Neutral Citation Number: [2023] EWFC 325 (B)

Case No: WT20P00115

IN THE CENTRAL FAMILY COURT

Central Family Court

Date: 18th October 2023

Before :

HIS HONOUR JUDGE TALBOTT

- -

Between :

K	**Applicant**
- and -	
A	**Respondent**

- -

Ajmal Azam (instructed on a direct access basis) for the **Applicant (Mr K)**
Elisabeth Traugott (instructed by **Glazar Delmar Solicitors**) for the **Respondent (Ms A)**

Hearing dates: 6, 7, and 8 September 2023

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Approved Judgment

This judgment was handed down in private at a hearing on 18th October 2023 and by way of circulation to the parties legal representatives via email. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

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HIS HONOUR JUDGE TALBOTT

Introduction

1. I am concerned with the welfare of M, a girl aged 7.

2. M's father, the applicant in this matter, is Mr K. He has parental responsibility.

3. M's mother, the respondent in this matter, is Ms A.

4. I shall refer to the parents as "the mother" and "the father" throughout this judgment.

The Applications

5. There are a number of applications before the Court:

   i) Father's applications for a Prohibited Steps Order, a Specific Issues Order and a Child Arrangement Order;

   ii) Mother's application for a Child Arrangements Order, Prohibited Steps Order and Specific Issues Order.

6. The parents disagree about the following:

   i) Whether M should live with both parents or live with the mother and spend time with the father;

   ii) How much time M should spend with each parent;

   iii) Which school M should attend.

7. The father's case on the disputed points is:

   i) That M should live with both parents;

   ii) That M spends an equal amount of time with both parents;

iii) That M should attend the school which is the most convenient for where she spends most of her time, and if it is an even split of time or if contact with him is increased then she should remain at the school she currently attends.

8. The mother's case on the disputed points is:

i) That M should live with her and spend time with the father;

ii) That M's time with each parent should be as it is now, namely spending one night with the father one week, and then three nights the next week on an alternate basis.

History

9. This matter has had a long and drawn-out history. The father made his application for a Child Arrangements Order in December 2020.

10. The mother had previously made an ex-parte application for a non-molestation order in October 2020. The father subsequently also applied for a non-molestation order. The parties cross-applications for non-molestation orders were both granted in the Family Court sitting at Wandsworth and were in place by the start of 2021.

11. The mother issued an application for a Specific Issues Order in respect of M's change of school on 28 April 2021.

12. The Children Act applications were then transferred to Central Family Court and were first listed on 29 April 2021 before Deputy District Judge Butler for a First Hearing Dispute Resolution Appointment (FHDRA). At that hearing, the court determined that a fact-finding hearing was necessary and ordered supervised contact in the interim. Within the order of 29 April 2021 there is no mention of PD 12J, any authority, nor any reason why the court determined that a fact-finding hearing was necessary to resolve the disputed welfare issues in respect of the child at that point in time.

13. On 15 July 2021 the matter was listed before Recorder Glancy KC for consideration of the father's application for direct interim contact and the mother's application to change M's school. The court ordered the introduction of unsupervised contact between M and the father to commence forthwith. It is clear from this order that, once again, there is no mention of PD 12J nor any authority, nor is there any recording of the reasons for considering that a fact-finding hearing remained necessary to resolve the welfare issues in the case. In light of the decision taken by the learned Recorder that contact should move to unsupervised contact, this is an obvious omission.

14. In any event, the fact-finding hearing listed to commence on 15 September 2021 for three days was vacated as a result of judicial unavailability. The fact-finding hearing was relisted to commence on 7 March 2022 with the same time-estimate.

15. The matter next came before the court on 17 September 2021 for a Dispute Resolution Appointment (DRA). District Judge Orchover refused the father's application for contact to progress to overnight contact in the interim and ordered that unsupervised contact should continue every Sunday between 9AM and 6PM. The time estimate for the fact-finding hearing was reduced to two days. The matter was listed for a further DRA.

16. This further DRA was listed before District Judge Orchover on 26 January 2022. At that hearing, the interim child arrangements were varied once more. The length of the father's unsupervised time spent with M every Sunday was ultimately reduced to three hours.

17. A number of previous orders were omitted by the parties in the preparation of the extensive bundle. Their existence was only highlighted by counsel on receipt of my draft judgment. There was, as well as the above hearings, a hearing on 26 November 2021 before His Honour Judge Marin which was ineffective as a result of the mother's solicitors filing the bundle after hours the night before the hearing.

18. The matter was listed for a fact-finding hearing before Deputy District Judge Morris on 7 March 2022. For very good reason, the Deputy District Judge ruled that the matter was not ready for hearing for the reasons recorded clearly within the comprehensive order. In particular, the Deputy District Judge determined that the time estimate was insufficient, the witness statements filed by both parties were excessive in length and the bundle was not PD27A compliant as it was far too long. Most significantly in the context of these proceedings, the order of the court makes clear that the question of whether a fact-finding hearing was necessary to determine the disputed welfare issues in the welfare interests of the child was specifically considered. The order of Deputy District Judge Morris clearly recorded the following:

"In any event, the court has considered the guidance of the Court of Appeal in Re H-N and Others (Children) (Domestic Abuse: Finding of Fact Hearings) [2021] EWCA Civ 448 and PD 12J and is satisfied that in the particular circumstances of this case, a fact finding hearing is neither necessary nor proportionate.

In particular, the court has regard to the following matters as providing a sufficient factual basis upon which an accurate assessment of risk can be undertaken:

The Judgement of the Kingston-Upon-Thames Crown Court dated 2nd December 2021 wherein the court upheld the mother's appeal against the conviction relating to the incident on 20 July 2020 (assault by beating) but dismissed the mother's appeal and upheld the conviction relating to the incident on 27 September 2020 (assault by beating)

The determination of the Crown Court that the child was present during the assault by the mother against the father on 27 September 2020 and this Court considering that the child is thereby a victim of domestic abuse within the meaning of Section 3 of the Domestic Abuse Act 2021

The Section 17 assessments dated 30 November 2020 and 13 January 2022

The agreement reached between the parties that contact between the child and the father can safely progress to overnight contact as provided for herein below."

19. For the first time within the proceedings, the order of the court reflected the analysis which the Deputy District Judge had undertaken of the necessity for a fact-finding hearing in the circumstances of this case. In particular, as is clear from the reasons set out with the order, by this point the parents agreed that contact between M and her father should progress to overnight contact. The agreement reached was set out within the body of the order in the following terms:

" CHILD ARRANGEMENTS

The Mother shall make the child available to spend time with the father on a direct unsupervised basis for interim child arrangements (until the next DRA appointment on 23rd May 2022) as follows:

13th , 20th and 27th March 2022 and 3rd April 2022 from 10am to 6pm

Overnight contact commencing at 1pm Saturday 9th April 2022 until 6pm Sunday 10th April 2022 and continuing on that basis every alternate weekend thereafter (save that the contact scheduled to conclude on 5th June 2022 shall end early at 10am)

Visiting daytime contact commencing Sunday 17th April 2022 from 10am until 6pm, and continuing on that basis every alternate Sunday thereafter

Each Tuesday commencing 15 March 2022 from after school (during term time or 10am during school holidays) until 6pm

Additional contact on the child's birthday, 16th March 2022, from after school until 5pm

On the day of Eid-ul-Fitr (as determined by the Islamic Cultural Centre, Regents Park Mosque) from 2pm until 6pm with handovers at the Morden Islamic Centre

Additional contact on 2nd June 2022 (being the father's birthday) from 10am to 6pm

Indirect contact by way of video calls each Monday and Thursday at 5pm for a period of 20 minutes

Save as provided for hereinabove, all handovers shall continue to take place at the contact centre in accordance with the Order of DJ Orchover dated 26 January 2022 with the costs of the contact centre being shared equally between the parties apart from the arrangement outlined in 9 (f) for Eid.

Such further or alternative contact as agreed between the parties in writing."

20. The matter was next before the court on 23 May 2022 for DRA. Deputy District Judge Grant recorded at paragraph 10 of the court's order from that hearing the following in respect of the interim child arrangements in place:

"The court has been informed that (1) the mother's work arrangements have changed such that she seeks to change the weekly Tuesday tea time contact to Wednesday tea time (2) she seeks a variation such that the child spends an additional night (Friday night) with the father on alternate weekends instead of weekly day time contact on the intervening Sundays; the court has declined to vary the interim arrangements save as agreed by the parties and ordered herein."

