet and that's how their fight ends. This takes place at his, Mr [J]'s, house and the fighting makes [H] feel scared."

The guardian said:

"I found [H]'s language – account authentic and was given in language expected of a child her age. There were no indications on this occasion that her views were not based on her experience and I do not consider that what she said was influenced by an adult."

The guardian then explores this with the mother:

"Ms [M] alleges that [F] is coaching [H] to say negative things about her and her marriage to professionals. However, I found [H]'s account authentic and given in language expected of a child of her age. There was no indications on this occasion her views were not based on her experience and I do not consider that what she said was influenced by an adult."

63. She meets H again on 16th May and this is what she records. That meeting was at school:

"She presents as a child who is torn between each of her parents to the guardian at this time. She told me she feels happy at both her parents' houses. She was asked about the important people to her and she said, 'My mum and my dad and my cousins.' We completed work sheets together, one of

each about her mother and father and [H] was careful to give equal and equivalent answers about each. When I asked [H] for her wishes and feelings about what time she wanted to spend with her mother and father, she presented as conflicted and confused. She said to me, ‘The same.’ I asked what she meant, keeping them like they are now or something else and she replied, ‘The same like three days, three days with each parent.’ Immediately afterwards she said, ‘Actually, no’, and then after a pause while she continued colouring in she says, ‘I don’t know what to do.’ I was concerned from this session that she presents as very conflicted and torn in her loyalties between her mother and her father. I note also in this report [H] uses her three wishes to ask for a private jet, a Lamborghini and a big house which struck me as a slightly unusual set of wishes for an 8-year-old girl and may well have been influenced by parental values in some way.”

64. The guardian in the witness box gave evidence that H has become aware of the conflict between her parents. No matter how careful her parents are to keep her away from it, she does know and she has adapted a slightly different thing, a slightly different version of herself in each home.
65. Ms O in the witness box said she visited H with her mother on 25th May, 16th June, 23rd June and did not visit the father until 27th June. Her written report also includes a note of a visit on 28th April 2023. The Waltham Forest assessment provided by Ms O records the allegation of hitting by the father being made on 11th June 2023. I do not know if that is a typo because in other documentation it suggests 11th May 2023. She also refers in her assessment to a visit on 2nd May 2023 to H at home which does not quite fit with the dates given in the witness box.
66. The social work records in the assessment says that on 2nd May H said during the home visit:

“My dad made me tell my teacher I am not happy sharing a room with my mum and Mr J.”

Later in the report it suggests that this was actually said on 26th May 2023. The report notes that on 16th June there is a visit to the school with the social worker and the safeguarding lead in which H is recorded as saying:

“My dad told me to talk about my mum to the school.”

The social worker notes:

“You don’t like your dad talking about your mother and you said yes, it makes you feel sad and I asked whether your mother or her husband talk against your dad and you answer ‘not one bit.’”

However, later on in the assessment a date of 26th May is given for this conversation.

67. As I have already said, when I tried to construct a chronology of exactly what H said on what date and who was present, I find it to be contradictory and unclear if I steer by the 2023 June Waltham Forest assessment. However, it is recorded that, as I have just read out, the father tells H to speak to people about the mother and nobody challenged the accuracy of what H was recorded as saying to the social worker in the witness box.
68. Mr Langford takes me to D138 and submits that the timing of the allegation against the father was after H had told the school about her mother and her husband fighting and after the guardian had been told by the mother that the father was coaching H to make such allegations. He submits that therefore there was a motive for the mother to influence H to say things about the father because it strengthened her case at a pivotal point in proceedings. Mr Langford points to the mother relying on other professionals when H has made allegations in the past and particularly paragraph 67 of DJ Prevatt's judgment.
69. I then go on to look at the note Ms O provides of her conversation on 27th July. She records H saying the following about her father:

“He comes to me even when I try to be alone and asks me, ‘What did they tell you to tell the social worker or what did they say to you?’”

And that again might suggest that the father has been talking to H about her discussions with others. Ms O was asked from the witness box if she saw evidence of coaching:

“[H] on this occasion, [she said] I was aware that she is balancing between the two parents. She is withholding things, she is managing. [H] does not want mum to know what dad did. Dad is interested in anything going on in the other home. I did not see coaching. She did the magic wand exercise and she was so innocent. She said, ‘I wanted [J] to start driving and I want uncle to lose weight.’ She is just a normal child. There are no signs of coaching. She is protecting her two parents, she is protecting the two.”

70. The mother's evidence is that H had not told her directly that she was hit by her father but this was told to her by the social worker from H. Ms O's notes support this. She writes to H, “You are also guarding your mother's emotional wellbeing”, and she reports in her notes of 27th July that, “Your mother became emotional”, when she was told about what H had said to her, the social worker. She notes, “Your experience is like hers when she was living with your father”. The mother was clear that H has not repeated the allegation to her after speaking to social services.
71. Looking at all the evidence in the bundle, it seems to me that after Ms O meeting with H on 27th July there was real confusion for both parents about what was happening and what the social workers and social services were doing. I do not need to make a finding about all of this but both parents were under the impression that H was told that one option would be for her to go into foster care and that is deeply troubling and both parents must have found this period so incredibly stressful and difficult.

