

**IN THE HIGH COURT OF JUSTICE  
FAMILY DIVISION**

Royal Courts of Justice  
Strand  
London, WC2  
20th May 2004

Before:

**MRS. JUSTICE BRACEWELL**

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**Applicant  
- and -  
Respondent**

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**MR. M. PIERCY** appeared on behalf of the Applicant.  
**MS. R. AMIRAFABI** appeared on behalf of the Respondent.

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**HTML VERSION OF JUDGMENT**

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**MRS. JUSTICE BRACEWELL:**

1. This case is to be known by the initials V v. V. I give judgment in open court in respect of two girls, N, aged eight years, and K, aged six years, who are the subject of a long-standing dispute between the parents in respect of issues of residence and contact. I have anonymised all names in the case and I draw attention to the statutory provisions which prevent publication of any material which is intended to or likely to identify the children by name or location. These provisions are s.97(2) Children Act 1989, and s.12 Administration of Justice Act 1960. Because the judgment is in open court it is therefore a public document and I consider that the issues raised justify public discussion.

2. This is neither a unique nor even unusual case to come before the courts. Unfortunately the courts at all levels are well accustomed to intractable contact disputes which drag on for years with little or anything to show for the outcome except numerous court hearings, misery for the parents, who become more entrenched in their positions, wasted court resources, and above all serious emotional damage to the children. These disputes are expensive, and most of them are funded by public finances. They take up a disproportionate amount of time in court, thereby depriving other cases of timely hearing. Constant litigation in respect of residence and/or contact is not only destabilising for parents and children who become a battleground to be fought over at any cost, but it is a process which progressively results in entrenched attitudes as if engaged in a war of attrition. Frequently, as in the current case, it is the mother caring for the children who is against making contact work. I find she has undermined contact to father over a period of years in circumstances in which the children love their father, want to spend time with him, know him and need a good relationship with him. They also love their mother who, in many respects, is a good parent. Had it not been for the breakdown of the parents' relationship, the alienation of their respective extended families and the corrupting, corroding effect of litigation battles, I consider that not one word of criticism would have arisen concerning the quality of care given to these children. What has happened is a tragedy because each parent has much to offer.
3. In this case there has been constant litigation since the year 2000, which has involved 17 court orders and directions and 16 different judges, including a full hearing before Bodey J. in 2002 in the High Court, and still the case drags on. It is time the litigation was brought to an end for the sake of the children, and the CAFCASS officer, Mrs. C, agrees.
4. There is a perception among part of the media, and some members of the parents' groups, as well as members of the public, that the courts rubber-stamp cases awarding care of children to mothers almost automatically and marginalise fathers from the lives of their children. There is also a perception that courts allow parents with care to flout court orders for contact and permit the parent with residence to exclude the parent from the lives of the children so that the other parent is worn down by years of futile litigation which achieves nothing and only ends when that parent gives up the struggle, or the children are old enough to make their own decisions, assuming they have not been brainwashed in the meantime.
5. This litigation regarding N and K has festered over four years. It is a prime example of the sort of dispute which could have been nipped in the bud by a project such as Family Resolutions for Early Intervention which is due to be piloted at three centres commencing in September 2004. If this project had been available to these parties when the first application was made to the court and before attitudes had hardened, sensible arrangements for the welfare of the children could have been effected without the need for bitter litigation which has driven this father to despair to such an extent that he has even contemplated walking out of the children's lives. He recognises the harm which constant litigation has caused to the emotional welfare of his daughters.
6. Recently Munby J. in *Re DF v. M* [2004] EWHC 727, referred to contact proceedings which have been ongoing for five years as an exercise in absolute futility. I ask the question: how can the situation be remedied? Unreasonable parents, by definition, are

difficult to deal with, and the most intractable situation is undoubtedly the unreasonable mother, but judges currently do not have the tools with which to make progress with the unreasonable mother or sometimes the unreasonable father who can flout or frustrate orders with impunity unless sent to prison.

