

DISTRICT JUDGE COCKAYNE (SITTING IN PRIVATE)
Re T and G (Allegations of Alienating Behaviours)
Neutral Citation Number: [2025] EWFC 15 (B)

IN THE FAMILY COURT AT DUDLEY

Claim No: WV23P0113

Date: 30th January 2025

Before :

District Judge Cockayne

Between :

The Mother

Applicant

- and -

The Father

-and-

1st Respondent

Child T and Child G
(through their rule 16.4 Children's Guardian)

2nd and 3rd
Respondents

Miss Fitt (instructed by instructed by Ms. Banga of Waldrons Solicitors) for the Mother
The Father was unrepresented and acting in person
Mr Smith (instructed by Ms Becky Tuckley of Star Legal Solicitors) for the Children
Hearing dates: 6th, 7th, 16th and 30th January 2025

Approved Judgment

This judgment was handed down at 9.30am on 30th January 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives

This judgment was given in private. The judge gives permission 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 this judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

District Judge Cockayne:

1. I am concerned with two children, T, now age 14 years, and G, now age 12 years. They live separately, T with their father, his partner and T's two younger paternal half-siblings; and G alone with their mother. Over the last year they have spent very little time together or with the other parent. This Judgment is given at the conclusion of a final hearing which took place before me on 6th, 7th, 16th and 30th January 2025 to determine their living arrangements, contact and G's education.

PARTIES THE HEARING

2. The mother was represented by counsel Ms Fitt. The father represents himself but was assisted by a court appointed QLR on Day 1 and in undertaking cross examination of the mother on their instructions on behalf of the Court. The children are represented in these proceedings by their Rule 16.4 Guardian, who instructed counsel, Mr Smith. I heard oral evidence from the mother, the father and the Children's Guardian.
3. Each parent has made a number of statements which I have read. I have also considered the bundle entirely including Section 16A and Section 7 reports, school and medical information. I cannot recite every piece of evidence heard and read so if I do not mention something written or said orally it does not mean I have not taken it into account.
4. The position for T is settled – they live with their father and the mother respects their wishes for no contact with her. In respect of G, the father, following the Children's Guardian's recommendation, proposes that G move to his care and without any transition to prevent the mother from undermining such an Order, and that thereafter her contact be supervised. This is in light of his allegations, again support by the Children's Guardian, that the mother has engaged in alienating behaviours which have jeopardised his contact with G. The mother's position is that she very much resists any suggestion that G live with their father and tells me she has no objection to G's contact with the father, but she cannot physically make them go.
5. It is accepted that G is settled in their secondary school (school V), which they have attended since September 2024 located near to the maternal grandmother's home some 45 minutes away from the father and which caters for their specific needs as a child with ASD, and the mother thus proposes no change. The father requests in addition to a transition to his care a move in schools to one closer to him. Three have been suggested during the course of this Final Hearing: school X (where G was originally registered to attend in September/October 2023); school Y (where T attends); and school Z (proposed during the Children's Guardian's closing submissions).

6. I wish at the outset to express my gratitude to all witnesses, who have given me their oral evidence in a clear way. I also want to thank counsel for their thorough yet targeted approach to the evidence and helpful submissions.
7. I am providing a written judgment, to record the evidence before the Court and to make findings of fact. Not only will it be important for the parents and any future professionals working with the family to read it, but it will form the basis of any future decision making if the matter comes back to Court.

BACKGROUND HISTORY

8. The parties separated in mid-2022, the mother taking G with her when leaving the former matrimonial home. She alleges having done so in fleeing domestic abuse. The father asserts that in fact T asked him to leave the mother due to their not getting on, which he did, taking T with him. The family were subsequently in family proceedings in 2022, which was the mother's application for a Child Arrangements Order for the children to live with her, a Prohibited Steps Order and Specific Issue Order for T to be returned to her care. Cafcass completed a 16A risk assessment regarding concerns relating to T and G living separately and concerns relating to domestic abuse which included allegations of physical, emotional, and psychological abuse which was evidenced in the information from the Police and Dudley Children's Services. The advice was for the court to consider a Fact-Finding hearing followed by assessment by Dudley Children's Services. At the first hearing however both parties agreed a 50/50 shared care arrangement. A Final Child Arrangements Order was made by consent at that hearing in January 2023 whereby the children (then aged 12 and 10) would live together spending one week with each parent, with handovers on Sundays at 6pm.
9. In July 2023 it was said by the father less than 6 months later that T no longer wanted to see their mother and had indirect text message contact with her only. Sadly, T has not spent any time with her since then, 18 months on.
10. In September 2023 the mother applied for an enforcement order, and shortly after for a Child Arrangements Order that both children live with her. By the time of the FHDRA hearing before Magistrates, both children were refusing to see the other parent, G by that time living full time with their mother. A Section 7 report dated February 2024 recommended a referral to ICFA, which was done with the parents' consent. As a result of that intervention, though T continued to express a wish not to see their mother, by June 2024 G was wanting to have a relationship with their father on the condition that there would be no overnight stays and that their father would not say mean things. An addendum Section 7 report was directed.
11. In early July 2024 the Court received the first CAFCASS Section 16A report. Concerns were expressed by CAFCASS in relation to the mother's relationship with a third party, to whom she became engaged in early 2024. That third party was subject

to an ongoing police investigation following accusations and findings in the family court in respect of their own children of domestic abuse including sexual assault and control and coercion. The mother was informed of the professional concerns and risks by CAFCASS in April and in June 2024. The Addendum Section 7 report filed alongside recommended, as a result of the risks to G should the mother resume / maintain her relationship with the third party, that G move to live full time with their father and brother. The matter was then re-allocated to District Judge level.

12. At an urgent hearing in July 2024 the Judge refused to endorse G's move to live with the father as CAFCASS recommended, the mother asserting she had ended the relationship with the third party, but made a Prohibited Steps Order preventing contact between him and G. Interim spend time with arrangements were made that T live with the father and for G to live with the mother. At that hearing the parties also agreed that G would attend school Y, the secondary school at which they had previously been allocated a space from September 2024 (as they were due to transition to secondary school) and a Specific Issue Order was made to that effect. There was to be no interim contact between T and the mother, in accordance with their wishes. G was to spend time with the father and T on Thursdays 5pm – 8.30pm and alternate Sundays 10am – 6pm, as had been recommended, and agreed, by the parents at ICFA. In accordance with that Order, G attended contact with their father and older sibling over the summer holidays on it is estimated around 6 occasions, but subsequently refused to go after returning from a holiday with the maternal family at the end of August 2024, despite 1:1 work by CAFCASS.
13. The mother then made a C2 application regarding G's school in September 2024, asserting they were refusing to attend the school as had been agreed by her. She wanted G to attend at school V located nearer the maternal grandmother's home and in fact at which G had attended three transition days in July. By the time of an urgent hearing G had already started at school V. Though very concerned regarding the mother's unilateral actions, the Judge suspended the previous Specific Issue Order and endorsed G attending school V until the matter could be considered at a Final Hearing.
14. A further Section 16A report dated August 2024 was sent to the Court, concerned as to G's change in wishes in wanting to see their father to not wanting to do so, but was not apparently before the hearing in front of the previous Judge. The matter came before me for the first time in October 2024. I appointed a Rule 16.4 Guardian. At a further hearing interim contact was directed for an inter sibling contact for 1 hour in the community facilitated by the father's partner to be followed by 1:1 work by the Children's Guardian before progressing to a contact including the father.
15. The Children's Guardian requested an urgent hearing by C2 application in late 2024 as G was sadly by then refusing to see either T or the father. At that hearing before me on 18 November 2024 I made directions for further evidence for a Final Hearing and Pre Trial Review.

