Neutral Citation Number: [2024] EWFC 290

Case No: DE22P07104

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/10/2024

Before :

THE HONOURABLE MR JUSTICE HAYDEN

- -

Between :

PP

Applicant

- and -

JP

First Respondent

- and -

B and T
(Represented through their Guardian)

Second and Third Respondent

- -
- -

Laura McGinty (instructed by **Buckles Law LLP**) for the **Applicant**
JP appearing in person, assisted by her McKenzie Friend
Steven Veitch (instructed by **Smith Partnership LLP**) for the **Second and Third Respondents**

Hearing dates: 9, 10, and 14 October 2024

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APPROVED JUDGMENT

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.

Mr Justice Hayden:

1. These proceedings concern the parties' two children, B who is 14 years of age, and T, who is 13 years. T, I have met, because he had asked to meet with me directly. A note of our conversation has been recorded and filed in these proceedings. B did not wish to meet. It requires to be stated, at the outset of this judgment, that these are two delightful young boys, effervescent with talent and potential, and who plainly love both their parents. It is also the case that both parents have, in different ways, let the boys down. They have pursued extensive and corrosive litigation, which undoubtedly has caused the boys emotional harm, which to some degree will be enduring. The proceedings themselves have taken far too long. The boys are almost palpably desperate for a resolution to their future and are signalling, very clearly, that they want these proceedings to conclude.

2. During the course of this hearing, I have heard from a forensic psychologist, Dr Jennifer Matthews, from both of the parents, extensively and from the boys' Guardian. The application ultimately generating this final hearing was made as long ago now, as the 7th of April 2022. Thus, the proceedings have been before the court for two and a half years. For an adult, two and a half years is a significant period, for an adolescent young person, it is an eternity. To live for such a long time and at such a crucial stage of their development with uncertainty and conflict swirling around them is, manifestly, inimical to their welfare.

3. The final hearing was, originally listed before Ms Recorder Coles in December 2023. That hearing appears to have been adjourned for *'conclusion'* in February 2024. The judgment was handed down on the 7th of March 2024. The application to change the children's residence, made by the father, was refused by the Recorder. In doing so, she rejected both the evidence of the Guardian and Dr Matthews. There was a predictable appeal, which was successful.

4. A re-hearing was listed to take place before HHJ Williscroft, on the 28th and 29th of August 2024. An application was made by the children's solicitor on

the 16th of August 2024 for further questions to be put to Dr Matthews, which required a follow up assessment of M. HHJ Williscroft approved the questions on paper the same day and listed an urgent directions hearing on the 22nd of August 2024. It was during that urgent directions hearing that the listing of the re-hearing on the 28th and 29th of August 2024 was adjourned to the 9th and 10th of October 2024 to allow sufficient time for the assessment of M to be completed. A short directions hearing went ahead on the 28th of August, on what would have been the first day of the re-hearing. A further directions hearing then took place on the 27th of September 2024 to consider various applications. The re-hearing dates were maintained but extended by one day. At a directions hearing on the 22nd of August 2024, the re-hearing was adjourned to provide time for Dr Matthews to complete a follow up assessment of M. The regrettable loss of the fixture resulted in further delay for the boys which could not have been more damaging.

5. The case was relisted to be heard in October 2024, which inevitably meant that the central issue of the children's education could not be resolved until after the beginning of the school term. On the 27th of September 2024, the case was further considered at an urgent directions hearing. At that hearing, the Mother [M] informed the court that she had cancelled her appointment with Dr Matthews and made a formal complaint about her to the Health Care and Professional Council (HCPC). Dr Matthews had been advised, by her professional body, not to undertake any further assessment of M, whilst a complaint was pending. The order directing an updated report from Dr Matthews was, accordingly, rescinded. Nonetheless, Judge Williscroft, correctly in my view, considered that she could hear from Dr Matthews in respect of her earlier assessment and provided for her attendance at this hearing. Unfortunately, Judge Williscroft was unable to hear the case, for reasons entirely beyond her control, and it was transferred to me to avoid compounding the lamentable delay.

