



Neutral Citation Number: [2024] EWHC 658 (Fam)

Case No: ZE23P00228

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25/03/2024

Before :

Kate Grange KC sitting as a Deputy Judge of the High Court

Between:

C
- and -
D

Applicant

Respondent

The Applicant and the Respondent appeared in person
The Children’s Guardian was represented by Mr Osborne Solicitor from Cafcass Legal

Hearing date: 6 March 2024

Approved Judgment

This judgment was handed down remotely at 10.30am on 25.3.24 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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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.

Kate Grange KC sitting as a Deputy Judge of the High Court:

Introduction and scope of hearing

1. These proceedings concern the welfare of two children; E, who is aged 11; and F, who is aged 5. Their father, the applicant, seeks a Child Arrangements Order under s.8 of the Children Act 1989 ('CA 1989') permitting him to spend time with the two children for one weekend a month and for half of all school holidays. The father is currently permitted to spend time with the children for four hours once a month, including any further periods agreed by the mother, but not including overnight contact.
2. At a directions hearing on 30 October 2023 Henke J ordered that the final hearing on the child arrangements application would include an element of fact-finding, but it was to be limited and focused on the reports that the father has used stress positions as a form of punishment/physical chastisement of E. The Court accepted a submission by the Children's Guardian ('The Guardian') that a determination from the court was required about whether the father had used physical chastisement in the form of stress positions, in order that the court could better assess the risk that the father posed should the children spend extended periods in his care, progressing to overnights and holidays. The court also made directions at that hearing and at the pre-trial review on 29 January 2024 about what evidence was required at the final hearing and how certain aspects of the hearing should be conducted.
3. This is my judgment following the final hearing which took place over one day on 6 March 2024. I have set out in this judgment my conclusions on the narrow factual question which was ordered to be determined by this court and I have gone on to decide, in the light of my factual findings, what arrangements should be ordered for the children to spend time with their father.

Arrangements for the final hearing

4. The parents have been unrepresented throughout these proceedings. The Guardian, Sarah Gwynne, was represented by Mr Osborne, Solicitor from Cafcass Legal.
5. At the pre-trial review, Henke J considered what particular measures were necessary to enable the parents' effective participation in the hearing given that there was an alleged history of abuse between the mother and the father. After giving the parents time to reflect on the matter, both submitted that a QLR was not necessary and the judge decided that the case could be managed effectively by allowing permission for the Guardian's representative to cross-examine the witnesses first and granting permission for the parents each to be able to put the questions they wished to ask one another to the trial judge who would consider how and what questions needed to be asked.
6. Having ascertained at the outset of the final hearing that all parties were content with those arrangements, the hearing was duly conducted in that manner. Both parents submitted a list of questions to me in advance of the hearing which they wished to ask each other and I asked those questions which were relevant to the issues I have to determine and which had not already been asked by the Guardian. I made clear that I was asking those questions on behalf of the other parent and I gave time for further questions to be suggested as necessary, which the father did propose during the mother's questioning and once he had heard the answers she gave to the Guardian's

questions. Both parents indicated they were content that all questions were put which they wanted to be raised.

7. Mindful of Practice Directions 3A, 3AA and 12J of the Family Procedure Rules 2010, I also raised at the outset of the hearing whether there were further measures which ought to be adopted to ensure the parties' effective participation in the hearing. The mother requested two further measures, namely that she could exit the court at a different time and location from the father and that the father would be screened during her evidence so that she could not see him. Those measures were subsequently adopted.
8. At the hearing the court heard oral evidence from the following witnesses/parties in this order: Ms Joan McClean, Social Worker at London Borough of Bexley, the mother, the father and Sarah Gwynne, the Guardian.

Background

9. The mother was born in Barbados and came to the UK at the age of 18 and has since naturalised as a British citizen. The father was born in Nigeria and came to the UK to study for a master's degree. He naturalised as a British citizen soon after marrying the mother in August 2008. The mother has another daughter, G, from a previous relationship, who was born on 22 December 2006 and is now aged 17.
10. The parents divorced in April 2021. At that time there were informal arrangements in place for the father to spend time with the children, with him seeing them approximately every 6 weeks.
11. In July 2022 the mother travelled to St Lucia for a holiday with the children. In early September 2022 she returned with E to the UK, but left F in the care of her mother, the children's grandmother. It is the father's position that he did not agree to F remaining in St Lucia and was not consulted in advance.
12. The father saw E for contact on 22 October 2022 but, by early January 2023, the arrangements for contact had broken down.

Allegations of abuse made against the father

13. On or about 9 December 2022 G's therapist made a disclosure to the mother and Bexley children's social services to the effect that G was alleging that she was the victim of physical abuse by the father (her step-father). G had alleged that her step-father had hit her several times in the past when he had been living with them, including one time with a belt. That led to a joint investigation by the police and social services, the mother having decided to report this matter to the police on or about 9 December 2022.
14. The police notes which have been disclosed in these proceedings show that on 9 December 2022 the mother contacted the police and wanted to report that she had been the victim of past physical and emotional abuse by the father, which had occurred between 2011 and 2021. The mother reported that she was first assaulted in 2011 when she was slapped in the face by the father and then was the victim of ongoing verbal abuse for many years. She also reported that she was physically assaulted again by the father in 2012 or 2013 when he threw her to the floor and banged his fists on her back. The mother told the police that the relationship ended in 2019.
15. The mother also told the police on or about 12 December 2022 that the father had hurt the children. She told them that the father had used a belt on G and that "*He used to*

make them put a finger on the floor and stand on one leg as a punishment". She also told them that he once slapped E in the face.

16. On 29 December 2022 the police and Bexley Social Services conducted a joint visit to the mother and children at their home. Notes from that visit are set out in the Bexley Child and Family Assessment dated 17 January 2023. At that time E was spoken to alone by the social worker, Joan McClean, and two police officers. That interview took place in the dining room/living room of the mother's house and with E the only other person present in the room. Ms McClean's notes state as follows:

"Discussion with E:

E has autism, but she was very chatty and was able to answer the questions and tells us her experience of being hit by her Father...

We asked when she last saw her father, E has no understanding of time when things happened, so could not remember.

E said that she gets on well with her father sometimes. When she does something wrong, he is harsh with her. He would tell her to put one finger down and weight bear, and hit them.

E said that she could remember last year 2021 no date, when he was living at the house. She would get scared because they would both get hit, her and G...

E said that her father once slapped her around the face for hitting G. When her father called her name she had shivers down her spine. She said that she has some pain for a few hours..."