21. The amendments that were made to the interim child arrangements were limited to the day of the week on which weekday contact occurred, the timing of handovers and the timing of indirect contact. No application was made in respect of a reconsideration of the decision by Deputy District Judge Morris in respect of there being no necessity to hold a fact-fining hearing and no appeal was ever pursued in respect of that decision. The court order of Deputy District Judge Grant dated 23 May 2022 clearly directed a

Pre-Trial Review (PTR) to take place prior to the final hearing of the matter. There is no mention of a fact-finding hearing at any point within the order of Deputy District Judge Grant, as such, it is clear that the court did not envisage any change in the position as ordered by Deputy District Judge Morris.

22. The PTR was listed before District Judge Jenkins on 18 October 2022. The order made at this hearing was omitted from the extensive bundle placed before me. The parties agreed that the only "outstanding issue" at that stage in respect of trial readiness was the outstanding addendum report from CAFCASS (recital 9). District Judge Jenkins determined that the final hearing should not be adjourned as a result of the mother's Victim's Right to Review application having resulted in the allegations made by the mother against the father being sent to the CPS for charging consideration. The matter remained listed for "Final Hearing" on 3 November 2022.

23. The final hearing was then listed before District Judge Cassidy on 3 November 2022. Counsel instructed by the father on a direct access basis, Mr Azam, did not attend. The court were informed that he was unwell. The District Judge adjourned the final hearing. Paragraph 10 of the District Judge's Order states:

"Combined Final Hearing

10. The next hearing shall be a combined final/fact-finding hearing on 6th September 2023 at 10:00 a.m. with a time estimate of 3 days before District Judge Cassidy unless released to another Judge by DJ Cassidy. The judge will determine as a primary issue which allegations it is necessary for the court to determine."

24. With respect to the District Judge, it is unclear why the decision was taken to direct that a fact-finding was necessary, albeit combined with a final hearing. There is no mention of PD 12J nor any authority within the order of District Judge Cassidy.

Further, there are no reasons at all given for this departure from the reasoned decision taken by Deputy District Judge Morris that a fact-finding hearing was unnecessary. It is clear from the direction that *"the judge* [on the first day of the trial] *will determine as a primary issue which allegations it is necessary for the court to determine"* that the District Judge approached the decision to direct a fact-finding hearing in an illogical way. A proper application of PD 12J requires the court to consider whether a fact-finding hearing is necessary or not and, if it is, when that should take place. Part of that process is to consider the allegations made and then to consider whether they, or any of them, are necessary to determine in order to make proper welfare decisions for the child. It is clear that, in fact, District Judge Cassidy determined that a fact-finding hearing was necessary without properly analysing the allegations made and the impact of them on the welfare dispute that remained. There was agreement as to overnight contact continuing and the District Judge determined that such contact was in the welfare interests of the child. In the absence of any recorded reasons, it is unclear why the District Judge felt that a fact-finding hearing was now required. It is clear from the order of the District Judge at paragraphs 16 to 21 that it was anticipated that there would be a distinct fact-finding hearing aspect within the final hearing as the court directed that two separate bundles must be prepared – one in relation to fact-finding and one in relation to the final hearing. In fairness to the District Judge, it is clear that the court was not, in fact, determining that the allegations themselves were necessary to determine separately to the welfare decision. Instead, the District Judge left the decision to judge before whom the final hearing was to be listed.

25. The matter was listed for a further hearing on 5 January 2023 following an application by the mother to alter the interim child arrangements. Significantly, there was once more no application to remove the overnight contact. Indeed, the order of the District Judge at paragraph five sets out that interim contact should increase to Friday to Monday contact one week, and then Monday to Tuesday contact the next week on an

alternate basis. The decision of District Judge Cassidy to increase overnight contact at this point but leave the matter listed for a fact-finding and final hearing emphasises the lack of reconsideration of whether a fact-finding aspect to the hearing was necessary. The matter remained listed for Fact-Finding and Final Hearing to commence on 6 September 2023.

26. On 28 August 2023, the mother applied to adjourn the final hearing on the basis that a separate fact-finding hearing was required and that *"a further update from the police has informed of a new charge being investigated and further police evidence, to be obtained."* In fact, the police had confirmed that they had re-opened their previous investigation following an appeal by the mother under the Victims Right to Review Scheme and had sent the file to the CPS. The application to adjourn was refused by me on the papers, with liberty to renew the application orally on the first day of the final hearing granted.

27. The matter then came before me for final hearing on 6 September 2023 with a time estimate of three days. No application to adjourn was renewed. As a preliminary issue I determined that a fact-finding hearing was not necessary to determine the welfare issues in dispute. I explained why that was the case in light of having undertaken an analysis within the context of PD 12J and *K v K* [2022] EWCA Civ 468. I enquired with both parties whether they required a full judgment in respect of this decision at that point. Neither did, and I indicated that I would provide the full reasoning as part of my final judgment in this matter. I made clear to counsel that I would continue to review the necessity of embarking on a fact-finding exercise throughout proceedings as was incumbent on a court dealing with a case in which PD 12J is engaged.

28. For the reasons I shall now explain, it remains the position that it is unnecessary to conduct a fact-finding hearing in relation to any disputed allegations of domestic abuse or controlling and coercive behaviour made by either party in this case.

Why it is not necessary to conduct a fact-finding hearing in the circumstances of this case

29. I have considered the "*Respondent Mother's Written Submissions on the Law for the Final Hearing on 6-8 September 2023*". Whilst a useful summary of *some* of the law in respect of the approach of the Family Court to allegations of domestic abuse, it covers neither *K v K* nor the parts of PD 12J which relate to whether a fact-finding hearing is necessary. It is the law and guidance detailed within this judgment which is most pertinent to the decisions I must make.

30. Both parents have made allegations of domestic abuse against the other during the course of these proceedings. The composite schedule of allegations from page A1 of the Fact-Finding Bundle sets out the allegations each parent makes against the other alongside their numerous narrative statements. Each parent alleges that the other was physically and emotionally abusive to them as part of an overall pattern of controlling and coercive behaviour throughout their relationship. Further, the mother alleges that the father was sexually abusive towards her in 2014 shortly after their Islamic marriage and financially abusive to her during the course of the relationship.

31. I have applied the definitions of Domestic Abuse within sections 1 and 2 of the Domestic Abuse Act 2021 and the further definitions contained within paragraph 3 of PD 12J. I have considered that, under s3 of the Domestic Abuse Act 2021, children are the victims of domestic abuse if they see, hear or experience the effects of domestic abuse perpetrated against one of their parents.

32. In the present case, the mother has a conviction for Common Assault in respect of an incident which occurred on 27th September 2020. By virtue of this conviction, the father is a victim of domestic abuse. As M was present during this incident, she is also a victim under the Domestic Abuse Act 2021.

33. The father’s position is that, regardless of this criminal conviction and the other allegations he makes of coercive behaviour and abuse, a fact-finding hearing is not necessary as he does not think that there is a risk of harm to M from being in the care of the mother. Indeed, his case is that he would like a progression towards M spending an equal amount of time with both parents.

34. The mother’s position is that it is necessary for the court to determine her allegations against the father in order to decide the welfare issues in dispute. As a starting point, it is necessary to determine what the disputed welfare issues are in this case. As I have already detailed, Deputy District Judge Morris recorded within the 7 March 2022 order that the parents agreed that there should be overnight contact between M and her father. Both parties were represented at that hearing. Indeed, the mother has been represented at every hearing in this matter. There has been no challenge to that order either by way of an appeal or an application to vary. Therefore, as of 7 March 2022 the mother’s case was that she agreed to overnight contact taking place regardless of the allegations made. Indeed, by 23 May 2022, the mother’s position was that a change to her working pattern meant that M’s welfare best interest would be best served by there being an additional night of overnight contact in the place of one daytime contact session. This stance emphasises the position that the mother was adopting – that regardless of the seriousness of the allegations which were made there was no reason why overnight contact should not take place. It was the mother’s case on 23 May 2022 that there should be more overnight contact than she had agreed to on 7 March 2022.