16. This hearing has been effective as a Final Hearing.

RELEVANT LAW

17. Though in her 2023 child arrangements application the mother cited concerns around domestic abuse, no party has suggested I should determine those allegations which address matters arising prior to the consent order dated January 2023. Both parties do however cite emotional and psychological abuse of the children by the other since that time. In determining any findings, I have borne in mind the following:

- a) The standard of proof is the balance of probabilities. A fact is either proved or not proved. The burden is placed on the person making the allegation to prove it.
- b) Findings of fact must be based on evidence, not on speculation. Proper evidence must be adduced to establish what is sought to be proven using best evidence available where it is challenged.
- c) The evidence of parents is of the utmost importance and the court must make a clear assessment of their credibility and reliability.
- d) It is common for witnesses to lie in the course of investigations and hearings, and for a variety of reasons. It does not follow that because they have lied about one matter they have lied about everything: *R v Lucas* [1981] QB 720; *Re H-C (children)* [2016] EWCA Civ 136.

18. I also have in the forefront of my mind Art 8 and the principle of proportionality and the parties' Art 6 rights.

19. In light of both parents making cross allegations of "parental alienation", and the Children's Guardian referring to those concerns in her Final Section 7 report analysis, I have reminded myself of the FJC Guidance on responding to a child's unexplained reluctance, resistance or refusal (RRR) to spend time with a parent and allegations of alienating behaviour dated December 2024. In summary:

- a) "Alienating Behaviours", which range in intensity and impact on children, can affect a child's emotional, social and psychological development. Severed relationships and growing up with a false narrative can have a harmful impact on a child's identity, self-worth and sense of safety. The effects of influence can be long lasting and will affect their ongoing attachments: *Re H (Parental Alienation)* [2019] EWHC 2723 (Fam).
- b) Whilst allegations of Alienating Behaviours should therefore be identified and responded to, and the impact of those behaviours considered on the relationship with either parent and the child, the terms '*parental alienation syndrome*' and '*parental alienation*' have no evidential basis and are considered by the Family Justice Council (FJC) a harmful pseudo-science.

- c) To establish Alienating Behaviours, 3 elements must be evidenced: Re C (Parental Alienation) [2023] EWHC 345:
 - o the child is reluctant, resisting or refusing to engage in, a relationship with a parent or carer;
 - o the RRR is not consequent on the actions of that parent towards the child or the other parent, which may therefore be an appropriate justified rejection by the child (AJR), or is not caused by any other factor such as the child's alignment, affinity or attachment (AAA); and
 - o the other parent has engaged in behaviours that have directly or indirectly impacted on the child, leading to the child's RRR to engage in a relationship with that parent. It is not important to decide whether the alienation is deliberate or not. It is the process that matters, not the motive: Re S (Parental Alienation: Cult) [2020] EWCA Civ 568.
20. Regarding the importance of establishing contact, I bear in mind too of course that applications for a child arrangements order under s.8 of the Children Act 1989 require the court to apply the principles set out in s.1 and s.1(2A) of the Children Act 1989 which provide that:

“...unless the contrary is shown, involvement of that parent in the life of the child concerned will further the child's welfare.”

21. It thus is almost always in the interest of a child whose parents are separated that he or she should have contact with the parent with whom he or she is not living. Well established case law principles as highlighted in Re C (Direct Contact: Suspension) [2011] EWCA Civ 521 and Re M (Children) [2017] EWCA Civ 2164 include that there is a positive obligation on the State and therefore on the judge to take measures to promote contact, grappling with all available alternatives and taking all necessary steps that can reasonably be demanded, before abandoning hope of achieving contact. However, the positive obligation on the State, and therefore on the court, is not absolute. Whilst authorities must do their utmost to facilitate the co-operation and understanding of all concerned, any obligation to apply coercion in their area must be limited since the interests, as well as the rights and freedoms of all concerned must be taken into account and, more particularly, so must the best interests of the child.

ISSUES FOR DETERMINATION

22. The following are agreed starting points:
- a) T will continue to live with their father;

- b) T will be encouraged to have contact with their mother, but their expressed wishes are not to see her at the present time;
 - c) T will be encouraged to have contact with their brother.
23. Save for the details of contact for T with their brother, the focus of this judgment will therefore be on the welfare options for G. It being accepted that the children are refusing to spend time with their non-resident parent, the key question is why: what are the reasons given for each child's RRR? I have to consider:
- a) whether the children each have an appropriate justification or cause for that RRR;
 - b) whether either parent has engaged in behaviours that have directly or indirectly impacted on either child?
24. Following on from that, in respect of G, the issues I have to address are:
- a) Should they remain living with their mother? If so, a) should she be permitted to live with or in the locality of the maternal grandmother; and b) should G continue to attend their current school, school V?
 - b) Are G's best interests best served by moving to live with their father? If so, what school should they attend (the father was requesting school Y where older sibling T attends, and now alternative school Z)?
25. In relation to both children, what contact should be directed in the best interests of both of them? How does the realistic prospect of contact (parental and inter-sibling) successfully taking place change depending on G's primary carer?

IMPRESSION OF THE WITNESSES

26. The mother was calm yet defensive, it took some pressing for her to accept she is not faultless in the root of both children's expressed wishes. Her case is put as an alleged victim of domestic abuse but of course no findings have been made beyond the father's admission of parental arguments, and she has after separation agreed shared care with him with no suggestion of coercion or control causing her to do so but rather her seeing that as in the best interests of the children. Nonetheless, she asserts G's wishes and feelings not to see their father are genuine and borne out the father's actions, not hers. She tells me she has done everything she can to get G to see the father. However, I was concerned her evidence suggests that G has never had a strong connection with the father and she struggled in oral evidence to say anything positive about him as a father save for as a "*provider*". The concerns the Children's Guardian raises that she does not give G emotional permission to have a relationship with their

father are therefore at least arguable. My assessment of the mother overall is she was generally honest, and in light of all she says, though she cannot yet see it herself, she is not helping G have a relationship with the father.

27. The father's case is that the mother is acting out of spite for him ending the relationship and is using the children to get at him. The father was plain speaking and I thought tried to assist me in proposing alternatives in response to concerns I raised as to the proposed change in residence and school. However, at times these appeared ill conceived and off the hoof. I was surprised he mid-way through their evidence suggested for example that G could attend neither school X or Y and in fact could be an alternative school, their position having always been I had understood that G should attend school Y, or that in fact family could help transport G to school V some 45 minutes away from his address, having said in all statements previously he cannot make school V work if G were to live with him. Though there are concerns I have about the father's insight into G's needs, his antipathy regarding T's contact with their mother, and impact of what the Children's Guardian proposes, all together I am satisfied that he is a reliable witness.
28. The Children's Guardian has been involved with the family as the allocated CAFCASS officer, and more recently appointed Guardian, for around a year. She has seen first hand the marked change in G's wishes and presentation in that time which she puts down to the mother's alienating behaviours. She expresses concerns for G's emotional wellbeing and the reasons for their change in position. Her only solution to that is a transfer of residence; she sees no realistic alternative and proposes no professional involvement or support following the move beyond a referral for Early Help and school support. In previous hearings I had expressed concern that the comparative benefits of each school setting need to be presented to me as part of my global best interests analysis. Regrettably, in respect of school Y, or indeed the lately proposed alternative schools X and Z, I was provided with very little if anything. She accepted in evidence providing no written analysis on the impact of a change of school on G beyond a loss of friendships. She accepted too not exploring at all each child's respective views and wishes on the prospect of living together for the first time in 18 months. She has not seen either child in the care of their respective primary carer or in contact, that having been left to ICFA and then unsupervised arrangements. I have to acknowledge, as Ms Fitt put it on behalf of the mother, that there are gaps in the written evidence and analysis. I am however very grateful to the Children's Guardian for her very full explanations in her oral evidence as to her reasons for recommending as she does that G should live full time with their father from her extensive involvement and experience.