17. During the same visit, social services and the police also spoke to G who reported being hit by her step-father, including on one occasion with a belt. She also stated that her step-father made her "weight bear on her finger for approximately 30 minutes". In January 2023 G was interviewed by the police in connection with her allegations, however at the case management hearing in these proceedings on 30 October 2023 it was agreed that a transcript of that interview was not required to be filed and served in these proceedings, since they are focused on E and F and not G.

The father commences legal proceedings

18. On 14 February 2023 the father applied to the East London Family Court for a Child Arrangements Order and a Return Order in respect of F (who at that time was still in St Lucia) and the matter was transferred to the High Court.
19. On 20 February 2023 Newton J set directions for the exchange of evidence and on 13 March 2023 a further hearing took place before Knowles J. At that hearing the mother informed the court that she intended to return F from St Lucia on 16 July 2023 and that F had been enrolled in primary school in the UK to start in September 2023. Accordingly, Knowles J ordered the mother to return F to the jurisdiction by no later than 18 July 2023. The children were also joined as parties to the proceedings and the children's Guardian was ordered to prepare a report under section 7 of the CA 1989 about the circumstances of E and F.

20. On 18 May 2023 the Guardian completed her first report in these proceedings. In that report she explained that on 26 April 2023 she had spent time with E and with F over video call to St Lucia. Telephone calls with both parents were also conducted.
21. The Guardian reported that the police checks contained entries for both parents. The father had one conviction (2017) for fraud and kinship offences and was also cautioned for common assault (assaulted another during an argument) in July 2013. The mother had one conviction (2018) for two fraud and kinship offences and was also cautioned for common assault (slapped partner) in August 2014.
22. The Guardian set out in detail in her report her interactions with E and F. When reporting her conversations with E she recorded the following:

“E spoke very negatively about her father and shared that she ‘spoke to him sometimes on the phone but I don’t talk to him anymore’. She said that G had told her that she had seen [the father] ‘pick her [the mother] up and push her’. She went on to demonstrate a stress position that she said [the father] used as a punishment, which had hurt her back at the time, and said that ‘he slapped me because I was a silly girl and rude to G’.

She shared that she had a recurring dream at night that F will come back from seeing her father with bruises. I asked if she’d ever had bruises inflicted by her father and she replied, ‘a red mark after a slap – it just went away’. She elaborated further, ‘I dream of punching him in the face, him going to the ambulance and then I walk away, and I feel proud because I have protected my baby sister’. ...

I explored with E the different ways that a child might slowly start to see a parent again after a period of no contact and she said her preference would be for a letter; ‘I like letters – I don’t have to see his face – I think that would be perfect and I could write what I feel and then maybe he could believe me.’ However, in the event that she has to see her father in person she said, ‘I am telling the truth, I am going to bring a weapon with me. I must have my phone with me, protecting gear so I might need a laser or weapon or something in my bag and I could bring it with me and I want to have respect from the judge that I am helping her (F)’. E was a little more conciliatory later in our discussion, when she said that she would allow [her father] to ‘hug my sister – I am not going to stop that because that would be possessive.

When I asked E if there was anyone within the father’s network who she might feel comfortable with to help support her to spend time with her father she described his family as ‘stupaheads’, saying ‘his parents is where he got it from’. She said that Nigerian men, most of them are quite stupid’. I asked how she knew this, and she said her mum had told her this, but she also googled it too because you should ‘always check what your mum tells you.’”

23. E went on to explain to the Guardian that there was a time when she was angry with her mother for not showing her enough affection when she had to have an injection at the dentist.
24. The Guardian reported that F presented as an energetic and enthusiastic four-year-old, but that she did not possess the level of language or understanding to be able to complete meaningful direct work with the Guardian over a video call about her wishes and feelings and family situation.
25. The father told the Guardian that he had not physically chastised the children and asserted his belief that there were more effective ways to discipline children such as sanctions on screen time or being sent to bed early. He said that the police had informed him on 22 March 2023 that there would be no further action in respect of their investigation into him being the perpetrator of physical abuse against G and E.
26. The father told the Guardian that the children had been encouraged by their mother to make up stories about him because she was 'bitter'. He said that his problems started when the mother informed G that he would not be paying her child support. The father said that he was no longer pursuing any form of contact with G due to her becoming rebellious and not listening to him.
27. The father told the Guardian that his relationship with the mother broke down after he had an affair during their final year together. He denied that he was the perpetrator of domestic abuse. He also alleged that the mother had been unfaithful to him in 2009/2010 which had led to a false report being made to the police that he had assaulted her and he was given a warning. He said that 2-3 weeks later the mother scratched him during an altercation and she too was given a caution.
28. The father informed the Guardian that he had been renting a two-bedroomed flat in Kent since August 2022, although the Guardian noted that no such details had been shared with the mother. He said that he undertook contract work as an information security consultant but was presently unemployed. He was in the early stages of a new relationship.
29. While the father was seeking one weekend a month with the children and to share their care with the mother during the school holidays, the Guardian noted that it did not seem that the father had fully thought through his plans for the holidays. When asked how he would manage caring for the children over the summer break, he said he might need more flexibility because he was applying for jobs as far away as Scotland.
30. The mother told the Guardian that she was a victim of physical, emotional and verbal abuse during her marriage to the father. The mother said that the father had had a number of extra-marital affairs and had left the home to spend time with other women. She said that there were often intense arguments between them when she found evidence of the affairs.
31. The mother gave a different account to the Guardian as to how they had both received police cautions. The mother said that about 10 years ago there was an argument after she found videos on his computer and he pushed her to the floor and started banging her back with his fists and she called the police. A few months later the father called the police when the mother confronted him for cheating and she pushed him and said she would leave him.
32. There had been no significant incidents since the parent's separation. The mother told the Guardian that she felt she had been left to cope on her own with the children since

the separation and that the father had not provided financial support. The mother explained that her decision to leave F in St Lucia with her mother was driven by desperation because she was struggling to fund childcare arrangements.