72. It seems also that there was a snowball effect that once the mother was advised by the social workers not to return H, she spoke to the police on 29th July, she took H to A & E and made a referral for CAHMS which is undated but is in the bundle. The mother's statement suggests she was acting on social work advice and Ms O was incredibly vague and could not recall whether she told the mother to do this.
73. The tone of the mother's email becomes increasingly frantic. She describes H as terrified and in hysterics at the thought of going back to her father and the father also spoke to the police and gave a different impression as to what their advice was. There were out-of-hours conversations with social workers over that weekend of 29th July and, put neutrally, it must have been awful for both parents and the impression I gain was of an incredibly emotionally charged atmosphere.
74. The mother's statement of September 2023 which looks back over this period I think was not prepared with the benefit of a lawyer and she expressly states she was concerned she would be blamed for not returning H and her statement gives the impression that in Ms O she found somebody who understood how H had been feeling all these years and who validated her own experience of [F] too.
75. Mr Langford submits that the fact the mother was so disappointed with the social work response in her statement of 11th September is suggesting of coaching behaviour. However, as with all pieces of evidence it could be interpreted a different way. It could be the mother felt that she had found somebody who understood her and she was disappointed when the social worker went back on what she had said.
76. Mr A worked with the family from August 2023 and he said, "I never got the impression anyone was coaching anyone". He noted how H put all the animals representing family members with the same level of closeness:

"She was guarded [he said] about what home life was like. She would tell me about the fun things, she would tell me about the fun things with her mum and dad."

77. The guardian's final analysis, which is in March 2024, after the event of course is that:

"H presents as most open about her wishes and feelings when seen at school. I have reminded her of my role and how there is still a question about her living and spending time arrangements, whether they will stay the same or change. H told me, 'I want it to be equal because I can't live without my mum or my dad. I think it should be 50-50 like mummy said.'"

The guardian's final report goes on:

"Mummy told me to say if I wanted 50-50 they would have to listen to me."

78. The guardian was asked about this by Mr Langford and said it was indicative that H had been exposed to her mother's position but she did not know how this came about.

She declined to say it was coaching but rather framed it as being indicative of being exposed to adult views and wishes. The guardian gave evidence:

“I really don’t know what’s gone on. I do have unanswered questions and worries about the allegation that [H] made at that stage. She has a good relationship with teachers at school and had not raised any worries about her dad. These allegations came during a time when she had spent time with her mum and neither of the social workers offer a view in writing about whether those allegations were substantiated.”

79. Taking a step back and looking at the totality of the evidence, what is very clear is that H has been in proceedings virtually all her life. Things that she says to professionals include an adult turn of phrase going back over a period of years now and that she has reported that both mummy and daddy told her to say certain things. It is likely, in my view, that the long running nature of these proceedings have had an impact on H and on her parents and that this has influenced the way she expresses herself but it is not possible to calibrate the cumulative impact of earlier events on her, how much she remembers of previous allegations that the court has found to be untrue. She may have learnt to respond to each of the parents in a different way that evokes in them a certain response.
80. None of the professionals speaking to her around summer 2023 formed the impression that she has been coached either by her father or her mother and all of them are struck by her trying to please both parents. The evidence in its totality suggests they have both spoken to her at times in a way that exposes her to what they want to happen but I do not find that she has been coached by either parent and her views and experiences are very hard to ascertain because, like an emotional sponge, throughout these proceedings she has been listening to everything that others have said and over the years absorbed the views of her parents and I am unable to find her authentic voice clearly in all of this. I am going to go on to look at the welfare checklist now.

Welfare checklist

81. I look at **her wishes and feelings** and I have already referred to the real difficulty in trying to ascertain what H wants because her own views have been so complicated by these long running proceedings and clearly she is a child who is trying very hard to please both parents and to keep the peace in some respects. The summer 2023 assessment says she cannot share her feelings with her mother because she did not want her to be sad and she cannot share her feelings with her father because he will shout and all professionals recently have referred to her being somewhat guarded in the way that she expresses herself.
82. The guardian’s final analysis is that H’s wish to have equal time with her parents is genuinely held but also likely to be influenced by her mother’s position and application. It is so incredibly hard to ascertain what H wants and I got a sense she needed somebody to remove the decision from her. I think that it is right that the guardian tells her the outcome of today’s proceedings and makes it clear to her that it is my decision and that she should not feel responsible for anything that has happened to her and to her family.

83. I look at H's **physical, emotional and educational needs** and both parents are clearly able to meet her basic care needs. Historically I see concerns that she was at the lower end of the weight scale for her age and height but it is clear from the bundle she has got two committed parents who are able to monitor this if necessary. There were concerns earlier in these proceedings that she did not have her own room but the guardian's final report reports that she now has her own room and space in every house that she stays in.
84. H does need consistency and stability and her school attendance has historically been slightly sporadic. The local authority record in early 2022 that her attendance has improved since she lived with her father and the section 7 report notes that her attendance at school and overall achievement and attainment has improved since the stable home with her father and consistency in parenting has been achieved.
85. The guardian as late as June 2023 was worried that H was persistently late on the days she is brought in by her mother who at times is also late to collect her and her overall attendance requires improvement. The mother was unable at that stage to answer the impact on persistent lateness on H in discussion with the guardian but the guardian points out that arriving late at school can make children feel embarrassed, impair their ability to settle and may mean they miss out on important informal social interactions with teachers at the beginning of the day and the week.
86. The report of Mr A shows that in September 2023 when he met with the designated safeguarding lead there were still concerns about lots of school due to illness being missed and being late due to traffic after returning from mummy's but happily the most recent attendance figures show a 98.3 percent attendance and the two lates that appear on the register are on a Wednesday, so clearly there has been a very positive change during these proceedings but H will need to continue to be at school reliably and on time if she is to maximise her educational abilities.
87. Her extracurricular activities have been a large focus of the evidence before me. The father's evidence is that the mother does not take H to her extracurricular activities such as swimming on Thursdays and her stagecoach on a Saturday. This issue seems to go back years. There was a child in need meeting dated 13th September 2021 when this is recorded as an issue. That is C11 of the bundle and the guardian says:
- "I am concerned at the prospect of [H] having extracurricular activities set up in parallel by her parents. If this persists she will never be fully part of a class in either area. Her leisure activities ought not to become symbolic of the conflict between her parents. The school raised concern in summer 2023 that the mother did not take her to a birthday party because of the distance involved."
88. Mr A was asked about extracurricular activities and he says H did not want to be forced into learning the piano or going swimming. She wants to go to fun activities but not to be forced into them. She wants to swim for fun with her cousins but not swimming lessons. In order for H to really enjoy her out of school activities, both parents really need to listen carefully to what she actually wants and also ensure that if she is signed up to something, that she does not miss sessions because that could undermine her confidence.

