Neutral Citation Number: [2024] EWHC 583 (Fam)

Case No: FD23P00122

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28/02/2024

Before:

MS JUSTICE HENKE

- -

Between:

The Mother	**Applicant**
- and -	
(1) The Father	**Respondent**
(2) U	
(via their Children's Guardian)	

- -

(*Re U: Welfare*)

- -

Sarah Hayward (instructed by **Anthony Louca Solicitors Ltd.**) for the **Applicant**
The **First Respondent** appeared **In Person**
Adam Tear acted as a court-appointed **Qualified Legal Representative** to cross-examine the **Applicant**
Jonathan Evans (instructed by **CAFCASS Legal**) for the **Second Respondent**

Hearing dates: 23, 26-28 February 2024

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Approved Judgment

This judgment was handed down remotely at 9am on 28 February 2024 by circulation to the parties or their representatives by e-mail.

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MS JUSTICE HENKE

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Henke J:

Introduction

1. This is my third judgment in relation to U. The first was handed down on 1 November 2023 ([2023] EWHC 3494 (Fam)). The second judgment related to a fact-finding hearing. I handed that down on 22 February 2024 ([2024] EWHC 582 (Fam)). The relevant background to this, the welfare judgment, is set out in the previous judgments. The three judgments should be read together.

2. On 1 November 2023, I gave my reasons for recognising the Educational Assistance Order made by the French judge on 22 July 2022. Effectively, U has lived with his father under that order since that date. Before me in this hearing, the father asks me to make an order that U should continue to live with his father. U's father sees the "*theoretical*" benefit in U spending time with his mother if it is supervised and safe. However, he doubts whether, in reality, there can be contact without U being placed at risk by his mother either directly or because his own ability to care for U is so impacted that he cannot provide U with the care he deserves. The mother's position can be put simply. It is that the French courts got it wrong. U should never have been removed from her care. Her sole focus is on U returning to live with her in France. Such is the intensity of that focus that she told me in evidence that she cannot contemplate what her position would be if U did not return to live with her.

The History of the Applications before this Court

3. The applications pending before the court are as set out in paragraph 8 of the judgment dated 22 February 2023. The father's applications are premised on the basis that I find that U should continue to live with his father. They are intended to try to keep U and his father safe and secure whilst U is in his father's care and to give both U and his father a period of respite from litigation initiated by U's mother. In closing, the father for the first time raised the issue of extinguishing the mother's parental responsibility.

4. The mother has always sought the return of U to her care. That remained her primary case in closing. I note that the mother appealed each of the decisions made by the French courts. The mother appealed the order of 21 December 2021 which did not become definite until the Court of Appeal dismissed the mother's appeal in June 2022. In July 2022, the French court's placed U in his father's care. The mother did not accept that decision and on 7 and 8 September 2022 the Judicial Court in France heard applications on behalf of the mother for U to live with her. On 22 September 2022, the Court re-affirmed that U's residence should be with his father. The mother appealed that decision. Her appeal was dismissed on 23 May 2023.

5. In March 2023, the proceedings which had been initiated in France were transferred into this jurisdiction. On 7 July 2023, the mother made an application under the Inherent Jurisdiction for U to be returned to her care for the summer holidays before the hearing in September 2023. That application was dismissed by Mrs Justice Knowles on 1 August 2023. On that occasion, Mrs Justice Knowles made non-molestation orders and a prohibited steps order to ensure that U and his father were protected from the mother. On 13 August 2023, the mother issued a C2 in which she made an application for organising or securing effective rights of access to U under

Art. 21 of the 1980 Hague Convention on Civil Aspects of Internal Child Abduction. At the hearing before me on 1 November 2023, I set out very clearly the implications of my decision, namely that U would continue to live with his father and that the mother's application was confined to contact. On 20 December 2023, I confirmed in a recital to my order of that date what was to be the scope of the hearing beginning on 19 February 2024. In response the mother issued a C100 dated 12 January 2024 which contained the following:

> "*Reasons for permission: - I'm not sure what I have to write here. I think I'm asking for the two applications to coexist, live with and visits. I do not see what advantage it would bring me to drop the art 21 application, and I'm worried it would confuse things. However, I do not want to understate the real concerns and extreme situation my son and I are being put in. From my perspective I have been asking for my son to live with me from the beginning. I am also not sure I have to make an application without notice or not.*
>
> *Reasons for application: - I was told at the last hearing that the proceedings were for visits and not for living arrangements. It doesn't make sense because of the nature of the case. (Gross domestic abuse, false accusations)*"

6. The mother's C100 was supported by a C1A in which she set out her allegations against the father.

7. The PTR for this February 2024 hearing was heard on 30 January 2024. I expanded the time estimate for this hearing to enable the relevant fact-finding to be heard and shortly thereafter all welfare applications about U to be heard including that recently issued by the mother. On 2 February 2024, the mother made another application. This time on a C67 and under the Child Abduction and Custody Act 1985. On the face of that application, she failed to mention the ongoing proceedings. Instead, she said she wanted the court to return U to her care because she said the father's behaviour was increasingly chaotic and threatening. She alleged the father had said on multiple occasions that he was unable to look after U properly. The mother travelled from France to England to pursue her latest application without notice to the other parties in the Urgent Applications court. There it came before me on 2 February 2024. I consolidated the application with those already pending in relation to U.

