

IMPORTANT NOTICE

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Case No: OX20P00428

In the Family Court

In the Matter of the Children Act 1989

Date: 21st December 2020

Before:

Her Honour Judge Lloyd-Jones

Between:

F

Applicant

-and-

G

Respondent

1. This application concerns two children: a girl, A, who is three and a boy, B, who is nine years old.
2. The mother and father are the parents of both children. Until 2016 they lived together as a family in London. At that point the marriage started to break down and by the start of 2017 they were formally separated and between then and now they have managed the divorce and separation of finances reasonably amicably.
3. Until earlier this year they continued living in London close to each other and the care of the children was shared between them with support from wider family. The mother has employment with limited fixed working hours and the father holds a senior position which allows him some limited flexibility but is largely office based.
4. When the country went into lockdown the parties agreed that it would be beneficial to the family for the mother to move out of London to the countryside where there was more space for the children to enjoy in spite of lockdown. The parents went to significant lengths to ensure that B was able to continue his education and a private tutor was engaged for him.
5. The move was intended to be temporary and was agreed by both parents but at some point in the early summer the mother decided that she would like to make it a permanent move. She thought it was beneficial for the children and it benefited her partly because the place she had chosen was close to her partner. Father's position is that he did not agree that the move should be permanent as it would affect the children's relationship with him. It is not possible for him to move out of London where his work is whereas the mother can commute for the limited contact time required but may even change jobs.
6. Initially the father opposed either child staying in the village where they were living but having read the reports produced in this case he accepted that the weight of opinion was in favour of child A remaining with her mother as principal carer and spending as much time as possible with him. This view was adopted by Cafcass in part because of

the unusual circumstances of child A's birth. That said it is very clear how much he adores child A now and there is no difference in his mind between his love for her and his love for child B.

7. Therefore, the evidence and submissions before me were focussed mainly on what was in the best interests of child B a significant issue being the potential for separation of the children given that he sought that child B should remain in his care while child A remained principally with her mother. Nonetheless the father seeks that I make an order in respect of child A also to avoid future argument and the mother does not object to an order being made.
8. Father's position is that the current situation could have been avoided and still could be avoided if mother would move back to London and live close to him. She does not consider that a possibility, the parents cannot agree and so the court has to make a decision. As the father said, any decision is sub-optimal but that is almost always the case in disputes between parents that come before the court.
9. The application is framed as an internal relocation application which was originally heard in August by Mr Recorder Weston and came back before me on 4th September 2020 for an interim decision given that term was about to start. At that point I decided that child B should return to his primary school in London where he had started his schooling as being the least likely to pre-empt any final decision and least likely to be disruptive for child B himself. Therefore, whilst before March the family members lived close together in the city and there was genuinely shared care, between March and September the children lived with their mother in the countryside and between September and now the children have lived each with one parent but spent all weekends together alternately in the care of their mother or father. In those circumstances it is difficult to see that there is an established status quo save for the fact that child B has attended the same school since reception.
10. Since the decision in *Re C* in 2015 it is clear that as in any other decision the decision made by a court under the Children Act for any child must be guided by the paramountcy principle in the Children Act - namely that it is the welfare of the child that is paramount. The welfare

of a parent is only important in so far as it impacts on the welfare of a child.

11. In this case it is not now a question of whether the mother should be given permission to move with the child, it is a fait accompli and she has made that clear. She has bought a house in the countryside and does not intend to move back to London. The question is a simpler and more difficult one; is it in child B's best interests to live with his father in London or his mother in the countryside where he would also be living with his younger sister.
12. The evidence I have considered is that of both parents through three statements from each and their oral evidence. I have had the benefit of reading reports from the Guardian, Ms McGeachey and the Child and Adolescent psychiatrist Dr Fiertag and hearing the oral evidence of each of them. In the course of the evidence there has been reference to a number of other documents mostly in the bundle but including the nursery application for child A which was separate.
13. The independent professional opinions provided to the court are divided in their views. Ms Mc Geachey after carrying out the balancing exercise with reference to the welfare checklist makes a clear recommendation for child B to remain with his father. Dr Fiertag does not make a clear recommendation and it is right that she did not but she expresses concern that child B will be emotionally damaged if he does not spend more time with his mother.