6. The children live with their mother and spend time with their father, broadly speaking, on alternate weekends. Holidays are shared roughly on an equal basis between the two parents. The order that Recorder Cole had put in place

to facilitate contact had survived the appeal and has been restructured in the existing childcare arrangements.

7. Both the children are being homeschooled. This has been a source of significant conflict between the parents, for some time. In addition to resolving the question of the children's education, the court is required to determine with whom the children should live with, and, as the issues have evolved, whether both children should live with the same parent. An order dated June 2024 identifies the issues for this hearing.

8. Firstly, the court is required to analyse each parents' approach to the '*behaviour and condition of the children'*. In particular, with reference to Autism Spectrum Disorder (ASD) and its associated traits.

9. Secondly, the court is required to consider in this case, as in any other, the children's wishes and feelings (relating to the issues in focus), recognising the danger of conflating the two. What a child says, and how a child behaves, may reveal a conflict between *'wishes'* and *'feelings'*.

10. Finally, the court is required to evaluate which parent is in the better position, fully to support the reintegration of the children into mainstream education. The present position of both parents is that the children should now both attend school. The sincerity of M's true commitment to her stated position is questioned on behalf of Father [F].

11. It is not necessary to look at the background of the parties in any detail. Some key facts, which impact upon the reality of the children's lives, do require to be identified. F is 67 and lives in Lincolnshire. M is 43, and lives in Derby, having relocated from Lincolnshire, where she has deep and longstanding roots Thus, the parties live some 65 miles apart, which for the purposes of contact, requires in reality, approximately two hours travelling in each direction.

12. The parties separated, following the disintegration of their relationship, in December 2018. It is worth reflecting at that point, B was 8 and T was 7. Almost immediately, F applied for a Child Arrangements Order for the

children to live with, or alternatively spend time with him. The final order was made by District Judge Parker on the 6th of February 2020, which provides for the children to live with M and have contact with F on the terms that I have already outlined.

13. It is significant that at that stage, the children were being home educated by M. The court concluded that it was appropriate for that to continue, but signalled that the matter might be revisited when the children reached the age for secondary education. It is also important to highlight that whilst M has shown enduring enthusiasm for home education, in 2017, when the parties were still married, both the parents had agreed enthusiastically on home education as the appropriate course for their children. There was a romantic aspiration for the children and the parents to live in a mobile home and travel throughout Europe, enabling the children to experience different cultures and become fluent in different European languages.

14. However, in September 2021, M agreed for B to commence mainstream secondary education, Year 7. From my assessment of M's evidence and from my reading of the papers, she regarded that very much as an experiment or a '*test'*, to use her phrase. She felt that she was experiencing significant difficulties in managing to get B to attend school. In October 2022, she concluded that the experiment had failed, and withdrew B from the school. The application currently before the court was, as I have mentioned, made by F in April 2022, and, I accept, was genuinely prompted by his concerns about the children's secondary education. At that stage of course, B was still attending at school, but his attendance was beginning to slip significantly.

15. Rather to the Guardian's surprise and without much, if any notice to her, a new partner and her two daughters emerged into F's home life. This woman and her children had been living in France but had moved to the UK in 2024. Initially, she and her daughters lived with F, in somewhat cramped conditions, until a more stable arrangement was identified. The Guardian was concerned that this change in F's domestic arrangements showed a lack of focus on the boys' needs and a failure properly to consider its impact on their emotional

wellbeing. The Guardian was particularly concerned that this had involved them giving up their bedroom, to share a bed with F.

16. It will be obvious from what I had said above, that the boys feel, with justification in my judgment, that their views have been lost sight of. It is appropriate therefore, having regard to the lengthy delay, to start my analysis of the issues in the case by identifying the views of the boys themselves. In a case where there are vanishingly few areas of agreement between the parties, there is a complete agreement that B has consistently and quietly asserted his wish to live with F. The two have a great deal in common. They share an enthusiasm in design and motor vehicles. This common interest has enabled them to forge a comfortable and easy relationship. The Guardian has observed that those interests make it, in her words, *"natural for B to align himself with his father"*. It is important to state, and for M and F to hear, that the bond that B has with F, does not in any way eclipse his obvious deep love and affection for M. It is equally important that B is made aware, by his Guardian, that I have recognised that in this judgment. It is greatly to these boys' credit that in the face of parental conflict, they have shown resilience, patience, and maturity to a degree which has somehow enabled them to forge good relationships with both of their parents, and to make contact a worthwhile and meaningful experience for them all. I hope their parents will forgive me for saying that I regard this as the boys' achievement and not theirs.