89. In relation to **her health and her physical needs**, there is some evidence in the bundle that the father had not taken her to eye clinic and was discharged after missed appointments. However, that seems to have been a mix up of some sort and there is certainly no pattern of him failing to meet her needs in that respect.
90. I look at her **emotional needs** and it is clear that H and her mother have a good emotional bond and a warm relationship. Mr Price-Rowlands submits that professionals have overlooked this aspect of the mother's good relationship with H, so I make it clear that the mother has a playful and supportive relationship with H and provides a good range of craft activities and fun for her. She clearly loves her time with her mother and feels valued and happy with her and tells her mother that her time with her are her happy days. Mr A says:
- “I got a sense of an emotional bond with your mummy. You are able to talk more freely and your tones are light and excited when engaging with mummy. With your father there is an element he has a more authoritative stance and this is reciprocated by you being more reserved.”
91. Each relationship with her parent is different for her, not better or worse but different and brings out a different aspect of her personality but she clearly needs both parents to meet her emotional needs and she needs a relationship with each parent and, as I will look at slightly later, again her mother has not been able to promote her relationship with her father in the past, where her father has been able to promote her relationship with her mother.
92. I look at the **likely effect on H of any change of circumstance** and this is the fourth set of proceedings for H. H has had a lot of change in her life. She lived with her mother and her father until they separated, I think in 2016 although in the bundle different dates are given for the date of separation so I will be corrected if I have got that wrong. Her father came to court in order to be able to see her and there was a gap of six months, I think, when he did not see her at all. She was then reintroduced to her father and the court moved her to live with her father and on several occasions the court order has been breached meaning she has not seen her father when she should have done and so her early life has been hedged around by uncertainty and change and it is very important that she is now able to enjoy her childhood and have stability and predictability.
93. I look at her **age, sex and background**. She is of British Asian heritage. She speaks English and I think some Urdu and is a practising Christian.
94. When I have looked at **any harm that H has suffered, or is at risk of suffering**, the guardian's very clear view is that she suffered emotional harm in the past due to the periods of time she was not encouraged to have a relationship with her father. DJ Prevatt analysed this in her 2020 judgment and looked at the risk of harm to H before she ordered that she go to live with her father. She says:

“I agree with the recommendation of the guardian and the social worker that she will remain at significant risk of emotional and psychological harm if she remains in the care of her mother and is unlikely to maintain a relationship with her

father. Although the mother now says she would encourage contact with the father, she has been given numerous opportunities over the last four years to show she can support contact and has failed to do so. She has continued to make allegations against the father, none of which have been substantiated and I agree that once these proceedings are over, in the absence of any treatment as recommended by Dr C she will be likely to do so again. It has been clear to me that she continues to feel that the father is a threat to [H] and she has misinterpreted events against him. I accept the mother loves [H] and I also accept this decision is likely to cause the mother and [H] considerable distress in the short term but this is outweighed by the long term damage which would be caused to [H] if she remained in her mother's care."

The judgment continues:

"I would urge the mother to seek the therapy suggested by Dr C. I consider her anxiety disorder is not only damaging to [H] but to the mother as well.

95. I look at how this harm identified by DJ Prevatl has been mitigated and I looked throughout the bundle for that evidence that the mother had shown Dr C's report to her treating clinicians and had a chance to work through with them the court's judgment. It is clear that Dr B did not have Dr C's report until that final letter that he wrote. Although to be completely even-handed, I would also note that Dr C did not have the documentation when he wrote his first report, so it is always difficult to make sure that everyone has everything but the evidence suggests that these treating clinicians had not seen what the court had said and acted in large part on the mother's report and history and what is interesting is they do not point to those entries in her medical notes highlighted by Dr C in his report that suggests a degree of anxiety that predates H's birth.
96. This is such a difficult and sensitive issue. The reports of Dr C explore differential diagnosis and they are very nuanced and detailed. The court clearly made a determination as to the diagnosis that Dr C on balance thought most apposite in paragraph 34 of DJ Prevatl's judgment and no one has appealed that and I cannot go behind it and I have not heard evidence from Dr C or any of the treating clinicians but the position of a treating clinician is different to the position of an expert who is there to assist the court. The treating clinician has no duty to the court, only a duty to their patient and the mother said she went to the GP and told them what had been said in court and they said she did not require medication and, of course, these treating clinicians are not bound by the views of the court or by Dr C. They must exercise their own professional judgment.
97. They have a duty to conduct their treatment ethically and, of course, they cannot provide medication or treatment against a competent patient's wishes and if the use of such treatment is not indicated by the symptoms they see at the time of their assessment, then that is their professional view but for whatever reason, the mother has not had the therapeutic intervention that Dr C thought would assist and I have no power to force anybody to go to therapy, that would be quite wrong but unpacking

what has happened in these proceedings may assist in doing things differently in the future and regardless, I would say for both parents, coming to court is such an upsetting and hard process for people that I often think that many people may benefit from a chance to process it all with professional support after the event but I have no power to compel anybody to do so.

