

**IN THE FAMILY COURT AT WEST LONDON**

West London Family Court,  
Gloucester House, 4 Dukes Gren Avenue  
Feltham, TW14 0LR

Date: 10/06/2019

**Before :**

**HIS HONOUR JUDGE WILLANS**

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**Between :**

**LONDON BOROUGH OF EALING**

**Applicant**

**- and -**

- (1) **The Mother**  
(2) **JB's Father**  
(3) **P's Father**  
(4) **The MGM**  
(5) **THE CHILDREN (by their Guardian Annette O'Callaghan)**

**Respondents**

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**Justin Tadros** for the **Applicant**  
**Ronan O'Donovan** for the **First Respondent**  
**Sharan Bhachu** for the **Second Respondent**  
**Amanda Meusz** for the **Third Respondent**  
**Katharine Marks** for the **Fourth Respondent**  
**Mark Rawcliffe** for the **Fifth to Seventh Respondents**

Hearing dates: 20-24 May and 12 June 2019

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**JUDGMENT**

## **His Honour Judge Willans :**

### **Introduction:**

1. This judgment is made in Part IV public law Children Act 1989 proceedings. All parties are represented as per the cover sheet. To preserve anonymity, I will refer to the relevant lay parties as follows:
  - i) The first respondent: “the mother”
  - ii) The second respondent (father to J and B): “the father” or “JB’s father”
  - iii) The third respondent (father to P): “the father” or “P’s father”
  - iv) The fourth respondent (maternal grandmother): “the MGM”
  - v) The children: “J”, “B” and “P”.
2. I have considered all the relevant papers contained within the digital final hearing bundle. Additionally, I heard live evidence from Natalie Casey (“the social worker”); Anne McKenzie (“ISW”); the mother, JB’s father; the MGM and Annette O’Callaghan (“the guardian”). Finally, I considered the written submissions made by the representatives for each party. Within this judgment I will refer only to the information required to explain my reasoning. I have though continued to bear in mind all the relevant information.
3. At the conclusion of the submissions there was insufficient time to provide an immediate judgment and so the matter was adjourned reserved with my indication of providing this written judgment which will be handed down at an attended hearing on 12 June 2019.

### **Summary of conclusions:**

4. J will be subject to a child arrangements order to live with the MGM. There is no need for a spending time with order given her age.
5. P will be subject to a special guardianship order to the MGM. The time she spends with her parents will be regulated by the MGM and I do not make a defined ‘spending time with’ order.
6. B will be subject to a living with order in favour of her father. There will be a defined ‘spending time with’ order referable to the MGM who will also be granted parental responsibility in respect of B.

### **Realistic options**

7. All relevant parties agree as to the planning for J. Having regard to her age and her wishes and feelings together with her settled placement with the MGM and her social, educational and peer connections it is clear no

move should be envisaged. Importantly both her mother and her father agree with this plan. Further all parties urge me to make a child arrangements order notwithstanding J is over 16. I intend to make such an order as I understand it to be in accordance with her wishes; it is likely to bring positive benefits to J including financial support and it will provide a third adult (the MGM) with parental responsibility in circumstances in which her local parent (the mother) cannot always be expected to exercise appropriate decision making. I consider the situation exceptional and make the order sought in favour of the MGM. I consider such an order is consistent with J's welfare interests.

8. Turning to P there is equal consensus. All parties argue for the making of a special guardianship order in favour of the MGM. I agree and intend to make such an order. It is in accordance with her welfare needs for permanence having regard to her age (under 2) and reflects the requirement for the MGM to hold primary parental responsibility having regard to her parents' life issues. It is to the immense credit of both her parents that they can prioritise her needs in this regard. I am conscious of the age gap between P and the MGM but I am equally conscious of the highly supportive role played by the maternal aunt (L) who has many positive attributes to offer whether in supporting the MGM or stepping in should circumstances deteriorate. In making these observations I do not intend to suggest any incapacity on the part of the MGM. She gave evidence before and there is supporting medical evidence. I formed the view she is a robust individual (both physically and emotionally). She may well have spared the Court the need to consider long term familial separation. The Court is deeply grateful to her for the role she has readily accepted. I consider such an order is consistent with P's welfare interests.
9. The options for B lie at the heart of this judgment. Both her father and MGM put themselves forward in opposition as her primary carer. The mother supports placement with the MGM whereas the applicant and the guardian support placement with her father. Each of the MGM and the father have agreed a mirror 'spending time with' order if B is placed with them. All parties agree there should be a parental responsibility order in favour of the MGM if B is placed with her father.