7. It appears to me that there are ways in which the problems can be addressed. The first consists of improvements in the court process. These are limited and mainly procedural, and will certainly require additional resources. They consist of case management from the date of application to the court, judicial continuity, timetabling to suit the needs of the case and not the slots made available by court listing, proactive orders such as envisaged by Munby J. in Re D, and attaching conditions to residence orders under s.11(7) Children Act 1989. Such improvements are dependent upon a change in the role of CAFCASS officers, so that in addition to writing reports, which must be timetabled to the needs of the case, as opposed to waiting for the availability of an officer to undertake the task, the officer will be there to monitor the initial stages of contact, help with hand-over arrangements and, if necessary, bring the case back to court before the same judge if problems arise. Such monitoring at an early stage has real potential to prevent frustration and animosity between parents. It needs to be combined with well resourced, supervised and specialist contact centres, of which there are currently too few.
8. Some parents agree to contact without any intention of making it work, as I find in the current case. At present it can take months for a case to be restored to court when contact has been frustrated. Further delays then occur in a search for a solution, during which time there may be no contact taking place and the residential parent, usually the mother, uses the time to brainwash the child into rejection of the father. The father then applies to commit the mother to prison, by which time there is no hope of an outcome which meets the need of the child to have a good relationship with both parents. The effect of intervention by a CAFCASS officer at the earliest stage would enable these cases to be brought back to court, overnight if necessary, before the same judge. Such improvements in procedure are supported by all the judges, but are frustrated by the lack of resources to deliver. Judicial continuity is essential. For a succession of judges to have to read a case for the first time, often consisting of many bundles, is not only wasteful of judicial time, but it risks inconsistency of approach and adds to delay and dissatisfaction of the parties.
9. There are undoubtedly difficulties in achieving continuity, particularly in the county courts and the family proceeding courts. In the former jurisdiction full-time judges have other duties in criminal and civil courts which may remove them from family work for months at a time; and part-time recorders, by definition, sit for limited periods in the year. In the family proceedings courts it is by no means easy to convene the same bench of magistrates at short notice. However, these problems are capable of solution and must be addressed by the Court Service.
10. The second way in which improvements can be effected requires legislation. At present, enforcement of contact orders creates insuperable problems for the courts. Currently, there are only four options available to the court and each is unsatisfactory: one, send the parent who refuses or frustrates contact to prison, or make a suspended order of imprisonment. This option may well not achieve the object of reinstating contact. The child may blame the parent who applied to commit the carer to prison.

The child's life may be disrupted if there is no one capable of or willing to care for the child when the parent is in prison. It cannot be anything other than emotionally damaging for a child to be suddenly removed into foster care by social services from a parent, usually a mother, who in all respects except contact is a good parent. Two, impose a fine on the parent. This option is rarely possible because it is not consistent with welfare of a child to deprive a parent on a limited budget. Three, transfer residence. This option is not necessarily available to the court, because the other parent may not have the facilities or capacity to care for the child full-time, and may not even know the child. The current case is one in which this is a real option. Four, give up. Make either an order for indirect contact or no order at all. This is the worst option of all and sometimes the only one available. This is the option which gives rise to the public blaming the judges for refusing to deal with recalcitrant parents. This option results in a perception fostered by the press that family courts are failing in private law cases and that family judges are anti-father. The truth, however, is that without the weapons to use against what is in essence a small group of obdurate mothers, the ability of judges to do better for fathers is strictly limited. It is not commonly recognised by the public that, in order to have enforcement procedures which are effective, legislation by Parliament is necessary.

11. The reforms requiring legislation come under two categories. The first is the facilitation to give judges and magistrates the power to refer parties to mediation at any stage of the proceedings. Legislation is needed to reform the family assistance order. To make these orders effective, they should cease to be directed to local authorities and should be directed to CAFCASS. The time limit of six months should be removed. They should not be limited to exceptional circumstances and parties should not be allowed to refuse to consent to the making of an order. In the past they have not been properly funded and local authorities have had the option of refusing to implement them. There must be a commitment to proper funding.
12. The second need for legislation relates to enforcement. There needs to be a clear commitment to legislation designed to provide the following powers in addition to those currently available: one, the power to refer a defaulting parent in a contact application to a variety of resources, including information meetings, meetings with a counsellor, parenting programmes and classes designed to deal with contact disputes; two the power to refer a parent to a psychiatrist or psychologist; three, the power to refer a non-resident parent, who is violent or in breach of an order, to an education for perpetrators programme; four, the power to place on probation with a condition of treatment or attendance at a given class or programme; five, the power to impose a community service order with programmes specifically designed to address the default in contact; six, the power to award financial compensation from one parent to another - for example, where the cost of a holiday has been lost.
13. I turn now to the current case. The father contends that the mother has demonstrated implacable hostility throughout the contact proceedings and has, on numerous occasions, unilaterally halted contact in breach of orders of the court. He contends that the mother has continually made allegations against him and members of his family, and that she has acted contrary to the children's welfare and best interests. It is in those circumstances that the father now applies for a residence order in his favour.