98. Where does this leave us when looking at change for H and the risk of harm in the future? The guardian's report of summer 2023 says:

“There has been no meaningful change in Ms [M]’s attitude or beliefs since the 2020 judgment. She concedes that the alleged sexual abuse, physical chastisement and neglect did not happen but did not agree her actions or behaviours caused [H] emotional harm. She attributes any harm suffered by [H] to [F] and regards the change of [H]’s residence to his care as unjustified. She does not accept the findings of fact and persists in her belief that [F] is an unsafe person and parent and she reports that she is afraid of him. Ms [M]’s lack of acceptance of previous concerns means there is a risk she will make further attempts to reduce or marginalise [F]’s role in H’s life if she spends increased time with [H]. She is unable to offer any positive feedback about his parenting and I lack confidence about her ability to make an order for shared care work effectively from this position. It would cause [H] harm if her relationship with her father is undermined or interrupted and, in my assessment, [H] is likely to suffer such harm if she spends increased time with her mother.”

The evidence that the guardian gave in the witness box is that this risk of harm remains unmitigated and it is harmful for H to have her relationship with her father interrupted.

99. In closing submissions Ms Kang points out that the mother is still very critical of the father. In her first statement she says:

“I am the only one who feeds [H] varied and proper food.”

She is critical of his fashion shows and exposing H in her attending them to nudity. She says in her second statement:

“He seems to be controlling every aspect of her life. There is simply no escape or respite from her father.”

And, indeed, the mother's language in writing can often be quite emotive and florid.

100. But for balance, and to look at the totality of the evidence, it is also fair to say that the father can be highly critical of the mother both in his witness statements and in the witness box. For example, in his statement of July 2023 the word “delusional” is a word that he uses repeatedly about the mother and I have already described how he is dismissive of the mother's ability to meet H's needs, pointing out that she cannot even

be on time for court but whatever view the father has of the mother, he has never stopped the mother's time with H and, indeed, has arranged extra days.

101. Although he criticises the mother for not taking H swimming on Thursdays, he has never stopped Thursdays unilaterally. She said she would do this but she has not but the father does not stop Thursday contact. Although he does not agree with H sharing a bed with the stepfather or a room with him and he clearly feels strongly about that, he did not stop H going to the mother's. So for all his mistrust and criticisms of her behaviour, he has made sure that H has always seen her mother and his position for this final hearing is not punitive. He is not saying there should be supervised contact, so he is able on one level to put his deep distrust of the mother and all that has happened in the past to one side and to make sure that he supports H spending time with her.
102. By contrast, there is a clear pattern of the mother being unable or unwilling to abide by court orders over a number of years and the most recent cessation of contact between 28th July and 2nd August 2023 is an example of this when the return of H was ultimately ordered by the court and during this time the mother made a CAMHS referral. I accept it was on the back of social work involvement and it is not clear what Ms O exactly said but the father's contact details do not appear on that CAMHS form and it simply says, among other things, she does not want to go back to her father. The mother was taking a unilateral decision to involve these mental health services and that is troubling.
103. The guardian gave evidence that the father is better able to support H having a relationship with both of her parents but there is no evidence that the mother can do the same. She says there were numerous unjustified interruptions between H's relationship with her father and unnecessary intervention. She says the father is better able to promote a relationship with both parents than the mother can.
104. DJ Prevatt did say that the parents' relationship was volatile and clearly it remains a very difficult one. The mother is very highly sensitised to the father and she views things, I think, through the lens of her experience with him and it is unclear as to the extent to which she is able to critically evaluate what H says about her father and that lack of clarity remained in her oral evidence in the witness box. She was asked about the hitting and she said:

“I cannot say if it's true or not. I'm not seeking a finding. I accept that he's a good father.”

But later when this line of questioning was returned to, she said, “I believe her and I trust what she says”. There is a real uncertainty and ambiguity still over the mother's ability to promote a relationship between H and her father.

105. When I look at harm that H has suffered, or is at risk of suffering, I look at the impact of her parents' interactions with other people and the mother is concerned about the father's interactions with other people because they might impact on H. The fact-finding judgment of DJ Prevatt does refer to the father as being excitable and in the final hearing judgment of 2020 DJ Prevatt says the following:

“At the end of the hearing I ordered there should be a child contact intervention. At that point [F] became very loud and upset and stormed out of court, so I could not deal with the enforcement application. However, I should say I did understand his frustration given that he has not been able to see his daughter unsupervised for more than six months after he has issued his application and when no allegations have been proven against him.”

106. The mother refers to the father’s aggression when she asks for more time with H, that is C3. At C6 she says he barks orders and denigrates her and, indeed, some of his emails could be interpreted as quite blunt and quite brusque. So for an example there is an email in 2021:

“Please don’t tell me what to do. I can look after her better than you. She is my life and priority. I have a Zoom meeting.”

The mother in the witness box gave another example of an email in which the father said, “That is enough. This is my warning”, as being rude and disrespectful. The guardian’s evidence was the mother interprets these emails in a certain way and that they were open to interpretation.

107. My view is, as the judge, that the father’s emails can come across somewhat brusque with no social niceties and bordering on rude at times. However, sometimes they are sent in the context of mother not returning H to him on time, sometimes it is clear that the father has been waiting in the car park for H and it is clear for both parents that they are often trying to juggle their own work commitments around childcare. Maybe it would be better if both parents imagined they were writing to a valued business contact when they write to each other with that degree of formality and courtesy that they would show to third parties.