17. In the course of these proceedings, a Section 7, Children Act 1989, Report was ordered, requiring CAFCASS to investigate the children's welfare. The commissioning of such a report is frequently a signal of a family in persistent difficulty. In that report, T was recorded to be '*guarded*'. He had, to paraphrase the evidence, come to see himself as a kind of Switzerland who needed to be determinedly neutral to both parents. The extent to which he continues to be guarded is both obvious and troubling. He rarely, if ever, issues words that are in any way critical of either of his parents. In her detailed report for these proceedings the Children's Guardian has noted that despite this carefully crafted and maintained neutrality over such a lengthy period of

time, T has recently been expressing a wish to live with M and to attend the local Grammar school, some 15 minutes from her home.

18. As I have foreshadowed, both parents now advance a case that the children should be in structured secondary education. Whilst the Guardian accurately records T's wishes, she is clear that the boys exhibit a strong need to be with each other. In his written closing submission on the children's behalf, Mr Veitch states *"the Guardian is clear that these boys need to live together. This is supported by the expert assessment of the boys. That has been the view of the parties throughout, until the mother's oral evidence".* Mr Veitch goes on to comment that *"the mother appeared to be very emotional in contemplating the separation of the boys"* and submitted that she was *"truly unable really to engage with the reality of what was being suggested".* I agree. In her questions to the Guardian which were focused, structured, and carefully thought through, the case clearly presented by M was that both boys should be with her. I consider that this questioning reflects her true understanding of the boys' needs. Her assertion in the witness box, that the boys should be separated reflected, in my judgement, her own emotional distress, rather than her true position. Finally, the Guardian considered that B, aged 14 would be upset and disturbed if his views were not adhered to, having articulated them so consistently and for so long. This, both parents agreed with. It is, in truth, redundant of any other contrary coherent response.

19. T, when he came to see me, had prepared a short letter in which he expressed his apparent concern that the Guardian might not have accurately represented his view that he now preferred to live with M. The Guardian's report had in fact properly and carefully reflected T's view. Ms McGinty, on behalf of F, submitted that that letter, properly analysed, bore the hallmarks of the Mother's influence. M disputed that, but she did accept that she had had some peripheral input into the letter, falling short of influencing its content. Certainly, M is critical of the Guardian, having, as I recorded above, applied to have her removed from this case. I agree with Ms McGinty that the letter itself shows some evidence of M's influence. That is perhaps inevitable, given her presence when it was being written. In the second paragraph of the letter, T

told me that he wanted to tell me the reasons why he would not like to live with F. He said *"with six people in the house, he had no place to be alone"*. He said he did not *"get along with A [the daughter of F's partner] as much",* and he *"found her to be quite annoying*". He said that C, his Father's partner, had now made new rules which he did not like, and he thought they did not "*really have much choice when it comes to going places"*. He also said *"although [F's] house has its good sides too, such as having people to play with until I make some friends…".*

20. Whilst M may have hovered over this letter and had some input into it, perhaps to some degree unwittingly, I consider that a good deal of T's authentic voice emerges from it. That phrase *"until I make some friends"*, seems to me to reflect his recognition that he, at present, does not have any friends. It also strongly suggests to me that he would like to make some. He goes on to say that *"M's house has some downsides"*, expanding this to note *"until I make friends (except my cousins, but they won't be at the school)".* T concludes that *"sometimes I prefer to be alone, and I think that is the only downside for me. but I have made my choice and I prefer to live with my mum and I am sure of that".* Having read these passages several times, it is impossible to fail to appreciate how highly contradictory they are. T's thoughts do not establish a basis for his conclusion. On the contrary, they indicate, at the very least, conflicting emotions and feelings. I recognise that T's relationship with his cousins is important to him, and not only because of the limited parameters of his social opportunities, but, as Dr Matthews has said in her evidence, the journey into maturity really involves meeting and making friends with others outside the family. It is a facet of the development of personal autonomy forged through the inevitable challenges of adolescent friendships which are part of the journey to adulthood.