14. The mother denies the allegations. She contends that the welfare of the children demands that they live with her. Her case is that she wholly supports contact, but that it has been necessary for her to protect the children from harm experienced during contact periods.
15. The chronology which I find established is that the two children, who are girls, were born, in respect of N, on 3<sup>rd</sup> June 1995; and K, on 18<sup>th</sup> April 1997. The mother and father married in 1994, but separated early in the year 2000. A decree absolute of divorce was granted in January 2003.
16. From the time of separation in early 2000 the father was denied contact with the children, in consequence of which he made an application to the court in December 2000 for a contact order. The return date for the hearing was 4<sup>th</sup> January 2001, when contact was agreed between the parties to take place on a weekly basis at a family contact centre. In April 2001 it was agreed that contact would increase and would take place outside the contact centre. Thereafter there started the history of allegations by mother which I shall recite at this stage and consider in further detail later.
17. In November 2001 mother made allegations of inappropriate sexual behaviour towards the children by a relative of the father, a Mr. M; and, as a result, she asked that contact should be suspended. The matter came before the court and no order was made on the mother's application. Father, however, in order to resolve the matter, gave an undertaking that the children would not come into contact with any of his relatives. Thereafter there was an application by the mother to suspend contact, she alleging a breach of the undertakings by the father. The matter came before the court on 5<sup>th</sup> April, but there was inadequate time for a full hearing. In consequence visiting contact only was ordered until a further hearing of the issues, and upon father undertaking only to take the children on public excursions, not to his home address nor to have any family member accompany him. Thereafter there was a hearing of the respondent's allegations and in consequence contact was ordered to continue both as to visiting and staying contact. Mother's allegations were not found to be substantiated.
18. However, in March 2002 there was a further allegation by mother that father had breached the undertaking by allowing Mr. M to be present during contact. Mother applied again to suspend contact, but it was continued. Thereafter in May 2002 mother made an allegation that father had left the children with a relative and they had been hit with a slipper by father's sister's husband. Mother then unilaterally stopped contact and applied to suspend it. Investigations by social services found the allegations to be unsubstantiated.
19. Thereafter there was the final hearing of the contact issues before Bodey J. on 5<sup>th</sup> December 2002. At the end of his judgment he ordered alternative weekly staying contact to father, plus weekday contact, and an equal division of the holidays between the parents. There was contact in December 2002 in the weeks following that judgment, but mother made an allegation that father had hit the children with a coat hanger and that the children had also been hit by their aunt. Despite those allegations there was a period of additional staying contact at the end of December, but then mother unilaterally stopped all contact, which was not resumed until a penal notice was attached to the order by me on 13<sup>th</sup> May 2003.