ALLEGATIONS: EVIDENCE AND FINDINGS

29. RRR is evident from both T and G through a range of behaviours, from refusing to speak to or see the other parent, to angry or challenging reactions to that parent, and making negative comments about that parent to others including professionals.
30. As to T's expressed reasons for not wanting to see their mother, I find they are age appropriate and realistic. T has said consistently that they argue with their mother and feels that she treats them less favourably to G. It is important that T may carry a sense of abandonment in the way that the mother left the relationship with G but not them. T has recalled an argument with his mother when G damaged a carpet for which T was blamed by the mother. T has maintained the view that G is her favourite throughout proceedings, notwithstanding support and encouragement from ICFA and CAFCASS. The father described to me T running off from the mother's house to the maternal grandmother's home on more than one occasion in the run up to the contact breaking down completely in August 2023. Though initially described by the Children's Guardian as "*nebulous*" those reasons for not seeing their mother, there having been no significant incident to cause the disruption in their relationship, greater validity was given to those wishes following increasingly lengthy and pressuring messages to T at the start of 2024 from the mother about which the Children's Guardian felt the need to advise she curtail; further by their perception of being pushed out by their mother in her announcing on social media that she was engaged to a third party in February 2024 without any forewarning to T, a man whom T had never met and whom their mother had known for less than 6 months. Regrettably, T also saw a social media Tik Tok post that the mother posted showing G with the third party with a caption indicating that having your children with the wrong person doesn't prevent you raising them with the right person. In her written evidence the mother explained she did so as she was brought up by her stepfather, however in oral evidence she distanced herself from that explanation and said she had simply seen a template and modified it as she liked the sentiment. The post has a picture of G with the third party. To my mind it is clearly meant to get at the father. In oral evidence she told me that she did not understand why T does not want to see her and did not think they had any valid reason not to. Focused on causing emotional harm to the father, the mother's behaviour has clearly not been helpful in repairing that relationship with her eldest child having been oblivious to the wider harm that causes them.
31. Has the father played any role in those wishes? The father is said to have discouraged T from blocking their mom on their phone, though more recently T has done so. The father has argued in his statements to remove the mother's parental responsibility, to prevent her from coming to T's school or medical appointments, which the mother has done over the last year but ignoring T's requests that she not do so. T has not seen their mother for 18 months and I am unclear how strenuously the father has promoted a positive image of the mother to T. For example, T has made concerning comments to CAFCASS and ICFA such as "*she says that he (the father) was abusive but he wasn't*", suggesting exposure to conversations about the adult conflict and these proceedings, which I find is more than likely to have come from their father as their

carer, either directly or overhearing him in conversation with others, the latter he accepts being a real possibility. T has messaged their mother with increasing aggression since their last direct contact saying “*we will see you in court*”, and told her to “*fuck off*” without reprimand from their father. I am concerned regarding the limited concern that the father has demonstrated for T missing a relationship with their mother or the impact of that, and his not correcting T’s rudeness to her which I expect he would do if T was rude to another. Though aged 14 ½ now, T was only 12 years old when contact stopped. The father has not in my view prompted and encouraged T to have contact with their mother as ardently as he could or should have done. By the father refusing any communication with the mother, he has not, and is not, leading by example, though he believes that has not had any impact. However, T is now old enough to understand the decisions they are making about not wanting to spend time with the mother. Though T has very firm views on this I share the hopes of the Children’s Guardian and ICFA that contact could be explored by T independently and would be supported by seeing G regularly coming to spend time with the father.

32. As to G’s expressed reasons for not wanting to see their father, their wishes and therefore their reasons have fluctuated. Before professional intervention, G was telling CAFCASS and ICFA that their father called him a “*baby*” and would shout which would hurt their feelings. The father admits doing so but in their evidence tried to, to my mind, minimise these and the effect it had on G. G recalls their father shouting at their mother when living together and making their mother cry, a point which the father also accepts, explaining in their evidence that all couples argue. G has gone so far however as to video record audio of their father and current partner arguing during the shared care arrangements in early-mid 2023, with their father heard shouting aggressively and his partner crying, during her pregnancy. At that stage therefore I find on balance that in G saying to professionals that their father’s actions have been scary is reasonable and G had reasonable justification not to want to spend time with their father at that stage. Following ICFA intervention and supervised contact sessions taking place however, G’s views changed to having no resistance to seeing the father or their paternal family. G was saying in June 2024 that they were missing their father and wanted to spend time with him so long as it was not overnight and their father did not say nasty things to them. Contact was agreed to commence unsupervised at father’s home fortnightly at weekends for a day and midweek tea-time weekly.
33. However, after the Children’s Guardian raised concerns in June 2024 regarding the risks posed by the third party engaged to the mother, and which were in her view not adequately addressed by the mother, the Children’s Guardian asked G in early July about living with their father. G did not want to. A week later the Children’s Guardian informed G of her recommendation that they live with their father because of ongoing risks from the mother’s fiancé. I am told G became very distressed and required a school teaching assistant to support emotionally. Nonetheless, their contact with the father as agreed continued, notwithstanding I find that G may have had

reasonable reservations and fears about not being returned to their mother's care following the Children's Guardian's two conversations with them. Around this time, the mother made a social care referral following concerns that G had, in her mind, intimidated the use of cannabis by their father during contact, which is very much denied by the father. There is no evidence or even suggestion of drug misuse by him beyond that. However, the mother asserts that following this referral the father threatened G that were they to say anything to the mother about what goes on in contact then he would seek to take G from her. Contact continued despite those allegations, with the father's contact with G only ending on or around 25th August following a holiday with the maternal family. The reasons for that provided by G to the Children's Guardian have been unclear and reticent. The Children's Guardian describes a change in their presentation with her from being open and engaged at the start of 2024 to shrugging their shoulders and in response to being asked why they do not want to see their father saying "*I just don't want to*". G has written me a letter during a meeting with the Children's Guardian at school in November with their reasons as: "*he started being horrible to me again saying if I told mom anything he would take me off mom...he would shout at me for being on the sofa and playing on my phone whilst he was talking to everyone*".

34. The reasons the mother gives for the suspension in contact are multilayered:

- a) She lays the blame at the feet of the Children's Guardian for distressing G in informing them of her recommendation they live with the father, after which she says G refused to see their father. That is not accurate as there were agreed to be roughly 6 contacts after that meeting on 11th July, indeed one that very evening.
- b) She repeats G's concern that their father shouts at them and calls them names. The Children's Guardian points out that, though it is right G raised that as a concern in her initial meetings in early 2024, no specific allegation has been made by G to the mother about anything of that nature during the unsupervised contact over the 2024 summer holidays and ICFA had "*addressed that issue*". I also bear in mind however that, as the Children's Guardian acknowledged in her evidence, a child of G's age, and in particular with ASD, will fester on things that trouble them, and further G in their November 2024 letter to me describes their father shouting during a recent contact, though it appears nothing more than forceful boundary setting by what is described.
- c) She says that G blames their father for trying to force a change in schools and leave school V where they are happy and settled. I am unclear if that knowledge has come from their mother or the Children's Guardian in her exploration of the issues, however the father accepts that when G refused to get out of the car to see him on 3rd September and was asked why, G responded: "*because you're making me to go to (school X)*".