Ms McGeachey of Cafcass

14. Ms Mc Geachey's report carried out the balancing exercise required under the Children Act and concludes that it would be better for child B to stay with his father in London. She recognises the positives of both parents and their ability to work together except for over this one issue. She also recognised that both children are used to shared care and will miss whichever parent they are not with. At present child B misses his mother. He is not with her every day any longer and both parents are important to him. He gave them both scores of 6 out of 10, that is they were strictly equal. His comment that life would be easier if he was living in the countryside village was in the context of saying he would like to spend more time with his mother, and Ms McGeachey understood him to be saying that it would be easier to see her not that

he was making a choice. She said in oral evidence that he was trying to resolve the adult's problems for them which is a sad reflection on the current situation.

15. She recognised the sibling bond as important but also that the children had different life experiences because of child A being in the sole care of her mother immediately after her birth. Therefore, there is a history of them being separate though not from March to September of this year. Jealousy was an issue between the siblings but that was not just because of their separation, it was also because of the present uncertainty and child B not knowing the reason for their different treatment. She noted that whilst the jealousy exists child B is able to speak about it which is a positive.

16. As to schools she noted that a smaller school, therefore a new school **may** be of benefit for child B on the other hand he has been used to his primary school in London and has spent the whole of his school career there so far. I note that the reference to a smaller school being of benefit was specifically to a smaller secondary school and I have no evidence of the size of school that would be available to child B from each of the available primary schools.

She said that due to the fact that social interactions are a challenge for him and his issue with motor skills may make him prone to bullying, the school setting overall is a challenge. Any transition including a change of school will be difficult. Her view was that the arrangements worked well for child B in the summer during lockdown because of the extra flexibility it allowed and the fact that the pressure of school itself was absent.

17. Although she supported a continuation of child B staying at his current school and living with his father during the week she agreed that the current arrangements had the potential for harm if his contact with his mother was not increased. That said she saw the mothers' actions in making him aware of what was happening to be harmful. She said it was not necessary to have told him the truth about visiting the possible new school. She saw both parents as having the children's best interests in mind but said the mother's actions have been harmful and child B is torn between the two of them.

18. In terms of increasing the time child B could spend with his mother she saw teatime contact as a normal arrangement and the obstacles raised by the mother to this were in her mind surmountable though she may not have been fully informed about the availability of relatives and the geographical distances involved.

19. I was satisfied that the Cafcass officer had reached her conclusions after carefully considering the evidence and the positions of both parents and after considering the impact on the children of the options available as set out in her report. From her information gathering we can conclude that child B doesn't like vegetables, does like Minecraft, finds school boring (but not distressing) and values both his parents equally. From her enquiries she reports and it is accepted that child B has experienced a number of changes in his living arrangements over the course of 2020. She says that child A has managed those changes well but child B less well. She points out that his school has been the one constant in his arrangements. She reaches those conclusions after reading and taking into account the report of Dr Fiertag which says that child B is having difficulty as a result of separation from his mother.

Single Joint Expert -Dr Fiertag

20. Dr Fiertag was not asked to make a specific recommendation as to where child B should live and she did not do so in her report. She did however both in her report and more particularly in her oral evidence make it clear that she thought the current partial separation from the mother was the most significant cause for the falling off in child B's mental health. That was the impression she gave me. She saw the time over the summer as a time when child B lived with his mother and spent some time with his father rather than sharing his time between them. She saw separation from his mother as the cause of some of his difficulties and said that lack of contact with his mother is causing child B suffering which will persist if it continues.

21. She was however criticised in the questions put to her for not considering the positives of the father's relationship with his son in coming to that conclusion. She did not consider whether any difficulties might be caused by separation from his father but on questioning, agreed that she would expect it to cause some anxiety but that he had previously managed well when moving between households. She emphasised that consistency and routine are important. Any change

would be unsettling but if well managed child B's anxiety could be contained. She did not explain why his anxiety could not be contained if he was to remain out of the care of his mother.

22. She did not accept that she had failed to take into account the impact of separation from his father – the impact of seeing him less often, in the way she had considered the impact of seeing his mother less often. She said there would be an impact but that it was manageable. She referred back to the arrangement over the summer and had to be reminded that at that time the arrangement was shared care – child B was with his mother during the week and his father every weekend. Also, that during that time he was not going to formal school but was going to holiday club. Her view from her assessment she said was that he was less anxious at that point and she attributed it to the fact that he was now spending much less time in the care of his mother. She stood by that position in cross examination.