21. I noticed that T used the phrase *"until I make friends"* twice, in his own short letter. When he came to see me, he was impeccably polite and charming. The central concerns identified by the Guardian and Dr Matthews revolve around the inevitably limited opportunities for social development that the boys have had, whilst at least ostensibly, studying at home. Their world is, I find,

restricted and narrow. It does not offer them sufficient opportunities to blossom and grow in their own particular soil, nor to develop their obvious potential. It seems to me that now both parents have coalesced on the need for formal secondary education, that they have both recognised this, at least to varying degrees.

22. T and B are obviously bright children. T has kept some tenuous foothold in academic learning, but it is undoubtedly the case that B has disengaged entirely. That would be sad for any child, but it is seems particularly poignant given B's clear academic potential. In her substantive report, Dr Matthews observes that during the assessment interview, and I emphasise that this is the report of August 2023, *"[M] specifically told her that [both] the children had not been having any structured education at all since Easter".* This was said in August 2023, i.e. approximately 5 months. M explained that period as being *"a break from structured learning".* She expressed the view that *"the children were engaging with online entertainment",* and she considered that, as I understand it, *"freedom to learn what they wanted to learn".* When B spoke to the Guardian, he told her he was not being educated at home, that he was watching YouTube. Notwithstanding M's apparently laissez-faire approach to education, I do not doubt that she recognises the real academic strengths in both boys. If I may say so, it is obvious listening to the parents in the witness box, that they too are articulate and academically able individuals.

23. In her short closing written submission, prepared over the weekend, M has thanked me for my patience for managing the challenges she faced as a litigant in person. Whilst that is generous of her, I cannot think of any litigant in person who has ever challenged me less. Her command of the electronic bundle, the chronology of the case, the detail of the material, the identification of the issues, and the accurate pagination of the references, has been quite extraordinary. On at least one occasion when counsel has struggled to find the page reference, she has been there in a flash. M's preparation and presentation of her case is suffused with detail. It is exemplified in her extensive spreadsheet which she has filed and used, dextrously, as a compass to navigate the 1500 pages of documents. However, in cross-examination, when asked

questions, her response would invariably be to turn to the schedule, citing a page reference, rather than respond instinctively to the question. In this sense, her compass had become a shield, with which she endeavoured to deflect questions. It left the persistent impression that her focus was far more on the litigation, than on the children themselves.

24. Much has been discussed in the course of evidence concerning what Dr Matthews identifies as M's *"avoidant coping style"*. In her evidence, M told me that she agreed with Dr Matthews that she had developed an avoidant coping style, and she considered the therapeutic input that she had received had enabled her, effectively, to address it and to come to terms with it. The difficulty with phrases such as this i.e. avoidant coping style is that they can be nebulous and rather generalised. I was left with the impression that M had not entirely observed what it was that Dr Matthews was identifying in her use of the phrase.

25. Dr Matthews explained that a key feature of the avoidant behaviour lay in M's rejection, often in fulsome terms, of those individuals who disagreed with her, and whom she perceived *"as not meeting her needs"*. She amplified this in evidence, stating that M regarded those who crossed her belief structure, or who otherwise opposed her as being ***'abusive'*** (my emphasis). By this she meant emotionally and psychologically, and not merely verbally. Dr Matthews considered that this response was rooted in M's undoubtedly difficult childhood, in which M has described herself as persistently and coldly denigrated by her own mother. In this context, it is notable that M has argued for the removal of the Guardian from the case on the basis of bias, and has, ultimately, referred Dr Matthews to the HCPC, i.e. to be disciplined by her professional body. Further, it is said that M's avoidant coping style and personality leads her to overestimate risk and danger, and in the context of her parenting, overestimate the boys' difficulties, and concomitantly underestimate their capacity for social interaction and personal development. It is contended by Mr Veitch on behalf of the children, and Ms McGinty on behalf of F, that M has, to use their term, *"medicalised the boys"* in a way which simply is not supported by the preponderant evidence. It is said that M's

account of the children's behaviour, particularly in the sphere of social interaction, is exaggerated to the extent that she regards it as requiring medical assessment and support.