20. The problems, however, continued. There were a series of anonymous complaints to the father's household to which I shall refer in more detail later. There was an allegation at the end of January/beginning of February 2004 that K's face had been scratched by her aunt, and that the children had been taken to see Mr. M in breach of the undertaking. There was a further allegation at the end of February 2004 that K had sustained injuries in father's care and mother alleged that father had beaten K. At the end of March there was an allegation that N had been injured whilst in father's care.
21. I have heard evidence from mother and father, as well as the aunt, Mrs. T. Wherever there is conflict in the versions given by father and mother, I have no hesitation in preferring the evidence of father. I found him sensitive to the needs of the children, caring, truthful, and, as the CAFCASS officer said, wanting to put his children first, but he has been thwarted by the mother. I was very favourably impressed with Mrs. T, who lives with her husband and family in the same household as the father. She is a very gentle, thoughtful person, who would have a role in assisting father if the children were to live with him. She inspires a calm, quiet, confidence in her abilities, and I have no hesitation in accepting that she has never hit any of the children, despite the allegations of the mother.
22. I find the mother has little or no credibility. She has an agenda in this case to pretend to support contact, but in reality wants to undermine it by coaching the children to make allegations, by inventing or grossly exaggerating minor incidents in order to justify stopping contact. There is an illusion versus a reality in this case. Mother has sought to present herself as someone who has the welfare of her children at the forefront, who wants to promote quality, but who has felt it necessary to protect her children by presenting them to social services, the police, and hospitals, by reason of what she says she regards as serious concerns in respect of injuries sustained in the care of the father. Before me her case is that father is a good, loving parent, who has an excellent relationship with his children, that the children love both her parents and she wants the children to have substantial contact to father to include staying contact. She even suggested shared parenting in evidence. She has made detailed proposals. She contends that she has always supported contact to father and the only reason why it has not taken place is because the children have returned home with injuries which required investigation.
23. I am satisfied that the reality is very different. Mother is shrewd and intelligent, but twisted by an agenda of her own. She does not want to lose residence, nor does she want to go to prison for failure to comply, but she wants to eliminate contact. Therefore, she has to present herself as a parent who supports contact, but who is constrained by the need to protect the children from harm. The truth, however, is that she builds up her store of ammunition against father to use when the opportunity presents.
24. I give examples of the denigration of father by mother. I find that she seeks to denigrate father whenever she sees the chance. An interesting example was in connection with her alleged need for an interpreter when interviewed by the CAFCASS officer for the main report for this hearing. Litigation between these parents has been ongoing for some four years, involving six statements by mother, interviews with CAFCASS officers, the police, doctors, social services, and various hearings in court, including mother giving evidence before Bodey J. All these

proceedings and the documents have been in English. However, before me mother has had an interpreter throughout. It was plain when in the witness box that the mother is fluent in English, because she was asked to and did read a number of documents in English and understood them, and on occasion she corrected the interpreter when there was an error in translation. Why, therefore, has mother created this charade? The answer is that she was caught out in a lie by the CAFCASS officer about father and her only way to save face was to pretend thereafter that she did not really understand. I find that mother was insistent to Mrs. C, and said so in English, that father had a criminal record. The officer queried this information, but mother was persistent. She no doubt thought that her information would be accepted without any check. However, when the officer revealed that father had no criminal record, mother, to the surprise of the officer, retreated into a lack of understanding of what a criminal record was and ever since mother has had to perpetuate lack of English in order to maintain her position.

25. Another example relates to the £10 notes which mother alleges father gave the children to bribe them not to disclose what had happened at contact on 29<sup>th</sup> March 2004 in respect of N, who mother said sustained an injury as a result of a fall from a merry-go-round which necessitated a visit to the hospital. I find the basis for the allegation by mother was an exaggeration by her to show lack of supervision by father when in truth she told the doctor it was a minor accident. The first time mother mentioned the bribery was in evidence. She claimed to have told her solicitor. I do not believe her. Mother never cross-examined father through her counsel on this topic, which was highly relevant to credit. There is no reference to it in mother's later statement which she seeks to explain now by saying she signed it without reading it. There is no mention in the solicitors' letter dated 6<sup>th</sup> April 2004 dealing with the incident. Mother did not mention it at the hospital in her detailed complaint. This allegation of bribery was so serious, if true, that I have no doubt mother would have shouted it from the rooftops if it had happened. It would have constituted powerful ammunition against father's case. I am satisfied that she invented it in the witness box and lied about father to bolster her case. It was an absurd lie in any event, because nothing serious had happened at contact.
26. On 29<sup>th</sup> February 2004 mother had taken K to the Accident & Emergency unit at 9 p.m. giving a history that K had been assaulted by an eight year old cousin who had pushed a chair in her buttock. Mother told the doctor that father hit the children and the doctor recorded this as part of the history. In evidence she denied having said that. I accept the doctor recorded accurately what she stated. According to the mother the doctor said, "We will tell social services that the child is in this condition". I find that was invented by mother in pursuance of her agenda against father. It would have made no sense whatever for the doctor to say that because K told him there was no assault, it was an accident when playing and no treatment was needed. It was a trivial incident which was not reported by the hospital to social services.
27. Mother further said in evidence that the children came home from contact mentally, emotionally and physically abused as well as being hungry. I reject that completely. It is contrary to an abundance of evidence that father is capable and loving and meets the needs of the children. It is revealing that in her statement of 19<sup>th</sup> December 2003, at a time when she was wanting contact supervised at a centre, she supported that contention by saying, "I do not believe father is genuine in his concern to see the

children on a regular basis"; and she suggested that his application was merely a ploy to obtain a council house. I find mother will say anything, however untruthful, to support her case.