23. It was not clear to me quite how she had reached that view and when asked directly she said it was an overall impression, based on her clinical experience and assessment and the evidence she had seen and heard namely his tics, his lessening academic achievement, his repetitive questions, his discomfort and fact that the situation had been easier in the summer. In explaining that process she still did not appear to assess the impact on child B of seeing less of his father. In terms of how child B saw each of his parents, the scores she had recorded child B as giving were not how he rated them but rather how he felt at that moment in the care of each. That was not clear from her report but in any event the score when in the care of each of his parents was the same. She reported that he liked spending time with both parents but that he did not want to speak about his mother and father's homes and there was a lack of eye contact from him when she interviewed him in the care of each of them. She did not say what her conclusion from that was. She described child B as being stuck between his parents. She said that when asked he didn't know what to say. She accepted that he did not actually express a preference for living in the village in the country.

24. She said that there were elements of sibling jealousy between child B and child A and his not understanding why he and his sister were

treated differently. Her view was that that issues would be reduced by them living together and being treated the same

25. She did accept a multi factorial aspect to child B's current difficulties - including separation from his mother, his knowledge of court proceedings, his awareness of his parents' conflict more generally and the uncertainty including the possibility of a change of school and the possibility of a change in his living arrangements. I did not hear from her how she had been able to reach the conclusion that the separation from his mother was the critical issue beyond that it was her clinical assessment based on experience.
26. She agreed that he would need time to settle into a new school and would have two years in which to do that before changing schools again. Her view was that both schools are capable of providing him with the support he needs, that both are good schools. She said he would manage well in a small secondary school.
27. She acknowledged that father and mother have different methods of managing child B's meltdowns. She did not think that they are absent when he is with his father but that father's way of managing them was effective. She accepted that the father sees the meltdowns coming and deals with them early. That said, her view was that it was important that he is not prevented from having an outlet for his emotions.
28. I was not impressed by her as a witness. She justified her conclusion on the basis of her clinical experience although there is very little detail in the bundle to tell me what that experience is. It would be correct to say she was not required to carry out a wide assessment or balancing exercise but rather to assess child B's mental health and the impact of that on the decision- making process. She did indeed address that in her report but she looked at only one side of the coin without making the reasons for that clear in the context of the facts of this case. She accepted a knowledge of proceedings would cause emotional harm to the child. She did not accept that the situation in the summer was wholly different for child B from what it is now or is likely to be in the future and seemed to think that there was a well-established status quo of child B living with his mother. I am satisfied that the summer arrangements were exceptional and cannot be compared to future arrangements when it is to be hoped that all children will be able to go

to school more normally. I am not satisfied that those arrangements established a settled status quo.

29. The Mother. I have considered three lengthy statements of the children's mother and heard her oral evidence. What struck me about her evidence that it was made up of two threads -the personal decisions she had made about her own life and what she thought was best for child B. The two are closely intertwined but from the papers especially the emails in the bundle her personal decisions came first though she felt both children benefited from the more relaxed life in the country and that child B had blossomed there. I heard the evidence of both parents about how much more socially relaxed he had been as the summer wore on. Equally she has clearly made a decision that her own life is now in the country village near to her new partner so that she will either commute to London or apply for a new job more locally.
30. She was very keen to get her story across regardless of what she was being asked. She had given thought to what was in child B's best interests and concluded that what would suit her also suited him based substantially on how relaxed child B became over the summer during lockdown.
31. She has proposed a plan under which child B and his sister would both live with her and spend time with their father in the holidays and alternate weekends. She also suggested he could travel down to see the children during the week. She seemed to expect that the father could be as flexible in his work as she was. I did not find that to be realistic. It is one thing to be able to work remotely when everyone is doing it and no doubt arrangements will be more creative for everyone in future but it is another thing to expect and seek special arrangements to accommodate demanding child care arrangements in more normal times . That is how I see the mother's proposals for the father to travel back and forth to the village from London. She presented it as a child centred offer to allow the children to spend more time with him but she did not take into account how realistic or otherwise it was for him to make those journeys as well as fulfilling his work commitments.
32. She also suggests long periods in the holidays when the children could spend time with their father although again not taking account of the father's work commitments .Her offer to let him stay at her house on alternate weekends I am sure was well intentioned but I note also the

father's very negative reaction to that suggestion and I have to say it was a perfectly reasonable one.