33. The mother told the Guardian that she had witnessed the father making E and F stay in stress positions as a form of discipline “perhaps up to a couple of times a month”. She said that she had made it clear that she did not think that this was an appropriate punishment but the father said he knew how to discipline children. She said that she was not aware that G had been hit with a belt or that E was slapped, until they reported these incidents to social services.
34. The mother said that, after the divorce, the father asked to see the children every two or three months in the community because he did not have stable accommodation and although E might have been reticent at first, she “came home with a smile on her face”. However, the mother found the inconsistency of the contact arrangements with the father destabilising for the children and wanted more of a routine around how much time the children spent with the father. The mother was also in a new relationship, of about 1 years’ duration, but lived separately from her new partner.
35. The mother told the Guardian that she was supportive of the father spending time with E and F around once a month. However, she wanted to know that they were safe and not at risk of physical chastisement and that E was supported to resume her relationship with her father.
36. The Guardian spoke with both parents about the fraud and kinship offences they had both been convicted of. These related to council tax evasion and the Guardian did not think that this was relevant to their parenting capacity.
37. In the Guardian’s professional opinion, the most concerning feature of the children’s circumstances was the fact that they no longer had a consistent relationship with their father. The Guardian explained that, in her view, there was a sincerity to E’s account of the physical chastisement, particularly when E clarified that she had been slapped once by her father and the mark went away quickly and the Guardian did not think that E was seeking to add gloss or sensation. The Guardian also thought that there was some balance to E’s commentary about both parents when E told her how her mother had also upset her. The Guardian had no sense that E came to the Cafcass meeting with an agenda of solely discrediting one parent above the other. However, there was some indication from E that she sought to align herself with her mother’s narrative when she declared Nigerian men to be ‘quite stupid’ and therefore E appeared to have been exposed to some of the acrimony between her parents.
38. The Guardian noted that the fact that both parents had a police caution suggested both were volatile on occasion, although the mother’s explanation aligned more accurately with the dates provided by the police check.
39. The Guardian concluded that, if the accounts of the mother and children were true, then she was concerned that the children might be at risk of physical and emotional harm if they spent time with the father in advance of him seeking parenting support and guidance. Further, if the position of the father was correct and there was mutual abusive behaviour, akin with situational couple violence, then robust safety measures might need to be in place to ensure the children were safeguarded from future incidents of adult violence.
40. The Guardian noted that the accounts of violence were not of a high-risk type which might be associated with coercive control. She also noted the positive influence of the maternal grandmother in the family network and that it was credit to the parents

that they were previously able to manage the spending time arrangements between themselves.

41. The Guardian recommended that the Court should consider whether a fact-finding hearing on the question of whether the father had excessively physically chastised the children should be considered. The benefit of that approach was that it would provide a settled factual matrix upon which future recommendations and decisions could be made. Depending on the outcome of that fact-finding, it would either reassure the children that their voices had been heard, or might show that the mother's capacity to meet the emotional and identity needs of the children was in question if she was proven to have encouraged the children to discredit their father.
42. The Guardian outlined a number of protective steps which could be taken to ensure that contact between the children and the father was as safe as possible prior to any determination of the factual allegations.
43. As to interim contact, the Guardian noted that there was some benefit to E from the occasions she had spent with her father since the parents' separation. E had not reported any physical abuse on those occasions and the father had not used that time to undermine the mother as the resident parent. The Guardian made a number of recommendations about steps the parents could take to address E's relationship with the father including engagement with an Improving Child and Family Arrangements (ICFA) intervention and a Planning Together for Children course which was a four-hour online workshop.
44. Finally, the Guardian expressed concerns about how the father's relationship with E and F would progress in circumstances where the father was not seeking to repair or address his relationship with G, his step-daughter. The Guardian encouraged the father to reflect on that further. The Guardian also encouraged the father to think further about what he could realistically commit to in terms of spending time with the children in the holidays.

Further case management

45. On 24 May 2023 the court made a number of case management and other directions including contact activity directions for the mother and father to co-operate and engage with the ICFA programme and the Planning Together for Children course. A further case management hearing was held on 2 August 2023 and on 30 October 2023 the court determined that the final hearing would include an element of fact-finding, but on a narrow and focused basis, as already outlined above. The court order of 30 October 2023 also records that the parties agreed that E and G should not be required to give evidence and that G's recorded interview with the police was not required to be filed and served in the proceedings.

The Guardian's second report – December 2023

46. On 18 December 2023 the Guardian produced a second report in which she updated the court on further developments and set out her professional opinion on the appropriate arrangements for the children.
47. The Guardian noted that the parents had attended the Planning Together for Children course and the ICFA work had also been completed. She also said that the landscape of the case had changed in that F had returned from St Lucia and the court was now concerned with the progression of the father spending time with the children. Although interim arrangements had been agreed for contact, there had been a

disagreement between the parties about where the children should be collected from in November 2023 and the spending time arrangements did not take place that month.

48. The Guardian had visited the children at the mother's home on 23 August 2023 and she had kept in touch with the parents with regular telephone calls. She held a meeting with the parents on 21 November 2023 to agree interim arrangements for the father to spend time with the children after the disagreement about where he should collect the children from.
49. F had adapted well to living back in the UK after her year in St Lucia. The maternal grandmother had stayed in the family home to ease the transition back to the UK. F spoke positively to the Guardian about contact with her father and there had been no concerns raised that the father had physically chastised her. Safety planning for the future with F was therefore based on any risk that this might happen in the future, if the court was to find that the father had subjected E to such harsh punishments.
50. As to E, she had now moved up to secondary school. She was reported to have additional sensory and processing needs and had an EHCP (Education and Health Care Plan) in place in school. The Guardian stated that E could be very literal or 'black and white' in her understanding. She was a very personable child.
51. The ICFA work had been positive and had allowed E to reunite with her father at a gentle pace, although there was one session which broke down and E asked to leave. The father was observed to be calm and appropriate in his interactions with E.
52. After conclusion of the ICFA, spending time arrangements with both children with the father were supported by the maternal grandmother who was staying in the family home between July and October 2023. Both parents provided positive reports of these sessions and the girls enjoyed spending time with their father. It was therefore agreed that the arrangements could progress to unsupported daytime sessions, prior to any determination about overnight and holiday arrangements.
53. The Guardian explained that, over the previous 7 months, she had observed some positive progression in the way E approached discussions with her father. When the Guardian spoke to E in August 2023 E's tone was more conciliatory than in the first meeting (in April 2023) and E said she did not want to hate her father and she would like a father/daughter relationship with him. E told the Guardian that she thought seeing her father every month was about right, but she would be open to more often so long as it meant she did not have to cancel any existing weekend plans. It remained E's opinion that her father needed to apologise for the breakdown of his relationship with G. It was clear to the Guardian that the father's relationship with G continued to impact on E's wellbeing and it was disappointing that the father had not reflected further on the Guardian's concerns in this regard and the importance of reparative work between him and G. The Guardian thought this would be a limiting factor on his ability to advance his relationship with E and F.
54. The parents did not dispute that the mother should continue as the main carer for the children and there had been no concerns about the mother's ability to care for the children as a single parent.
55. When setting out her professional opinion, the Guardian said that it was her experience of working with the parents that there were times when they were able to manage arrangements for the children by consent, but also more fractious periods when effective communication broke down. The Guardian thought that there were mutual abusive behaviours at play. It was clear that the mother felt extremely frustrated by the lack of financial support from the father and the Guardian had

observed the father being more adversarial in his approach to speaking to the mother than she had previously seen. The father was “intransigent” that he should spend time with the children at weekends only rather than during the week when he might be able to help with childcare, which the mother thought was at odds with his report of being unemployed. The Guardian also reported an occasion when the father demonstrated a blaming attitude towards the mother stating ‘[she] made a choice (in separating) – that’s what she wanted – that’s what she gets’. It was the Guardian’s opinion that the father did not demonstrate insight into the mother’s financial position or acceptance that it would be in the children’s best interests for him to support the mother financially so that she could care for them.