### **Legal Principles**

10. My guiding principle must be the welfare interests of the children. This is the paramount consideration and I will come to assess what is in the welfare interests of the child by reference to the welfare checklist found at section 1(3) Children Act 1989.
11. I am asked to make threshold findings, although I am not asked to make public law orders (care or supervision orders). The test for threshold findings is by reference to section 31(2) Children Act 1989 and I will in broad terms ask whether the child(ren) have suffered significant harm or are likely to suffer significant harm arising out of the care given to them by their carer not being that which would be expected of a reasonable parent (or would be likely to be given were an order not made). In this

case it is agreed the threshold test is crossed/met although there is disagreement as to the extent to which the threshold is made out.

12. In considering threshold disputes I bear in mind the authority of *Re A*<sup>1</sup> and the discipline it expects of a Judge in examining threshold allegations. I will also bear in mind the principles which guide a Court when determining disputed allegations. Importantly it is for the party making an allegation to prove it and it will do so by establishing the allegation as more likely than not. Only then will the allegation be treated as a fact. I will bear in mind all evidence when examining such allegations and will have regard to the evidence of the parents whilst not placing any burden on the parent (as alleged actor) to disprove the allegation. Finally, I will caution myself as to the approach I should take to any witness who has been shown to be unreliable on other factual matters. I should not reject that individuals other evidence out of hand but must continue to carry out a rigorous assessment reflecting on the context in which lies have been told and noting that a dishonest witness on one issue can be honest and reliable on other matters.
13. Given the central dispute in this case I remind myself of what McFarlane L.J. said in *Re H (A Child)*<sup>2</sup>, and again in *Re W (A Child)*<sup>3</sup>, namely that there is no assumption in favour of a natural parent or a natural family member. Everything is determined with regard to the paramountcy of the welfare best interests of the child or children concerned.

### **Procedural History**

14. The proceedings were issued on 7 September 2018 and thus in week 37 at final hearing. This would appear to relate to the delays in the proceedings arising out of expert assessments; a complication arising out of the need to assess extensive historical information and finding time for a 5-day final hearing. The proceedings were allocated to District Judge level but reallocated to me at the same time as this hearing was fixed on 13 February 2019.
15. There is within the papers extensive assessment evidence relating to both the mother and P's father. It includes hair strand testing; parenting assessments and psychiatric assessment of both the mother and P's father. Neither parent has continued to put themselves forward as the primary carer for any of the children.
16. At the first hearing both J and B were made subject to an interim 'living with' order to the MGM and P was made subject to an interim care order with placement with the MGM subject to conditions. They have all remained with the MGM throughout the proceedings.

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<sup>1</sup> Re A (A Child) [2015] EWFC 11

<sup>2</sup> [2015] EWCA Civ 1284 at paras.89-94

<sup>3</sup> [2016] EWCA Civ 793 at para.71

17. In around March 2019 issue arose as to historic proceedings concerning the mother and her siblings. This issue generated a vast amount of documents and some of the documents were inappropriately leaked to JB's father. I conducted a substantial directions hearing on 28 March 2019 at which I significantly restricted those documents which should enter these proceedings. I did not accept much of the information from the mid 1980's could have relevance to the current proceedings. With the hindsight of the final hearing it is quite clear to me this was the right decision. I have made the decisions in this case unaffected by these historic matters.