35. Arguably no concerning trigger event associated with any misbehaviour by the father is therefore alleged to have prompted that change in G's wishes to see their father from September onwards. I have therefore considered the Children's Guardian's views carefully therefore as to whether G's wishes can be put down to alienating behaviours on the part of the mother. Is there evidence of her sharing inappropriate information about the adult relationship or portraying the father as a source of harm to herself and G where there is no basis for doing so? In respect of that:
- a) At the third and final ICFA supervised contact taking place in a park, the mother and her fiancé remained in a car nearby, which T saw. Though this impacted on the contact for T, G happily was able to converse with the father and extended family without issue.
 - b) At the end of ICFA intervention, the mother refused to co-operate with shared handover arrangements for G going to their father's home once the ICFA programme ended, asserting it is the father's responsibility to collect and drop G and would only be willing to share handovers if T was involved in contact too, prioritising her own feelings over G's.
 - c) At a hearing in July 2024 the mother agreed to contact taking place between G and the father and that she would allow CAFCASS to inform G of the plan. She however told G herself. G then refused to attend.
 - d) In October 2024 the Court directed a short sibling contact. That month G attended for ten pin bowling with T facilitated by the father's partner, however, the mother remained on site and seated in view of the bowling activity. She says she was recovering from a hospital intervention she had undertaken that same day and went in on G's request. That may be so, but I struggle to see why that would require her to enter and remain in the venue. She told me that G asked her not to leave him, and she said don't worry I won't. She did not reassure G they were fine with T and father's partner.
 - e) In November 2024 a further sibling contact at Pizza Hut took place between the siblings. The mother was seen by them outside the restaurant window in her car arriving 25 minutes early, undermining the already fragile relationships between the children.
36. None of the children's RRR behaviours can in themselves be taken to indicate evidence of exposure to psychological manipulation by the other parent in their own right. In this case I am satisfied on the balance of probabilities that G has had negative experiences in the care of their father such as demonstrated in the video of their father arguing with his partner and their father's admitted name calling. Though I am not satisfied those behaviours continued in August 2024, those experiences remain a valid concern for G and provide reasonable justification for at least a hesitation in seeing their father. What is more I bear in mind that the father refused to leave his home for any period on Boxing Day to enable G to see their siblings and open their presents during an agreed contact at which it was planned that G would see

their father and extended family at the father's home. He refused to do so in response to what I understand to have been his partner's sensible proposal that, as G refused to go into the father's home so long as he was present, he should go out for an hour or so. No reason has been provided to me why he refused. Thus, by his actions he prevented any contact between G and the paternal family on that occasion and has not agreed any further sibling contact before this hearing.

37. However, I find on balance that the mother's actions have been unhelpful in promoting that relationship. G is aware of their mother's feelings towards their father and in seeking to reassure G by, for example, remaining in view during contacts, she has provided the inconsistent messaging of a need to protect when in fact there is no need to do so. There are no safeguarding risks associated with the father in respect of his having contact with their children. The mother's actions in insisting in being present when unsupervised contact is assessed as safe have not helped to heal that hesitation, rather I find those actions have served to exaggerate G's worries to now an outright refusal and irrational fear of their father, to the point G was described as curled up crying in the back of the mother's car on Boxing Day, refusing to open their Christmas presents if the father were there. I therefore also find in light of that assessment that it more likely than not that the mother did very little if anything to encourage G to see their father on Boxing Day, or reassure G with any positive messages that there was no risk in going into the house with their father present / encourage G by stressing the fun they'll have / their siblings are were excited to see them / etc. I am satisfied on balance the mother has unjustifiably limited and undermined G's contact and its progress with their father.
38. However, other parental behaviours highlighted in both the CAFCASS toolkit and FJC guidance in identifying alienating behaviours include: repeatedly or constantly criticising or belittling the other parent; forbidding discussion about the other parent; creating the impression that the other parent dislikes or does not love the child; denying emotional responsiveness to the other parent or spurning, terrorising, isolating, corrupting, or exploiting them. None of those are evidenced to the requisite standard of proof in this case. Neither does the mother seek to reinforce a rejection of the father by withdrawing emotional warmth from G in response to their wishes to maintain a relationship with him, for example immediately after the failed Boxing Day contact he opens his Christmas presents from his father and messages to thank him including "xxx", actions no doubt they would only feel able to do if their mother was supporting demonstrations of affection. Nor is there sufficient evidence of G repeating things she has encouraged or prompted them to say to others such as the Children's Guardian, school or health in opposition to seeing their father. She is not coaching G, rather she is not encouraging or giving them emotional permission to attend physical contact. Part of that is due to her own experiences of the father, someone who I have found has not adequately supported the mother's own relationship with her other child, T, and it is accepted had arguments with her. Indeed, G is having indirect contact with their father, the exchanges of messages over Christmas from G to his father demonstrating a willingness to go shopping with him

to make up for their missed birthday. There is concern expressed that this message is contrary to the refusal to get out of the car to see the father on Boxing Day, but I cannot perform the quantum leap as the Children's Guardian does to conclude the reason for that is the mother, when the father did not assist himself.

39. Will the mother abide by Court orders regarding the father's contact however? She has not done so regarding a consent order that G attend the school at which he had been originally registered. However, I accept her evidence for the reasons behind that. She was consistent and coherent in explaining that she separated from the third party in June 2024 and moved in with her mother some 45 minutes away from the father for support, having nowhere else to go. Concerned that G was to start secondary school in only a few weeks, she registered him at the more local school V following research into the best schools that would meet their needs as a child with ASD. She facilitated their attendance at 3 induction days there, arranging for assistance by their autism outreach worker. At the court hearing in July, she says she was advised that she had little option but to agree to G attending school X near their father's home and moving back to her previous address so as not to bind the court by her unilateral actions, by which time the third party had left the property she had previously shared with him. I accept her evidence that after that hearing she attended an induction evening at school X with G and bought a school uniform for G in order to comply with the Specific Issue Order. G, however, having been introduced to school V, wanted to go there; he had no connection to the school which it had been directed they attend and refused to attend on the first day of term, in September 2024. Their older sibling and, for the most part, junior school friends do not attend there, but rather they attend school Y, the school for G only proposed by father more recently. G was taken by the mother to see the father on what should have been G's first day of school day for contact but G refused to see him; they associated the mandate to attend the directed school X against their wishes with their father it seems. The mother permitted their attendance at school V from the start of term the very next day so that he received schooling, albeit in breach of the Specific Issue Order.
40. On balance I am not satisfied that the mother has used, or is using, alienating behaviours to sabotage G's contact with the father and T, just as I am not satisfied the father has used, or is using, alienating behaviours to sabotage T's contact with the mother and G. I note the Children's Guardian within her first Section 7 report through to her oral evidence concludes that the children's own personalities affect the parent to whom they align; T a "*lad*" responsive to their father's more stern parenting style and G quieter and more sensitive as their mother. I am satisfied that it is more likely than not that both children's alignment, affinity and attachment (AAA) is at the root of both children's RRR, and no alienating behaviours beyond the parents' unhelpful and counter-productive actions as I have already identified have led to either child's rejection of their mother or father for the reasons I have given.
41. Rather, both parents have failed to address the issues in the relationships between the child who is in their care and the other parent by putting their own hostile feelings

towards the other first rather than the best interests of the children, the father through apathy in failing to promote T's relationship with their mother when he was still at an age where he was receptive to their doing so, and the mother through unnecessary overprotection of G in their contacts with their father. In addition, the parties' mutual refusal to communicate with each other even indirectly is testimony to their inability to put their children's needs first. On reflection of this Judgment, I hope going forward there can be agreement for direct communication via a parenting app. If T knows their father is willing to speak to their mother, they may be encouraged to do the same; and if G knows their mother is willing to engage with their father, they may better understand that their father poses no risk to their mother or them.