35. The mother then served her final witness statement dated 4 September 2023. The statement is to be found at page c338 of the Final Hearing Bundle and is titled “*STATEMENT OF Ms A FOR THE FINAL HEARING ON 6-8 SEPTEMBER 2023*”. Within that statement, the mother’s evidence in respect of the arrangements which would best meet M’s welfare needs is:

"I agree with the CAFCASS recommendations. The father's application for a shared care agreement would not be in M's best interests, I agree that the current arrangement is sufficient and that the father's continued pursuit of his application will have an emotional impact on M." (para 28);

"I also urge the court to honour M's expressed wishes and feelings." (para 7);

"I seek a lives with order and I be permitted to change M's school. I agree to the contact staying as it is." (para 49).

36. Within her oral evidence, the mother set out her position in respect of contact equally clearly, saying:

"I do not think it is fair for us to keep confusing M with contact arrangements, as I have said in my statement we should keep it as it is."

"I am not saying that the court should reduce contact."

"It is difficult for me to know what is best for M, I have suggested something which I feel is in M's best interests."

37. During closing submissions on behalf of the mother, it was submitted that:

"*The father's contact could be rowed back until he completes a Domestic Abuse Perpetrators Programme and should certainly not be increased at this point."*

"The court may think it best to add an extra day onto the weekend contact to avoid contact between the parents and the impact that would have on M"

38. A consideration of the positions adopted by the mother at the previous hearings, her written evidence and her oral evidence paints the clearest of pictures as to the stance she adopts at this final hearing. The mother has been entirely consistent in her approach to the issue of contact since the agreement to overnight contact taking place

at the hearing on 7 March 2022. I am entirely satisfied that the mother agrees that there should be overnight contact and says that the current level of four nights out of every fourteen is the level which remains in line with M's welfare best interests.

39. Having established the positions of both parents in respect of the arrangements they each say are in M's welfare best interests, I must consider whether it is necessary to determine any of the allegations made by the parents against each other in order to decide the disputed welfare issues. The welfare issues in dispute are:

i) How much overnight contact should there be between M and her father;

ii) Whether the order should be a joint "lives with" order or an order than M lives with her mother and spends time with her father;

iii) Which school M should attend.

40. There is no dispute that PD 12J in engaged in this case. Paragraph 17 of PD 12J states:

17. "In determining whether it is necessary to conduct a fact-finding hearing, the court should consider –

(a) the views of the parties and of Cafcass or CAFCASS Cymru;

(b) whether there are admissions by a party which provide a sufficient factual basis on which to proceed;

(c) if a party is in receipt of legal aid, whether the evidence required to be provided to obtain legal aid provides a sufficient factual basis on which to proceed;

(d) whether there is other evidence available to the court that provides a sufficient factual basis on which to proceed;

(e) whether the factors set out in paragraphs 36 and 37 below can be determined without a fact-finding hearing;

(f) the nature of the evidence required to resolve disputed allegations;

(g) whether the nature and extent of the allegations, if proved, would be relevant to the issue before the court; and

(h) whether a separate fact-finding hearing would be necessary and proportionate in all the circumstances of the case."

41. Paragraphs 36 and 27 of PD 12J state as follows:

"36. (1) In the light of-

(a) any findings of fact,

(b) admissions; or

(c) domestic abuse having otherwise been established,

the court should apply the individual matters in the welfare checklist with reference to the domestic abuse which has occurred and any expert risk assessment obtained.

(2) In particular, the court should in every case consider any harm-

(a) which the child as a victim of domestic abuse, and the parent with whom the child is living, has suffered as a consequence of that domestic abuse; and

(b) which the child and the parent with whom the child is living is at risk of suffering, if a child arrangements order is made.

(3) The court should make an order for contact only if it is satisfied-

(a) that the physical and emotional safety of the child and the parent with whom the child is living can, as far as possible, be secured before, during and after contact; and

(b) that the parent with whom the child is living will not be subjected to further domestic abuse by the other parent.

37. In every case where a finding or admission of domestic abuse is made, or where domestic abuse is otherwise established, the court should consider the conduct of both parents towards each other and towards the child and the impact of the same. In particular, the court should consider –

(a) the effect of the domestic abuse on the child and on the arrangements for where the child is living;

(b) the effect of the domestic abuse on the child and its effect on the child's relationship with the parents;

(c) whether the parent is motivated by a desire to promote the best interests of the child or is using the process to continue a form of domestic abuse against the other parent;

(d) the likely behaviour during contact of the parent against whom findings are made and its effect on the child; and

(e) the capacity of the parents to appreciate the effect of past domestic abuse and the potential for future domestic abuse."

42. As well as PD 12J, it is vital that a court considering whether it is necessary to conduct a fact-finding hearing follows the guidance within *K v K* [2022] EWCA Civ 468. An analysis of both *K v K* and PD 12J provides a number of key propositions in respect of the decision as to whether to conduct a fact-finding hearing in any particular case, including:

i) A judge considering whether to hold a fact-finding hearing must first identify the child welfare issue to which the resolution of the dispute will be relevant;

ii) The court must have in mind the purpose of a fact-finding hearing, which is to provide a basis of assessment of risk and therefore the impact of the alleged abuse on the child;

iii) Domestic abuse is pernicious in nature, but a fact-finding is only needed if the alleged abuse is likely to be relevant to what the court is being asked to decide relating to the child's welfare.

43. The President's Guidance from 5th May 2022 *"Fact-finding hearing and domestic abuse in Private Law children proceedings"* promotes the same focus on the welfare decisions that need to be made by the court within a particular case for a particular child:

"There is a time and a place to determine allegations of domestic abuse, but it may not be in your court. Unless it will be relevant to, and necessary for, your decision regarding the welfare of the child, do not allow the court to be used to litigate such allegations." (para 3)

"Identify the real issues in the case. Is one parent denying contact per se or seeking to add conditions for or in relation to contact arrangements? What are the questions pertaining to the child's welfare?" (para 5)

"The fundamentals are relevance, purpose and proportionality. Consider PD 12J [14] and [17]." (para 13)

"If your conclusion is that the allegations, if proved and however serious, would not be relevant to the decision, then no fact-finding hearing is required." (para 16)

"The court must, at all stages in the proceedings, consider whether domestic abuse is raised as an issue: FPR PD 12J [5]. However, guard against attempts to re-argue the question once a decision has been made. What is said to have changed to undermine the original analysis? Proceedings should have judicial continuity, wherever possible, and a consistent approach. (para 27)."

44. Whilst *K v K* post-dates *Re H-N* [2021] EWCA Civ 448, the importance of the decision in *Re H-N* is, if anything, emphasised by the judgment in *K v K.* The written note provided on behalf of the mother to accompany the oral submissions made focuses on the impact of domestic abuse. This is uncontroversial. As per the Court of Appeal in *Re H-N*:

"Each of these appeals are examples in differing ways of the importance of the modern judiciary having a proper understanding of the nature of domestic abuse and in particular of controlling and coercive behaviour and of its impact on both the victims and the children caught up in the atmosphere engendered in such a household." (para 224)

"The child can be harmed in any one or a combination of ways for example where the abusive behaviour:

i) Is directed against, or witnessed by, the child;

ii) Causes the victim of the abuse to be so frightened of provoking an outburst or reaction from the perpetrator that she/he is unable to give priority to the needs of her/his child;

iii) Creates an atmosphere of fear and anxiety in the home which is inimical to the welfare of the child;

iv) Risks inculcating, particularly in boys, a set of values which involve treating women as being inferior to men." (para 31)

45. There is no doubt as to the devastating impact on the welfare of a child that exposure to patterns of controlling and coercive behaviour are likely to have. As a proposition, that is undeniable. However, in any particular case it is incumbent upon the court to decide whether it is necessary to hold a fact-finding hearing in light of the particular allegations made in a particular case in light of the potential impact of the welfare decisions needed to be taken in respect of a particular child.

46. For the following reasons, having applied the relevant guidance detailed above, it is not necessary to conduct a fact-finding hearing in order to resolve the welfare issues between the parents in respect of the arrangements for M.

47. The welfare issues in dispute in respect of the arrangements for M are how many nights she should spend with her father, under what order(s) that should occur and

which school she attends. The only issue that the allegations of domestic abuse could possibly be said to have a significant bearing on is the number of nights M spends with her father. However, there has been and continues to be informed agreement as to overnight contact occurring. The "issue" between the parents is the amount of overnight time which is in line with M's welfare best interests.