### **Background History**

18. I consider it impractical to provide a detailed history of the background to these proceedings. To do so would unnecessarily weigh down the judgment. I will though highlight points which provide a sufficient understanding of the background.
19. I have read some details as to the early history surrounding the mother with a short period at an early age in care when the MGM was suffering from likely post-natal depression. Although this was at a very young age and for a relatively short period the papers suggest it has had longer term emotional implications for the mother and the maternal family ~ see the CORAL assessment and report from Dr Lock.
20. I have also considered the details pertaining to the relationship between the mother and JB's father. This commenced when the couple were young (mother 16) and continued on and off until they were 26. The mother does not suggest there was any violence in the relationship and the key complaints appear to me to have been as to:
- i) A suggested lack of fidelity
  - ii) A lack of commitment to the children both by way of financial support and emotional commitment, initially challenging B's paternity together with periods of absence from the children's lives
  - iii) A concern arising out of apparent sexualised behaviour between the father's male son from a previous relationship and J (in 2007)
  - iv) Hostility towards the maternal family.
- In contrast the father suggests hostility towards him by the maternal family and unjustified allegations.
21. There have been private proceedings between the parents in 2014 (see section I of the bundle) which led to the children being with the mother and there being a loose contact order made in favour of the father.

22. Both sides of the dispute continue to point to the other side as being the source of ongoing difficulties in making unjustified allegations and in being willing to insult and denigrate the other family. Each fear the inability of the other to be an advocate for contact should the child be placed with the other family. It is clear these disputes have brought further family members into the conflict and there is little evidence of any neutral individual who might negotiate between the parties.
23. The balance of the chronology relates largely to the mother. I have had regard to the initial chronology in the case<sup>4</sup> which details local authority records relating to the mother and her lifestyle between 2008 and the initiation of proceedings., The chronology details neglectful care; inappropriate physical chastisement; partner domestic violence; illicit drug abuse, and mental health disturbance. My understanding is importantly supplemented by the psychiatric evidence (Dr Lock) and the continuing evidence of drug misuse as documented in the hair strand testing. At the date of final hearing the mother frankly accepted an absence of appropriate drug work engagement.
24. The mother's mental health difficulties are aptly summarised in her perinatal discharge letter<sup>5</sup> in which the following are identified:
- i) Emotionally unstable personality disorder
  - ii) Mental and behavioural disorders due to multiple drug use of psychoactive substances
  - iii) Obsessive compulsive disorder.
25. Turning to P's father I have considered Dr Lock's report. Given his position I do not intend to detail the report save to say it identifies issues with insight, immaturity and related drug issues. It suggests a poor prognosis and makes for concerning reading. The social worker chronology includes the father turning up at the children's home and causing difficulties and on other occasion making suicidal threats.
26. During my analysis and threshold consideration I will further refer to relevant parts of the background.

### **Threshold**

27. I accept threshold is crossed in this case and briefly note the following features admitted by the parties:
- i) The threshold neither seeks nor suggests any threshold findings against JB's father.
  - ii) Both mother and P's father accept a neglect allegation comprised of matters relating to substance abuse and concerns arising out of

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<sup>4</sup> C6

<sup>5</sup> H1

mental health issues. I accept/make the findings in section 1(a) relating to the mother and P's father on the basis that P's father admits the issues of drug misuse and in relation to the mother the matters are admitted / based on documented and/or uncontroverted matters. I take into account the mother's basic case that she would not use drugs in the presence of the children and/or in such a way as to impact directly upon them. I do not agree with this analysis. It is quite clear that her drug use has had a direct and significantly impactful effect on the children whether consumed directly in their presence or not. First, it impacts on the mother's emotional presentation with direct implications for the children. Secondly, there is an obvious financial implication on the children of such poor prioritisation. I am alive to the issue in this case of it being suggested JB's father did not provide adequate child support but were this the case then how would the situation be improved by the mother spending valuable resources on drugs? I note J's laptop was pawned by her. The obvious association between this and continued drug misuse is unavoidable. In any event I understand the mother conceded this point within submissions.