33. She rejected all suggestion as to how she might spend more time with child B in London on the basis of lack of accommodation, his difficulty with transitions or the burden it would place on child A.
34. Focussing more directly on the mother's views as to child B's best interests she says that a new school would be better for him because it will be smaller and he has already thrived in the rural environment .She asks the court to note how well he did in the holiday club over the summer where he will have met other children who will be at the same school . She says he is missing her and that she will make sure he sees his father as much as possible. There is the added advantage of both children living together all the time which I agree is a big one.
35. She did not seem to have any doubts about child B's ability to settle into a new school at the same time as saying that he found change difficult and all transitions difficult. She thought he might be settled after a month. She did not appear to acknowledge the extent of the impact of the other differences in his life throughout the summer as compared to when he returned to full time school. Her view was that it was living with her in the village that was responsible for the improvements in child B's demeanour. She relies on his difficulties with friendships as being a reason why he would do better in the village but did not seem to be fully up to date with the situation with his school friend child X. Her suggestion that the only friend he has ever had is child Y does not seem to be correct.
36. Her evidence about child B's meltdowns was that she accepted that they were more controlled or did not happen at all when he was with his father but put that down to the fact that the place he was more relaxed was when he was with her. Her description of how father manages child B was different from his own description. Her clear suggestion was that he would do better in her almost full time care. As I think about that, I keep in mind child B's own responses when he gave both parents an equal score out of 10 to the guardian and to the psychiatrist he gave scores (once she had explained what they meant) which suggested he was equally comfortable in the care of both parents.

37. As to child A she is very definite that contact needs to be built up gradually - I did not hear anything that helped me understand why that was except for the inference that child A is more used to being in her care. Her own evidence is that she went abroad in 2019 and was away from her for 6 nights. She makes no suggestion that child A suffered by that and yet says it would be a brutal shock for it to happen again. I do not accept that. Child A has managed it once and can get used to it happening again. I did not understand her assertion that it would not be possible to make arrangements for child A to be cared for by someone else, possibly a friend or relative while she went to London to work and to spend some time with child B.

38. In her first statement the mother said that keeping the children together is a top priority but in mediation and in her emails in May this year it is her suggestion that they should be split up. She talks in her statement about her own unbearable heartache but does not contemplate going back to London or even visiting child B when he is there. All of that causes me to question how child centred her plans really are and causes me to think that she is seeking to mould the children's lives around her own plans.

39. The suggestion made about her by the father is that she is prone to making unilateral decisions without much thought for the impact on other people. She bought a house or flat without consulting him saying that there was no financial impact on him. His consent was not fully sought before child A was born and the mother's evidence at its highest did not convey that there was any serious discussion about the implications, the consultation was at best inadequate. She enrolled child A in nursery in the country village without his consent and I accept that is shown by the registration form. She published personal information without any sign of insight into the future impact of that on the children and finally she did not show any sign of accepting that she was responsible in some degree for child B's current anxiety by making him aware of the proceedings and the possibility of changes in his arrangements.

Turning then to the Father

40. He like the mother, has filed three statements and gave oral evidence to the court. From his evidence I found the father to have a clear grasp of what his son's best interests were. I record that I also heard and I accept

his evidence about how devoted he was also to child A and that his decision not to contest the position as far as she was concerned was a difficult one. It implies of course that he accepted that taking everything into account including that the mother was not going to be returning to London his position was that the children would be separated during the week. I note also his comment into the potential for damage that the mother's publications have for child A in particular. I was impressed by his insight and wish to protect her from that.

41. I was impressed by small things in his evidence which chimed with the evidence of others. For example, I was told that his way of managing child B's meltdowns was to distract and redirect and confront and that it worked by sticking with it, which I take to have meant being firm. He rejected the description of being strict but accepted he did not put up with problematic behaviour. I understood him to be saying in effect that he provided clear boundaries for child B.