8. In cross-examination, the mother accepted that her C67 had no proper legal basis. She accepted that there had been no unlawful removal of U by the father nor had there been any unlawful retention of U by the father. She had issued it when acting in person. She had made the wrong application. The mother wanted U placed in her care and to live with her in France. She stood by the allegations she had made on the face of the application. In the circumstances, I decided to deal with the substance of the application rather than its form, namely as an application for a lives-with order.

The Law

9. I now turn to the law relevant to the applications before me.

10. When determining the applications before me, U's welfare is my paramount consideration – s.1 of the Children Act 1989. I must apply the welfare checklist in

s.1(3). I must not make any order unless I consider that doings so would be better for the child than making no order.

11. In the context of the decisions that I am asked to make, I particularly note and bear in mind that s.1(2A) of the Act provides as follows:

> "*A court, in circumstances mentioned in subsection (4)(a) or (7), is as respects each parent within subsection (6)(a) to presume, unless the contrary is shown, that involvement of that parent in the life of the child concerned will further the child's welfare.*"

12. When assessing whether the contrary is shown for the purposes of s.1(2A) of the CA 1989, I have reminded myself of what MacDonald J said in *D v E (by her Children's Guardian)* [2021] EWFC 37.

13. In relation to the mother's application for U to move to France to live with her, I have been referred to:

- *Re F (A Child) (International Relocation Case)* [2017] 1 FLR 979;
- *Payne v Payne* [2001] 1 FLR 1052;
- *K v K (Children; permanent removal from jurisdiction)* [2011] EWCA Civ 793;

14. The relevant law was summarised by Mr Justice Williams in *Re K (A Child)* [2020] EWHC 488 (Fam). I have reminded myself of that summary which I adopt.

15. In my second judgment, I made findings of fact which I consider bring this case within the scope of FPR 2010, PD12J. Paragraph 7 of PD12J states that:

> "*In proceedings relating to a child arrangements order, the court presumes that the involvement of a parent in a child's life will further the child's welfare, unless there is evidence to the contrary. The court must in every case consider carefully whether the statutory presumption applies, having particular regard to any allegation or admission of harm by domestic abuse to the child or parent or any evidence indicating such harm or risk of harm.*"

16. I have also reminded myself of paragraphs 35-38 of PD12J. I have specifically considered FPR PD4A which states:

> "*4A.1 Under section 91(14) of the 1989 Act orders are available to prevent a person from making an application under that Act without leave of the court. Section 91(14) leaves a discretion to the court to determine the circumstances in which an order should be made, which may therefore be many and varied. However, section 91A specifies certain circumstances "among others" in which the court may make an order. These circumstances include where an application would put the child concerned, or another individual at risk of harm. This would include, but not be limited to, a risk of harm arising where an application could be used to carry out or continue domestic abuse. A future application could be part of a pattern of coercive or controlling behaviour or other domestic abuse toward*

the victim, such that a section 91(14) order is merited due to the risk of harm to the child or other individual.

4A.2 Where allegations of domestic abuse are alleged or proven, the court should consider whether a section 91(14) order might be appropriate even if an application for such an order has not been made."

17. That brings me to s.91(14) of the Children Act 1989 itself. That states that:

"*On disposing of any application for an order under this Act, the court may (whether or not it makes any other order in response to the application) order that no application for an order under this Act of any specified kind may be made with respect to the child concerned by any person named in the order without leave of the court.*"

18. Further provision about the making of orders under s.91(14) is contained in s.91A. Section 91A(2) contains the circumstances in which a court may make an order under s.91(14). They include, among others:

"Where the court is satisfied that the making of an application for an order under this Act of a specified kind by any person who is to be named in the section 91(14) order would put —

(a) the child concerned, or

(b) another individual ("the relevant individual"),

at risk of harm."

19. Section 91A(3) specifically states that *"harm"* in this section *"is to be read as a reference to ill-treatment or the impairment of physical or mental health*".

20. In July 2022, FPR 2010 PD12Q came into force. It sets out under paragraph 2 the key principles to be applied when making s.91(14) orders. They are:

"*2.1 Section 91(14) orders are available to prevent a person from making future applications under the 1989 Act without leave of the court. They are a protective filter made by the court, in the interests of children.*

2.2 The court has a discretion to determine the circumstances in which an order would be appropriate. These circumstances may be many and varied. They include circumstances where an application would put the child concerned, or another individual, at risk of harm (as provided in section 91A), such as psychological or emotional harm. The welfare of the child is paramount.