48. The father's case is that his allegations do not need to be determined as he does not say that his allegations, even if proved, would have an impact on the welfare decision the court needs to make. Indeed, whilst acknowledging the fact that he is a victim of domestic abuse, that father's position is that the mother voluntarily undertaking a victim awareness course after her criminal conviction is a positive sign. In light of the nature of the father's allegations and the evidence available to the court in respect of the mother's conviction and subsequent victim empathy work, it is clear that there is no necessity to determine any of the allegations of behaviour demonstrating a pattern of controlling or coercive behaviour made within his narrative statements or schedule of allegations.

49. In respect of the mother's allegations, it is important not to artificially focus on individual allegations in assessing their relevance to the welfare issues which fall to be determined for M. Incidents of alleged sexual abuse may well be relevant to welfare decisions and necessitate specific determination when it is evident that they form part of a pattern of controlling or coercive behaviour which impinges upon the decisions the court must make for a child. Slavish adherence to schedules of allegations in not useful when considering the complex issue of domestic abuse. However, in the present case, the specific allegation of sexual assault which the mother seeks to be determined by the court dates to 2014, before M's birth. Even when viewed in the context of the other allegations made by the mother, this is not an allegation which can properly be said to have an impact on the welfare issues in this case. The mother's further allegations include that she was the victim of a physical

assault by the father on 27 September 2020 and that he then proceeded to have her, wrongly, arrested for assaulting him. However, the mother was convicted of assaulting the father on this occasion, and that conviction upheld on appeal, and so there is sufficient material available within the case papers already to ensure that determination of this allegation is unnecessary.

50. In respect of the mother's other specific allegations, these are also said to be relevant to establishing a pattern of controlling and coercive behaviour by the father towards the mother from 2014 to the end of the parents' relationship in 2020. Of course, the allegation of sexual abuse in 2014 is said to form a part of a pattern of abusive behaviour and the court must not lose sight of that. The alleged behaviour includes *"denying the mother a civil marriage ceremony in a bid to limit her rights and control her*", being "*financially abusive*" including threatening to stop providing for her financially if she refused to be intimate with him and "*emptying the joint bank account at a point they were separated*" before they rekindled their relationship, and two specific incidents of physical and verbal domestic abuse which occurred on 9 January 2018 and 15 September 2020. In January 2018 it is alleged that the father was repeatedly verbally abusive and pushed the mother to the floor in front of the child. In September 2020 it is alleged that the father threw a mug at the wall near to the mother.

51. In respect of the allegations the mother makes relating to the alleged sexual assault which occurred in April 2014 and of control and coercion throughout the relationship, it has been submitted on behalf of the mother that the current status of the police investigation into those matters is relevant to the decision as to whether a fact-finding hearing is necessary. In short, the police initially investigated the mother's allegations and concluded that there was insufficient prospect of a successful conviction to bring charges. The mother appealed that decision under the Victims Right to Review Scheme and the police have informed the mother that they have now sent the file to

the Crown Prosecution Service for a charging decision to be made. There is no timescale within which this decision will be made, but in recent correspondence that police have advised the mother that it is likely to take some time. Of course, in practical terms the fact that at some point in the future charges may be brought, there may be a trial, there may be a conviction and there may be a sentence of imprisonment imposed all have the potential to ensure that the arrangements for M which are determined to be in her welfare interests at this stage are no longer possible. However, by equal measure there may be no charges brought and, as a result, that would be the end of the police investigation and any criminal proceedings. In any event, the status of the police investigation into some of the mother's allegations has no bearing on the decision I must make in respect of the necessity or otherwise of conducting a fact-finding hearing. I have taken the mother's allegations at their highest in reaching the conclusions that I have. Therefore, what view the Crown Prosecution Service may take in the future as to whether there is a realistic prospect of conviction in respect of specific criminal offences on the basis of a different evidence base to that available to me is irrelevant to the decision I must make in respect of the necessity of conducting a fact-finding hearing.

52. I have considered the views of the CAFCASS Family Court Advisor as to the impact of the allegations of domestic abuse on the welfare decision the court must make for M. The Family Court Advisor's views are as follows:

"It is positive that spending time arrangements between M and her father has now commenced and progressed to overnight stays" and *"Recommendation – for the current spending time arrangements to remain in place until the outcome from CPS is received."* (amended s7 report dated 15 June 2022, with minor amendment made to previous report from May 2022)

"The recommendation of the Section 7 report dated 15 June 2022, for M to live with her mother and spend time with her father remains unchanged." (addendum s7 report dated 1 November 2022)

"She confirmed her recommendation remain (sic) as per the Section 7 report and Addendum report dated 1st November 2022; namely she does not recommend a shared contact arrangement or progression of contact beyond the existing level, due to the allegations of domestic abuse having not been determined." (recital to order of District Judge Cassidy 14 November 2022)

"The recommendation of the report dated 1 November remains unchanged." (further addendum s7 report dated 23rd March 2023)

"M is enjoying contact, she has expressed no concerns to me and I see no reason why it needs to change." (in oral evidence)

"It would be reasonable for M to spend one extra night with her father at the weekend." (in oral evidence)

"If no findings are made then I have no objection to contact increasing at M's pace." (in oral evidence)

53. It is abundantly clear that the views of the Family Court Advisor are that the current arrangement of M spending one night with her father one week and three nights the next, in place since District Judge Cassidy's order of 5 January 2023, pose no risk to M' welfare. Indeed, the Family Court Advisor accepted that a progression of contact at M's pace, beginning perhaps with an extra night on the longer period of contact, would be "*reasonable*." It was clear from The Family Court Advisor's evidence that she did not feel that the undetermined allegations of domestic abuse made by either of the parents were sufficient to prevent these regular periods of significant unsupervised overnight contact.

54. It was suggested in closing submissions on behalf of the mother that she may have agreed to overnight contact previously due to undue pressure being put on her. I reject this submission. Not only has the mother been represented throughout these proceedings by both solicitors and counsel, but there has been no suggestion within either her written or oral evidence that this is the case. The general proposition advanced in closing submissions that victims of domestic abuse sometimes do agree to contact arrangements as a result of the continuing effect of the control and coercion of their abuser on them is uncontroversial. However, that is not the position in the present case. I am entirely satisfied that the mother's agreement to unsupervised overnight contact which has been in place since March 2022 is both informed and is a position she adopts having had the benefit of advice and representation throughout, even at points when the father himself was unrepresented. The fact that the parents have agreed that overnight contact is in the best interests of M is, of course, not determinative of the court's decision. There may well be cases where a court availed of all of the relevant evidence concludes that such an arrangement is not in the best interests of a child despite parental agreement. However, in the present case I am entirely satisfied that the agreement in this regard reached by the parents is not one with which the court should interfere.

55. Therefore, the position is that, regardless of the nature and seriousness of the mother's allegations:

i) The mother agreed to overnight contact at least as long ago as March 2022;

ii) The mother suggested an increase of overnight contact due to her changing working arrangements in May 2022;

iii) The court determined in January 2023 that the overnight contact should be increased to four nights out of fourteen;

iv) The view of the CAFCASS Family Court Advisor is that these arrangements should remain the same, or potentially increase gradually and slowly;

v) The mother agrees with the CAFCASS Family Court Advisor's recommendations;

vi) The father does not seek a fact-finding hearing and does not suggest that the mother's conviction for common assault against him has any effect on the welfare decisions that is necessary for the court to make.

56. Of course, if the behaviours alleged by the mother occurred then it would have been frightening for the mother and she would have suffered harm as a result. However, when the mother's allegations taken at their highest are considered in conjunction with her consistent agreed position that there should be overnight contact between M and her father, and the supporting views of the CAFCASS Family Court Advisor in this regard, it is clear to me that they are not allegations which are necessary to determine in order to make the welfare decisions for M that I must.

57. For all of these reasons, it is not necessary to determine the mother's allegations in order to decide how many nights M should spend with her father, which order this arrangement should be under, and which school she attends. Nothing I have said within this analysis should be understood as in any way minimising the impact of domestic abuse either generally or specifically on children who are exposed to it or to adults who are victims themselves. In each case it is incumbent upon a judge within the Family Court to consider the impact of the specific allegations made in a specific case in the context of the impact on the welfare decisions required in respect of a specific child. It is that task which I have undertaken, and this judgment is not in any way a comment on domestic abuse, controlling behaviour or coercive behaviour more generally.