26. Ms McGinty has, with impressive forensic rigour, pursued M's deep-seated belief that both boys suffer from autism and to a degree which has a significant impact on their day to day lives. Ms McGinty has demonstrated that when these beliefs are put to the assay, there is no independent factual evidence supporting that diagnosis, nor in my judgement, is there sufficient properly to trigger the assessment pathway that both boys have been on for some time. That assessment was initiated because of a General Practitioner (GP) referral, that is the only gateway to such an assessment. When the records were examined, it was clear, and M accepted, that the referral was based entirely on her own report to the GP, recognising that he had no other basis upon which to make any independent professional evaluation. On the basis on what M reported, the GP proffered a diagnosis that B suffered from anxiety. In most cases, what parents report to a GP about their children is likely to be accepted as broadly accurate. No doubt the GP will factor in potential for some parental anxiety, but the GP will be slow to suspect significant exaggeration, whatever the motivation may be for it. In this clinical situation, it is counterintuitive for the GP to be in any way suspicious of the history given.

27. The school referral seems to have emerged entirely from the Vanderbilt Assessment which was conducted by two teachers on the 17th of November 2021. This is a generalised assessment tool which highlights characteristics of those who might be displaying autistic or attention deficit behaviour. The assessment is included within the bundle, and lists some 35 *"symptoms"* or behaviours, as well as considering academic performances and specific classroom behaviour. Of the 35 characteristics set out in the assessment, it is notable that B scores lowly on the vast majority, i.e. shows very few significant and repeated indicators of Attention Deficit Hyperactivity Disorder (ADHD) or Autism Spectrum Disorder (ASD). In fact, only 2 out of a possible 35 reveal a significant score. In her evidence, M told me that she had also

pursued an assessment from a woman who was, she told me, professionally qualified, whom she had met socially, and who, on a superficial non-clinical assessment of the children, concluded that they both showed autistic traits.

28. In her substantive report, Dr Matthews identified the following:

> *"1.53 In my opinion based upon my interactions with both [B] and [T], alongside the reports of both of their parents, school report for [B] and all other collateral information; neither of the boys would appear to fulfil the diagnostic criteria for ASD. Whilst I acknowledge only spending a short period of time with them, I would have expected to have been able to observe a number of the traits described above, and I specifically asked for both of the boys about any sensory difficulties that may have.*
>
> *1.54 For clarity I do not rule out all traits of autism or another sensory related difficulty which may be identified by a full assessment, however, in my view the boys would not fulfil the diagnostic criteria for ASD, and don't present with social skills deficits, though they lack opportunities for social interactions outside of their family.*
>
> *1.55 I am concerned that [M] views both of the children through a lens of their having special needs, which she has failed to consider could simply relate to anxiety, attachments styles and a response to their experiences of parental conflict. For the boys to be given the message that there is something 'wrong' with them is damaging to their sense of self and self-esteem, their confidence, and their view of themselves both over the short and long term."*

29. M challenged Dr Matthews on her professional expertise and qualifications to express such opinions. She did not consider Dr Matthews, who worked with CAMHS for two years, had sufficient relevant experience, nor did she think her qualification as a forensic psychologist, equipped her to make diagnosis of children with autism. It is important, however, to note that Dr Matthews was not concluding the children did not have autism. She simply said the signs she had seen did not align with the traits she was used to seeing professionally. All of this, it is said by Ms McGinty, when properly analysed, indicates M's propensity to overestimate risk and danger, and underestimate her boys' abilities, as Dr Matthews had identified. In cross-examination, Ms McGinty demonstrated that M had claimed disability allowance for B, based on these described traits, and, at one stage, at the highest rate care component. M emphasises that the claim was presented on the basis of the GP's conclusion that B suffered from anxiety, as discussed above. This is an allowance that, in the experience of the professionals, is notoriously difficult for carers to obtain and on its criteria, is allocated to those with very severe presentation. There is an obvious disparity between the level of allowance and the observations of the children's behaviour by those other than M. Ms McGinty submits as follows in her closing written submission:

> *"28. Dr Matthews, who has experience with working with CAMHS and children with autism, did not see any traits which would meet the criteria for an autism diagnosis. Importantly, in her oral evidence she stated that if [M] hadn't informed her of the children's additional needs she would not have known. This aligns with [F]'s experience where [M]'s reports of the children's difficulties are inconsistent with his own experience of the children.*
>
> *29. [B] was referred to Art Therapy in 2022 via [the school] to try to address his low attendance. As part of the therapy process, [M] and [B] were separately asked to score [B]'s strengths and difficulties. [M]*

> *repeatedly scored [B]'s difficulties as being more problematic than [B] did.*
>
> *30. It is striking that (i) [M] claims Disability Living Allowance - at one stage at the highest rate care component - and Carers Allowance for [B]; and (ii) takes him to the Umbrella youth club "for children and young people with disabilities" in circumstances where she acknowledged in her oral evidence that [B] does not see himself as having a disability.*
>
> *31. The concerns relate to [T] too. [M] takes him to the Umbrella group despite him having no known disability and she is also pursuing an ASD assessment for him in the absence of any expert evidence to suggest this is necessary or appropriate."*

30. It is also a fact that both children have been enrolled by M at the Umbrella Youth Club. This is a club which is structured for young people with disabilities. From what I have heard, both boys have, to some degree, attended and enjoyed going to the club. In some respects, this is not surprising given the otherwise constrained parameters of their social interaction, but it would be highly inaccurate to describe either of them as *"disabled"*, and it would be entirely wrong to inculcate in them a sense that they are, either deliberately or otherwise. If there should be any doubt about it, let me be clear, that is not to attach stigma to the term *"disabled",* it is merely to emphasise the importance of the correct use of the word. In her submissions above, Ms McGinty contends that M's selection of this club, and the encouragement of the boys' attendance, risks distorting their own perception of themselves as in some ways disabled. This on its own and in conjunction with M's pursuit of a neurodevelopmental label for both her children, is, says Ms McGinty, an established pattern of exaggerating the boys' difficulties and underplaying their abilities. I agree.

31. In her evidence, M spoke about the progress that she had made in her cognitive analytic therapy. It is greatly to her credit that she has persevered with 24 sessions. This signals her commitment to meaningful change. From what she told me, she had taken many positives from the experience. She identified these as having learnt *"self-compassion"*. She also told me that she had developed the capacity to resist what she described as her tendency to *"people pleasing"*. She described to me what she now understood as her overprotective countertendency to negate her feelings, in what she identified as an *"I'm alright, Jack"* response to difficult situations. It is not difficult to see how all this resonates with M's description of her relationship with her mother, which appears to have cast such a shadow over her life. M also articulated with an air of positive enthusiasm, which struck me as entirely genuine, that she had forged a philosophy encapsulated by the phrase *"if I must, I won't"*. This she told me, reflected her new and growing capacity to address her tendency to address what she described as her *"procrastination"*. All this, she explained, had led her to be more assertive, and, as a convenient example, she told me that were it not for the cognitive analytic work that she had participated in, she would not have had the confidence to appear as a litigant in person and *"fight for her boys"* interests in the courtroom.

32. At this hearing, unlike previous hearings, M felt sufficiently empowered to request of Her Honour Judge Williscroft, that she be permitted special measures in the courtroom. Judge Williscroft granted that request, and M gave her evidence from behind the screen. I granted her request to be supported by a McKenzie friend, whose assistance struck me as measured and helpful to her.

33. I do not in any way wish to diminish M's achievements in therapy, but I agree with Dr Matthews that is a journey which is not yet completed. In particular, I found M struggled in articulating Dr Matthews' concern in respect of her *"avoidant coping style"*. It was striking to me that M, despite her undoubted intellectual ability, found real difficulty in understanding this facet of her functioning. Though eloquent in so many aspects of the evidence, she struggled to find the words to respond to this central difficulty. She seemed, at

times, rather bewildered by Dr Matthews' description of her avoidant coping. It follows, perhaps inevitably, that there was no evidence, at all, of M having made any progress in this area of her therapy.