56. On a more positive note, the Guardian reported that it did not appear that the father spoke negatively to the children about the mother; the father recognised the children’s love for their mother and the value of this for them. The father did not appear to use his time with the children to undermine their relationship with their mother. There was a realistic prospect that an ongoing relationship with the father would be beneficial to both children.
57. The father remained living in the two-bedroomed flat in Kent which was comfortable and well-presented. However, there was work to be done before the children could come and stay with the father, including clearing the second bedroom and investing in toys/games for F and activities for E.
58. The Guardian noted that there was a disparity between the father seeking contact once a month and then also half the school holidays because it was a big jump to the latter. She noted that the father remained vague around his plans for the holidays and the logistics of how this might work in practice given he had said that he was not available on weekdays. The Guardian encouraged the father to address this in more detail in his next statement to the court so that the court could better understand his proposals. The Guardian noted that the time the father spent with the children was mainly activity-based e.g. going to a trampoline park and often out to eat or getting takeaways at home. While these were nice experiences for the children the guardian thought that it was a significant step up to caring for the children for a week or more at a time, which would require more structured days including home-cooked food, help with schoolwork, bedtimes and all the other household tasks connected to caring for children. The Guardian encouraged the father to reflect on what he could realistically propose in terms of these arrangements.
59. Above all it was the Guardian’s view that the children needed safe and consistent arrangements with their father and it was for that reason that the Guardian had recommended that a determination was required about the father’s use of stress positions in order to better understand the risk the father would present if the children spent extended periods of time in his care, progressing to overnights and holidays. While the Guardian was satisfied that the father was able to meet the children’s needs for shorter daytime periods, the Guardian felt that there needed to be greater clarity as to how he would cope for longer periods. This was particularly important given the age and stage of development of the children and given E’s additional needs. It was the Guardian’s opinion that, if the children were to stay overnight with the father for longer periods this would be a big adjustment and the court would need to have confidence that the father would be able to handle any challenging behaviour without resorting to physical chastisement.
60. The Guardian also explained that if no findings of physical chastisement on the father’s part were made, the arrangements to progress to the father spending time over weekends with the children would need to be built up slowly, starting with one overnight and progressing from there. However, the Guardian was not satisfied that

the father was in a stable enough position to care for the children for half the holidays given the necessary practical and financial arrangements that would involve. The father needed to provide more information about that aspect of his plans. The Guardian's view was that only a minimum holiday time was warranted at this stage (e.g. a long weekend or a week in the summer) which would have to be on the proviso that there was evidence of a realistic plan and if the monthly weekends had progressed well by that stage.

61. However, if factual findings of physical chastisement were made against the father, the Guardian's view was that there would need to be enhanced safeguards in place to protect the children from experiencing physical chastisement in the future. In that event the Guardian would want to know how the father had responded to any factual findings and whether he was able to identify the concerns around his previous attitude and actions. The Guardian noted that the father was adamant that he had not chastised the children in the manner alleged and she thought that this might make it difficult to work with the father effectively. The Guardian suggested that if the father was willing to engage in a parenting course, he would need to show meaningful progress and evidence of a sustained change in his attitude and parenting strategy. There would need to be a reassessment at that point as to whether the arrangements could safely progress beyond the existing monthly daytime arrangements.

The evidence relevant to the fact-finding

Oral evidence of Social Worker

62. I heard oral evidence from the Social Worker at the London Borough of Bexley. The social worker met E on 29 December 2022 when she conducted the joint visit, together with two police officers, to the mother's home (see paragraph 16 above). The social worker confirmed that she and the two officers spoke to E on her own during the visit which took place in the dining room/living room of the house. The police took the lead in the questioning of E and were trained in the questioning of children which involved asking open questions. While the social worker could not now recall all the detail of the interview, she confirmed that she had no concerns about the manner in which the interview was conducted. She said that E came across as a very chatty, happy bubbly girl who seemed able to answer questions happily. The social worker said that she and the police were aware in advance of the interview of E's sensory and processing issues and therefore tried to keep all questions short and succinct. The social worker confirmed that the notes of the interview with E correctly recorded what she had told them (see paragraph 16 above). The social worker also had a specific recollection of E demonstrating the stress position she alleged her father had put her in during the interview when E "put her hand down on the table with her finger pointing down".
63. The social worker was not able to recall whether the mother told them separately during the visit that she had witnessed the father putting the children in stress positions but she said that she would have recorded that in her report if that had been said by the mother.

The mother's evidence

64. In her witness statement dated 6 March 2023 the mother stated as follows at paragraph 7:

"My eldest child and E complained that the Applicant put them in stressed positions as a way of punishing them which is a form of abuse. The therapist that G disclosed the information

to...as a result of her duty of care reported this to the authorities. The police...and Social care worker visited my home and took individual statements from me and the children (G and E). It is worthy of note that the social services have closed their case as they are comfortable that the children are in my care and the Applicant no longer lives in the family home. The Police investigation is however still on-going. With this in my mind I am seeking a safety plan in addition to a parent plan.”