58. Before moving on to consider which orders are in M's welfare best interests, I must comment upon the assertion made within the position statement filed on behalf of the mother that *"K v K stands for the limited proposition that a court must take care when determining whether a FFH is required in the first instance and not before it has an understanding of a party's allegations. In M's submission, it does not permit a court to go behind a previous decision that a fact-finding hearing should be held if the original decision was sound (i.e K v K compliant)."* Of course, as a matter of logic it would be wrong for a court to determine, absent a change in circumstances, that a fact-finding hearing was not required when a *K v K* and PD 12J compliant analysis clearly necessitated the conducting of one. However, it is incumbent upon any judge due to embark upon a fact-finding hearing to consider, in the context of PD 12J, whether a fact-finding hearing remains necessary and, if so, the scope of the fact-finding exercise necessary to determine the relevant welfare issues in dispute. In the present case, despite the decision as to the listing of combined fact-finding and final hearing being flawed, District Judge Cassidy specifically anticipated the judge conducting the final hearing undertaking exactly that exercise. In any event, in the present case there have now been four different judges determining the issue of whether a fact-finding hearing is necessary in this case:

i) DDJ Butler determined that a fact-finding hearing was necessary on 29th April 2021. A careful application of PD 12J indicated that this was a decision taken too early in the proceedings and with inadequate information available. The lack of reasoning apparent on the face of the order underlines this;

ii) DDJ Morris determined on 7th March 2022 that a fact-finding hearing was not necessary and gave clear reasons within the context of PD 12J as to why this was the case;

iii) DJ Cassidy determined on 3rd November 2022 that a fact-finding hearing was necessary and that it should be held at the same time as the final hearing. Two separate bundles were ordered;

iv) I determined at the start of the proceedings before me that no fact-finding hearing was required for the reasons explained herein.

59. On any view, the inconsistency of the judicial approach in this case has been unhelpful for the parties and is likely to have contributed to the delay in a final decision being made in respect of M's welfare. The chronology of this case emphasises how important it is that judges in the Family Court adopt a consistent approach to determining the necessity or otherwise of conducting a fact-finding hearing. PD 12J is the framework which, if applied carefully, provides that consistency.

The Law to be applied to the Welfare Decision

60. In respect of the law, which is not in dispute, I apply the following principles:

i) M's welfare is my paramount consideration;

ii) I must apply the welfare checklist within s1(3) Children Act 1989 to the decisions I make in respect of M's welfare;

iii) The standard of proof that I apply in respect of any disputed areas is the balance of probabilities;

iv) The burden of proving any allegation made lies with the person making it;

v) I only need determine any factual disputes which are relevant to the welfare decisions that I must make for M and which are necessary to determine in order to determine the dispute as to which arrangements are in her welfare best interests;

vi) Any factual determinations I do make must be made on evidence and not suspicion or speculation. I can draw inferences from the evidence before me if appropriate to do so and I have regard to inherent probabilities and improbabilities;

vii) I must take into account all of the evidence before me and weigh it holistically in a way which ensures that I am able, where possible and necessary, to determine a coherent picture reflective of the whole of the evidence. In doing so, I have considered the wide canvass of evidence before me without artificially compartmentalising any particular aspect of the evidence;

viii) People lie for many reasons. I must only hold any particular lie, if I am satisfied that one has been told, against a party if the lie was deliberate, relates to a material issue and there is no innocent explanation for it. Even then, I must place any lie that I find to have been told into the wider context of the evidence as a whole in order to consider whether it has any wider impact on my view of the evidence.

The Relevant History of this family

61. The father was born in 1982 and the mother in 1986. They met at the end of 2013 and began to live together from April 2014. M was born in 2016. The parents separated in mid-2018 and the mother moved out of the family home with M. The parents then reconciled at the start of 2020 and moved back in together in the home the father had purchased during the period of separation.

62. On 27 September 2020 the mother was arrested for assaulting the father. On 2 October 2020 the father's contact with M ceased. Non-molestation orders were then sought by both parents and the Children Act applications already set out at the beginning of this judgment were subsequently issued.

63. A great deal is in dispute between the parents as to exactly what occurred during the course of their relationship. However, as can be seen from the agreements they have reached in respect of the time M spends with her father, they have both shown a clear ability to prioritise M's welfare and change their positions in light of changing circumstances at various points. Sadly, both have at points demonstrated that they are capable of letting their ongoing negative feelings about the other impinge upon their decisions made relating to M and each other.

The Evidence

64. I have considered the entirety of the bundle provided to me as well as the oral evidence of the witnesses from whom I have heard. If I do not mention any particular piece of evidence, it is not because I have ignored it but because it is unnecessary to repeat all of the evidence I have considered in reaching my conclusions.

65. I permitted each parent to be cross-examined for two hours on behalf of the other. That provided ample time for the respective cases to be put and the evidence of the other parent appropriately tested. Both counsel put their cases robustly and skilfully in cross-examination of the other parent, the CAFCASS Family Court Advisor and through their oral and written submissions.

66. Participation directions were made by agreement by way of a screen between the parties in court. This was an entirely neutral step and has had no impact upon the conclusions I have reached.

67. I heard first from the CAFCASS Family Court Advisor allocated to this case. I found the Family Court Advisor to be a measured and realistic witness whose oral evidence was clear and focused upon what she felt was in M's welfare best interests. The Family Court Advisor was able to tell me that M's wishes and feelings were clear that she would not change anything about her current arrangements. The Family Court

Advisor rightly noted that M was only seven years old and, whilst mature, her views must be considered firmly with her age in mind. The Family Court Advisor struck me as somewhat saddened when she said, *"There is a lot of conflict between the parents, when we were here last year I hoped we had made progress and could move on, but we have not."* It was evident to me that the Family Court Advisor had genuinely hoped that, despite their differences, the parents may be able to find a way to effectively co-parent for M's benefit. Overall, I found the Family Court Advisor to be a careful and methodical witness who made every effort to anchor her answers within her analysis of what was best for M. Despite this, I am less than clear why it was the Family Court Advisor's position that the issue of whether M should attend one school or the other was not one of the issues in respect of which she could assist the court. It appears to me that there could very easily have been some work done with M by way of an age-appropriate conversation regarding the prospect of changing schools or remaining where she currently is. However, the Family Court Advisor was firmly of the view, as recorded within the recitals to the last order of DJ Cassidy, that this was a matter for the court and not for CAFCASS to comment on. The Family Court Advisor does note within her written evidence that M's current school regarded her as *"persistently absent"* with attendance of 88.8% as at 13 May 2022, 4.4% of the 11.2% of absence being as a result of lateness. Within the same s7 report, the Family Court Advisor notes that M says that she enjoys attending her current school. The Family Court Advisor goes on within the same report to note that M's school raised no concerns for her emotional presentation. Further, within the second addendum s7 report authored in March 2023, the Family Court Advisor noted that "*M said she enjoyed school".* Therefore, whilst I am of the opinion that there was no good reason why further work could not have been undertaken with M by the Family Court Advisor in respect of her feelings about a potential change of school, I am satisfied that there is sufficient information before the court for a decision in this regard to be made.

68. I heard from the mother next. In light of my decision that it was not necessary to conduct a fact-finding hearing, I queried whether I should hear from the father first. However, the mother was keen to give her evidence first in light of her expecting to do so and so I allowed a modification to the traditional order of evidence as a result of the agreement reached between the parties. I found the mother's oral evidence to be in line with the position set out within her written evidence. The mother told me that when there were points at which M showed some reluctance to see her father *"I could not understand why she would not want to go to contact with her father"* and said on the same subject *"I encourage her to go and things have got a lot better."* The mother went on to say *"I have never said that there are circumstances in which he court should reduce contact."* The mother set out her case clearly – she feels that M's welfare best interests would be met by the current arrangements continuing and her changing schools to cut down the time spent travelling to and from school. Despite this being the clear thrust of her evidence, the mother was also keen at points to mention her "*concerns*" about the father's behaviour in a way in which I am entirely satisfied was designed to undermine his ability to meet M's needs without committing to whether she genuinely felt that there was a real risk to M's safety in the father's care. An example of this was the evidence the mother gave about the incidents of M bedwetting on two occasions when staying with the father overnight. The mother was, understandably in my view, concerned that she was not told by the father that M had wet the bed on a couple of occasions when staying overnight at the father's house. It is entirely reasonable for the mother to be caused some worry about not being told by the father about it. However, the mother then made an unreasonable and unjustifiable 'mental leap' from the fact of M wetting the bed on two occasions (which is not unsurprising as a result of her getting used to sleeping in a different bed in a different home) to having "*concerns*" that it was indicative of the father sexually abusing M. I found the mother's evidence about this to be inconsistent and implausible. The mother said in evidence that when she spoke to M's GP about the bed-wetting she did not