TRANSFER OF RESIDENCE

42. There being no significant alienating behaviour by the mother towards G such as to cause their RRR, or the father to T, that is not to say the situation should stay as it is. There is no notion that a transfer of residence should only be considered as a "*last resort*" and only in cases where findings of "*intractable hostility*" or alienating behaviours have been made. For example, in *Re L (A Child)* [2019] EWHC 867 (Fam) HHJ Toulson did not make findings of what was then termed "*parental alienation*" but did find that the mother and grandmother had not allowed the child emotional space to express positive feelings about the father and had in fact, provided him with emotional reward for expressing negative views. He concluded that maintaining a placement with the mother and maternal grandmother would not meet L's future emotional needs. In dismissing her appeal, the President of the Family Division said:

"Where, in private law proceedings, the choice, as here, is between care by one parent and care by another parent against whom there are no significant findings, one might anticipate that the threshold triggering a change of residence would, if anything, be lower than that justifying the permanent removal of a child from a family into foster care. Use of phrases such as "last resort" or "draconian" cannot and should not indicate a different or enhanced welfare test. What is required is for the judge to consider all the circumstances in the case that are relevant to the issue of welfare, consider those elements in the s1 (3) welfare check list which apply on the facts of the case and then, taking all those matters into account, determine which of the various options best meets the child's welfare needs."

43. Recent case law in this area includes *Warwickshire County Council v The Mother & Ors* [2023] EWHC 399 (Fam) wherein Lieven J concluded at a final hearing in care proceedings that, whilst the court should respond with exceptional diligence and take whatever effective measures are available in cases where findings of "*parental alienation*" are made, the wishes and feelings of the 11 and 13 year old subject children (despite having been brought about by manipulation by their mother) tipped

the balance in favour of the children ultimately being returned to the mother's care, notwithstanding and in the face of expert opposition.

44. I'm now going to balance the options before me, addressing the welfare considerations of the children in accordance with the Children Act welfare checklist.

WELFARE OPTIONS

45. The mother asks me to maintain the status quo in so far as G remains in her sole care, and has permission to continue attending school V. She does also seek however for permission to relocate to live in the same area as her mother, initially with her mother and then secure her own accommodation in that area.
46. The father, supported by the Children's Guardian, now as I understand it seeks for G to be placed in his care and to attend school Z, a school which caters well for ASD students. The school where T attends, school Y, was that which I heard oral evidence about as father sought G's attendance there but the mother raised concerns it does not cater for ASD children and indeed there was no certainty of a space, though the Children's Guardian was in support. I also heard about school X as also nearby the father and originally selected in the Local Authority enrolment process in September 2023. Only in closing submissions was school Z proposed, where a space is available.
47. It seems to me those two stark choices (M and school V; F and school Z) are the only realistic ones before me. I find that any suggestion that G lives with the mother but is made to remain in her present location is unnecessary and an infringement to her ability to live where and how she wishes. She cannot financially afford to remain in her present address in any event. This is not a move to another geographical area within England and Wales through which there would be a meaningful change to the pattern of contact arrangements were they to commence, nonetheless I bear in mind that it is the welfare principle in section 1(1) which dictates the result in internal relocation cases (*Re C (Internal Relocation)* [2015] EWCA Civ 1305).
48. Similarly, I am persuaded that it is not realistic for G to attend school Z unless they are living with the father. Equally the father cannot practically facilitate a daily round trip journey of 1 ½ hours to, and then collecting from, school V were G to live with him.

WELFARE ANALYSIS

49. Both children are refusing to see the other parent, very sadly. That is a source of real concern for me and of course the Children's Guardian. The question is what steps to facilitate contact can reasonably be demanded in the circumstances of this particular case?

50. The father has within the last 6 months acknowledged to the mother in a message to her, after learning of the Children's Guardian's recommendation to transfer residence to him in July 2024, that: *"I know G is close with you and he wouldn't want to be here on a permanent basis"*. Equally, G told the Children's Guardian on two separate occasions in July 2024 that they wanted to stay living with their grandmother (and mother).
51. As to sibling contact, G has set out in their 6th November letter to me *"I don't want to see T every week and only when I feel like seeing them"* because T would not reply to their messages and wouldn't really talk to them during sibling contacts. The Children's Guardian accepts not exploring the children's wishes and feelings about living together.
52. Regarding the voice of the child, allegations of Alienating Behaviours can impact on how the wishes and feelings that a child expresses are viewed. However, care should be taken not to dismiss the voice of the child in the absence of compelling evidence to show that psychological manipulation has impacted on their capacity to freely express their wishes. For example, a child may become increasingly inflexible in response to repeated enquiries due to frustration, or the child may be selective in the account that they give in the hope it may bring about the outcome that they desire. I am conscious that the Children's Guardian has expressed a view that G's wishes are not their own and have been negatively influenced by the mother and as such the weight I attach to them should be less than otherwise. She views G's declining engagement with her and failure to repeat the reasons behind their earlier RRR (father's insulting address towards them, for example) as evidence of that. With respect, I disagree. A realistic and equally likely explanation for those matters is fatigue from questioning about the same issues by the same professional, and an inherent difficulty in talking about tricky subjects that upset them.
53. Linked to that issue I bear in mind G's ascertained needs. G has been diagnosed in March 2022 with Autistic Spectrum Disorder and Generalised Anxiety, and as confirmed in a recent GP letter dated December 2024, social phobia in addition. That must also be considered in their conversations with, and expressed wishes to, the Children's Guardian. I bear in mind that any observation of G becoming a closed book from one which was open to her must be seen in that light. Their autistic assessment highlighted the presence of significant autistic traits including: *"restrictions in reciprocal social interaction and conversational skills, sensory sensitivities and emotional dysregulation in response to changes in their environment..."*.
54. The Children's Guardian and the father both argue that we have no up to date assessment of their presentation. G has also *"coped"* with huge changes in their circumstances: moving away from the family home with their mother in 2023 to live with the maternal grandmother; then living 50/50 between their parents homes (their father then being at a new address with his pregnant partner, and their mother in a further new address, shared with the third party); then from July 2024 back and forth

between the homes of their mother and maternal grandmother, no longer having any contact with the third party, or their father or siblings. In addition, G transitioned to school V in September 2024, a big step for any child of that age, but with the added stress and significant confusion as to whether they would be permitted to do so, a different school having been directed as the one they should attend. The Children's Guardian and the father both argue that the mother has exaggerated G's needs and presentations to advance her case that there should be no change in G's living arrangements.