65. The mother also gave oral evidence during the hearing. I found the mother to be a clear and cogent witness who gave her evidence calmly, with conviction and without embellishment. As I describe below, she gave a compelling account of the way in which the father had used stress positions on E and G as a form of punishment, becoming upset at certain points in her evidence. In general, I was impressed by the extent to which the mother made clear, as is consistent with her position throughout these proceedings, that she was not seeking to prevent there being contact between the children and the father. She was realistic and measured about that and I did not detect a desire on her part to undermine the father’s relationship with the two children.
66. During her oral evidence the mother stated that the father used to make E and G take up stress positions as a form of punishment. If they did something wrong they would have to put their finger on the floor with their leg in the air or had to kneel with their hands in the air. The mother said that this was “a normality – it was what our life was like”. The mother confirmed that she herself had witnessed this which she said occurred whenever the children were naughty or disrespectful.
67. When asked where she was when the stress positions occurred, the mother said that she was present sometimes and would try to get involved but the father would say that he knew what he was doing and would tell her to get out of the room. She said that she had seen E undergoing such punishment including kneeling down with her hands in the air for as long as the father deemed fit and she could remember E crying at this. She also said that the father would make them put a finger down on the floor with their leg in the air for as long as he deemed fit. The mother said that this would last for a couple of minutes and that after a few seconds it would become uncomfortable.
68. The mother also recalled a specific example of when G had done something naughty and the father had taken G into the sitting room of the house and told her off and made her put her finger on the floor and her leg up in the air and G was crying a lot. The mother said that this was “going on for ages” and she walked into the sitting room telling the father that it was “enough now” and he screamed and told her to leave the room. She said that this was an incident which she would “never forget”. When giving evidence the mother became visibly upset when she was recalling this incident.
69. The mother said that the last time she herself witnessed stress positions being imposed on the children was around 2 ½ to 3 years before they were divorced. She said that in the last few years when she was together with the father she felt that she was able to speak up for herself more in the marriage and there was a disconnect between her and the father and they weren’t on the same page as they were headed for divorce. She said that she felt able to intervene more, which in itself led to more problems and arguments.
70. The mother was questioned by the Guardian’s representative and the father (in questions formulated by him, but put by me) about why she had not mentioned earlier that she herself had witnessed the children being put in stress positions by the father

during the time they were married. Mr Osborne suggested to the mother that it was not until she was interviewed by the Guardian in April 2023 that the mother had suggested that she personally had witnessed that behaviour. However, the mother thought that she had mentioned to the social worker in December 2023 that she herself had witnessed this happening. The mother also said that it wasn't until both G and E disclosed how they felt about the father's behaviour to others that she discussed it with them and they expressed to her how they felt about it and she said that this "opened up my eyes" and made her determined to speak up for them and help them express the concerns they were articulating. She said that she didn't see the light until she was out of the dark, by which I understood her to mean that she was not able to properly reflect on what had occurred until she was out of the relationship with the father.

71. The mother denied that she had spoken badly about the father to E and she also denied that she had ever suggested to E that the father had put E in stress positions. The mother said that she was keen to promote a supportive relationship between the children and the father and that, even when E was not keen to meet with the father, she was encouraging E to go because she "would love her to have that relationship with him".
72. When asked whether E told lies, the mother said that E had special needs and was very frank, very black and white and was less able to manipulate or "woo others to get her way". She said that, in contrast to E, F was much more cheeky and much more able to "woo someone to get her own way". Out of the three girls the mother said that E was the most honest, although she accepted that E had sometimes lied about matters, albeit the mother could not think of a specific instance when this had occurred.

The father's evidence

73. In his written evidence the father denied that he had been involved in any incidents of cruelty towards the children. In his witness statement he said that he was "shocked" when he was told that there was to be a police investigation in relation to allegations made against him. He said that this was "fabrication and false. The height of manipulation and lies." He said that the mother had been "bad-mouthing me" to the children and "manipulating" them to lie about him. He said that the mother did not want him to have a relationship with E and F.
74. I was less impressed with the father's oral evidence than I was with the mother's evidence. The father came across as authoritarian and somewhat inflexible and intransigent in his approach to parenting, as I explain further below. Overall, I came away with the impression that the father was fixed in his beliefs and he wasn't good at seeing matters from the perspective of others.
75. During his oral evidence the father accepted that he himself had been physically chastised when he was a child. He said that he didn't know what "stress positions" were until these proceedings commenced, but he denied having been put in such positions by his parents when he was a child. He strongly denied ever having used physical chastisement or stress positions when disciplining his own children.
76. The father said that he was concerned that E was lying and he said that, at times, when he was living with them, E would lie and would make up stories to "try to pull a fast-one". The father said that E had been "coerced" into making false allegations against him, the implication being that it was the mother who was putting pressure on E to make up stories about him.

77. When asked about how he would discipline E, the father said that he would sometimes stop her playing her favourite game on screen and he accepted that sometimes he would raise his voice to tell her not to do certain things. He said that his basic approach to discipline was to explain why something was wrong and take away privileges from the children (e.g. laptops or ipads).
78. The father said that respect was something which was expected within his African culture and he explained that where he came from it was customary to greet one's parents by either kneeling (if a girl) or prostrating (if a boy) and say good morning to them. He said that he did expect such behaviour from his own children – although perhaps not every morning or every day. He said that he thought it was important to teach children these customs which were part of showing respect and he said that he taught E to do this when he was living with the family. He said that he wanted E to know what her father's culture, as a Nigerian, was. The father said that there was some opposition to the children doing this from the mother. He admitted that, on occasions, he had sometimes raised his voice and told them to kneel down and later in cross-examination he also accepted sometimes shouting at the children to do it. But he denied that he was making the children raise their arms when doing this or making them adopt stress positions. The father said that he did not expect his children to kneel down to greet him now that they weren't living with him.
79. The father said that E was easily manipulated and that she was being manipulated into making allegations against him. He said that he would not hold it against E that she was making these allegations against him because he was aware how easily she could be manipulated. He denied that he had ever asked E to put one finger on the floor as part of a punishment and he said that the mother was lying when she said she had witnessed that behaviour.

The Guardian's oral evidence

80. I have already set out in some detail the two reports which have been produced by the Guardian, Ms Gwynne, as part of her section 7 assessment in these proceedings.
81. The Guardian also gave oral evidence, in particular about the conversation she had with E about the stress positions. As explained at paragraphs 20 and 22 above, the Guardian met E at the Cafcass offices on 26 April 2023.
82. In her oral evidence the Guardian described E as chatty and keen to share information and concerns, albeit there was a balance to E's account in which she had criticised both her mother and her father. First E told the Guardian about her concerns when her mother had not been sympathetic about a visit to the dentist. Then, unprompted, E had explained to the Guardian her concern about the stress position her father used to make her adopt. E had got up from her chair and demonstrated this – she put 1-2 fingers on the floor and her leg in the air and she told the Guardian that this had hurt her back. The Guardian was clear that this was a different position from one in which E may have been kneeling.
83. The Guardian also said in her oral evidence that she was struck by the fact that E did not seem to be embellishing her account, in particular when she said she had been slapped by her father but that the red mark had faded quickly. Her impression was that E was not a child who was trying to make as much as possible of what she was reporting. Likewise, E had been keen to emphasise that the stress positions had occurred when E was naughty and she wasn't describing it as a punishment for no reason at all.