2.3 These circumstances can also include where one party has made repeated and unreasonable applications; where a period of respite is needed following litigation; where a period of time is needed for certain actions to be taken for the

protection of the child or other person; or where a person's conduct overall is such that an order is merited to protect the welfare of the child directly, or indirectly due to damaging effects on a parent carer. Such conduct could include harassment, or other oppressive or distressing behaviour beyond or within the proceedings including via social media and e-mail, and via third parties. Such conduct might also constitute domestic abuse.

2.4 A future application could also be part of a pattern of coercive or controlling behaviour or other domestic abuse toward the victim, such that a section 91(14) order is also merited due to the risk of harm to the child or other individual.

2.5 There is no definition in section 91A of who the other individual could be that could be put at risk of harm. However, it is most likely to be, but is not limited to, another person who has parental responsibility for the child and/or is living with or has contact with the child, or any other individual who would be a prospective respondent to a future application.

2.6 In proceedings in which domestic abuse is alleged or proven, or in which there are allegations or evidence of other harm to a child or other individual, the court should give early and ongoing consideration to whether it would be appropriate to make a section 91(14) order on disposal of the application, even if an application for such an order has not been made (since the court may make an order of its own motion – see section 91A(5)).

2.7 Section 91(14) orders are a protective filter – not a bar on applications – and there is considerable scope for their use in appropriate cases. Proceedings under the 1989 Act should not be used as a means of harassment or coercive control, or further abuse against a victim of domestic abuse or other person, and the court should therefore give due consideration to whether a future application would have such an impact.

2.8 The court should consider case law for further guidance and relevant principles, bearing in mind Parliament's insertion via the 2021 Act of section 91A into the 1989 Act."

21. Paragraph 3 of PD12Q deals with the procedure to be adopted by the court when considering making a s.91(14) order. It is relevant to note within this judgment that:

3.4 Under section 91(14), an order may only be made when disposing of another application under the Act, but section 91(14) is silent on when an application for such an order may be made. In proceedings in which risk of harm is alleged or proven, including but not limited to domestic abuse, the court should therefore give early and ongoing consideration to the question of whether a section 91(14) order might be appropriate on disposal of the application, and to whether any particular findings of fact will be needed to determine the section 91(14) application.

3.5 If an application is made, or the court is considering making an order of its own motion, the court should also consider what opportunity for representations

should be provided to the parties. Courts should look to case law for further guidance and principles.

3.6 If the court decides to make a section 91(14) order, the court should give consideration as to the following matters:

a. the duration of the order (see section 4);

b. whether the order should cover all or only certain types of application under the 1989 Act;

c. whether service of any subsequent application for leave should be prohibited until the court has made an initial determination of the merits of such an application (see section 6). Such an order delaying service would help to ensure that the very harm or other protective function that the order is intended to address, is not undermined; and

d. whether upon any subsequent application for leave, the court should make an initial determination of the merits of the application without an oral hearing (see section 6)."

22. As heralded above, the duration of any s.91(14) order is considered in paragraph 4 of PD12Q which states:

"4.1 Sections 91(14) and 91A are silent on the duration of a section 91(14) order. The court therefore has a discretion as to the appropriate duration of the order. Any time limit imposed should be proportionate to the harm it is seeking to avoid. If the court decides to make a section 91(14) order, the court should explain its reasons for the duration ordered."

23. FPR 2010 PD12J paragraph 2.8 reminds the court to consider case law for further guidance and relevant principles, bearing in mind Parliament's insertion via the 2021 Act of section 91A into the 1989 Act. Accordingly, I now turn to consider the case law.

24. The leading modern authority is the Court of Appeal's decision in *Re A (A Child) (Supervised Contact) (Section 91(14) Children Act 1989 Orders)* [2021] EWCA Civ. The lead judgment in *Re A* was given by King LJ. At paragraph 32, King LJ repeated the classic statement of the legal principles at play when making a s.91(14) order as put by Butler-Sloss LJ in the form of guidelines in *Re P (Section 91(14); Guidelines; Residence; and Religious Heritage)* sub nom: *In Re P (A Minor) (Residence Order: Child's Welfare)* [2000] Fam 15; [1999] 2 FLR 573 at page 19. Before proceeding to place the *Re P* guidelines into a modern context and to consider how the provision in section 67 of the Domestic Abuse Act 2021 may impact upon the guidelines when that section to be brought into force.

25. The guidelines in *Re P* are as follows:

"*Guidelines*

(1) Section 91(14) of the Act of 1989 should be read in conjunction with section 1(1), which makes the welfare of the child the paramount consideration.

(2) The power to restrict applications to the court is discretionary and in the exercise of its discretion the court must weigh in the balance all the relevant circumstances.

(3) An important consideration is that to impose a restriction is a statutory intrusion into the right of a party to bring proceedings before the court and to be heard in matters affecting his/her child.

(4) The power is therefore to be used with great care and sparingly, the exception and not the rule.

(5) It is generally to be seen as a useful weapon of last resort in cases of repeated and unreasonable applications.

(6) In suitable circumstances (and on clear evidence), 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.