108. The children and family assessment of May 2023 was written by Ms O and she takes the view:

“Father displays harsh and aggressive behaviour towards professionals in your presence and you reported that your father shouts at home.”

In the witness box she said the father was very verbally aggressive. There is a discussion at D153 of H having her own bed and during this time, says the social worker:

“Your father undermined my professional capability. He says, ‘I’m sure you cannot stand in court and look straight into the judge’s eyes,’ he says, ‘I dare you to come to court and to face the judge.’ The father was swearing and using abusive language. He said, ‘Do you have a brain? You’re vomiting nonsense. Your brain is like a 7-year-old.’ Your father was not mindful that you can hear his loud voice from the bedroom because she told him earlier, ‘I can hear you anyway, you talk loudly.’”

109. The social worker describes the father furious with uncontrollable anger and that she found him intimidating and frightening. H herself at D156 describes an incident when she thought her father got angry:

“According to you my dad’s voice is very loud and he swears a lot.”

And she goes on to describe some kind of disagreement with the paternal grandmother. The GP reports to the social worker that:

“At one point [F] on 18th July 2022 became very angry and aggressive during a consultation towards myself shouting loudly and aggressively in front of H. She was very quiet during consultation.”

110. The professionals who have worked with [F] do not all share this view. The guardian says:

“I have not experienced him as aggressive. I can find him anxious to explain himself, anxious to be understood. He can raise his voice and he can speak in a forthright and passionate way but I have never found him to be aggressive or to shout.”

What matters more than his impact on professionals is the impact on H and here her view of her father as reported to the social worker in July 2023 is nuanced:

“She says she was looking forward to returning to her father’s house and when asked whether she missed her father, she said yes but when we talk about your home you share you do not like your father’s house because he swears at you and shouts too loudly and you related your experience the last time I visited your father’s home and you described how scared you were knowing your father may shout at me. When I asked you whether you heard your father’s voice on my visit you said, ‘Yes, I heard him telling you that you don’t have a brain and he asked you whether you can allow your daughter to sleep in bed with a stranger.’”

111. Mr A said that [F]’s tone of voice and speed of words raises when he is frustrated and this could be viewed as aggressive. He says:

“If he were to speak like this to you [he is addressing himself to H] when you were in the vicinity it would be scary for you and you did say to me that daddy was very rude to your previous social worker.”

The guardian observed that if H had mentioned this to her social worker, it had had an emotional impact on her. In the witness box Mr A said that:

“[F] is very passionate in the way he talks. He is wordy, he acts out his passion. It is not his aggression but he will repeat about how he has been let down and how mum has been doing

this and mum has been doing that and she, H, may have heard things like that.”

And this is the important thing:

“H sometimes reports that her father is angry and that he raises his voice. She describes her father as being angry and shouting.”

And again I can find no evidence that the mother has influenced her to say this and, of course, being exposed to conflict is harmful for H and I am really glad that the father has gone to the stage of being able to accept that going on the Calm Parents course might be helpful to him because being exposed to conflict is harmful to children.

112. When I look at **how capable both parents are of meeting H’s needs**, they can both meet her basic care needs. They have both ensured now that there is suitable sleeping arrangements and her attendance has now improved but a vital part of meeting H’s needs is meeting her relationship needs for needing both a mother and a father and the evidence, as I have already suggested, suggests that mother might struggle with this. They also need to be able to make changes for H. As a child grows, one always needs to think about change, they never stay the same and the guardian’s evidence is that the mother has struggled to change the way that she is and particularly her tendency to remove H from her father’s care.
113. The father by contrast, says the guardian, is able to make changes when things are pointed out to him. The guardian gave evidence that she visited both homes after Mr A’s reports and the father had taken on board what Mr A had raised. There were art materials and H was colouring a Wendy house thing and so he had taken on board that observation. He had heard it, she said, and acted upon it and made sure she had access to age-appropriate toys. He is able to reflect and learn.
114. When it comes to meeting H’s needs, both parents are reliant on other family members to help them meet H’s needs. The father has his brother and sister-in-law and the mother, of course, has her husband and her own parents. These are people who are really important to H. The guardian, of course, spent time expressly with Mr J and found him personable and able to speak fondly of H. However, it was apparent he had given very little thought to the potential complexities and challenges involved in the unique role of the stepparent and I would just observe in passing in all of that period of confusion over the summer of 2023, it is not clear what role, if any, he had in analysing what was going on or, indeed, in supporting adherence to court orders.

(Short adjournment)

115. I have to look at **the range of powers that I have in these proceedings** and this is a very difficult and complex situation for H but I have to put her first. I think it is best that I make an order that she lives with her father and that ensures that she will be returned to him after any period that she spends with her mother. I am going to provide that she should be returned promptly after any time she spends with her

mother and attach a penal notice to that provision. I think that is necessary and proportionate given the history of non-return and the observations I have made in this judgment about the ability of each parent to promote the relationship with the other.