Fact-finding - The applicable law

84. The following key principles apply in any case such as the present one where the court is required to make factual findings in a case in which abuse is alleged:

- i) The burden of proof lies, throughout, with the person making the allegation (*Re B (Care Proceedings: Standard of Proof)* [2009] 1 AC 11, at [2]).
- ii) The standard of proof is the civil standard – the balance of probabilities. The law operates a binary system, so if a fact is shown to be more likely than not to have happened, then it happened, and if it is shown not to cross that threshold, then it is treated as not having happened; this principle must be applied, it is reasonably said, with 'common sense' (*Re B (Care Proceedings: Standard of Proof)*, at [2]; *Rhesa Shipping Co SA v Edmond and Another: The Popi M* [1985] 1 WLR 948 at 956).
- iii) Sometimes the burden of proof will come to the judge's rescue: the party with the burden of showing that something took place will not have satisfied him that it did. But, generally speaking, a judge ought to be able to make up his/her mind where the truth lies without needing to rely upon the burden of proof (*Re B (Care Proceedings: Standard of Proof)* at [32]).
- iv) The court can have regard to the inherent probabilities of events or occurrences, but this does not affect the legal standard of proof (*Re B (Care Proceedings: Standard of Proof)* at [15] and [31]); the more serious or improbable the allegation the greater the need for evidential 'cogency' (*Re Dellow's Will Trusts; Lloyd's Bank v Institute of Cancer Research* [1964] 1 WLR 451 at 455).
- v) Findings of fact in these cases must be based on evidence, including inferences that can properly be drawn from the evidence and not on suspicion or speculation (*Re A (A Child) (No.2)* [2011] EWCA Civ 12 at [26]); it is for the party seeking to prove the allegation to "adduce proper evidence to establish what it seeks to prove" (*Darlington BC v M and F* [2015] EWFC 11 at [8]-[9]).
- vi) It is, of course, not uncommon for witnesses to tell lies in the course of a fact-finding investigation and a court hearing. The court must be careful to bear in mind that a witness may lie for many reasons, such as shame, misplaced loyalty, panic, fear, and distress and the fact that a witness has lied about some matters does not mean that he or she has lied about everything (see *R v Lucas* [1981] QB 720).
- vii) The court's function in resolving disputes of fact in the family court is fundamentally different from the role of the judge and jury in the Crown Court. As the Court of Appeal made clear in *Re R* [2018] EWCA Civ 198 at [62]:

"The primary purpose of the family process is to determine, as best that may be done, what has gone on in the past, so that that knowledge may inform the ultimate welfare evaluation where the court will choose which option is best for a child with the court's eyes open to such risks as the factual determination may have established."

The parties' positions on the fact-finding issue

85. Having set out the background in some detail above, I can summarise the positions of the parties fairly shortly on the fact-finding matter which I have to determine.
86. The mother invites me to conclude that, taking the evidence in its entirety, the father did use stress positions as a form of punishment/physical chastisement of E.
87. In contrast the father asserts that the allegations are false and that it never happened. He points to the fact that it was not until he started asking for F to be brought back from St Lucia that the allegations were made. He also asserts that the mother has given different accounts to the police, to the Guardian and to this court about what happened. He relies on the fact that the police investigation into these matters was dropped.
88. Mr Osborne helpfully highlighted certain aspects of the legal approach to be applied, which I have included in my summary of the law above. On behalf of the Guardian he summarised the evidence I had heard and he made clear that it was a matter for this court to determine what happened as a factual finding which would then inform the risk to the children.

Fact finding – my assessment

89. The factual issue I have to determine is a narrow and focused one. It is whether the father has ever used stress positions as a form of punishment/physical chastisement of E. Taking the evidence relevant to that topic in the round, I have concluded, on the balance of probabilities, that it is more likely than not that such punishment/physical chastisement did take place. That is for the following reasons:
 - i) E has given a consistent account of being placed in stress positions by her father to two different professionals (the social worker and the Guardian) on two separate occasions (in December 2022 and April 2023). On both occasions E was able to physically demonstrate what had happened to her which involved putting a finger down on the floor and weight bearing on it.
 - ii) E was 10 years old on each of the occasions that she spoke to these professionals, and has been described by her mother, the Guardian and the Social Worker as a straightforward child who is very matter of fact.
 - iii) The Guardian noted that there was a balance to E's reporting about what had happened with the parents and there was no indication that E was embellishing or exaggerating what had happened to her – indeed E made clear to the Guardian that when her father slapped her, the mark went away quickly. E was also able to explain the effect the stress position had on her which she said "hurt her back at the time".
 - iv) I am satisfied that E's description of these stress positions is very different from being asked to kneel before her father as a form of greeting or as a sign of respect.
 - v) While I take into account that I was not able to hear direct evidence from E herself, I find that the matters set out at (i)-(iv) above are good reasons why I can place weight on the evidence E has given about what happened to her.

- vi) I was impressed with the mother's evidence. As I have already stated at paragraph 65 above, I found the mother to be a clear, cogent witness who gave her evidence calmly, with conviction and without embellishment. I found her detailed account compelling about the way in which the father had used stress positions on E and G as a form of punishment which had become a "normality" for all of them when the father was living with them. I believed the mother when she said that she personally had witnessed E undergoing such ill-treatment.
 - vii) I was also impressed by the extent to which the mother made clear, as has been her position throughout these proceedings, that she was not seeking to prevent there being contact between the children and the father. I did not detect any desire on the mother's part to undermine the father's relationship with E and F. Based on everything I heard from the mother and the way she interacted with the Guardian, as set out in the Guardian's reports, it was apparent to me that the mother wanted the father to have a good relationship with his daughters and that she would do what she needed to do to help make that happen, despite the acrimonious history between her and the father.
 - viii) It seems to me to be very unlikely that the mother would have put pressure on E to make up the allegations about stress positions. First, these are very specific and particular allegations. Secondly, if the mother was seeking to manipulate E by making suggestions to her about the father's conduct, it seems to me to be much more likely that the allegations would be altogether more serious and more wide-ranging.
 - ix) Finally I did not believe the father's evidence when he said that he had never put E in stress positions. I found him to be a less impressive witness who came across as authoritarian and somewhat inflexible and intransigent in his approach to parenting. I preferred the detailed evidence of the mother as to how he used to discipline the children.
90. I considered carefully whether the mother may have given different accounts to the professionals about whether she herself witnessed the children being put into stress positions by the father and whether that might undermine the truthfulness of her evidence. It is not clear whether the mother mentioned to the police and social workers in December 2022 that she herself had personally witnessed such behaviour. The mother says she did mention this at the time, but there is no explicit record in the police or social worker notes to that effect, although the police notes are unclear in places about exactly what was being reported (see paragraph 15 above) and I do not feel able to conclude that she did not mention it. Perhaps the more obvious discrepancy is that in her witness statement the mother talked about E and G complaining about this, without making clear that she herself saw it happen and yet in the interview with the Guardian the mother stated that she did witness it happening. I bear in mind however that the mother has been acting throughout these proceedings as a litigant in person and that this may explain why her statement did not make clearer that she saw it happen. I also accept the mother's evidence that she saw herself as an advocate for her children once it was clear to her how aggrieved they felt about the behaviour and that may also explain why she used the language she did in her statement.
91. I also considered whether the mother's evidence that she did not personally witness the stress positions happening in the last 2 ½ -3 years before her divorce (in 2021) might also undermine the evidence she gave about whether it had ever occurred. However, I accept her evidence that in the years immediately before they were divorced, the couple were drifting apart and spending less time together and that, in