28. The CAFCASS officer has demonstrated the bond of the children with both parents. In the witness box mother had to concede to her counsel that father is a good father and the children were happy, confident and relaxed with him, but then she had to temper that by complaining that the children were not properly cared for when with him. In her statement of 19<sup>th</sup> December 2003 the mother stated in terms that father had telephoned her the previous month and called her a stupid bitch. However, she said to Mrs. C, the CAFCASS officer, that she had not recognised the voice of the caller.
29. I question the basis for the attitude of the mother. Does she genuinely think that she has good reason to disrupt contact? Is she being over-protective? Or is she cynically working to an agenda which suits her campaign? I am satisfied on the evidence that from time to time she has had some minor cause for complaint in respect of father. In the past he and his family have not always respected mother and she has undoubtedly felt some hostility from his side of the family. Further, as the CAFCASS officer stated, there have been occasions of minor injuries to the girls which were not the subject of discussion between the parents, and which arose out of accidents when playing, and which, in mother's eyes, may have demonstrated some lack of supervision. However, I do not consider that these shortcomings on the part of father in any way justify the resulting behaviour by mother.
30. I find it is necessary to analyse in a little detail the various allegations made by mother because, in my judgment, that analysis shows that they are calculated by the mother to undermine the children's contact with father. The first allegation relates to the sexual abuse allegation. It arose on 20<sup>th</sup> November 2001 by letter from the mother's solicitors, in which it was alleged that Mr. M resides in the same house as father and has touched the children inappropriately by touching, or attempting to touch, their bottoms, and that he has kissed them. In response, the father's solicitors stated that the allegations were malicious. They further indicated, as was the case, that Mr. M did not reside in the same house as the father but lived elsewhere at some distance. The mother then applied to the court claiming that Mr. M had touched and kissed the children inappropriately. Mother made a report to social services. By this time her allegation was more explicit and detailed. She said that N had told her that her uncle had put his hand down her knickers, pinched her vagina, she had then closed her legs because she did not like what he was doing and he removed his hand. The uncle had then repeated this with her sister, K, and N stated that uncle had kissed them both on the lips. Mother, however, then refused to give permission for the children to be interviewed and stated that the whole incident had been a misunderstanding. However, they were interviewed by a detective constable some time later at school. N then stated that she had been in the sitting room with her uncle who had touched her bottom over her clothes, squeezed her bottom, and it hurt. She said she saw her uncle do the same to her sister, K. K made no disclosures. Social services recommended that no further action be taken. Father, however, agreed that he would ensure there was no contact between Mr. M and the children. Social services assessed that the children were not at risk of any significant harm.