(7) In cases under paragraph 6 above, the court will need to be satisfied first that the facts go beyond the commonly encountered need for a time to settle to a regime ordered by the court and the all too common situation where there is animosity between the adults in dispute or between the local authority and the family and secondly 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.

(8) A court may impose the restriction on making applications in the absence of a request from any of the parties, subject, of course, to the rules of natural justice such as an opportunity for the parties to be heard on the point.

(9) A restriction may be imposed with or without limitation of time.

(10) The degree of restriction should be proportionate to the harm it is intended to avoid. Therefore, the court imposing the restriction should carefully consider the extent of the restriction to be imposed and specify, where appropriate, the type of application to be restrained and the duration of the order."

26. The modern context in which King LJ considered s.91(14) is set out in paragraphs 34-36 of her judgment. The modern legal landscape includes the advent of the smart phone and social media and "*the almost universal use of email as a means of instant communication*". Another development considered of relevance by King LJ is the withdrawal of legal aid in the majority of private law cases leaving litigants unrepresented without the "*steadying influence*" of legal advisers. According to King LJ, one of the consequences of these changes not uncommonly seen in private law proceedings is that the other parties, and often the judge themself, can be (and often are) bombarded with emails from a parent, whether male or female, who is representing him or herself. Such behaviour may be the result of anxiety but in other cases, as in the case before King LJ, it is part of a campaign of behaviour by one

parent against the other which amounts to a deeply disturbing form of oppressive behaviour on their part.

27. At Paragraph 36 of her judgment King LJ stated: -

> "*Regardless of the motivation, behaviour of this type, as exhibited by the mother in this case by way of an example, is deeply distressing to the parent who is the subject of such abuse and litigation at this level and is highly debilitating to each of the parties and to their children. All too often such communications are ill-considered and ill-judged with the consequence that every minor dispute or misunderstanding is met with an application to the judge. More importantly, the distress and anxiety caused to the other parent and to the children at the centre of such a raging dispute cannot be overestimated, nor can the damaging consequences where the focus of the litigation veers away from what, on any objective view, would and should be regarded as the real issues going to the welfare of the children concerned.*"

28. In anticipation of section 67 of the Domestic Abuse Act 2021, which came into force after *Re A* and which brought into force s.91A of the Children Act 1989, King LJ stated at paragraphs 45-46 of her judgment

> "*45. It is not for this court to presume to interpret or to purport to provide a commentary upon a section in an Act which is not yet in force and in respect of which statutory guidance has yet to be published. It is worth however noting that the proposed new section 91A dovetails with the modern approach which I suggest should be taken to the making of s91(14) orders. In particular the provision at section 91A(2) , if brought into effect, gives statutory effect to Guideline 6 of Re P (see para 39 above) by 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.*
>
> 46. *Under section 91A(4) when considering whether to grant leave the court will consider whether there has been a material change of circumstances. Again, this would put the current approach to the granting of leave on a statutory footing.*"

This Hearing

29. The evidence before me for this welfare hearing is contained in the main bundle and the supplemental bundle. Although they had both been before me for the fact-finding hearing, I re-read them.

30. In order to determine the applications before me, I heard oral evidence from the witnesses I set out in the paragraphs that follow.

Dr Bose

31. Dr Bose is a Consultant Forensic Psychiatrist instructed as a single joint expert within these proceedings. He was identified by the mother. He assessed the mother on 28 November 2023 and has prepared a Psychiatric Report and an Addendum thereto in

relation to the mother's mental health. In fairness to Dr Bose, on the face of his report he stated that:

> "7. *There are severe limitations to this report, as there are problems with the quality of the information given, especially from the medical notes given by the French psychiatrists. I have not had any access to detailed notes made by Dr B or Dr L who have seen [the mother] many times. All I have is the diagnosis they have given [the mother]. Concerning Dr B's medical notes, I have been given a complete letter where he makes the diagnosis of ADHD, but I have not been given any correspondence after he prescribed a trial of ADHD medication and [the mother] appears to have had a manic episode.*
>
> *8. I have not been given any correspondence from Dr L as to how he came to the conclusion that [the mother] suffers with Bipolar affective disorder (type 1).*
>
> *9. Of the correspondence that I have been given, the translations are incredibly difficult to follow and the diagnoses that the French psychiatrists use are not used in British psychiatry, thus after the admission to France, [the mother] is diagnosed with delirium instead of drug-induced psychosis and after being seen by Dr G, she is given a diagnosis of "cycloid psychosis" instead of recurrent acute stress-induced psychosis.*
>
> *10. The fine detail of the previous psychiatric assessments is needed as [the mother] has received so many different diagnoses in the past […]"*

32. In evidence, Dr Bose tried to say that these were not severe limitations but moderate limitations, before accepting that without knowing what these records contained, he could not quantify the severity of the limitation but needed to acknowledge it.

33. Dr Bose's opinion was that when the mother was admitted to hospital in France, she was likely to have been suffering a drug induced psychosis because of the ADHD medication, concerta XL. Her admission to hospital in February 2023 was also likely to be a drug induced psychosis. This time the drug was cannabis.