55. That G has coped with so much is not in my view a matter from which I can conclude all is well. As Dr Gillespie in the letter dated December 2024 comments: "*...it is very well known that autistic children can struggle to cope well with change and this can detrimentally affect their academic progress and mental health*". That G adjusted to those changes and is described as settled and as having made significant progress with their confidence in their current living and schooling environment by both health and school V may well be a credit to the mother's parenting. Autistic Spectrum Disorder is a diagnosis for life. It is in my view wrong to think of ASD as a line of graduating severity from light through to heavy, but rather a circle where any number of traits may be present. Though the traits G experiences may fluctuate with their age and circumstances, a consistent theme in their life will be, as the mother explained in her evidence, a need for predictability, routine and reassurance. Any changes G experiences they can only cope with if presented with strategies that permit them to do so. For example, school V explains: "*Work is differentiated for individual students to ensure it is accessible and achievable. G has a consistent start to every day by meeting their tutor for 20 minutes...G is supported via their pastoral team which consists of a teaching and non-teaching Head of College. Should additional support be required by G, this will be actioned by the schools SEND team.*" After considering the evidence, I sadly have no reassurance such similar sensitivity to G's needs will exist at their father's home or at school X, Y or Z. In respect of school Y, an email from the Head of Inclusion at the school received during the hearing states only: "*G may be identified as a K coded pupil on the SEND register at their current school due to historic engagement with external agencies and current needs... Without access to their SEND records from their current school, it is difficult to confirm if their needs can 100% be met specifically at school Y.*" I have seen absolutely no evidence as to the relative merits of school Z, proposed as it was at the ninth hour.

56. Rather than misrepresenting G's symptoms, I find it more likely that the mother, having been their primary carer, has demonstrated the ability to understand and respond to their particular needs resulting from their diagnosis, as exemplified by those positive reports from third parties. She shares that care in reality with the maternal grandmother, who looks after G 2-3 nights a week at her home overnight while the mother is at university, a routine I'm told involves fish and chips on a Friday night and which he very much enjoys. That is not to say the father cannot meet G's needs; he shared 50/50 care of G for over 9 months in 2023. However, he told me he "*believes G's autism is slowing down*" and on how G would react to a

transition that G would be “*a little bit upset*” and it would “*just take a week or so*”. I bear in mind and am satisfied on balance that that was a period also involving name calling and shouting by him towards G, which appears reflective of a lack of patience and appropriate sensitivity to their needs. Parenting an autistic child reluctant to even see him, let alone stay overnight or live with him, alongside 3 other children and a tiring full-time job, risks an understandable difficulty in meeting G’s individual needs to the same apparently high standard as the mother, who can provide him with 1:1 attention.

57. Those needs are further demonstrated by the support G has required in recent years from the Family Support Service at Dudley CAMHS and most recently in their transition days to school V, whereby a Family Support Worker supported him. A significant factor for me to consider is the likely effect of a change of circumstances on G. School V writes in October 2024: “...*we would not be looking to unsettle the situation... G has made an excellent start to their time in secondary school. We could not have asked for more....*” Dr Gillespie outlines that: “...*from a paediatric clinician point of view I would be unkeen for disruption to schooling*”. So far, changes for G have taken place, though not necessarily in a well-planned manner, but staggered over the year and when G has been supported by their mother and grandmother as consistent attachments. The changes proposed by the Children’s Guardian and the father are to their home, their personal space (going from receiving 1:1 attention from their mother to sharing a house with 2 adults and 3 siblings), their school and therefore friendships and the security G has found there.
58. Is there anything proposed to mitigate the impact of such a dramatic change in all aspects of G’s life so as to reduce the harm that would flow from it were I to direct they now live with their father against their wishes as a 12 year old? As to practicalities, G would have their own room in either parent’s home. Though the father works full time, his partner as main carer has a pivotal role and supported his care of G for over 6 months in 2023 without issue. The father to my mind however fails to appreciate the gravity of the task proposed. He says as G gets on well with his siblings and his partner, and will have friends from junior school at school Y, then it will take “*a week or two*” for transition. As to professional support, the Children’s Guardian recommended in her final analysis that: “*The father is worried that if G were to live with him that Mother would attempt to deliberately undermine their relationship with G unless their time together was supervised. This worries me also. There is going to be a need for some professional oversight of this, at least for a period of time while G adjusts to the change in their arrangements.*” In asking for clarity on that position, the Children’s Guardian confirmed in her Position Statement for this hearing and oral evidence that her view is that making a Family Assistance Order or a contact Monitoring Order will merely provide a forum for ongoing allegations to be made by the family in respect of arrangements and that no additional benefit will be derived to the children or the family for ongoing involvement by the service or by the local authority. The important thing will be for the family to have a period of time away from professional oversight and for arrangements for the children

to proceed within the parameters of that directed by the Court. Crucially too therefore in addition to all those changes for G it is proposed their primary attachments are disrupted, it being proposed their contact with their mother and grandmother (with whom he stays overnight on Fridays weekly) is initially suspended altogether and then supervised for an unknown period.

59. The issue is if I don't change their circumstances the effect on G of potentially having no relationship with their father. Will the mother facilitate such contact when hitherto she has failed to do so? She commented that the father's partner, who has been her point of contact, has been "*really really lovely*" in trying to assist her in encouraging G's contact with the father. Given the father's refusal to communicate with the mother and her now greater willingness to use his partner as a conduit, there is scope of progress in that relationship were the mother to step back and allow the father's partner to fully facilitate G's contact with him, as was the plan at the end of last year, though as I have expressed the parents would ideally directly communicate in order to organize the arrangements.
60. What of G's sibling relationships? G has had contact with their siblings, albeit alongside concerns as to the mother's presence in the first two, on 5 occasions between the end of October and December. I understand the mother tried to arrange further contacts before this hearing but the father wanted to wait. I'm not sure why. That demonstrates at least a greater understanding by the mother as to the importance of inter sibling contact and optimism for me that she will promote it.
61. I have to also assess the relative risks of harm in both scenarios were G to remain with their mother or move to their father. The sad reality is that if G remains with their mother, contact with their father may not progress; it hasn't to date. If it does not, that has real long-term risks in terms of G's self-esteem, identity, sense of belonging and overall wellbeing. As G grows up they may blame either or both parents for that loss, or indeed themselves. For a child who already experiences issues regulating their anxiety, the potential impact on their lifelong wellbeing were they not to have a positive relationship with their father, a father who has a positive relationship with all other of their siblings, is clear.
62. I have already remarked on why recent problems in progressing contact exist: it should, for example, have been common sense to the mother not to enter the bowling contact venue in October 2024 where T was waiting specifically to see G and not her, naturally then impacting on the siblings' ability to naturally play at that contact and falsely reinforcing G's impression of their father as a risky adult. Equally it should have been common sense to the mother not to park directly outside the Pizza Hut contact venue in November 2024 half an hour early and when there was an appreciable risk she would be seen by T. As Mr Smith on behalf of the Children's Guardian put in questioning, "*she doesn't think*". She cannot see the effects of her actions on the children's views of their parental relationships.