think she may have been sexually abused by her father, but that she now did think there was such a risk. However, a careful consideration of the disclosure from the GP by way of the medical records shows that it was indeed the mother who raised the issue of potential sexual abuse and, I am satisfied, exaggerated the extent of M's bedwetting in discussion with the GP. The GP notes were made at the time of the conversation and are, I am satisfied, more likely to be accurate than the evidence of the mother all this time afterwards which is tainted by her ongoing distrust of the father. Whilst the mother denies being the one who raised the issue of potential sexual abuse with the GP, it is clear from a reading of the notes themselves that this was simply not true. Further, I accept the evidence of the Family Court Advisor that during their conversation on the subject the mother was clearly "*alluding*" to the fact that M may have been sexually abused in the father's care as a result of her wetting the bed twice. The mother denies that this was the case and says that it was the GP who raised the issue of potential sexual abuse, that she was not alluding to that being the case when she spoke with the Family Court Advisor and that she was purely guided by the professionals as to her approach to the subject. However, the evidence by way of contemporaneous medical records and the evidence of the Family Court Advisor significantly undermines the mother's version of events in this regard. I am satisfied that, in fact, in the context of a strained and distrusting relationship between the parents, the mother's understandable concern about finding out about M's couple of incidents of bedwetting from the child rather than the father led her to deliberately imply to professionals that there were genuine concerns about sexual abuse with the intention of influencing their recommendations as to contact with the father on which she could then rely. Indeed, this is exactly what did happen. Having raised the issue of potential abuse herself with the GP surgery during the telephone call, the mother then emailed the Family Court Advisor (author of the s7 report) to tell her that the GP had made a referral due to safeguarding concerns for M (para 8, addendum s7 report of 23 March 2023). In further support of my conclusion that the mother has, on occasion,

misrepresented the truth to professionals it is again evident from the medical records from 31 March 2022 that the mother implied to the GP surgery that they should not disclose M's medical records to her father on the basis that she had Parental Responsibility. The mother said in evidence that the medical records concerning her correspondence with the GP surgery are inaccurate and that, if fact, the confusion regarding the lack of disclosure of M's medical records to the father was as a result a change of surgery rather than any action on her part. However, the records themselves could not paint a clearer picture to the contrary. I am entirely satisfied that, once again as a result of the distrust that continues to exist between the parents, the mother implied to the GP surgery that it was her who had Parental Responsibility for M and that M would be at risk of harm were her father to receive her medical records. The mother may not have specifically said that the father did not have Parental Responsibility, but I am satisfied that she only mentioned her Parental Responsibility to the GP surgery in an attempt to imply that the father did not. Indeed, that is clearly the case as a subsequent note within the medical records shows that the mother specifically told the GP surgery that she was awaiting advice from her solicitors as to whether the medical records should be disclosed to the father. The mother could not offer a plausible explanation in evidence as to why the contemporaneous medical notes recorded clearly that she was awaiting legal advice before agreeing to disclosure if, as she claimed, she had not objected to the disclosure in the first place. Instead, the mother attempted to avoid providing a straight answer. Once more, I am satisfied that the explanation for this is that the mother was attempting to make suggestions to professionals in an opaque way that there may be safeguarding concerns in respect of the father without wishing for these to be scrutinised further. Despite these examples of the mother trying to undermine the father's role in M's life, I am entirely satisfied that these occurred in the context of both the mother and father making no secret of their dislike for each other and determination to make the life of the other as difficult as possible. I am satisfied that their more recent behaviour does begin to show a

degree of maturity on both of their parts and a recognition of the emotional harm that M would be caused were they to revert to this sort of behaviour again. In the context of the clear behaviours detailed already, I am in no doubt that the Local Authority records accurately reflect that in the aftermath of the mother's arrest for assaulting the father in September of 2020, the mother told M that the father *"was not her* [M's] *friend because he sent mummy to jail."* I accept both that M said this to the social worker as detailed within the assessment report and also that she was told this by her mother. This was clearly a comment designed to negatively affect M's view of her father. It is right that this comment must be viewed in the context of a point in time at which the dislike and distrust between the parents was at its very highest. Whilst I am entirely satisfied that this was said to M by the mother, and that the mother's inability to remember saying it now is highly questionable, it is not the sort of behaviour that is likely to occur again in light of the progress both parents have made in being able to prioritise M's welfare over their own. Of course, the fact that the mother has at points not been entirely honest in her oral evidence does not mean that the whole of her evidence is undermined. Indeed, it is clear to me that the mother was entirely truthful when describing that M has at points been reluctant to attend contact and that she has demonstrated behaviours which led the mother to worry about her. The fact that M has been spending significant overnight time with her father for as long as she has, and has been clear to both the Family Court Advisor and the mother herself that she enjoys it, is good evidence that the mother has encouraged her to spend time with her father. The mother's encouragement to do so has, on mother's own evidence, led to a noticeable reduction of M's behaviour after contact which had led to the mother's concerns in the first place. The mother's determination to promote contact with the father is the clearest of evidence that her focus is, usually, on what is best for M and that it is only occasionally diverted by the feelings that exist between the parents. It is clear that the relationship between the mother and father had deteriorated significantly before they officially separated and that both parents subsequently acted in ways

which were not child focused. Despite this, the mother's commitment to promoting contact in M's welfare best interests is clear. Overall, the mother's evidence reinforced further my view that she is focused on M's welfare best interests, is able to provide her with excellent care on a consistent basis and appreciates the negative impact that M's lived experiences within the family home have had on her.

69. Finally, I heard from the father. I found his evidence, similarly to the mother, to be largely straightforward and clear. However, also like the mother, I found his explanation as to some of his past behaviour to be simply implausible and tainted by the distrust and dislike which clearly continues to exist between him and the mother. For example, the father's explanation as to why he stopped the Child Benefit being paid into the joint account within a month or so of the mother's arrest for assaulting him being purely related to his status as *"high income individual*" was nothing more than an attempt to recast what was a reactionary and malicious decision on his part in the aftermath of the incident between him and the mother. In cancelling the child benefit, which he knew was for the benefit of M who was living with her mother at this point, the father lost sight of the welfare of his child and, instead, chose to focus on punishing the mother. Of course, it is right that he was the victim of the mother pinching him during an argument and so his reaction must be viewed in the context of someone recognised under the Domestic Abuse Act 2021 as a victim of domestic abuse. However, the father's tendency to be immature and stubborn at points of conflict between the parents was shown once more when he refused to appear on camera during the marriage counselling to which he "*begrudgingly agreed."* On his own admission, rather than agreeing to engage in the counselling and then simply doing so, the father agreed to engage and then deliberately did so in a way which was, in my view, no more than childish. It is also clear that the behaviour of both parents during a contact session handover in which there was disagreement about M taking an overnight bag with her could, and indeed should, have been avoided. M was caused

upset by the reaction of the father walking into the room unexpectedly and also in light of his reaction to her bringing an overnight bag. Each of these incidents in isolation does not appear particular significant, but when taken as a whole paints a clear picture of the father allowing his feelings towards the mother to influence how he behaves. For example, his decision not to simply tell the mother that M had wet the bed on two occasions at this house by way of a simple note in the handover book was a deliberate decision on his part which was taken, I am satisfied, as a result of the dislike he had for the mother at the time and a feeling that certain information was being withheld from him. It is this sort of "tit for tat" behaviour between the parents which simply must not occur in the future for the sake of M's emotional welfare.