34. There are various diagnoses that have been given over time for the mother's mental ill-health. I have set out in my second judgment Dr Bose's working diagnoses which, of course, is subject to the limitations identified above. His opinion was that whatever the diagnosis, the mother is currently being very effectively treated on 300mg of quetiapine. That is why her behaviours have calmed since July/August 2023. However, the application made to this court in February 2024 and its content was in his opinion likely to have been made in a quasi-psychotic state triggered by stress. That would also explain her behaviour on 11 September 2023.

35. Had Dr Bose limited his evidence to the above, I would have accepted it without further comment. However, I find that his evidence in relation to the risks the mother posed to U was partial to the mother and ill-thought out. I cannot accept it. I consider that when Dr Bose considered risk, he had not factored in the findings of fact judgment I had given and which he had been provided with prior to entering the witness box. Indeed, he appeared to me have given it little or no regard. Instead, he had relied on the mother's self-report and had omitted at her request, information

which she volunteered to him but which she considered would be harmful to her case. Further, when considering risk, he only considered direct risk. In that regard he considered that if the mother's mental ill-health remained managed by medication, then she would be no direct physical risk to U, i.e., she would not intentionally hurt him. However, he could not contemplate indirect risk to U from witnessing his mother's oppositional behaviours to third parties or his father. He had not considered the impact on U, if in his father's care, and how his father continued to be impacted by his mother's behaviours. He did not consider the risks that would flow from a potential repeat of the two quasi-psychotic episodes which had occurred when the mother was appropriately medicated. Instead, he simply said they were not ideal. Further, he strayed beyond his area of expertise and started to give evidence about the resilience of children in general and to apply his theories to U. He did so without ever having met U, let alone having assessed him. Rightly, in the end in cross-examination on behalf of the Guardian, he agreed that when it came to assessing the risk to U and, in particular, the emotional and psychological risk to U, he would defer to the Guardian.

The Mother

36. U's mother gave evidence to me again. She was polite and restrained in her evidence. She assured me she would continue to take her medication and to engage with Dr L in France. Her primary position was that she remained convinced that U was a completely lost boy. She could tell from photographs she saw of him on social media feeds. She had the financial and emotional resources to care for U. If U moved to France to live with her, she would have to see how he was and how he responds before deciding what contact he should have with his father. The mother later told me she would see what U wants. She would introduce her partner to U naturally. She accepted that at the moment, U does not know she has a partner. In evidence, the mother did her best to consider what would be best for U and what contact he should have with her if he continued to live with his father. She told me she wanted video contact four times a week and direct contact at her friend's home in England every second weekend. She told me she wouldn't try to abduct U again because it would be futile – "*there is CCTV everywhere*". It was clear to me in evidence that the mother's focus remained firmly on securing U back into her care and the only inhibitors to prevent his abduction from his father would be external. The mother had no insight into her behaviours and, more specifically, no insight into the impact of her behaviours on others, particularly the father. In relation to professionals, who have supervised contact etc. in this case, she regarded them like "*Nazis".* She considered they had "*hero syndrome*". Her evidence was self-centred and selfish. She told me that "*none of this had been fair for me from day one*". She did not accept my judgment. She did not accept the French decisions – "*Nothing can be done to help me accept it*". She still thinks the father is a risk to U. She found it hard to contemplate U not living with her. Very frankly, she told me that she wished she could 'shut up' in the future but that she did not think she could.

The Father

37. U's father also gave evidence to me for a second time. He told me he did not like the findings I had made about him, but he accepted them. His case was that U should remain with him. He would like U to have a relationship with his mother. He told me that he had tried everything to facilitate that, and he does not know what else he can do. The mother's behaviours towards him make him anxious and stressed and that

impacts on the parenting he can give to U. He talks to U about his mother when they are doing day-to day things e.g., when eating spicy food, "*your mother likes spicy food*". He has explained the mother's absence to U by telling him his mother is ill and needs to take medicine. He accepts he needs help with what to tell as U gets older. He told me about the positives of the mother and more particular about U's need for a mother's love. However, he is truly scared of what might happen if the mother has direct and indirect contact with U. He does not know how the risks can be managed and considers the risks outweigh the benefits. He will however comply with whatever contact this court considers in U's best interests. He needs a break from proceedings and the impact of those proceedings on him and U. He has had enough.

The Guardian

38. The Guardian was professional and diligent in her written and oral evidence to this court. She was an impressive, reliable, and credible witness. She showed kindness to both parents but very clearly had U's best interests front and centre of her recommendations. She has provided this court with two reports. The first is dated 12 May 2023. The second is dated 15 February 2024. I accept the contents of her report and her recommendations.

Discussion and Conclusions

39. U is now 4 years old. He will be five next month. His best interests are my paramount consideration. I have no doubt that U loves both his parents and they him. U has a bond with both his parents, and I factor that into my decision making. U is too young to articulate what he wants. I factor into my assessment that, like most children of his age, he wants to love and be loved. He wants to feel and be safe and secure. He would wish to have a relationship with both his parents now and as he grows up.