- iii) I am equally persuaded as to the points relating to the parents' mental health. P's father admits the same. I understand the mother is equally accepting but in any event the points are borne out on the evidence.
- iv) The next heading relates to allegations of physical harm. It is alleged the mother has misconducted herself towards both J and B. The mother denies using any force against the children, indeed she denied any shouting or verbal misconduct. In considering these allegations I heard from both the mother and the MGM. They either denied the substance of the allegations or denied knowledge of the same. Problematically the supporting professional reports are fully detailed in the CORAL assessment and are clearly reported as having been made by the children and/or accepted by the mother and/or reported or accepted by the MGM. Having considered the evidence I accept the reports are a correct account of what was said. I simply can find no reason for rejecting this independent account which is detailed and lacking in any ambiguity. I bear in mind what appears to me to be a general rejection of third party reporting by both the mother and MGM. Having heard their evidence, I was left unpersuaded as to their accounts. Whilst the Court is ready to accept some room for misunderstanding and confusion; in this case the issues were so broad and the disagreement so consistent as to leave me feeling I had to choose between the reliability of the mother/MGM and the independent professionals. I very much prefer the substances of the reports as being correct and importantly accept that part of the reporting did indeed derive from the MGM and mother on occasion. This does not answer as to the correctness of the report

but it leaves an inevitable concern in either event given that concerning events either have arisen or the children are so troubled as to make up concerning allegations. Ultimately either outcome raises concern. However, having considered all the evidence I prefer the independent accounts as being broadly correct accounts of what has happened. I accept the mother has hit the children and there have been troubling confrontations in which she has been threatening towards the children and acted out in a volatile manner. I did not find the evidence of either the mother or MGM persuasive in this regard and reached the conclusion their evidence was consciously shaped to avoid the mother's responsibility for the emotional harm suffered by the children. Plainly this finding is made against the mother but I cannot help but record the MGM has in denying these matters prioritised her daughters position over a clear understanding of the children's experiences. In reaching this finding I have placed weight on the consistency of reporting by both children. In the case of the comb threat for instance whilst I understand the suggestion that J may have made the allegation due to her own anger, this does not explain why B would have given a similar account in respect of an incident which did not directly involve her. In relation to the 'baby drop' incident I found the timeline given by the mother wholly inconsistent with what seemed to me to be the timeline found in the independent account. I also of course bear in mind the independent reports include a degree of contemporaneous admission as to the events. This is important supportive evidence. I accept the accounts given by the children include points which are open to question (the presence of the Aunt being an example) but weighed in comparison the balance is firmly in favour of their accounts being the more credible. I find the matters alleged at 2(a) – (c) proven.

- v) I next turn to the allegations of emotional harm. It is quite clear the children have suffered emotional harm deriving from the mother's behaviour and presentation and likely out of her prioritisation of her own needs over those of the children. I accept the evidence of the children experiencing the effects of domestic abuse in the home. More importantly I accept there is evidence of the impact on the children of the surrounding environment. Both J and B have demonstrated concerning behaviours. J has threatened suicide and B has presented with erratic and challenging behaviour. Whilst I do not have evidence to rule out a genetic basis for her difficulties it is clear that her environment has led to or aggravated her behaviours. The evidence from the school and other professionals is powerful and clear.

I accept the mother has been abusive to the children name calling on occasion. Sadly, this fits with my impression of a parent who experiences periods when she lacks the emotional

control/regulation expected of a responsible care giver. Again, I find the documented reports reliable.

I also find there was inappropriate discussion with B around the subject of her paternity in July 2018. That this was in issue historically is not really in doubt. However, it was inappropriate to raise this with the child in the manner suggested by both the mother and MGM. I am very doubtful as to the account given by the maternal family to justify the discussion. It seems most unlikely B would have suddenly come to associate what she had been told was a dental appointment (of sorts) many years before with DNA testing. My sense of the child is that a historic mouth swab would not lead to such an awareness. I am left with the strong impression that this discussion was more to do with dividing B from her father than accommodating the child's need for information. Even were I wrong about this the matter was handled in a very poor way.

I find the allegations at paragraphs 3 and 4 proven.