The father was cross-examined on behalf of the mother about his decision to call the police on 27 September 2020 after the incident which had occurred between the parents. It was suggested to him that his decision was not *"child focused"*. The court must be cautious in assessing such a suggestion as, ultimately, the mother was convicted of assaulting the father on this date and undertook a victim empathy course in recognition of the need for changes to be made in her thinking and behaviour. Whilst I do not feel that the decision to phone the police was one in respect of which father could properly be criticised in light of the outcome of the police investigation, it is right that the father's decision to submit a safeguarding concern to the Local Authority two days later on 29 September 2020 at 04:29 AM is one which, on scrunty, reveals the sort of un-child-focused behaviour which the father has been capable of demonstrating previously. The escalation of the matter to involve the local authority, and therefore likely the involvement of social workers in M's life, was a significant step taken by the father. It was a step taken following a disagreement between the parents at the school gates on 28 September 2020 and not immediately after the assault on the father on 27 September 2020. In the same way that the mother has attempted to involve professionals in a way designed to support her own agenda – the

father's decision to invite Local Authority input into the life of M was not one which was taken with M's welfare interests at heart, but instead one taken as a result of the animosity and dislike emanating from each parent towards the other. The father's inability at points to put to one side his own feelings towards the mother for the benefit of the child is evident from the instances I have detailed. However, in the same way as the mother, I did glean from the father's evidence that there had been genuine progress made in being able to put the clear continued distrust and dislike to one side and to focus on what is best for M. This was most clearly demonstrated in the father's evidence that whilst he ultimately sought for M to spend an equal amount of time with each parent, he appreciated that things should progress slowly and at M's pace. This was insightful and showed that the father had reflected on matters somewhat. It was submitted by counsel on behalf of the father in closing that M has been exposed to the clear acrimony between her parents and that neither parent could truly deny this to be the case. I agree entirely with that characterisation of the situation. Despite the occasions previously when the parents have each been unable to prioritise M's welfare over their own, and have made poor choices as a result, by the conclusion of each of their evidence it was clear to me that both parents love M very much and, whilst being unable to fully recognise their role and responsibility in respect of the animosity and continuation of their questionable behaviours as a result of their continued dislike and distrust, did show some insight into the need for it to stop for M's benefit. I am therefore satisfied that both parents are likely to continue on their journeys of putting their feelings for M above their feelings towards each other in their hierarchy of importance.

Welfare Analysis

70. In respect of M's wishes and feelings, I accept that she has said she would like things to remain the same in respect of the time she spends with each parent and that she enjoys attending her current school. Most recently, as detailed within the addendum

s7 report from March 2023, M told the Family Court Advisor that *"she has no worries about living with her mother and spending time with her father, and that she enjoys the times she spends with her parents as they do fun things together."* Within the same report, M told the Family Court Advisor that she would like to spend more time with the father at weekends so that she could visit his family who live in another part of the country. She was clear that she was unsure how she would feel were so to spend an equal amount of time with both parents. It is therefore abundantly clear to me that M's currently expressed wishes and feelings are that she wishes to spend time with her father, perhaps slightly more than currently, but that she was uncertain about an equal split of time. Whilst important, the views of M, whilst she is mature for her age, must be viewed in the context of her being just seven years old and, importantly, form just one part of the evidence I must consider in determining where her welfare best interests lie.

71. M's emotional, physical and educational needs are a significant consideration in this case. As the Family Court Advisor highlighted within her original s7 report, whilst M presents as an emotionally stable and resilient little girl "*the ongoing difficulties between her parents heightens her vulnerabilities*." I am entirely satisfied that the real risk of harm to M in this case is the risk of emotional harm were either of her parents to be unable to put their feelings about each other to one side and for this to continue to negatively affect her welfare. However, I am satisfied that the risks to M of either parent doing so is greatly reduced from the level of risk at the height of the parental animosity.

72. In respect of physical harm, for the avoidance of any doubt neither parent pose a risk of physical harm to M. The mother poses no risk of harm through exposure to physical abuse and the father poses no risk of harm through physical or sexual abuse. Whilst not minimising or ignoring the mother's conviction for assaulting the father in 2020, I am satisfied in the context of this case that the incident must be viewed in the

context in which it occurred at the height of the breakdown of a distrusting and unhappy relationship and is an incident into which the mother has shown a significant degree of insight. I am entirely satisfied that it is not reflective of a wider risk to the father or, importantly, M of harm in the future.

73. The risk of harm at this point in time for M is likely to be increased significantly if the parents are required to interact beyond the level necessary to ensure that the arrangements put in place for M are effective and are efficiently put into place. The court does not expect the parents to stop feeling the way they do about each other. Their feelings are based upon what they each say are their lived experiences of life in a relationship with the other. However, the court does expect them to be able to prioritise M's welfare by ensuring that the arrangements made for her work in a way that is in her best interests. I am satisfied that both parents are both able, and now largely willing, to do so.

74. The likely effect on M of any change in circumstances is an important factor. M has for a long time been spending time overnight with her father. She enjoys this and I am satisfied that there is no risk to her in continuing to do so. However, there is always the risk of destabilising M emotionally were the arrangements to change too quickly or too significantly for her. There is a risk that, in fact, too drastic a change too soon may result in a negative impact on her relationship with her father in the longer term if she feels rushed or that her views have not been listened to. Indeed, the father himself recognised this in his evidence. For M, there is a need to ensure that the arrangements in place are realistic and do not make her feel significantly unsettled.

75. What is abundantly clear from M's perspective is that she requires a stable and workable arrangement to be put in place which provides her with the best chance to develop and maintain the strong and loving relationships she has with both parents. Doing so will avoid the emotional harm that would be caused to her were she to

experience the sort of short-term changes in routine which she has since these proceedings commenced.

76. M's characteristics which are relevant include her age and cultural background. M is fortunate to have two highly intelligent and eloquent parents who both love her dearly. She is a bright young girl who is aware of the conflict that exists between her parents.

77. I must consider any harm M has suffered or is at risk of suffering in the care of either parent so far as it is relevant to the welfare decision that I am required to make. For the reasons I have already explained, it is not necessary to determine the specific allegations made by each parent within the composite schedule of allegations and narrative statements regarding the alleged patterns of controlling and coercive behaviour each says the other subjected them to during their relationship. It is abundantly clear that whatever did or did not occur between the parents during the course of their relationship there is no suggestion from either parent that it prevents M spending significant unsupervised time with the other parent. I agree entirely with this agreement between the parents which is reflective of the fact that M is not at risk of physical harm in the case of the either parent. If both parents were to be unable to put aside their feelings towards each other, then there is a risk that M would be caused emotional harm as a result of feeling that the parent she was currently with was portraying the other in a negative light. On more than one occasion both parents have shown by their behaviours that they have been unable to focus on M's welfare and, instead, have behaved in a way designed to harm or punish the other parent. Neither have at any point have deliberately done anything to harm M and I am entirely satisfied neither are likely to in the future. However, the risk that both will on occasion be unable to put their differences to one side for the benefit of their daughter continues to exist and both must guard against it. I have borne in mind the mother's evidence that M had sometimes returned from her father's care with unwashed school

clothes and has on occasion returned home having not washed her hair or having had a shower. I accept that this has occurred on occasion and that it is far from ideal. There is a risk that M may feel uncomfortable and unhappy if she wished to have a shower at her father's but was unable to. However, I must be cautious in respect of such assertions as M has not expressed any such worries to the Family Court Advisor during their conversations and chose to use the "*safe*" sticker to describe how she feels with her father. I accept the Family Court Advisor's conclusions that M has a positive relationship with both parents and enjoys the time she spends with each of them. In conclusion, both parents are capable of meeting M's needs when she is with them. The only risk to this maintaining is if either were to allow their feelings towards each other to distract their focus away from meeting M's needs.

Conclusions

The Amount of Time Spent with Each Parent

78. Having weighed all of the evidence before me holistically and applied the welfare checklist to the decisions I must make for M, it is abundantly clear to me that her welfare best interests will only be met by a continuation of her spending regular time with her mother and spending significant time overnight with her father. In respect of the amount of time she spends with the father, I am satisfied that there should be an increase to the current arrangements. This will ensure that both parents' equal status in her life is emphasised to her, albeit I am not satisfied that an equal split of time is currently in her welfare best interests. In my judgment, a move to equal time at this stage would be too disruptive for M. Currently, M spends Monday to Tuesday on 'week one' and Friday to Monday on 'week two' with her father on an alternate basis. I am satisfied that, in order to maintain her relationship with her father and ensure that M is aware of the equal importance of each of her parents in her life, there should be

an increase in the amount of time M spends with her father. The promotion of the importance of both parents equally in her life is an important aspect of M's welfare needs, particularly in light of the incidences where there have been attempts by both to negatively influence her view of the other. The arrangements that meet M's welfare best interests are at this point in time that:

i) Week One –Monday after school to drop off at school on Wednesday (a one-night increase),

ii) Week Two – Friday after school to drop off at school on Tuesday (a one-night increase on week two).