34. The essence of this avoidant behaviour, as considered above, is M's outright rejection of those whose views, in her personal sphere, conflict with her own. M's opposition to the continuing involvement of this Guardian is an example of that. I also consider that T's distrust of the Guardian is entirely reflective of M's negativity towards her. I agree with Judge Williscroft that there is no basis to question the objectivity and integrity of this very experienced Guardian.

35. Whilst I consider F's resistance to the children being *"medicalised"* or *"labelled"* unnecessarily, to be entirely appropriate, I have, nonetheless found features of his evidence to be troubling. In the past, M has made allegations in interview to Dr Matthews, but not elsewhere, concerning F's rigid and controlling behaviour. These allegations have never been litigated, nor is it necessary or possible, especially within the timescales of these two children, to embark on that course now. However, in his evidence, F recounted that he had told the two young teenage girls of his new partner that they should not watch *"soaps"* because of what he perceived as the unhealthy moral code which they promulgate. He volunteered, apropos of nothing, that he had discovered the girls watching these programmes, and told them that the subject matter involving affairs, deceptions, etcetera was morally unhealthy for them. He also told me that they immediately saw the force of his argument, and that they no longer watch such programmes. F introduced this to impress upon me his parental skills. In fact, it created an entirely different impression. I find it difficult to recognise such a scenario in this recently constituted new family. I am told that F has strong religious beliefs. He is of course entitled to them, but his somewhat didactic imposition of them on these two young girls strikes me as lacking nuance, sensitivity, or insight. Later, in her evidence, M astutely made reference to a discussion that she had had with Dr Matthews. In her substantive report, Dr Matthews records:

> *"She [M] explained that the controlling behaviour [by F] started off 'very silly' as he did not like her watching Holly Oaks due to there being a gay couple on the show. She told me that [F] would make derogatory comments about this, and he could not stand her watching this."*

36. Both these incidents have, in my judgement, a strikingly similar complexion to them. They do generate concern about F's rigid perspective on the world, and his inclination to impose it on M, which I can readily see might be perceived as controlling.

37. I was also concerned when F told me that the boys would regularly sleep with him in his bed. He told me that he had contacted the social services to see if this was acceptable. He recounted that he had been strongly assured that it was entirely appropriate. There has been no evidence of there being any sexually inappropriate behaviour, but the Guardian was concerned as to whether F was setting appropriate boundaries with the boys. The fact that he felt it necessary to telephone the social services is seen by the Guardian as part of a pattern in which F reverts to the professionals involved in this case rather than trust in and develop his own parenting judgement. All agree that if T were to return to live with F, he, in particular, would need a sensitive and intuitive carer alert to his likely unhappiness in moving from M's care. As the Guardian put it, the professionals would not be available 24 hours a day, and F would have to rely on his own resources. In her report, the Guardian expressed *"some reservations"* in respect of *"F's capacity to prioritise the needs of B and T"*. She also considers that *"F underestimates the potential challenges faced by B and T"*. I consider these concerns are rightly identified, and I share them.

38. One of the central issues in this case has been identifying the appropriate school for the boys. Having analysed the background in the way that I have sought to, it becomes clear that the choice of school is far less important than evaluating which parent is most likely to promote and support mainstream education for the boys. In many respects, therefore, the actual school is less significant. There are some indicators that features of the curriculum in the

school closest to M might fit comfortably with the respective interests of the two boys. There are also some reassuring signs that the school selected by F has a strong emphasis on pastoral care, which might better equip them to help the boys integrate socially. This is probably the greatest challenge they will face.

39. It is entirely unnecessary for me to embark upon this comparative exercise because I, ultimately, had little difficulty in concluding that F will far more effectively support B and T into mainstream education. He has consistently identified the need for it. He has proactively argued for it over a considerable period of time. He has spent much time assessing the available options. Though a former Grammar school boy himself, and intellectually and temperamentally attracted to the local Grammar school, he has discounted his own instinctive preference, and concluded that the identified school would be better for the boys, given the significant gaps in their education, and the protracted and significant curtailment of their opportunities to socialise. It is also notable that F has been providing educational support for B at weekends, which has been for some time, the only education he has been receiving.