40. U has been seen by his Guardian in the home he currently shares with his father and in his primary school. At his father's home, U was instantly engaging, showing her his toys, and he was happy. He spontaneously spoke of his mother and occasionally and appropriately went to check-in on his father who was in the kitchen. He is comfortable and relaxed with his father. His Guardian made similar observations about U in school when she had been speaking to him 1:1, but when observed in the playground, she saw a different side. He was slightly removed from the other children. The Guardian wondered if what she observed could be explained by U not liking transition. He moved from nursery to primary school in September. U's new school describe him as being unable to work independently without support. When he first joined the school, he did not really talk. He is speaking more now. The school consider that U struggles with transitions and has struggled with changing from nursery to school. On a day-to-day basis, U struggles with going to school and also struggles with leaving school. The school does not consider that he presents with additional educational needs. Rather, their view is that his presentation reflects his difficult early life experiences. I agree with the Guardian. U is a vulnerable child, who has suffered adverse experiences in his early life and that has impacted on him emotionally and psychologically.

41. U is a little boy who has experienced a lot of change. His parents separated when he was very young, only to resume their relationship briefly before his mother took him to France with his father's consent in August 2021. During his parents' relationship, I

have already found he was in the kitchen when his mother pointed a knife at his father before making as if to cut her wrist. By October 2021, he was having no contact with his father. Whilst in France, he is likely to have experienced his mother's deteriorating mental ill-health before being removed into foster care. There, the pattern of his contact with his mother was disrupted because of her behaviours. He was placed in his father's care and returned with his father to England. I have found that in England, he witnessed the events of 28 February 2023. He has experienced his mother shouting in a distressed state through the letter box of his home on 26 February 2023 and in July 2023. In England, by reason of his mother's behaviours, his contact with his mother has been disrupted and there has now been no contact for 10 months.

42. When the Guardian saw U in school, he pointed to an angry emoji and stated, "*that's my mum*" and "*my mum is so angry. I think she is angry*". He later described her as happy. I consider that it is no wonder that U has two such different impressions of his mother, given his mother's behaviours which he will have seen and heard. I accept and accordingly find that when supervised contact between U and his mother has taken place, the interaction is of good quality. There is natural and positive interaction. They laugh, have fun and her obvious love for U shines through. There is no issue in this case about the mother's ability to meet U's basic needs and to provide him with good quality care during contact. Further, I accept that on occasions in contact the mother behaves appropriately when U wants to go home with her and that she is positive about the father. The problem is that the mother does not always behave appropriately to the professionals facilitating contact or historically, in contact itself. U's contact with his mother was suspended by the French Court as a result of her behaviours, which included being unable to protect U from her own emotions and her behaviours towards professionals. In England, direct contact has been disrupted by the mother's behaviours which on 7 January 2023 resulted in a contact centre not being prepared to facilitate contact after the mother had an argument with the centre's manager. There were then two sessions of supervised contact on 24 March and 28 April 2023 before contact was again suspended because of the mother's behaviour. That behaviour included an attempt on 28 April 2023 to abduct U. Thereafter, despite the mother being asked to identify alternative contact centres that could be used, she did not do so, citing a number of reasons. Instead, and inappropriately, she attended the home that U shares with his father on 22 July 2023. I have already made findings about what happened on that occasion. I agree with the Guardian that such events are physically and emotionally unsafe for U. They destabilise him and unsettle him. U needs consistency and security. U's father provides that. In September 2023, the mother's actions caused the police to attend the father's home. U was asleep but the police attending will have stressed his father and raised his carer's anxiety levels. The impact on U's carer cannot be ignored. U is likely to pick up on the stresses and the anxieties even if he does not understand them.

43. Sadly, U's mother has no insight into the impact of her behaviours on U. She told the Guardian that U was not harmed by his exposure to conflict with professionals nor her attempt to abduct him. Her belief is steadfast that "*the fact she tried to leave [contact with him] deeply reassured her son*". The mother holds hard to her belief system and is, I find, unlikely to be able to let it go. She considers that she and U have been "*tortured*" by separation and that her actions have been justified. Her only goal is reunification. She sees and understands nothing else.

44. U's mother has many positives. She has provided good care to him in the past, as commented on by the nurseries in their reports to this court. In periods of separation from the father, the mother has met U's needs as a sole carer. I factor all of that in. However, there have been periods when she has not been able to care for U properly. Hence why the French Authorities removed U from her care. The mother has a significant history of mental ill-health. I accept her evidence that she no longer uses cannabis and has not since 28 February 2023. I accept her evidence that she takes her medication regularly. She has been prescribed quetiapine since July/August 2023 and on a dosage of 300mg she is stabilised. I accept that the issue is not whether she has a mental illness or indeed what it is called. The issue is whether the behaviours it causes can be managed and controlled to enable her to safely parent. Since taking quetiapine at 300mg and being stabilised, there has been an evident improvement in the mother's mental health and her ability to control her behaviours. However, in early February 2024 the mother filed her C67. She flew from France to England to have it heard in the Urgent Applications court. She did so because she was convinced that U was being caused and was at risk of significant harm from his father. That was a false belief, but it is one which I find she is unlikely to release. The mother cannot see that her actions put U at risk. A court not familiar with the background of the case could have removed U from his father's care, or at least have caused more professionals to investigate his and his father's circumstances which would have been intrusive and potentially harmful. The mother does not understand the impact such actions have on the father. He and U's placement are potentially undermined and the father's ability to care for U is reduced by his own anxiety and stress.