any event, she was standing up to the father more during that time. I also note that the mother told the police that the relationship with the father ended in 2019. The mother gave clear and compelling evidence that she witnessed the abuse happening. Thus, I do not consider that evidence to be undermined by her admission that she did not personally witness it happening in the 2 ½ -3 years immediately before she was divorced from the father.

Fact finding – my conclusions

Conclusions on the fact-finding – stress positions

92. In conclusion I find that, on the balance of probabilities, it is more likely than not that the father used stress positions as a form of punishment/physical chastisement of E when he was living with the family.

Welfare assessment

93. I heard evidence and received submissions from both the mother and the father on the question of welfare and what child arrangements order I should make in this case. I also heard oral evidence from the Guardian on this question who addressed the court in the alternative and depending on what conclusion I reached on the fact-finding issue.

The mother

94. In her oral evidence the mother explained that she was “not keen” on overnight stays until there was more consistency in the arrangements and the relationships were more developed. However, in her submissions, she made clear that she would live with whatever outcome the court determined. She made clear that she wanted the children to have a relationship with their father, but she wanted it to be in a safe environment. The mother agreed with the Guardian that it was necessary for the father to show that he could plan his time with the children if he was to have them for extended periods, including some of the school holidays.
95. The mother emphasised that E had a neuro-processing disorder, was undergoing an autism assessment and was dyslexic. As a result, E needed more certainty than other children and more reassurance about what was going to happen to her in the future.

The father

96. In his evidence and submissions the father accepted that the last occasion he had spent time overnight with the children was in 2021. As to his plan for the future, he was asked in oral evidence by Mr Osborne what his intention was for overnight contact with the children, in particular during the holidays. Mr Osborne pointed out that the Guardian had flagged the need for the father to provide further information regarding his holiday plans in the proceedings. However, it became evident during the questioning of the father that he had done no such planning and did not know when the school holidays were other than a vague notion that they might be at Easter and in the summer. The father’s answer to the lack of planning on his part was that he could not make any such plans until it was clear from the court whether he would be permitted to have the children for some holiday periods. He said that he could not plan in the absence of certainty about that. However, the father said that one of the things he wanted to do was to take E and F to Nigeria to meet his extended family and to travel round the country.
97. The father said that he had already introduced his new partner’s children (three girls aged 10, 8 and 6) to E and F which had taken place on the last visit. He said that this

meeting had gone well. The father said that he lived at his partner's house most weekends and 1-2 days per week. The father said he was reluctant to send proposals to the mother about what he would be doing with the children in advance. He thought that this would be "encroaching on [his] boundary" because how he spent time with the children was up to him. However, he said he would tell the mother if he planned to go on holiday with the children.

98. As to how he would provide for the children financially if they were to spend time with him, the father explained that he was not currently working but was trying to get a job. He said his new partner was supporting him and she paid the rent at his address.
99. The father said that the children were keen to spend time with him overnight and kept asking when they could have a sleep-over with him. He said that he had been a very hands-on dad when he was married to the mother and would always be the one to wake them up and get them to school. He said that he loved his children and was keen to be a part of their lives. He wanted the opportunity to develop his relationship with the children and wanted the best for them.

The Guardian

100. I have already set out in detail the conclusions and recommendations made by the Guardian in her two written reports earlier in this judgment. In her oral evidence the Guardian explained that she felt that nothing had changed in terms of the father's position since her updating report in December 2023 and she expressed concern about a lack of planning on his part. While she understood that the father wanted some certainty before he could make plans, she pointed out that every parent has to plan ahead and every parent should be thinking about the school holidays and how they could be managed.
101. While the Guardian was pleased that both the mother and father appeared to be in stable relationships with new partners, she was concerned about the possible over-reliance of the father on his new partner, particularly in terms of her paying his rent. She emphasised that it was important that E, F and the father had time together which was just the three of them so they could continue to re-build their relationship before any consideration was given to whether the blended family unit should come together.
102. The Guardian emphasised that it would be a big jump for the children to go from full-time care with their mother to extended time in the care of the father. In her opinion any increased contact needed to be built up slowly.
103. The Guardian was concerned that if the court did find that physical chastisement had occurred, there needed to be further work done by the father to demonstrate a change in his approach and there also needed to be a safety plan to protect the children, particularly given F's young age and E's additional needs.

Legal principles - welfare

104. There are a number of guiding principles which I have borne in mind when deciding the welfare aspects of this case. They are as follows:
 - i) First, in approaching this case the welfare of E and F is paramount (section 1(1) CA 1989). My focus must be on what is best for E and F in all the circumstances.
 - ii) Secondly, I am also to presume, unless the contrary is shown, that involvement of a parent in the life of a child will further the child's welfare (section 1(2A))

CA 1989). Therefore, the starting point is that involvement of the father in E and F's life is presumed to be of benefit to them, unless something different is shown on the evidence before me.

- iii) Thirdly, when considering making any section 8 child arrangements order under the CA 1989, I should have regard to the welfare checklist in section 1(3) of the CA 1989, which I have sought to apply this in my analysis below.
- iv) I also remind myself that the Article 8 rights to family life under the Human Rights 1998 are engaged in this case (as are the rights under Article 6 to a fair hearing).

Welfare checklist

105. As I have just explained, central to my analysis is the welfare checklist. I have considered that carefully in this case, as set out below. I have applied the checklist to both children and have made clear where different considerations apply to each child.