63. Regarding the mother's ex-partner, it is a concern that the mother was aware in November 2023 from him that he had been accused of sexual assault of his ex-partner and that there was an ongoing police open investigation. She became engaged to and moved in with him in February 2024, 6 months after meeting him. She was made aware by the Children's Guardian of her concerns as to the risks all that presented to not only G but herself in April 2024. I prefer the Children's Guardian's version of events regarding the advice she gave at that juncture; that she was so concerned she would give the mother 8 weeks to separate and if she failed to do so would refer the matter to children's services and recommend G be removed from her care. It was in late June 2024 after a further meeting with the Children's Guardian and a reiteration of the concerns did the mother separate. Additionally, it is uncontentious that the maternal grandmother knew about the findings around the same time as the mother yet she herself did not take any safeguarding steps. It is reported by the Children's Guardian that the mother said in June 2024 that: *"She doesn't accept those findings, she has stated that the female in question has made them up...she has also asked whether if she continues the relationship but G doesn't spend time with him whether this would be 'allowed'."* The Children's Guardian goes on: *"I am worried about her understanding of risk and her capacity to safeguard G from possible emotional harm that might arise if the relationship with (the third party) continues and this is a feature in their relationship."* I find on balance that the mother was unable to acknowledge the risks arising from the findings made against her partner and thus put her son and herself at risk of harm by not separating in November 2023, or at the latest April 2024 when warned by the Children's Guardian of her concerns.
64. The Children's Guardian doubts that the mother is no longer in a relationship with him, or if she is not, asserts a real risk she will resume one away from the spotlight of proceedings. The father says that the mother is simply malicious and deceitful and will say anything to get her own way and shares that view. That is suspicion only, and I am not satisfied that the mother has breached her undertaking given in July not to have contact with the third party given there is no evidence of any ongoing contact between them. Similarly, in relation to where the mother lives, she accepts living between her mother and her own address on an almost split week basis. I do not accept the hypothetical risk of harm that the Children's Guardian asserts should the mother enter into a future risky relationship; I must act on facts and evidence only, not speculation.
65. The level of hostility and acrimony between the two households is evident and is another source of harm for the children. Tensions remain high, communication has broken down and the children are aware of this. Children who experience parental conflict struggle to regulate their own emotions, their brain development is impacted upon and they are more likely to go on to experience relationship difficulties in their adult lives. For as long as the parents fail to communicate with one another the risk of long-term harm to the children's emotional wellbeing increases. The fact that a child's relationship with one parent has been disrupted by the behaviours of the other

parent is a factor to be weighed in the balance in determining the child's overall welfare.

66. There is a range of orders I can make. The Children's Guardian sees only one way forward: a transfer of residence and a change of school. I must only make decisions in accordance with the children's best interests but I would only contemplate such a drastic step if it was both necessary and proportionate. A Court might, for example, consider making a suspended order to allow a parent further time to demonstrate a capacity to change, allow a parent or child to access therapeutic work or even consider whether a s37 report would enable the provision of services. I have considered all options.

SECTION 91(14)

67. In addition to regulating child arrangements and resolving specific issues such as education, I may make a Section 91(14) order preventing any future application without prior permission of the Court. A court may impose the leave restriction in cases where the welfare of the child requires it, although there is no past history of making unreasonable applications. In such circumstances the court has to be satisfied that the facts go beyond the commonly encountered need for a time to settle to a regime ordered by the court and where there is animosity between the adults in dispute and further that there is a serious risk that, without the imposition of the restriction, the child or the primary carers will be subject to unacceptable strain. Finally, the degree of restriction should be proportionate to the harm it is intended to avoid (*Re P (Section 91(14)(Guidelines)(residence) and Religious Heritage)* [1999] 2 FLR 573).
68. The law applicable is also set out in section 91A which makes further provision as to the making of Section 91(14) orders. In summary, the provision at section 91A(2) gives statutory effect to the guideline in *Re P* permitting a s91(14) order to be made where the making of an application under the Children Act 1989 would put the parent or child at risk of physical or emotional harm. This is supplemented by PD 12Q which emphasises an order can be made where it is merited to protect the welfare of the child. The parents have had notice of such an order being contemplated by a recommendation being made within the Children's Guardian's final analysis.

DECISION

69. Having considered all the written and oral evidence, I have come to the following conclusions:
- a) Initially G's refusal to see their father in mid 2023 was I find mostly due to their own recollections and experiences of him, however, during and following the intervention of ICFA in early to mid 2024, G's own positive experiences of

contact supervised by ICFA and unsupervised in summer 2024 should have reassured them. G's later rejection of their father then it seems to me stemmed from multi factors including the Children's Guardian's recommendation that they move to their father's care against their wishes; a threat made by their father that they should not report anything back to their mother from the contacts else he would do just that; and G feeling forced to attend a school near to their father's home again against their reasonable wishes. Thereafter, the mother has not given G emotional permission to engage in that contact. I am satisfied on balance that G's current reluctance is principally owing to an alignment to their mother, but which has been reinforced, rather than caused, by her actions. Those actions include her invading sibling contacts and failing to provide positive reinforcement as to the father's contact. I am not satisfied, as it is not proven to the necessary standard of proof, that her actions were wilfully designed by her to cause any rejection of their father on the part of G but I find rather she has acted without forethought and not encouraged contact as well as she ought. I am therefore not satisfied her actions outlined in this judgment can be described as alienating behaviours.

- b) G's current stability to me indicates an admirable ability by the mother to meet their specific needs. The father and Children's Guardian suggest that G's traits are exaggerated, relying on the observations of ICFA, their primary school and Children's Guardian herself in pray and aid that they chat easily to adults, adapts well to change and has required no specific treatment as an autistic child in their education setting, or at their father's home, to date. However, contrary to that I have evidence beyond the mother's simple assertion that unless strategies are put in place G has meltdowns, for example, from T themselves in describing G's behaviour towards them during the period of shared care; to CAMHs family support being required at their school's transition days, a resource that would not be available unless there was a need; to most recently G's stark presentation in the car when contact was attempted on Boxing Day as curled up and wailing. In addition to her sensitivity to their autistic traits and educational needs she is promoting their relationship with the paternal family whereby G can in fact currently have successful sibling contact and limited indirect contact with their father.
- c) The lack of direct contact between the father and G does not lead to an automatic conclusion that therefore G should live with their father. Even were I satisfied of alienating behaviours by the mother, that alone would not justify the making of an order sanctioning a removal from her care and further replacing her live with relationship with one that is severely limited, none at all initially then professionally supervised for an indeterminate period. All parties agree that G will want and be able to have contact with their mother were I to direct G live with their father and thus, were I to transfer residence, would enjoy a relationship with all members of their family in such circumstances. The Children's Guardian and the father therefore invite me to

turn life for G on its head to enable them a better family life. On a balance of harm analysis, I find the harm that will arise from a wholesale change in G's home, attachments, friendships and school will not only be traumatic in the short term, but carries a real risk of being detrimental to their overall wellbeing such as to risk their welfare in the long term. I find a transition to the father carries high risks of failure and the harm that would cause outweighs the risk of an ongoing fractured and delayed relationship with their father whilst living with their mother, even if limited to indirect contact. Furthermore, I have been presented with no transition plan despite my inviting the Children's Guardian to address me on the point, her position it is not her role to design one. It is, with respect, not mine as Judge either. We therefore look to father to do so; he has been unable to. Such an unplanned move would only heighten the risk of failure and breakdown, and a real possibility of even greater resentment towards the father by G.

- d) If things stay as they are however, how do I ensure contact and an improved relationship between G and their father? The Children's Guardian does not provide me with a plan B. I asked the mother for her proposals, but she too had none, save that she needs support. The mother tells me she is happy for G to go to their father's home and would not object to overnight contact occurring if G was content, though their opposition to that has been a running theme even immediately after ICFA's involvement (she was even open to the notion of restoring 50/50 shared care), but she says she cannot physically force this 12 year old to do so, indeed if she tries to force them it will be counterproductive. However, she cannot hide behind G's wishes and difficulties:

“The parent's job, exercising all their parental skills, techniques and strategies – which may include use of both the carrot and the stick and, in the case of the older child, reason and argument –, is to get the child to do what it does not want to do. That the child's refusal cannot as such be a justification for parental failure is clear ...” (Re H-B (Contact) [2015] EWCA Civ 389 per Munby P at [74]-[75]).