45. The mother told me that if my fact-finding judgment was disclosed to her treating psychiatrist, he would not believe it. That is, in my judgment, because their relationship is based on the mother's self-report. I find that the mother does engage with her psychiatrist and that is a positive. However, she does so on the basis of her own belief system which is not at one with the findings this court has made. In the past, she has been confrontational with those who do not accept her view of things. It remains to be seen whether she will engage with her psychiatrist in the future if, whether because of this court's findings or otherwise, he challenges her.

46. The father's ability to parent U has been impacted by the stress and anxiety generated by the mother's behaviours. However, since U was entrusted to his care in July 2022, he has met U's basic needs consistently. He could have done more to support U in school and now that has been pointed out to him, I am sure that he will provide that support. The father has been able to meet U's emotional and psychological needs. The father is at the end of the tether and has lost empathy with the mother. He writes to this court about her in negative terms and speaks about her negatively. I have made findings about that which I factor in. However, it is a testament to good parenting and the positive way he must speak of the mother when with U, that U felt able to spontaneously speak about his mother to the Guardian in the home he shares with his father with his father in earshot in the kitchen. In evidence, when asked on behalf of the mother to tell the court of the mother's positive qualities, the father was able to tell me that he does not underestimate U's need for his mother's love and the care she could give him. I find he gave that evidence with conviction. The father sees the benefits of promoting contact between U and his mother but worries that it will lead to more exposure to the mother's impulsive and unsettling behaviours. He is

pessimistic about contact in the future seeing it as a source of potential harm for U. The father's view is drawn from his experience. He says that whilst it is a good idea in theory, it cannot be achieved in reality. I thus factor into my decision-making that if U remains in his father's care, contact between U and his mother may not be promoted as it ought to be, and there is a real possibility that his relationship with his mother may be diminished. Despite that negativity, I conclude that if U remains in his care and if this court orders contact between U and his mother, the father will do his best to comply with the order.

47. I also place in the balance that if U move to lives with his mother in France, his relationship with his father may be fractured. The mother cannot contemplate with any certainty how contact would look for U in the future if U were in her care. She tells the court that she would need to see how U reacts to the move and gauge what U wants. The mother, I find, remains negative to the father and convinced he is a risk of harm to their son. I also take into account that when U moved to France with the mother in August 2021, his father by October 2021 had to take steps to regain contact with him. I find that it is likely that if U was placed in his mother's care, she would not promote his relationship with the father through contact. I do not consider that the mother would comply with any orders this court makes. I find that the mother's certainty in her own belief system is so entrenched that she would follow that come what may. Her beliefs are, I find, fixed and dominant.

48. I find that the mother's plans for U to live with her in France are incomplete. I accept that she has the necessary accommodation and finances. However, her plan is that her partner will remain out of the home they share for two months. She accepts that U does not know of his existence. She believes that in time and naturally, U can be introduced to her partner. I accept that her partner has no criminal convictions. I accept that he works in forestry and that he is creative. However, he has not been assessed for these proceedings and the mother has chosen not to bring him before the court to support her case. What is known is that in the relatively recent past he too has suffered from mental ill-health necessitating a period in hospital. He has used cannabis in the past. These facts raise issues of risk. Those risks may or not be capable of management and mitigation but without assessment this court cannot say that they are managed and controlled. Thus, I find that there would be risks in the mother's care which may not be managed. I find that the mother is overly optimistic about her plans. She does not see that there will be any need to settle U in her care even though she has not seen him for ten months. I find that she has an idealised view of what the reality of U in her care would look like and has no real insight into the manner in which U may react to being removed from his father and his current home, or the need for concrete practical plans for U's future. For instance, if U were to live with his mother in France, she would not put him into school for the remainder of this academic year. Thereafter this court has not been told which school he would attend.

49. I find that the father offers U continued stability and certainty in an environment with which U is comfortable and settled. His home and school would remain the same. He would have the day-to-day consistent care of his father. A move for U to live in France with his mother would be a significant change in circumstance for U. U does not like transition and it is likely that he would be severely impacted by the move and the new circumstances in which he would be required to live. The move is likely to impact negatively on his relationship with his father, who has been his point of

stability and certainty since the July 2022 judgment. I consider that a move for U to live with his mother is France would expose U to the risk of further emotional and psychological harm and that the degree of harm is likely to be significant. U is already vulnerable and has already suffered adverse life experiences. He needs to be protected from further risk of harm.