31. However, mother had continued to raise this allegation of sexual abuse at every opportunity. I find that there is no substance in the allegation of sexual abuse for the following reasons: mother alleged that the incident occurred in October 2001, but it was reported for the first time by mother some three weeks later at a time when she had already threatened the father that she would make allegations in order to stop contact. When the mother first made the allegation it was vague. Later it became specific and in detail, although mother claimed at one stage it was a misunderstanding. When eventually the children were interviewed the account given by N was radically different from that given by her mother. There are many examples within the papers of mother coaching the children, which has been apparent both to the detective constable and to the CAFCASS officer. This I find is one of those examples. Both the father and the uncle should be released from their undertakings.
32. Mother's allegation that father breached the undertaking: there is a clear conflict of evidence between father and mother. Father states no such contact has ever taken place. Mother, relying on what she says the children have told her, contends that it has. The latest allegation in this respect is a letter from her solicitors dated 6<sup>th</sup> February 2004 that the father took them to see uncle in his new property in a named area of London. It was pointed out in reply that that information is wholly inaccurate and the uncle does not live in that particular area and, in any event, during the time alleged by the mother when this contact took place, the children were with their father in Birmingham. I prefer the evidence of the father.
33. Mother alleged the children were severely beaten by Mr. K, the husband of Mrs. T, during week-end contact in May 2002. The allegation surfaced in a letter from the mother's solicitor. There was an allegation that N and K had been hit on their bottom and legs with a slipper for crying. On that basis the mother stopped contact and applied to suspend it. When she was interviewed by a detective constable she claimed the children had been severely beaten. There was a s.47 investigation by social services. Neither child supported the contention in any way and they stated in terms that they had never been disciplined in any way by Mr. K, let alone severely beaten. I find that that allegation was false and made by mother to justify her stopping contact.
34. There is a further allegation that during staying contact in December 2002 the children were hit by their father with a coat hanger, that Mrs. T kicked N, causing a scratch, and pinched K, and further that they had been allowed to meet Mr. M. These allegations were raised in a letter from mother's solicitors in January 2003, and were relied upon to deny any further contact with the children from 1<sup>st</sup> January 2003 until 13<sup>th</sup> May when the court made an order for contact, endorsed with a penal notice. Mother claims that the allegations were made to her by the children on 26<sup>th</sup> December. If that is true it is very surprising that she permitted the father to have contact on 29<sup>th</sup> and 30<sup>th</sup> December. The allegations again were investigated by the same detective constable, who discovered that the father had been cross with the children, who had gone out without permission, and that he had tapped the children with a coat hanger. N made a complaint to the detective constable that Mrs. T had kicked N on the leg causing a scratch which disappeared when she wiped it. K claimed that her father had hit her on the back with a coat hanger and had hit N in the same place. K also claimed that Mrs. T had used her foot to punch her. The detective constable concluded that it was obvious that the children had been coached in what to

say by the manner in which they recounted their version. The CAFCASS officer independently reached the same conclusion. The mother told Mrs. C that there were no signs of any bruises or injuries to the children. There undoubtedly was an incident in Birmingham when the father was worried and cross with the children for leaving the house without permission. There was some incident whereby he may have slapped the children. Neither child was injured or even hurt by the father. I find that the allegation against Mrs. T has no substance whatsoever. In relation to this matter, the mother not only made a complaint to the police, which then resulted in the children being interviewed, but she refused all contact for the next five months.

35. There then was an anonymous complaint to the police that Mr. K had hurt his own son whilst drunk and that prostitution was taking place at the home. The police came to the house at 2.30 a.m. and concluded that the call was mischievous. On the totality of the evidence I conclude that this was the start of a campaign by mother to make false anonymous complaints in order to vilify the father and the family.
36. There was a further complaint to the NSPCC about alleged physical and sexual abuse in the home of Mrs. T. It is interesting to note that those allegations were made shortly after father's sixth statement in support of his application for a residence order in which he placed reliance on being able to accommodate the children in the home of Mrs. T. The complainant was female, and there is a very telling detail about the complaint in which the caller contends that her brother-in-law gets drunk and then teases her son by blowing smoke in his face. That is in almost identical terms to an allegation made by the mother in her statement dated May 2001. The mother denied that she had ever made any anonymous complaints, but she said she believes that the allegations made had, in fact, occurred in the home of Mrs. T and that they were credible allegations. There is no candidate for such anonymous allegations except the mother, who has demonstrated a detailed knowledge of the arrangements within the father's household, and it is very sad to be compelled to the conclusion that the mother is responsible for those complaints.
37. The next matter relates to the alleged assault on K by her cousins in February 2004. The mother took K to the police station complaining about the injury to K during staying contact with her father. She then took K to the Accident & Emergency unit at night on 29<sup>th</sup> February alleging assault. It is significant that she used this visit to the hospital to have recorded a number of serious allegations against the father and his family, namely that father drinks a lot, does not take good care of the girls, he beats them, and one of the relatives had once tried to molest one of the girls in the family home. K's own account of this accident to the doctor demonstrates that it was a simple accident during the course of play, that the injury was insignificant and did not merit a visit to the doctor, let alone to the police station. I find that mother used a simple and trivial accident as part of her campaign to stop contact; and in doing so she subjected K to an intrusive investigation at the age of 6 involving the police and social services so that she could stop contact to father.
38. The allegation relating to the injury on the merry-go-round on 29<sup>th</sup> March 2004: this was the incident in respect of which mother introduced this rather startling allegation of the bribery with the £10 notes. Mother stressed in evidence that she considered this to have been very serious misconduct by the father but there is no reference to the

bribe anywhere else within the bundles of documents until she gave evidence before me.