40. In this context however, I would raise a concern about the passivity with which F accepted the school's assertion that it was not their policy to keep a student down a year. It is proposed that B enters mainstream education parachuted directly into his GCSE Year. This strikes me, as it did the Guardian, as requiring further investigation and challenge. It is also, it seems to me, an example of what the Guardian identifies as F's over dependence on professional advice. In signalling this to both parents, I am not indicating any view. I am not in a position to assess, nor do I have the expertise to do so. I am highlighting what I regard as a parental task to be pursued and investigated, ideally by both parents working together.

41. There is no contentious law here, and no party has addressed me on it. I would simply point out that this case underscores the point made in **Re L (A Child) [2019] EWHC 1867 Fam**, that the common deployed phrase that a change of residence is in some way a weapon or tool of last resort is inaccurate and sometimes unhelpful. The test is, and has always been, based on the

requirement that the court conduct a broad survey of each individual child's welfare needs, and to identify how those needs might best be met in terms of the ultimate welfare outcome.

42. Finally, I address the question of an order pursuant to **s.91(14) of the Children Act**. The law in this context has finally become settled: see **Re A [2021] EWCA Civ 1749**. It is a ray of hope, in what has been, in many ways, a sad case, that both parents have been able to recognise the adverse impact of protracted litigation on the children. Both had agreed that whatever my ultimate decision, a s.91(14) order would be appropriate. The Guardian expressed the view that such an order might inhibit the rights of the parents to access the court. Those fears are misplaced. The provision serves to erect a protective gateway before professionals are permitted to intrude into children's lives via further litigation. See King LJ in Re A supra:

> *39. Although an order made under s91(14) limits a party's ability to make an application to the court, the court's jurisdiction to make such an order is not limited to those cases where a party has made excessive applications, although that will frequently be the case. It may be that there is one substantive live application but that a person's conduct overall is such that an order made under s91(14) is merited. This situation is anticipated by Guideline 6 of Re P: '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.' In my judgment the sort of harassment of the father seen in this case, in the form of vindictive complaints to the police and social services, is an example of circumstances where it would be appropriate to make an order under s91(14), even if the proceedings were not dogged by numerous applications being made to the judge.*

> *40. Further, the guidelines do not say that a s91(14) order should only be made in exceptional circumstances, rather Guideline 4 says such an order should be the 'exception and not the rule'. That is of course right, there is no place in our child focused family justice system for any sort of 'two strikes and you are out' approach, but it seems to me that in the changed landscape described in paragraph 30 above there is considerable scope for the greater use of this protective filter in the interests of children. Those interests are served by the making of an order under s91(14) in an appropriate case not only to protect an individual child from the effects of endless unproductive applications and/or a campaign of harassment by the absent parent, but tangentially also to benefit all those other children whose cases are delayed as court lists are clogged up by the sort of applications made in this case, applications which should never have come before a judge.*
>
> *42. The guidelines in Re P should now be applied with the above matters in mind and in my judgment the prolific use of social media and emails in the modern world may well mean that orders made under s91(14) need to be used more often in those cases where the litigation in question is causing either directly or indirectly, real harm.*

43. In conclusion, having met with T, on his request, I told him that I would think very carefully about this decision, and whilst I would give great weight to what he said, I emphasised that the decision is ultimately my responsibility and not his. I would appreciate it if the Guardian will tell both boys that my decision has been arrived at after very great thought, and in a process in which their welfare has been my primary consideration throughout. I should also like

them to be told that I have been very impressed with everything that I have read about them, and that I wish them well in their new school, where I hope that their considerable academic potential, which I have seen for myself, will find its full expression.

Postscript

I delivered this judgment, ex tempore, at the conclusion of the hearing, in order that it was available to the parties, to enable decisions to be made in respect of the children's education before the approaching half term break. I have done this to resynchronise, albeit late in the day, the children's timescales with those of the litigation. I hope that this small gesture of reparation will be utilised by F to ensure that plans for the children to be integrated into the school can begin immediately, and if necessary, before the half term break, if that is what the school think would be helpful.