116. In relation to the time that she spends with each parent, in my view, having looking at all of these issues, they should stay as they are. H has had so much change in her short life and it is not in her best welfare interests to navigate more. She is used to this pattern. It means there is not a long gap in her seeing her mother. Her attendance at school has improved and so dropping her back to school is no longer, it seems, an issue that is interrupting her learning and there is no recurrent report of illness. Although it is a relatively short period of improvement during these proceedings, there has been increased stability for H and H expressed to the guardian she did not want the pattern to change, she did not want to go back to her father on Sundays.
117. I have looked at whether the parents could communicate well enough to share the care of H equally and the guardian said this:
- “Their communication works well enough but it doesn’t work in terms of negotiating things. It’s not worked to resolve the issue of worms or the swimming issue. They can talk to each other but I’m not sure how well they listen to each other. They don’t reach compromise very often. H does not speak to the other parent when she is not with them and that’s how things have always been. She didn’t seem concerned about it but there’s not a free line of communication in either house. A shared care order in which their positions were on a more equal footing could lead to an even more conflicted relationship and they both need to make decisions and their inability to compromise will be accentuated. It will be exposing to more disputes.”
118. I accept the guardian’s evidence in this respect having watched the pattern of communication in this case and read how this is expressed through the papers in these proceedings and it is my view that the mother is so highly sensitised to the father and what he does. Although she says he is a good father, she has in practice struggled to allow H to spend time with him without her own emotional responses getting in the way and I have found that there remains a risk that the mother is unable, for whatever reason, to promote H’s relationship with her father and support it in practice and a shared care order would not help to mitigate this risk.
119. In relation to Thursdays, I agree with the guardian that these should stay as they are because otherwise the gap for H seeing her mother is too long. Much has been said about the mother’s failure to take H swimming on Thursdays despite her agreeing to. The guardian says:
- “It is not ideal at all. It is always really sad when a child’s activities away from home are shadowed by adult conflict. Things being as they are, it may make more sense to find swimming lessons on a different day. I worry if she goes to a weekly class fortnightly. That is representative of her split life.”

120. I agree. Swimming has become a real source of tension over the years. It, in my view, would be better for H to have swimming on another day so she can go every week and build up her confidence in the water more quickly, or even do an intensive week course during the holidays to get her safe in the water. Swimming is clearly a life skill and no doubt her parents want her to learn to swim so that she can be safe but I would ask the father to consider if he might find a weekly class on a different day when he can take her, or even invest in intensive summer or Easter courses to help H progress more quickly.
121. I will provide that there may be such further and other contact as is agreed in writing between the parties. That enables the father, as he has been doing, to offer the mother extra days and to enable both parents to be flexible if things change for H in the future. I do not put a cap on the number of days that H spends with her mother consecutively but it seems to me that long periods out of either parents' care may be difficult for H because she has no line of communication with the other parent during this time. Maybe over time this will change and when she is older no doubt she will have her own phone or tech to communicate with the other parent as she wishes but it seems to me that the parents have actually managed to divide the holidays reasonable well bar the summer 2023 retention and so I do not think any more prescriptive order is needed to enable them to share the holidays as they have been doing.
122. In relation to the issue of the prohibited steps order, I have reminded myself of *Re C (Due Process)* [2014] 1 FLR 1239. Lord Justice Ryder emphasised that a prohibited steps order is a statutory restriction on the parent's exercise of their parental responsibility for a child and can have profound consequences. It is not reflective of any power in one parent to restrict the other, that power does not exist. It is a court order that must be based on objective evidence. It can only be relaxed by the court, not by agreement between the parties and, accordingly, there is a high level of responsibility of the court not to impose such a restriction without good cause and a reason must be given. Furthermore, where a prohibited steps order is appropriate, consideration should be given to the duration of the prohibition and the nature of the order, finite nature of the order must be expressed on the face of the order.
123. As I have already quoted, DJ Prevat put the order in place, or continued an existing prohibited steps order on behalf of fears on the part of each parent that the other might leave the UK with H. The mother's final statement says this:
- “The mother has a genuine concern that the father plans to relocate abroad due to his work commitments and the fact he has threatened in the past he would take [H] to Pakistan to live with his mother but the concern, however, is as far as it goes. The father is flying out all the time and the child is looked after by auntie and uncle. The father could possibly move to Pakistan, India and not return. His company is international. There needs to be some protection in place where he will not remove the child for more than two weeks at a time.”
124. Of course, the court does not act on the basis of fears, or speculation, or concerns but on the basis of fact and the fact is that neither parent, as far as I can see from the evidence, have tried to take H out of the UK. Foreign travel was not a theme of the evidence before me despite actually the overseas connections that both parents have.

It is a criminal offence, of course, to take a child out of the UK without the consent of everyone with parental responsibility. So, in effect, the parents are already prohibited from doing so if the other parent disagrees. Of course, the father now has a lives with order, so he may take H out of the UK for up to 28 days.

125. The guardian's final report of 2023 is:

"I am unable to recommend that she travels overseas with [H] [referring to the mother]. In my assessment there is a risk she could retain [H] overseas."

The guardian appeared to change her position in the witness box and give a slightly different reason for recommending a prohibited steps order. She says:

"It is not about the mother's overseas connection and retention, it is because she does not see that she has done wrong in the past. I don't have confidence that if she had the opportunity to keep [H] in her care and it's a little bit speculative and it is untested and I would want to see and hear some acknowledgement about her role and what has gone wrong in the past, it's about mitigating risk. I am concerned that mother may seek advice or support in another country if she finds professionals who hear her out. Maybe it's a bit of a leap she would do that on holiday but it's about placing barriers in the way of [H] coming back to her father's care."

To some extent this risk has been mitigated by the lives with order and the provision I make about the prompt return with a penal notice.

126. Mr Langford submits if the mother loses this case, she will have nothing to stay for and might potentially go to Pakistan if her husband's spousal visa is not renewed but the evidence suggests that the mother has been in the UK since she was 15 years old in 2002. She has expressed no intentions to return to Pakistan to reside when she is now 37 years old and the last time she left the UK was for Paris in 2022 for work for three days. Her husband is on a spousal visa that expires in 2024. She says they will reapply but on the worst case scenario he returns to Pakistan and she will stay in the UK.