(a) the ascertainable wishes and feelings of the child concerned (considered in the light of their age and understanding)

106. E is 11 years old and has shown herself capable of clearly communicating her views to the Guardian. While there were a number of negative aspects to her attitude to her father when she first met the Guardian in April 2023, it is clear that there has been some positive progression in her outlook towards him since that time. It is apparent from the Guardian's second report that E would like to have a good father/daughter relationship. It is also clear that while E thought that seeing her father once a month was about right, she was open to seeing him more often provided she didn't have to cancel her plans. I accept that she may well have told the father that she would like to sometimes stay over with her father. However, it is also clear that E would like the father to apologise for the breakdown of his relationship with G and I accept the Guardian's evidence that the poor relationship between the father and G is impacting on E's feelings towards her father.

107. F is much younger and only 5 years old, but she speaks positively about spending time with her father and it is clear that she enjoys her time with him.

(b) physical, emotional and educational needs

108. E and F's physical, emotional and educational needs are clearly well provided for by their mother and by their grandmother who has also supported the children and particularly F following her return from St Lucia.

109. However, both children are also keen to have a good relationship with their father which is also an important part of their emotional needs. It is apparent that both girls enjoy spending time with their father and that an ongoing relationship with him will be beneficial to them, provided that can happen in a safe way.

(c) the likely effect of any change in circumstances

110. Both girls are now used to having the father in their lives and have been developing a good relationship with him through the contact which is currently permitted (4 hours per month). I accept the evidence of the Guardian that any sudden increase in overnight contact with the father (particularly in light of his proposal about school holidays) would represent a very significant change for them and would be one which would need to be managed carefully given they are used to the full-time care of the mother. At present the contact with the father is largely activity-based and there are

no extended times when the children are spending time with him in a more normal family situation including, for example, eating home prepared meals, navigating bedtimes, or undertaking homework or other chores. Accordingly, I accept that any move to overnight contact would represent a significant step-up for the girls which has the potential to alter the relationship with their father and introduce pressures not so far experienced.

111. I found the father to be wholly unrealistic in his desire to have so much holiday contact with the girls so soon. There was also a lack of any proper planning on his part which was not simply explained by the fact that these proceedings were ongoing and he didn't have certainty about what the court would order. The father was very naïve about what arrangements he needed to put in place for children over the holidays and was wholly unrealistic about how these could be managed, including financially, given his current circumstances.

(d) age, sex, background and any characteristics of his which the court considers relevant

112. E has special needs as already described and needs a certain amount of predictability and routine in the arrangements which are made for her. That is likely to be particularly relevant to the father's desire to have extended holiday time with the children which would require careful planning and the involvement of E so that she knew in advance where she would be, who she would be with and what she would be doing. At present I do not think that the father has properly recognised those particular needs of E which would all need to be part of the necessary planning on his part.
113. F is still young and will need age-appropriate toys and games if there are to be any overnight stays, as highlighted in the Guardian's reports.

(e) any harm which they have suffered or are at risk of suffering

114. This is an important factor in the current case. I have found that the father has used stress positions as a means of physical punishment/chastisement of E. If such conduct was to be repeated this could cause serious physical suffering and emotional harm to E and has the potential to significantly undermine the progress which E has made in her relationship with her father. In my assessment there is a significant risk that such conduct could occur again given that the pattern was for the father to deploy this as part of his way of disciplining the children – it was “normal” behaviour for the father when he was living with the mother.
115. While F has not reported any physical chastisement of her by the father, there is still a significant risk that this could occur given it has occurred to E in the past.
116. I entirely agree with the Guardian's assessment that, in the light of these findings, there would need to be enhanced safeguards in place to protect the children from experiencing physical chastisement in the future. Any introduction of overnight or holiday contact would represent a significant change and one which will put more pressure on the relationship between the father and the children because the children would require more structured time and may well need to be disciplined in a way which doesn't arise when the contact time is largely activity-based out of the home.
117. I accept that, before any change to overnight contact can occur, the father needs to demonstrate that there has been meaningful progress and evidence of a sustained change in his attitude and parenting strategy. One way of demonstrating that would be to provide an undertaking around physical chastisement and for the father to attend a parenting course in which he demonstrated the necessary change in his approach.

There would also need to be a 'safety plan' in place which E and F could follow which would provide a mechanism for them to raise any concerns about the time spent with their father. There would then need to be a reassessment of whether the arrangements could safely progress beyond the existing monthly 4-hour contact.

(f) how capable each of their parents, and any other person in relation to whom the court considers the question to be relevant, are of meeting their needs

118. It is apparent that the father is able to meet the needs of the children during relatively short daytime visits. What is in doubt is the ability of the father to care for the children for extended periods, including overnight stays. Leaving aside the matter of physical chastisement, there has been a lack of planning and forethought on the father's part. He has not demonstrated that he fully understands the complexities and pressures which would be involved if the children were to be with him for extended periods, and particularly during half of the school holidays. There has been no sign of any financial planning for that nor any practical preparatory steps taken by him even to find out the dates of the school holidays and consider how he would care for the children in circumstances where he currently has no extended or weekday time with them. While the main area of work the father needs to do is around his approach to disciplining the children, he also needs to demonstrate that he understands the practical and financial burdens which are required to care for them properly, and that he has a plan for how he will address those matters in the future.

(g) the range of powers available to the court under this Act in the proceedings in question

119. I have taken into account the broad range of powers I have available to me, including that I am not constrained to reach conclusions simply on the basis of the parties' positions.

Conclusion - welfare

120. I find that E and F's welfare will be met by living with their mother and continuing to have monthly contact with their father for four-hours during the daytime. While their relationship with their father is developing well and should continue to be encouraged, the risk that the father will subject them to stress positions as a form of punishment/physical chastisement is currently too high for overnight contact to take place. As I have identified at paragraph 117 above, if any change to overnight contact is to occur there will need to be a number of safeguards in place and the father will need to demonstrate that there has been meaningful progress and evidence of a sustained change to his attitude and parenting strategy. If the father undertakes that further work and agrees to those safeguards being in place, he can make a further application to court seeking to increase the amount of time he is able to spend with the children, including overnight stays and holiday time.

121. I trust that the father will reflect on his position and will recognise that it is important to undertake the further work which has been identified, so that the positive progress which has been achieved in repairing his relationship with E in particular can continue.

122. Finally I wish to make clear that, even if I hadn't concluded that there was a risk of stress positions being imposed as chastisement by the father, I would not have ordered that the father should have extended contact with the children during the school holidays at this time and I would have ordered that any progression to overnight stays should take place slowly and carefully and with a safety plan in place so that E and F would know what to do if they were worried about the care provided to them by the father.

123. I would be grateful if all the parties would liaise with a view to agreeing the final order in this case. If there are any points of detail about that order, including the arrangements about the location for collecting the children for contact with the father (which appears to have been a problem in recent times), then that can be dealt with at the hearing when this judgment is handed down and before the order is finalised.
124. That is my judgment.