39. The hospital notes I find very revealing. The doctor has recorded that the mother was "collecting evidence as she feels the children are being mistreated whilst at dad's". There is further recorded that mother was very concerned about previous accidents and the children had been on the Child Protection Register for sexual abuse. Mrs. C gave evidence that after this incident mother contacted her to ask whether she could terminate contact in the light of the incident. I find that this was a trivial incident which was exaggerated by mother in order to build up her case.
40. There were also further anonymous allegations of an extremely serious nature alleging immigration offences which led to the arrest of father and Mr. K. There was absolutely no truth whatsoever in those allegations and again I am driven to the conclusion that it was mother who made them, and they resulted in a raid on the father's family home and the arrest of him and Mr. K until investigations revealed that there was no truth in the allegations.
41. The welfare officer in this case has said in terms that both parents are capable of meeting the children's needs, except the mother in respect of the relationship with father and the extended paternal family. In oral evidence, Mrs. C confirmed that she had no doubts about the father's ability to provide for the children in all respects, including their emotional development, and she praised his sensitivity to their needs. She also considered that father would facilitate contact between the children and their mother.
42. I find father has proved himself to be totally committed to his relationship with the children, despite the obstacles placed in his way. He can offer reasonable accommodation. He has a network of close family with whom the children are very familiar, in particular Mr. K and Mrs. T. The father is committed to provide them with private education with financial assistance from his father. I have no doubt that Mrs. T would help in every way she could and would be wholly welcoming to the children. I find the children are the father's priority. His working hours are adaptable and in emergencies he can rely on trusted members of the family to assist. He would make himself available for the children during school holidays and father has the network of family support which the mother lacks.
43. The mother undoubtedly has provided the children with a good standard of care, which has been described by Mrs. C as "better than good enough". However, it is a fact that the mother's continued care of the children is incompatible with the children enjoying and benefiting from a normal relationship with their father. This is because the mother is implacably imposed to the children having contact with the father's family, and she is prepared to resort to desperate and injurious remedies to sabotage such contact and to defeat the orders of the court. I find she has coached the children to make false allegations against the father and his family, and she has subjected the children to repeated and intrusive examination by police, social services and doctors. She has attacked the reputation of the father's family without justification. She has involved the children in her lies and her deceit. She has shown an inability to put the interests of the children before her own.

44. This case is governed by welfare check list s.1 Children Act 1989, which I apply. The wishes and feelings of the children are significant in respect of their age and maturity. These children wish to stay with their mother with whom they have always lived. Their views must be taken into account, but cannot be determinative of outcome, partly because of their young age, and also because they have become so enmeshed in the parents' problems and have learnt to say what they think is expected of them. In order to survive emotionally I find these children, and in particular N, have become skilled in reiterating the views of their principal carer to date, namely the mother; and in consequence their views are tainted by the influence of the mother.
45. The CAFCASS officer has been involved in this case over a substantial period of time. She, together with a retired colleague, have prepared no less than six reports, including an addendum dated 6<sup>th</sup> May 2004. She does not feel able to make any recommendation as to where the children should live, because she recognises the traumatic consequences of each alternative outcome. If the children move to father they would be uprooted from mother's daily care, where they have lived all their lives. They would have to change schools and settle into a new environment with father and extended family. The mother has more than adequately provided for their needs, except in respect of the relationship with father. The change would be traumatic, even though each parent has the capacity to care for the children. If the children stay with mother there is the prospect of ongoing battles about contact to father, continued litigation with mother finding reasons to stop contact until father, exhausted from the proceedings, might well retire. There would be, in my judgment, a real risk that father would become battle-weary and withdraw from the children's lives defeated and demoralised.
46. If the children move to father I am satisfied he would actively support generous contact to mother and encourage the children to have a loving relationship with her; but there is the emotional upheaval for the children to consider as well as the problem of mother not accepting placement with father and perhaps seeking to undermine it.
47. These children need both their parents. The welfare officer felt compelled to leave the balance of risks to the court. I ask the question: how can the best outcome be achieved for these children? Which solution results in the least risk, the least detrimental harm? The starting point is that these children, in my judgment, have already suffered harm by means of the emotional abuse by the mother. I agree with the CAFCASS officer. I further agree with her that the situation cannot be allowed to continue as at present because the children will continue to suffer harm if deprived of their relationship with their father. It is the right of the children to have contact with their father. It is for the mother to establish by credible evidence any basis for denying or restricting contact. She has not done so. Her implacable hostility is not a proper basis for denying or restricting contact.
48. In *Re K (Contact Committal Order)* [2003] 1 F.L.R. 277 it was recognised that there may be circumstances in which a mother's denial of the children's right to a relationship with the father and his family justified a transfer of residence to father. Any decision to change residence arising from difficulties over contact must be fully justified by affording paramount consideration to the child's welfare. It must not be used to punish a parent.