127. I note she only left the UK for a very short period when she got married, if I have understood the evidence correctly, and she does not express a great sense of connection to Pakistan. She says that in the witness box she was adamant that her husband's visa was not going to cause a problem and if he were asked to leave the UK, even if that happened she would not leave the UK. She explained the climate did not suit her health in Pakistan and her family is here, everyone is here. She has explained that she was working for family members on their businesses in the UK. I asked Mr A about this. He said:

"I didn't get a sense that anyone was thinking of taking [H] from each other, no sense anyone was about to whisk off to another jurisdiction."

128. I have to act on the basis of evidence, as I have said, rather than the concerns or speculations or fears and there is no cogent evidential basis to suggest that the father would remove H from the UK and I think the same applies to the mother. The guardian herself admitted it was “speculative” and I agree with her in that respect. I agree too with the guardian’s words that it may be too much of a leap to suggest that the mother would go overseas and enlist professionals to her point of view during a holiday. She has clear roots and all her close family are in the UK. She has never attempted to remove H from the jurisdiction and nor has she sought any expertise overseas.
129. I can only make orders that are both necessary and proportionate and I have already set out the criminal law that means a child cannot be removed from the UK without the consent of the other parents with parental responsibility. A prohibited steps order is an intrusion into family life which the guardian says should last for a number of years. If I made a prohibited steps order and the father did not consent to H travelling, it would mean that the mother would need to make an application to the court and that is undesirable because it opens the door to her returning the matter to the court sphere. I have, of course, considered this in conjunction with section 91(14) which I will turn to later.
130. The father has shown, on whatever view he has of the mother, he is able to ensure that the mother spends time with H and acknowledges that that is important for her. So I think a prohibited steps order is disproportionate and that the following can address the concern in a less intrusive way. I think that the parental responsibility and the powers of the parents to make wise decisions for H should be the focus of the way forward because I should not make an order for H unless it is better than making no order at all so, in my view, this is a necessary and proportionate way of addressing the risk.
131. The father should hold the passport for H and he should be the one who renews it. Should she hold any travel documents from any other jurisdiction, those should be kept in the father’s care. It should be the father that applies for any other travel documentation that H ever needs on her behalf. So, for example, if H is invited to go on a school trip to Iceland, the father should apply for any Iceland visa. The mother should not be the one to apply and I will specify that on the face of the order. In my view, that is appropriate because H lives with the father and the parents, in any event, do not communicate well enough to share this task and it also gives the father a degree of oversight over travel plans.
132. In my view, if the mother wishes to travel with H, she must give the father two months written notice and provide details of the addresses overseas, the purpose of the trip, the contact details for when she is there and travel details like flight or ferry times and evidence of return travel plans and invite him to agree. If the mother, of course, goes without his permission, I made it clear she would be committing a criminal offence and I am not sure what a prohibited steps order would add to that by way of deterrent. Of course if he does not consent when he has seen all of that information laid out, the ball is on his court to seek an order preventing travel.
133. He has shared parental responsibility with the mother and, in my view, he is best placed to calibrate risk and if and when the mother asks to travel, he will know what the current state of the relationship between them is, he will know what therefore he

needs to weigh up when taking that decision and when to seek the advice of the court. I think that is more appropriate than a blanket order that lasts indefinitely. I have already noted the father's ability to make decisions for H and the role of the mother in her life and I take the view that he can assess whether travel is in H's best welfare interests at any given time and it is an unnecessary intrusion to make a prohibited steps order.

134. In relation to section 91(14), I remind myself of the guidance in Practice Direction 12Q of the Family Procedure Rules and that the circumstances in which a court may make such an order are many and varied. The welfare of the child is paramount and in paragraph 2.3 of Practice Direction 12Q there are some issues that are relevant in this case. A section 91(14) order can be used when a period of respite is needed following litigation and where a period of time is needed for certain actions to be taken for the protection of the child or another person. Nobody in evidence was actively opposed to the cessation of court proceedings and all thought it would be beneficial for H.
135. I have reminded myself of the case law and section 91(14), *Re P (section 91(14) guidelines)* [1999] 2 FLR 573, I have already mentioned that the welfare of the child is paramount, the power to restrict applications is discretionary and the exercise of the discretion the court must weigh in the balance all the relevant circumstances. The power is therefore to be used with great care and sparingly and it is the exception and not the rule. In a suitable case and on clear evidence the court may impose the leave restrictions where the welfare of the child requires it even when there is no past history of unreasonable applications. The court will need to be satisfied that the facts go beyond those commonly encountered for a time to settle into the regime ordered by the court. The degree of restriction should be proportionate to the harm it is intended to avoid.
136. I have reminded myself of the changes to the law made by section 91A and even before that change to the law in *Re A (Supervised contact) (section 91(14))* [2021] EWCA Civ 1749, Lady Justice King says that the jurisdiction to make a section 91(14) order is one which there is considerable scope for greater use of this protective filter in the interests of children. Section 91A says that the court may make an order where the court is satisfied that the order would put the – without an order it would put a child at risk of harm and, in my view, there is a clear risk of harm to H from further litigation. As I have already observed, she has been part of litigation for her family for virtually all of her life and no doubt all of her memory.
137. I remind myself that the guardian has made a formal application. The parties were well aware that I would be asked to make an order like this. The mother has had legal representation to explain the meaning and effect of the order, the mother has heard the evidence of the guardian and been asked about this herself. All parties have had a proper opportunity to make representations. I am satisfied that further proceedings in short succession would be harmful to H. She has spent many years of her short life speaking to social workers and CAFCASS officers and I have observed that she is stuck between trying to please both her parents. She needs to settle into this pattern without fear of disruption.
138. The guardian says that the section 91(14) order should last three years and the father says five. The father thinks the longer the hurdle lasts, the more that H will become

her own person and less vulnerable to influence and allegation. I have thought about this very carefully. The guardian's three year proposal brings us to the Easter term of year 6 and that is a pivotal time of transition for any child in their education and I think a further application around the transition to senior school would be very unhelpful. I think that H needs to enjoy the rest of her time at junior school and make that senior school transition without proceedings potentially in the background.