28. To their credit both the mother and in the case of P, the father accept they are unable to care for the child(ren) now. This is a realistic concession. Whilst both parents express an intention to now turn a corner and focus on bettering their position to benefit the children I must bear in mind the history of the matter and the professional evidence which urges a cautious approach in such regard. I do wish them both the best in their efforts and I have no doubt all the children will benefit to see their parent(s) well. However a return to either of their care would be to place the children in a continuing position of risk of significant harm without any safeguards which could appropriately manage the risk.
29. Realistically the options for the children are as set out above. That being the case I now turn to consider the welfare factors that must shape my decision making with respect to B.

### **Welfare Analysis**

#### *Wishes and feelings*

30. This is a controversial subject. There is evidence pointing in both directions with B on occasion speaking in preference for her MGM and at other times for her father. In considering the matter I am bound to have regard to the principle that her wishes are to be considered in the light of her age and understanding. As a 9-year-old her views are in my judgment entering the period where they increasingly deserve respect based on maturity and understanding but remain at the lower end of this range. I must also bear in mind her emotional presentation and the likely impact upon her of being caught within a hostile family environment. This will I accept create complex questions of loyalty both towards each side of her family and towards the other children in the case (J and P on her mother's side to who she is strongly attached and her father's younger

child in respect of who she also has a warm relationship). These factors cause me to approach her wishes with a degree of caution.

31. I consider it significant she has expressed on a number of occasions a wish to live with her father notwithstanding the strong and obvious associations on her mother's side. Both the social worker and the guardian gave robust evidence of their discussions with B and the views she expressed in favour of such a placement. I appreciate the argument that is made as to father being a weekend father with the potential for this to be viewed as a 'fun' home but my sense of the evidence was that these expressed wishes went deeper than that point would suggest. I do though bear in mind that B has spoken of a move in the context of being with J post-move.
32. I also bear in mind there are some real challenges around the form of the communications expressing the wish to remain in the home of the MGM. I have read the letters sent by B and agree that there are troubling features which raise question as to the influences operating on B when the letter was written. I agree the use of the shorthand 'SW' to connote social worker is surprising in the light of B's age and understanding. I also consider the phrase '*social workers are meant to keep families apart not separate them*' has the feel of a sentence with some adult input. It may be of course B has heard this said, that it chimes with her feelings, and; that she has accordingly recorded it in her letter. Nonetheless the overall sense I have is that a degree of caution is appropriate.

### *Needs*

33. My assessment of the evidence is that B is a troubled child with behavioural issues arising out of her environmental experiences. In large measure this arises from the care and experiences she has had in her mother's care. It has likely been exacerbated by the ongoing hostility between the families and has not been removed simply by the transfer into her MGM's care.
34. I am very concerned B is reaching a point where it will become increasingly difficult to repair the damage done and if this is so that she will continue to bear these emotional scars into adulthood. If this is the case her schooling, educational outcomes and social relationships are likely to be seriously hampered with lifelong implications. I consider I must ensure an outcome which offers real prospects of turning this situation around.
35. Having reflected on the alternative options I must say I remain concerned that both have a potential to maintain the tension and hostility commented upon elsewhere in this judgment. As such I feel unable to be wholly optimistic. I consider this to be a troubling position to find myself in.

36. However, a distinction can be drawn in my judgment between the options. Whereas I express concerns in respect of both homes with regards to their ability to meet B's needs for maintained relationship with the other I have reached a difference of view as to the internal merits of each placement. The evidence tells me and I accept that the father's home is a settled and stable unit in which the father's younger child receives good and consistent care. There are no identified issues of concern. In contrast the placement with the MGM cannot be said to be so settled. I refer to my threshold findings and to the simple reality that B's emotional presentation has continued to be problematic following placement with her MGM. For reasons which are not all the MGM's making this move has neither cure nor significantly reduced the concerns for B.
37. As to schooling B continues to struggle within the school environment albeit I note there was some improvement following a therapeutic intervention. At home B continues to exhibit emotional disruption. I appreciate there is evidence of B throwing tantrums whilst with her father but the sense of the evidence is that the situation with the MGM is much closer to crisis than whilst with the father. I am sure the ever-presence of the mother contributes to this difficulty as it brings home to B on a continuing basis issues at the heart of her emotional instability. There is in my assessment strong grounds for suggesting she demands respite from this pressure.
38. I consider it imperative B now has the opportunity of a settled permanent home to take her through the balance of her childhood. Further disruption in the foreseeable future will be highly damaging. As I set out below one must be at least realistic as to the possible uncertainty that might derive from the MGM's age. I accept the father could separate from his partner and that this would be an equally disruptive change. But there is no evidence to support this suggestion and it sits in a very different category of risk to that of deteriorating health which is inevitable at some point albeit uncertain as to timing.