42. He then gave evidence about the worry about child B rubbing his upper lip and how he had taught him to blow on his hand instead which had worked as well. He describes himself as having a close connection to child B and that came over in his evidence.

43. He suggested that the mother had a more emotional relationship with B without any suggestion that either way was better than the other and like the children's mother he was clear that both children needed both parents active in their lives. His position was that the mother's proposals were unworkable for him and therefore for the children. He said this with particular regard to the idea that he should travel down to the village for an evening in the week or go down every other Friday and stay overnight to spend extra time with the children. He could not imagine staying overnight in the house lived in by his ex wife and the children as if they were still a family and I do not see that as unreasonable.

44. He acknowledged that the time he had spent with child B on holiday this last summer had been unusually positive but he did not think he could say what had been the cause underlying that. He accepted that child B had been more relaxed but did not accept that this could be attributed to being substantially in his mother's care because in fact

child B was moving between them, nor did he accept that being in the country village was in itself a clear cause.

45. His view is that it is preferable for child B to stay at the school he knows and has attended from Reception until now when he is in year 4. He acknowledged he may have to use wider family or a childminder sometimes for taking to or collection from school but equally the need for that will be reduced because of the greater flexibility that comes from working from home sometimes which is very close to school. He also described very positively and without challenge the occasions on which the maternal grandfather has been able to collect child B from school.

46. He did not accept that child B at present has no friends and described play dates and the fact that child B was being cared for within his friend's family during this hearing. He did not see having to start from scratch to form social relationships as being a benefit. He thought it perverse to say that child B had less opportunity to socialise at his school in London than he would have at the school in the country village. He accepted that child B had flourished over the summer but saw that as being because of lockdown and a long period without having to go to school at all.

47. His suggestion is that child B stays with him in the week and that weekends alternate between the parents to allow the children to spend as much time as possible together. He has 5 or 6 weeks holiday a year from work which he can make available to the children whereas the mother had 26 or so non-working weeks. He recognises that she has other work but suggests it still means that the children can spend 9 of their school holiday weeks with their mother thereby increasing the time they spend both with her and with each other.

Consideration and analysis

48. Any decision about a child must be made in his or her best interests. The child's welfare is the court's paramount consideration and that welfare must be considered against the welfare checklist contained in s1(3) of the Children Act. The paramountcy of the child's welfare is no different when making an internal relocation decision than any other decision for a child and that has been properly recognised by counsel on both sides in the way they have presented their respective cases.

49. Applying the checklist to the facts of this case I comment as follows ;

a) **The ascertainable wishes and feelings of the child.** Child B is clearly attached to both parents - he is used to spending substantial time with both. He has anxieties about school but he is not in a position at present to have a preference between them because he has only ever been at his school in London . Both parents believe that he has expressed a preference to be with them and that is not surprising in the context of the expert evidence and the circumstances of this case generally. He has been strictly fair and equal in the 'scores' he has given them. He seems to have mixed feelings about his sister but the sibling bond is an important one .

b) **His physical emotional and educational needs -and d) his age sex and background and any characteristic the court considers relevant.**

I take these two considerations together.

Child B's particular needs stem from his diagnosis of autism -other than this he needs like any other child, love and stability and security. As a child with autism change is a difficult issue for him and so the question of stability and security is particularly important in the context of what has been happening to him since March this year. One of the particular factors to be taken into account therefore is how change should be managed for child B -whether there is any positive benefit in the change proposed by his mother or whether change should be minimised.. I must also take into account the question of his relationship with his sister and how that will be affected by them living together or apart.

c) **The likely effect on him of a change in circumstances.** Both parents agree that he should spend substantial time with each of them. It is just a case of how that should be organised and in particular where he should spend weekdays during term time. The psychiatrist accepts that a change is likely to be difficult , the mother accepts that it will take him a month or so to settle down .The task is to weigh in the balance factors in favour of that change with the harm that change itself will bring as well as factors in favour of minimising that change. There has been change already since the time he was in lockdown in the countryside including the need to return to school never mind which school. Is there evidence that it will be such a positive benefit to him to spend more term time weekdays with his mother or to go to a different school so as to make a change worthwhile?

d) **Harm suffered or that the child is at risk of suffering.** The psychiatrist says that his mental health has deteriorated since September. Mother says that is due to separation from her while, father says it is due to more general uncertainty and awareness of these proceedings that has been caused by her.