She suggests items of comfort are provided to G to take from her home to that of the father, including teddies and dolls that G likes.

- e) The Children's Guardian was adamant shared care did not work and the mother will not promote contact with the paternal family, even siblings. I do not accept that; the evidence of both parties is in fact they saw shared care as working up to July 2023 when T fell out with their mother, and that contact with the paternal grandparents, half siblings, cousins and T, has progressed well over the last few months. Ultimately for G, I consider a return to shared care would be in their best interests, to enable a positive relationship with all sides as is their right, but the way in which this occurs must be carefully managed and very much gradual and stepped. Progress however isn't linear.

That G cannot at the present time be persuaded to go to their father's home or stay overnight is not necessarily demonstrative of any default in intentions on the part of the mother. Forcing the issue is not going to help either child move forwards. However, letting G's views be determinative is not the solution either, nor have the mother's interventions assisted. Cooperation between the parents is necessary, but to date their feelings towards each other has been a barrier to their working collaboratively for the benefit of their children.

- f) A reintroduction of contact that is fun and positive so the father and G can break down the walls they have built is first required. Sibling contact is already a success and must continue. Following on from the positive recent pantomime contact last week, I suggest a further activity-based contact between the siblings and then a sibling only contact in father's house, then following on from that contacts in the father's home where he is present, even if only for a limited time initially. These should be no less frequent than weekly initially. It is hard to be prescriptive when G is resistant but the order must do just that as far as it can in order to work. G has additional needs and some limited resilience so in my view meetings between G and their father should gradually be increased in length but the parents use the children's wishes and feelings to make adult decisions about the pace.
- g) I appreciate it may be said all this was the plan in July 2024 but has been unsuccessful; my directions arguably are not novel and unworkable. However, I would further direct that in addition to mother not being present in the contact that she is also not directly involved with handovers given the findings I make that she is insufficiently permitting or encouraging G to go to see their father. Is it possible for father's partner to collect G from their home / that of the maternal grandmother / school? Further or alternatively, perhaps more aptly as contact progresses, a school collection and drop off once or twice a week by the father or someone on their behalf such as the father's partner, or their sister or father, is viable according to his oral evidence but does not seem to have been attempted. Though that would involve a journey of 45 minutes each way, this could be limited to once a week, and it would demonstrate the father's support for G attending school V, which in itself may be important for G.
- h) To aid this progress towards direct contact and for longer periods in my view there must be some ongoing guidance from professionals. Opportunities for G, and indeed T, to express their wishes and feelings have been given throughout these proceedings. Through ICFA that offered clear indications of the viability of reparative work to re-establish the relationships between the children and their parents; for T it was not deemed viable, but for G progress was made. Do I invite further professional involvement? The Children's Guardian would oppose the making of any Family Assistance Order or Contact Monitoring Order as doing more harm than good, it bringing with it a

lack of finality and a method both parents may see to indirectly raise grievances about the other. I consider that, whether or not the working relationship between the Children's Guardian and G has broken down, it has indeed broken down between herself and the mother. Though the Children's Guardian asserts that the mother has not communicated with her or asked for her support, I note with concern the first mention of school Z, a third school option for G near the father's home at which he has secured a place for G in the gap between days 2 and 3 of this final hearing, was communicated to me and the mother only within the closing submissions on behalf of the Children's Guardian; that demonstrates to me a lack of effective mutual communication and respect between the two.

- i) In my view a professional whom the children, and adults, do not associate with these protracted court proceedings might provide a fresh insight, and I would therefore be grateful if the Children's Guardian could make a Local Authority referral for support. In my view this entails different areas:
 1. There has to date been no therapeutic intervention aimed at restoring G's relationship with their father whilst in the care of their mother. Such a referral could therefore include, given G's needs, a request for play / art / other therapy, perhaps facilitated in conjunction with school V, autism outreach and CAMHs through Family Work or Educational Psychology. In my view a therapeutic intervention would allow G space to reflect on their feelings and encourage a conciliatory approach to their father. It is a question as to how this can be sourced.
 2. In addition, there should be practical support for the father's initial contacts, through the presence of a support worker, and for education on parenting a child with ASD. The support should also extend to the mother in a script of how to encourage G to attend contact. Though I should not force a Family Assistance Order on CAFCASS, or indeed a Local Authority, contact needs professional guidance for a period to get it off the ground and G needs a social worker, either from CAFCASS or the Local Authority, who can assist and advise them at regular intervals on the issue of contact. On that I accept Mr Smith's proposal that both the Local Authority where G will reside and Cafcass Management be invited to comment on the suggested Family Assistance Order and their willingness to accept such an order in light of this Judgment. I understand this Guardian is to shortly go on leave, or at least would be unavailable for a full 6 month order, so a new worker is likely under either appointment.

3. I would also add that a Family Group Conference or guided family mediation is needed if parties will sign up to it.

- j) A personal short letter to each child which I will write shortly will I hope help T and G understand the importance I place in their having a relationship with both parents and that has led to me directing that contact between G and their father must take place in order to permit a family life that includes not only T but their younger paternal half siblings and both parents, in addition to extended paternal family. In respect of T, due to their age and strength of feelings, I can only go so far as leaving open the option for a relationship with their mother. At the moment, I understand she is blocked on their phone. It is my hope, as expressed by ICFA, that G having contact with their father in itself will encourage T to respond to their mother. As no immediate change is indicated by my order, I propose that the parents inform the children of my decision today, but reassure them that they will see something in writing from me as their Judge shortly which I will share with the Children's Guardian and then she with them, or better still with any new worker appointed under the FAO which I would make for 6 months.
- k) I determine that a Section 91(14) order is appropriate, against both parties and in respect of all applications save for enforcement applications. It is important all parties, including the children, are clear that this is the Court's order and my decision will not be revisited. I can only make that order for a reasonable and proportionate period. I do so for 3 years therefore, by which time T will be 17 and G age 15 and their joint and separate wishes set. Any future application for permission to apply or enforcement should be reserved to me, but on notice, to be considered initially on the papers only.
- l) I give permission for the mother's enforcement application to be withdrawn as it is no longer pursued, events having been taken over by the necessary welfare considerations I've set out and no realistic enforcement of the previous 2023 order by the mother is pursued.

ORDER

70. T shall live with their father and G shall live with their mother, under child arrangements orders, securing the status quo. There shall be no contact ordered for T but a recital they will be encouraged to do so in accordance with his wishes and feelings. The current situation is far away from the shared care aspiration. Both parents are at fault for the current situation but I acknowledge the father will bear the greater upset in not having an immediately desired relationship with G. I have invited the parties to agree specific contact for G with the assistance of the Children's Guardian in accordance with this Judgment and which can be recorded in my order.

71. I grant permission to send to both CAFCASS management and the Local Authority a copy of this Judgment and we await a response on the FAO point.

72. This is my Judgment.

District Judge Cockayne

30th January 2025

Post-script: Stepped contact was agreed, including a build on direct contact between G and father that had commenced between the hearings on 16th and 30th January. CAFCASS accepted allocation under a 6 month FAO and the Local Authority at which G is to reside will undertake a CAF assessment to consider further coordinated support.