#### *Change in circumstance*

39. The principle point of consideration is the impact on B of moving to her father's care. She has for some time been cared for by her MGM and is familiar with that, indeed has (see above) voiced support for it. Very importantly it is, and will continue to be, the home in which J and P are living. There is no question she is firmly bonded to J and whilst there are some questions as to whether she is jealous of P, it also seems clear she has a good bond to her younger sister. In such context a move will be a significant matter. Plainly due to geography it will impact on schooling and peer groups. It will have a limiting impact on the amount of time B can spend with J, P, the MGM and her mother. These are all material considerations that weigh in favour of no change. B is a child who has experienced a great deal of change and the Court would ordinarily be looking to avoid further disruption unless it was unavoidable.

40. In considering this point I reflect on many arguments raised in favour of the continued placement. I reflect upon the evidence of B suffering upset out of the instability in respect of her relationship with her mother and I bear in mind this will be increased. Having said that there is the potential it might gain greater regularity following a move and might be attended by stability and certainty whereas it is currently uncertain and unpredictable. I have also considered the point raised by B of wanting to move with her sister and note this is not on the cards. Linked to this I bear in mind the evidence of B anticipating significant contact were she to move and my interpretation of the evidence is that she expects more opportunity for contact than is likely to be the case (i.e. more than say fortnightly). I also of course bear in mind the strong bond between B and the MGM and P and the loss that will be suffered by a reduction in the relationship.
41. Finally, I reflect on the potential that a move might not cure the hostility in the inter-familial relationships but may simply re-locate it into the father's home. If this were to attend on any move then it would magnify the disruption, instability and harm caused to B.
42. Yet there is a balance to be considered. I accept B is more than familiar with her father's home, his partner and their child and the evidence supports the view B is attached to these individuals as well. This is not an unfamiliar place for her and she has plainly considered the potential of such a move. In recent times contact has been almost weekly and B has spent significant periods of time with her father and his family. This does suggest potential for such a move to be successful.
43. One should also reflect upon the fact that given J's age it is likely she will in the foreseeable future come to play a lesser role in her sister's life. She is not far away from adulthood and an independent life. I consider it likely that within a relatively brief period B's home connection will be more to P than J and that the capacity to maintain a good relationship with J will not be significantly hampered whichever home she is in. I also accept there is evidence of some jealousy towards P arising out of B's sense of loss in respect of her mother and the reality that her mother's principle focus (when present) is on P. My assessment is that this is likely to be a continuing feature. I do not wish to overplay this point and I recognise there is at least an equal potential for such a feature in her father's home. Still on balance I judge the demands of P as a baby is likely to be more problematic for B in her MGM's home where her MGM must divide her attention between the children and where the attendance of her mother likely amplifies the issue than any equivalent concern in the father's home where two carers can share out their attention.
44. Of course, I also have regard to the assessment evidence and the oral evidence which suggests I can have confidence that such a move can be successfully managed.

45. I also bear in mind the MGM's age. It may seem inconsistent to make mention of this whilst at the same time making an SGO in her favour. There is however an important distinction to make. Whilst the MGM is fit and well, she is in her mid 70's and one must sensibly have regard to the potential for deteriorating health. As she herself commented (I think to the Guardian) if things deteriorated B might then move to her father. I consider this issue has little if any bearing on J. However, in contrast P has the foundation of a fall-back plan in the form of Aunt L. She was on the way to a positive assessment herself before pulling out and continues to be recognised as a significant support for the MGM. My understanding of the evidence is that she intends to continue to support the placement and there are grounds for optimism as to the role she might play were things to deteriorate. For reasons which I do not seek to examine or criticise she does not consider herself able to offer similar fall-back care for B.