49. This is a case in which but for the mother's malign influence the children would have benefited by having the regular and substantial contact provided for by Bodey J. Sadly, the false allegations by mother, in my judgment, are likely to continue as long as the children live with her. She will continue to refer the children to social services, the police and hospital. She will continue to involve them in lies, to coach them, to subject them to intrusive investigations in respect of those whom they want to love and respect. She provides a very bad example to the children by her manipulation and deceit. She seems oblivious to the harm which she is causing. I find that, if left with mother, there will be increasing emotional harm to the children and I agree with Mrs. C that mother's conduct is likely to continue. The use of enforcement procedures, such as penal notice, may have the effect of causing the mother to deliver contact but it will not prevent her from continuing to poison the children's minds against their father and family and building up a case against him.
50. Applying the welfare check list in relation to physical, emotional and educational needs, the parents can provide equally for physical and educational needs, but the father is better able to provide for emotional needs. The likely effect of a change in circumstances means that the children will undoubtedly be upset initially to leave their mother but in the longer term will benefit from a change of circumstances.
51. In respect of age, sex, background and any relevant characteristics, the mother contends it is particularly important for girls to be brought up by their mother, but these children would have the benefit from the presence in the father's home of Mrs. T and father's sisters who are regular visitors.
52. In respect of harm which they have suffered or are at a risk of suffering, I am driven to the conclusion that the harm and abuse will continue as long as they are with their mother. The capability of the parents means that the father and his wider family are able to provide a more balanced and emotional secure basis for the children in the future.
53. I make findings of fact as follows: that each of the allegations made by the mother against father and his family are either false or wholly exaggerated out of all proportion. I find the mother has made allegations to frustrate contact and in order to do so has coached the children involved, them in false allegations and has subjected them to emotional abuse by four interviews with the police and visits to hospital which were wholly unnecessary. That abuse is likely to continue while she has the care of the children. The father, I find, is fully capable of providing for the children.
54. What is the capacity for change in mother? That is crucial because the current situation cannot continue. Mother points to the fact that since May 2003 she has complied with the orders of the court, and therefore, she says, that should give confidence that she can be relied upon to promote contact in the future. I do not accept that conversion by mother to the cause of contact for various reasons. One, she has only complied when faced with a penal notice and an application for a residence order by father; but she has continued to work underground to collect evidence against father to use against him. Two, in her statement dated as recently as December 2003 she proposed only supervised contact at a contact centre. Three, as recently as April this year she instructed her solicitor to ask Mrs. C if she could terminate contact. Four, she constantly dredges up old, stale complaints. Five, Mrs. C has no confidence

in mother complying once this court case is over because of her lack of capacity to change. Six, my assessment of mother in evidence is that she will say anything to try to satisfy the court, but her whole campaign is to frustrate contact.

55. Mrs. C, when declining to make a recommendation, stated prophetically that "it may be that the court will have other evidence which will assist in making a final decision". There is, I find, an abundance of such evidence. Having considered all the factors, weighing all the risks and advantages, I am satisfied that the need for these children to have a relationship with their father can only be met by transferring residence to him. I am confident in his abilities. I, therefore, order a residence order to father.

56. That concludes my judgment in public. There are other matters that need to be dealt with in private.

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