The table below sets out which nights M will spend with each parent within any 14 day term-time cycle:

M	**T**	**W**	**T**	**F**	**S**	**S**
F	F			F	F	F
F						

79. This arrangement will ensure that, whilst M still spends slightly more time with her mother, and indeed has the benefit of six nights in a row living with her mother, she also has a significant period with her father every other weekend as well as two nights in the week. I have considered whether the pattern as set out would be too disruptive for M in respect of the number of moves between her parents. However, on the evidence before me there is no suggestion that the number of moves causes M any harm. The new arrangement will keep the number of moves the same as it currently

is, but with a one-night increase on each of the periods of time spent with the father. This arrangement also has the benefit of all handovers utilising the school during term-time as one parent will drop off and the other will pick M up. From M's perspective, it is clear to me that there needs to be a gradual progression to the above arrangements becoming the norm for her. Therefore, between now and October half-term (commencing Monday 23rd October 2023), M should begin to spend an extra night on week one with the father (i.e. an immediate increase to Monday after school to drop off at school on Wednesday contact). After October half-term, the extra night in week two should also be incorporated, ensuring that after the October half-term the arrangements set out within para 78, above, are in place.

80. In respect of school holidays, half-terms and two-week holidays (Christmas and Easter) should be equally split with the precise arrangements to be agreed (and included within the order).

81. The longer summer holiday should involve M spending an equal amount of time with each parent, and each must have a period of two weeks in which they can take M on holiday if they so wish. The precise arrangements for each summer holiday must be agreed in advance, but each parent must have a two-week period with M if they so wish. In the event that agreement cannot be reached, then it is the mother who should elect which two-week block she would wish to have with M in the 2024 summer holidays, and the father can then choose in 2025. During each summer holiday, M should be with the parent who is to take her to school on the first day of the new term for the week before the start of term.

82. In respect of Eid-ul-fitr and Eid-ul-adha (as determined by the London Central Mosque Trust Ltd), M shall spend these alternately with each parent in a pattern to be agreed between them. If either Eid falls in the period of time M is due to spend with a

particular parent then this should remain the case to avoid unnecessary disruption if it can be accommodated within the alternating system.

83. In the event that the parents are able to discuss matters and agree alternate arrangements in the future, which in time I hope they may be able to do, then they are welcome to alter the arrangements set out above without the need to return to court. They simply need to record in writing what they have agreed so that there is no risk to M of the arrangements becoming destabilised by further disagreement between them as to what has been agreed.

The Nature of the Order

84. In respect of the nature of the order under which the above arrangements should be facilitated, it is clear to me that there is the need to mark very clearly that both parents have an equally important role to play in M's life. Whilst it is clear to me that the parents are still unable to fully put aside their personal differences for the sake of promoting their daughter's welfare, the bringing to an end of these long-running proceedings will hopefully mean that they feel more able to do so. The lack of a current working co-parenting relationship, whilst relevant, is not a bar to the making of a joint "lives with" order. Indeed, in my judgment M's emotional needs will be best met by the making of an order that makes clear that she lives with both parents (albeit with slightly more time spent living with her mother) and that both parents are equally as important to her. Without a joint "lives with" order being in place, I am satisfied that there would be a risk to M's emotional and psychological welfare due to one parent allowing their feelings towards the other to once again influence their decision making to the detriment of M. M living with both her mother and father ensures that there can be no dispute in the future that both have equal rights to information regarding things like M's schooling and medical records, an equal right to take M abroad and an equal responsibility to promote the importance of the other parent to

her. Only the making of an order that M lives with both parents meets her welfare needs in my judgment. I have borne in mind that the Family Court Advisor does not recommend a "shared care" arrangement. However, it is clear to me that there was no analysis whatsoever of the pros and cons of a joint "lives with" order by the Family Court Advisor. As is sadly often the case, there appears to have been a confusion between a joint "lives with" order and a shared care arrangement. An order that a child lives with both parents is an order the Family Court can make under s8 of the Children Act 1989. A "shared care" arrangement, or "shared care order" as it is regularly erroneously referred to, is usually interpreted as an arrangement where a child spends an equal amount of time with both parents on a "week on, week off" basis. Having conducted the balancing exercise, it is clear to me that there and no negative impacts of a joint lives-with order being made in this case for M, but that an order than she lives with her mother and spends time with her father runs the risk of the importance of both parents in her life being undermined. This would cause M emotional harm which could affect her throughout her childhood and beyond in respect of her relationship with both parents.

Change of School

85. In respect of the mother's application to change M's school from her current school to either her first alternative preference school or second alternative preference school, I have considered the written and oral evidence on the topic and the written submissions provided on behalf of each parent. The thrust of the mother's application is that the journey by car can take "*well over 30 minutes*" (C2 application dated 28 April 2021), that the ULEZ expansion ensures that it is not economically possible for the mother to take M to her current school and that the journey by public transport will take nearer to an hour. In oral evidence, the mother's said that the best-case scenario for the journey to school is 20 minutes, but that it usually takes 30 to 45 minutes. The mother says that the school's previous concerns regarding M's lateness

are partly due to the length of journey required from her home to the school. It is said on behalf of the mother that M has experienced bullying at her current school and has a lot of friends who already attend the mother's first alternative preference school as a result of her engaging in numerous extra-curricular activities in the area in which the mother lives already. In opposition, the father says that M is settled in her current school and has friends there and that the mother has exaggerated the length of the journey to a degree. It is said on his behalf that to change M's school in the absence of any solid evidence-based reason to do so would not be in her welfare best interests due to the disruption that it would cause.

86. I have to bear in mind that M has attended her current school since 2020 and it is the only primary school she has known. Of course, this could never be a determinative factor in my deliberations. I bear in mind that the mother made her application for a Specific Issue Order regarding schooling in April 2021 and that the delay within the court process is not her fault. However, the familiarity that M has with the school is an important factor. Whilst it is said on behalf of the mother that M has experienced bullying at the school from an older year group, this is not reflected within the, albeit limited, views M has expressed to the Family Court Advisor about her enjoying school. I also have to bear in mind that changing school at this stage would involve a "mid-year" change, albeit we are close to the start of the academic year and so the impact is minimised to some degree. I have no doubt that the mother is telling the truth about M having friends who attend her first alternative preference school as a result of her extra-curricular activities she undertakes in the area. I also accept what the father says about M having friends at her current school. From M's point of view I am satisfied that she would have friends at both schools, albeit she likely knows more children who attend her current school. The issue of travel is a significant one. In many cases where a child spends their time between the care of two parents, they have a different journey to school depending on where they are travelling from. However, I

do not underestimate the stress and worry that M may experience as a result of being late for school if traffic is particularly bad on a given day. I have not ignored the mother being in a weaker financial situation than the father and the impact that this has on her ability to afford a car which is ULEZ compliant or to afford the ULEZ charges. Both the travel time in the car from the mother's house to the school and the use of money to facilitate that travel may ensure that M suffers emotionally and by way of there being less money available to spend on other things. However, balanced against that is the fact that moving schools is a significant thing for a child of M's age and it is clear to me that she has friends and connections at her current school which have an emotional value to her. To change school at this stage would inherently be disruptive for her.

87. Having considered the evidence before me at this stage, I am satisfied that it would not be in M's welfare interests to change school at this point in time. M will need some time to adjust to the arrangements made within the final child arrangements order I make in this case and a change of school would be too much for her to take on at this point in time. Further, I must consider that in respect of travel time and the journey to school, changing school would largely replicate the situation for M when travelling from her father's house to the new school. Whilst I appreciate the potentially difficult financial position the mother may be in it is not sufficient to outweigh the emotional harm that M would likely suffer were she to change school at this point in time. Therefore, with M's welfare at the forefront of my mind, I am satisfied that the mother's application for a Specific Issue Order should be refused. In the event that there continues to be a desire for M to change school by the end of the school year, and there is not agreement in this regard between the parents, then of course further application can be made, if necessary, in respect of this specific issue. If any such application is made, then it may be that the court considered some input

from CAFCASS necessary – but that will be a matter for the magistrates or judge dealing with any such application in the future.

Orders

88. I therefore confirm my orders as follows:

i) M shall live with both parents;

ii) M shall live with each parent for the durations set out within paragraphs 78 to 83 of this judgment;

iii) The mother's application for a Specific Issues Order regarding a change of schools is refused;

iv) All other applications which fall to be determined are dismissed.

Post-script

89. This case was the subject of an unsuccessful application to appeal. The appeal judgment of Cobb J (as he then was) is published as **A v K (Appeal: Fact-Finding: PD12J)** [2024] EWHC 1981 (Fam).