*Personal characteristics*

46. I have set out B's age; her sex and many personal characteristics within this judgment. I continue to bear all of this in mind.

*Risk of harm*

47. In the threshold section set out above I have identified significant harm suffered by the children due to the care given to them. I have also commented that such risk would continue if in the care of the mother.
48. However, the finding cannot be wholly detached from potential placement with the MGM. As I have found there have been significant events when the children have been in the care of the MGM (see the comb incident). The reality is that placement with the MGM comes with a reasonable likelihood of the mother continuing to move in and out of the children's home. The evidence included the mother appearing in the home during a social work visit. It is simply not possible to conclude such a placement will shield B from continuing emotional harm ~ given part of the emotional harm arose in exactly equivalent circumstances.
49. In my judgment this must be contrasted with placement with the father. The evidence demonstrates no material risk arising out of his direct care of B. His family home is assessed as a safe and emotionally stable environment. His relationship with his partner is positive with no issues being recorded. I appreciate the the assessment in such regard was far more limited than that undertaken in respect of the maternal home however at the same time it far exceeds the extent of assessment that the Court might expect in private law proceedings in which a similar question as to placement might arise. Having considered the evidence, I am satisfied I have sufficient evidence to balance the placements.
50. In making these observations I put to one side the concerns expressed in respect of the father's oldest son. The maternal family appear to paint him as a sexual predator posing a significant risk to B. Such a suggestion

is unwarranted on the evidence and sadly says more about the inter-family discord than it does about risk. I do not intend to detail this issue other than to say that I would expect more mature reasoning from the adults in the case when considering the behaviours of a 6 and 4-year-old 16 years ago. This failure of analysis is aggravated when one reflects on the passage of time since and the absence of further concerning behaviour together with the son's current career which is unlikely to be consistent with any further problematic behaviour of this sort.

51. There is though a very different risk which falls outside of the threshold but warrants consideration. This is the risk of the residential carer alienating B from the other side of her family. Having assessed this issue, it is clear there continues a highly negative attitude felt by each side of the family to the other. Despite his protestations of willingness to work with the maternal family the father continued to exhibit a negative and critical approach to the maternal family. His actions in misusing information on the maternal grandfather (despite such information including evidence the grandfather had been 'cleared' of any concerns) suggests ~ as he in fact conceded ~ that he was willing to allow retaliation to be prioritised over the welfare interests of the child. My overall assessment was of a witness who expressed a willingness to build bridges but seemed unable to engage in consideration of the maternal family without negative comment.
52. Sadly, this is not a one-way street. Both the mother and grandmother continue to wrongly express themselves in strongly emotional terms in respect of the father's son despite the objective information set out above. Each continue to view the history through a coloured lens and neither really seem able to view the father in positive terms. At the same time the MGM speaks in terms of being willing to work with him.
53. It may be a fair assessment cannot be properly undertaken whilst within proceedings and in circumstances in which each side is seeking a contrary outcome. I sense the points they made and which have left me concerned as to their attitudes, are ones which they felt would influence the Court. It may be that when decisions are made that they are required to put these points to one side and engage more appropriately. I approach this possibility with caution although I very much hope they can then engage. If they do not then there will be no winners out of the fall-out and most importantly B, who loves both sides of her family, will be the biggest loser of all. I urge all members of the family to keep this observation in mind.

#### *Capacity of carer*

54. I have borne in mind the positive kinship assessment undertaken in respect of the MGM with respect to P. It is abundantly clear the MGM is both very proud and loving towards all her grandchildren. I have no doubt she wants the best for each of them and will do all she can to ensure

this is achieved. There is no doubt she has the basic skills to meet B's care needs and her warmth and bond to B elevates her care significantly beyond basic elements. Were there to be no alternative for B then I would not hesitate to place B into her care.