50. I stand back and look at all the factors in this case and make a holistic evaluation. I factor in the Article 8 rights of U and of both of his parents. Having done so, I consider that the best interests of U, which are my paramount consideration, point fairly and squarely to U remaining in his father's care in England. I make an order that U should live with the father and dismiss the mother's applications for U to live with her in France.

51. I consider and so find that it is in U's best interests to maintain a relationship with his mother. It is important to his future emotional and psychological welfare that he continues to know she loves him and is committed to him. It is, I find, also important that he has an opportunity to interact with her and experience all the positives that she has to offer, and which have been observed in the past in contact. I thus find that it is in U's best interest to have contact with his mother. Whilst there are risks in promoting it which his father sees, I consider that at U's age the benefits outweigh those risks.

52. The Guardian writes, and I accept, that:

> *"If the court were to refuse [the mother's]'s application for [U] to live with her, in my assessment, the requirement for supervision of any contact between [U] and his mother is essential. [The mother] maintains her strongly held belief that [U] was unjustly and unfairly removed from her care and that his rightful home is with her. [The mother] is completely unaccepting of [U]'s placement with his father, which was ordered at the conclusion of proceedings in France, and which was recognised by the UK Court on 31/10/23'. Further, that as recently as 8 February 2024, '[the mother] expressed to me that it is wrong that [U] is with his father, that there is absolutely no option that she would let this continue and that she will not leave [U] with his father because it is not OK for him to be there".*

53. I agree with the Guardian's analysis. U's future contact with his mother needs to be supervised on a 2:1 basis. The mother has attempted to abduct him in the past. Whilst the mother told me in evidence that she would not do that again because of CCTV, I find that if the opportunity arose again, the mother is likely to take it. She has a firm and fixed belief that she is right and sees, in reality, only one outcome: U living with her. That remains her steadfast focus. She has no insight into her behaviours and their direct and indirect impact on U. I find that the mother has no internal inhibitors. The only way U can be protected is to put external inhibitors and barriers in place.

54. I agree with the Guardian about the duration and frequency of direct contact. Two hours every other month is sufficient to maintain the bond between the mother and U. It will be supported by the indirect package of contact the Guardian has recommended and which I now so order. That will enhance the direct contact and make it more meaningful for U. I also consider that it is both necessary and proportionate to make

ta prohibited steps order to prohibit the mother removing U from the father's care and from the care of those to whom he delegates care on a day-to day basis, i.e., U's school. The father has asked me to remove the mother's parental responsibility for U. His justification is that in the past the mother has acted to prevent him removing U from the jurisdiction for a holiday. I accept the observation made on behalf of the mother that under a lives with order there is already permission for the parent with whom the child lives to take the child out of the jurisdiction for 28 days. I do not consider the evidence supports the need for the draconian order the father sought for the first time in closing. However, I accept that there is a very real risk that at the conclusion of this hearing, the mother is likely to act out when she does not get what she so dearly wants. I consider that these proceedings themselves have inhibited the mother's behaviours during the currency of the proceedings. She has not offered any undertakings in relation to her future behaviour. In fairness, I was told that she might do if I gave her direction. However, I find that for undertakings to have true meaning and effect they need to be genuinely volunteered. I have reminded myself of the terms of the Family Law Act 1996. I am satisfied that the relevant provisions of the Family Law Act 1996 are made out in this case on the evidence available to me and that it is just and convenient to make a non-molestation order to limit the risk of significant emotional harm to U. Accordingly, I make an order to protect both U and his father in the same terms as originally made by Mrs Justice Knowles on 1 August 2023.

55. I make an order pursuant to s.91(14) of the Children Act 1989. There is a significant history of the mother not accepting court orders and making applications to this and the French court. The litigation has an adverse effect on the father. It stresses him and causes him anxiety. I have previously said that he is at the end of his tether. That is not an exaggeration. The father's stress and anxiety will undoubtedly impact on U and the care that can be provided by his father. U and his father need a period of respite from applications and the many court hearings that follow. U needs certainty and stability. Every child does but U, in my judgment, needs it more than most because of his adverse life experiences to date. The Guardian in her evidence advocated initially for a period of 18 months, but when cross-examined by the father she accepted that a longer period could be justified and left it for me to determine. Having considered all the evidence, I find that 18 months is not long enough. I find that U needs a period of respite and stability. Looking to his timeline, I consider that making the order until September 2026 is in U's best interests. By then he will be 7 years old. He will have grown not just physically but matured age-appropriately, both emotionally and psychologically. By then he will, I hope, have had two and a half years of stability and certainty. There will have been time not just for the dust to settle but also hopefully for the contact I have ordered to have been established and to be proceeding smoothly. It is my hope for U that by then, his mother will be able to express her profound love for him without the risk of her behaviours destabilising him and impacting adversely on him whether directly or indirectly through their effects on his father. I consider that an order made until September 2026 is both necessary and proportionate to the risks in this case.

56. That is my judgment.