The psychiatrist is of the view that he is suffering through not living with his mother, but I was not satisfied that she properly justified that view.

The experts agree that child B should be spending more time with his mother one way or another. I do not dwell on the 'cable tie' incident. Both parents have a different account of what was going on in child B's mind and it seems to me that that difference may be an example of child B feeling torn between his parents .

e) **How capable each parent is of meeting his needs.** In this case both parents are very capable of meeting his day to day needs and have done so throughout his life and they both show him great love and affection. No serious issues have been raised about that. I have though been more impressed by father's child centred attitude and his ability to manage child B at times of stress and less impressed by mother's decision making process when I consider how child centred those decisions have been.

50. There are a number of issues central to my decision in the light of the evidence. First whether mother or is father better able to meet his needs on a daily basis. Secondly, is living in London or the country village likely to be beneficial for him bearing in mind that there is no clear status quo -over the last year he has lived in both places under different arrangements. Part of this is whether there is any inherent benefit in living in town or country.

Third, how is he likely to cope with a change of school -is there any clear evidence that it will be better for him to change schools. Fourth the implications of possibly living separately from his sister. I have been much exercised by concern about separating the siblings

51. In considering these issues I have thought about whether he will have a better chance of making friends in the school in the village than retaining the friends he already has, whether the nature of the relationship with one parent or the other point in one direction or another and how the time he spends with the both parents will be maximised given the distance between them and the commitments of each. The decision is not about fairness to the parents it is about what is best for child B and for child A.

52. I am entirely satisfied that both parents can meet his needs but I find the father to be more focussed on what is best for child B with less regard for what he wants to achieve for himself. It is not unreasonable for him considering his position at work to be committed to that as well as caring for his children and I accept that inevitably allows him less

flexibility in managing his working life than mother given the nature of their respective employments. I am not satisfied that the deterioration in child B's mental well-being can be attributed solely to his removal from the village and the care of his mother. There are too many other factors for that to have been demonstrated even on the balance of probability. He has had to go back to school and he does not find that altogether easy whichever school it is. He is not unlike many other children in that respect. Life has returned to something like normal although not even quite that after what was in effect a 6 month holiday which he enjoyed. He knows about these proceedings and he knows that his parents are in dispute and that what he knows as his normal life has been changed and could be going to be changed further. He is anxious about all of that. I cannot say therefore that a change for child B in going back to the village nearly full time is in itself likely to be beneficial. Rather there is a risk in changing what he has known. I am not satisfied that there are such benefits in living in the countryside that that should have a big impact on the decision

53. It is apparent from Mother's emails in May and July this year that even she contemplated various options at that stage rather than suggesting that there was a clear benefit to child B in her proposals for him to move. She contemplated a number of options for child B but the need she expresses there to stay in the village comes principally from what she wants for herself.
54. Living in town or country is a matter of personal choice and the benefits of each will change as a child grows older. If child B lives with his father in London and spends his time with the mother in the holidays and at weekends he will get the benefit of both as will child A. It is not 'either or'.
55. Equally I am not satisfied that there is positive merit in a change of school. Both are good schools capable of supporting his particular needs and the idea of a small school is raised in the context of secondary education not primary. He is going to have to change of school in just over two years anyway. He has been at his school in London for the whole of his school career so far and given the potential difficulty for any child in changing school at a different time from his peers there would have to be a very positive benefit in the new school proposed to make it worthwhile. I do not understand or accept that if he has difficulty with friendships a change so that he has to make a

completely new set of friends even if they are people he has met at holiday club is likely to be beneficial for him. Mother may be right that there have been issues in his current friendships but those friendships do exist even on her evidence and there is no evidence of any friendships in the village school - merely that he can be introduced to children at the school before he starts. There is no guarantee at all that he will in fact make friends more easily in the village than in London.