139. However, I have looked at the five years option and I think that is arguably too long and disproportionate and verging on punitive, so I think the appropriate length of time is four years. Four years brings us to the Easter term of year 7 when H herself will no doubt have views about how her time is working and how it works with her at secondary school. Four years is time for the mother to seek any assistance she wishes to in coming to terms with the impact of litigation on her and if there is to be a further pattern of allegations, no doubt this will be abundantly clear within the next four year period and I hope there is not.
140. It seems to me that the issue between the parents all of these years has been the arrangements for H to spend time with both of them. There have not, broadly speaking, been separate applications about anything else and so I think it is necessary and proportionate to restrict further applications for a child arrangements order in relation to living and spending time arrangements but I do not make a restriction for prohibited steps or specific issue orders and the restriction only applies, of course, to the mother.
141. If she makes an application during the four years, leave for such an application should not be served on the father until the court has made an initial determination of the merits of any such application. This order delaying service helps to ensure that the very harm and protective function the order is intended to address is not undermined. If there is any subsequent application for leave, the judge will make an initial determination on the merits of the application without an oral hearing and any further application should be reserved to me unless I am unavailable for any reason.
142. I remind myself the court cannot attach conditions to an order requiring a party to take a specific step before an application for permission will be successful, that is *Re S (Permission to Seek Relief)* [2006] EWCA Civ 1190, but it is permissible for a judge imposing a section 91(14) order to identify a particular issue and to suggest to the litigant that unless they show that that has been addressed, any further application for permission to apply to the court is unlikely to be successful. It seems to me that if there are further unmeritorious allegations made, it is unlikely that any permission application would be granted.
143. Should any further allegations be made by H, I repeat DJ Prevat's view that these should not cause her to be moved to her mother's care until the outcome of an investigation is known and that those investigating should read all the judgments in the case, both of those from DJ Prevat and this judgment today and the guardian's final analysis and the order which I make putting all of this into effect. I would be really grateful if the order could be drafted at court so that the parents know that a line is drawn under matters and counsel do not have to have protracted discussions about exactly what the order should say. If there is any debate about that, I would be very happy to settle it this afternoon.

144. I am conscious that is a long judgment but I would be happy to accept any request for correction or clarification or further applications arising. Ms Carpenter I expect you are in a difficult position because you were not here for all the evidence but is there anything I have missed or you wish to draw to my attention.

MS CARPENTER: Your honour, just a few points, if I may? The section 91(14) obviously does not relate to any application to enforce either.

JUDGE SUH: No, it is a new child arrangements order application or I think it does apply to variations—

MS CARPENTER: Yes.

JUDGE SUH: —but not enforcement.

MS CARPENTER: Enforcement, I am grateful. Secondly, in terms of the father has a lives with order so he can take the child out of the jurisdiction for up to 28 days without my client's consent.

JUDGE SUH: That is right.

MS CARPENTER: Your judgment obviously accords with the law that my client has to seek his consent. If he does not, then obviously she, the onus is on her to make an application for a specific issue order.

JUDGE SUH: Well, I have not banned that.

MS CARPENTER: Yes, exactly.

JUDGE SUH: But I did observe that [F] would be also able to make a prohibited steps order application if he thought there was a risk of the mother going without seeking the court's consent.

MS CARPENTER: But could I ask just for – I am not sure if this was addressed. If the father wants to take the child out of the jurisdiction, he does not need my client's consent but just as my client is going to give him two months' notice, would the court be minded to say obviously he does not need her consent but could he at least provide some advance notice as to what is going on, where the child is going, least of all she will be able to talk to the child or looking forward to a holiday.

JUDGE SUH: Understood. I will hear Mr Langford on that but it seems to be good parenting communication.

MS CARPENTER: Yes and also not just to provide the information obviously – sorry, I have lost my train of thought. Not to provide that information, not just to provide that information in advance but I do not know if that but the travel to be during his time so that there is not a scenario where he is taking the child out of the jurisdiction—

JUDGE SUH: I think that falls into the arrangements for dividing holidays equally because each of them will have a plan for how they want to spend the summer and therefore they will need to tell each other when they are arranging summer division of time what their plans are and if they are planning to travel in the time that they have got.

MS CARPENTER: One last point, your honour, if I may? Easter holidays, my—

JUDGE SUH: Which come up very quickly, do they not?

MS CARPENTER: Yes. I understand my client has the child on the 28th to the 29th. She would seek to have the child Thursday the 28th to the 30th at 4pm.

JUDGE SUH: Has this been discussed outside at all?

MS CARPENTER: No. I am just raising it now so that we are going out to draft—

JUDGE SUH: That is fine, so you can go and have a discussion.

MS CARPENTER: And I do not know if my learned friend for the father has details, so she would seek the 28th to the 30th and the 1st to the 7th.

JUDGE SUH: So I will leave Mr Langford to take instructions about that. Mr Langford, anything from you?

MR LANGFORD: No. I will need to take instructions on both the points that have just been raised.

JUDGE SUH: Thank you. Thank you very much. Ms Kang, anything from you?

MS KANG: No, thank you.

JUDGE SUH: Thank you very much.

(Discussion re order follows)

(This Judgment has been approved by the Judge.)