55. The position with respect to the father is in my assessment also positive. Whilst there are some matters in the history which are puzzling (e.g. the father's failure to attend the final hearing in 2014 or pursue the matter at that time to conclusion) I am confident he is both committed to B and firmly attached to her. I am also confident his partner has a positive attitude to B and that they are mutually committed to caring for her. The evidence indicates they are providing a happy and warm home for their child and their relationship appears stable and positive. As with the MGM the evidence makes clear the father can meet both her basic needs plus.
56. There are however two points which suggest the father is better placed to meet B's needs. All parties have addressed me on the question of insight. The evidence supports the view that the father has shown insight as to B's presentation and behaviour. In contrast there is a suggestion the MGM is either less insightful as to B's needs or perhaps that her insight is somewhat obstructed by her commitment to her own daughter. It can be seen from my findings I consider the MGM has shown difficulties in this regard. A particular example in this regard was considering B was throwing tantrums because she wished to see more of her mother. I consider that whereas the behaviour is causatively linked to her mother it is far more complex than suggested by the MGM and indeed most unlikely the position would be cured by greater time with her mother. Rather the problem relates to consistency and stability in the relationship together with predictability of response. I also reflect on the MGM's age and the issue this may pose as to the permanence of the placement.
57. It is a telling feature that whereas J would very much want B to continue to live with her that she nonetheless expressed the view that it would be better for B to live with their father. I consider this is material given J has had the same lived experience.

## **Conclusions**

58. I consider B's welfare will be better met placed in the care of her father and that a move to her father is in her welfare interests. B requires a period of settled and calm care. As the evidence suggests she now needs attuned parenting which together with some therapeutic work should have the best chances of reparative care. I find the father is significantly better able to provide this. I draw on the historical experience in concluding that continued placement with B will continue to meet her basic needs but will likely continue to leave her emotionally damaged. A significant concern relates to the interaction of the placement with the mother. The MGM sees the mother as the solution to the problem by meeting B's need and so she envisages more time with the mother will act to reduce her behavioural difficulties. However, I find the

unpredictable relationship with her mother is close to the source of her issues. At this time I have limited confidence that the mother will make changes but a high level of confidence she will continue to come in and out of B's life if she remains at her MGM's. Placed with her father she is likely to receive more consistent care which is not regularly but unpredictably undermined by her mother's attendance. This is likely to be a stronger foundation for commencing the work required by B.

59. I also consider there is a real risk of volatile events impacting on B if she remains with the MGM. Whilst I appreciate this may occur during contact I consider placement with her father will both limit such opportunity and provide a more substantial emotional balance against such situations.
60. I consider such a placement is not inconsistent with B's wishes. She will have the opportunity to maintain a good relationship with J who is both able and willing to visit her father. On balance I judge the parties will be able to progress contact once these proceedings have come to an end. I agree the MGM should be granted parental responsibility for B.

#### *Contact*

61. As regards B I agree the basic mirror agreement reached under which B visits her MGM and J and P every other weekend and half the holidays.
62. The contact B and P have with their mother (and in the case of P with her father) will ultimately be a matter for the MGM. In the case of P's father I feel contact each fortnight is more consistent with the needs of a child of her age. Pending personal progress this will need to be supervised.
63. In the case of the mother I would suggest there needs to be a balance to ensure P can settle into the care of her MGM and to avoid the emotional instability experienced by B. In the case of B it would seem sensible for her mother to see her perhaps twice each fortnight she visits. Again pending progress this needs to be supported by a family member. I would suggest at least one period should be with B alone to meet B's need for her mother's undivided attention.
64. In the case of P one has to be realistic. The contact should have regularity and consistency. Failing this P will likely suffer. I consider it realistic to permit weekly contact for a few hours. I do not consider it would be at all helpful for an arrangement to develop where the mother simply drops into P's life as she sees fit.
65. This judgment can be shared with the lay parties. I will deal with any corrections or requests for clarification at the listed hearing.

His Honour Judge Willans