56. I have been very concerned about separating child B from his sister and because of the agreement between the parents I accept that A will go on living with her mother during the week. It is not attractive to split siblings as a rule but in this case child A's experience of life has been different from child B's, the time she has spent with her father has been shorter. Nonetheless it is unattractive, and I have had to consider it carefully bearing in mind that the children's welfare is paramount. I have concluded that again it is not all or nothing. On the plan I have decided upon the children will spend 14 full weeks a year with each other that is the whole of the school holidays and all weekends. That is a total of 202 days out of 365 - more time together than apart. This is so especially when one bears in mind that during the school week they would both be spending six or more of their waking hours apart in any event while they were at school. It will be a loss not to spend weekday evenings together, but I can only achieve that by ordering that child B move to live in the village. I am not satisfied that that is in his best interests when I take into account the impact of moving schools from something that is good to something that is uncertain and the beneficial nature of the relationships between him and his father. Although it is difficult the balance comes down firmly in favour of child B remaining with his father in London during the week in spite of the separation from his sister that will entail. There has been reference to jealousy from child B towards his sister and that this will be exacerbated if he perceives their treatment to be different. Their treatment would inevitable be different in any case because he is older and no-one has suggested he would not cope with that. It will be up to his parents to promote the differences positively so that he does not perceive himself as losing out.

57. I am satisfied that child B needs to see as much as possible of his mother while living with his father during the week and that he needs to be able to move as naturally and easily between them as possible.

Considering the arrangements in the round I am not persuaded by mother's alleged difficulties in seeing child B in the city given that she will be travelling up to the city at least once a week for work. The difficulties she raises are obstacles to what the father suggests rather than real difficulties.

58. The evidence I heard was that with preparation and explanation child B can cope with changes. He was able to enjoy going out for pub meals with his grandfather and there was no challenge to the positive relationship they had. It is perfectly possible to find a regular restaurant to go to or to put some toys in her father's flat. When I compare the difficulties she raises to the very real difficulties presented by her proposals for father's travel to the village I am not persuaded that it is easier for him to go there than for her to go to London.

59. Mother's suggestions are presented as child focussed in allowing extra time for the children to spend with the father but all the effort required is from him. I hope she will be able to prioritise child B and to make the effort required of her by this decision. I also do not accept that appropriate arrangements cannot be made so that child A can be cared for by someone else during a few hours while she is absent. I have heard no evidence to suggest that child A is less adaptable than any other child.

60. I also do not accept that it is not appropriate for child A to spend more than two or three nights away from her mother in the holidays. Any three year old should be able to be cared for by her own father and she was able to do it when it suited the mother's arrangements.

61. Child B and child A are lucky in that they have not one, but two parents who want what is in their best interests and are prepared to devote themselves to their care. I hope and trust that will allow them to put aside their differences that have been caused by this application and continue to care for the children cooperatively as they have in the past. This decision is not about one parent winning or losing it is a decision made on their behalf by the court in the hope it will allow them to move forward in caring for their children.

Actual arrangements.

62. The order will be that the children will live with both parents but the time with each will be defined as follows ;

Child B will live with his father from Sunday evening to Friday evening and go to school at the school in London

Child A will live with her mother in the village and go to nursery and school there on the same basis.

The children will spend every weekend together alternating between their parents.

63. Father is also to make child B available to spend time with his mother one tea-time per week mid-week or on the Friday of a weekend when he is not with her if she prefers.

64. Both children will spend their school holidays together in a pattern which shares the time between their mother's and their father's care. The summer holidays will be split with a minimum of two weeks in their father's care and the remaining four with their mother. Christmas and Easter holidays will be shared equally and the children will spend all half term holidays with the mother unless otherwise agreed.

Counsel referred to school holidays as adding up to 14 weeks in a year. I make it 13 and that they are all accounted for above. If father can be more available than above then any 'spare holiday' should be spent with him bearing in mind his more limited time with child A.

65. The holiday time arrangements will start at the end of this term assuming the father can be available at short notice to care for the children for a full week of this Christmas holiday. I heard no evidence about how the children would spend Christmas itself and I anticipate that it will alternate between the parents.

66. I am not clear however if father seeks to continue the two weeks of father /son time that he has previously enjoyed with child B or what mother's view about it is and that needs to be clarified in the light of my decision.

67. Until this issue arose the parents were able to work cooperatively for the benefit of the children. It is up to them to return to that situation and to do what is best for the children now. The Mother needs to be constructive and creative about the arrangements she can make and they both need to be flexible within the terms of the order.

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