

**IN THE PRINCIPAL REGISTRY
OF THE FAMILY DIVISION**
No. CR12P01478

First Avenue House
42-49 High Holborn, WC1
Monday, 23rd December 2013

Before:

HIS HONOUR JUDGE HARRIS

B E T W E E N :

RS (Applicant)

- and -

SS (Respondent)

*Transcribed by **BEVERLEY F. NUNNERY & CO***

Official Shorthand Writers and Audio Transcribers

One Quality Court, Chancery Lane, London WC2A 1HR

Tel: 020 7831 5627 Fax: 020 7831 7737

info@beverleynunnery.com

MS. S. BRANSON (instructed by Kirby & Co.) appeared on behalf of the Applicant.

MR. Z. SAMUEL (instructed by Goodman Ray) appeared on behalf of the Respondent.

MS. R. AMAN (instructed by NYAS) appeared on behalf of the Guardian.

J U D G M E N T

(As approved by the Judge)

JUDGE HARRIS:

1. I am dealing today with the father's application, which is dated 10th July 2012, effectively now for a transfer of residence in relation to the two children of these parties: AB, born on 7th November 1999 and therefore aged 14 years and just over one month, and CD, born on 3rd October 2002 and therefore aged 11 years and 2 months. The father is RS. He was born on 3rd July 1970 and is therefore aged 43. The mother is SS who was born on 29th October 1972 and is therefore 41. The children were joined to the father's application by an order of District Judge Wood, and are represented by their NYAS Guardian, BH. The representation of the parties is as follows: the father is represented by Ms. Branson of counsel, the mother by Mr. Samuel of counsel, and the children by their Guardian, by Ms. Aman of counsel.

2. I have heard this case over the best part of four days: on 28th and 29th November, 13th December and today, 23rd December. As well as reading a substantial bundle, I heard evidence from the following witnesses in the order in which they gave evidence: CH, the Deputy Head teacher of the school attended by AB; LS, the paternal grandmother; SB, the father's wife; the father; the mother, and finally today the Guardian. I also met the boys, at their request, on the morning of 13th December in the presence of their Guardian and solicitor, and in fact spent just under an hour with them. A minute of that meeting has been prepared by the Guardian's solicitor.

3. The father's application for a transfer of residence is supported by the Guardian on behalf of the children, and is strongly opposed by the mother. This is a high conflict contact dispute which has endured for most of these children's lives. It has many of the hallmarks of such a dispute: repeated applications to the court, the involvement of the police, and the involvement of social care. The father's case is that the boys have been alienated by the mother from him, and that the very negative wishes and feelings they express have been heavily influenced by her. If this is correct, this would constitute a form of emotional abuse. The mother, for her part, says that she has always been prepared to promote contact and insofar as there are difficulties in contact, that has been as a consequence of how the father has conducted himself in the context of his contact with his sons.

4. This case is not just about the issue of alienation, it goes wider and embraces other potential concerns. The father's case is that the mother has also failed to meet the boys' educational needs as a result of longstanding concerns about the boys' attendance at school, punctuality and failure to complete homework. He says further that it is about the mother's parenting in terms of her ability to meet their social, emotional and developmental needs, in particular their need for clear boundaries and structure. Whilst he recognises that it would be extremely difficult at first if there were a transfer, given the boys' ages and strongly expressed views, he considers that in the longer term he could meet their emotional, social and educational needs far better than the mother, and indeed would promote contact with the mother without difficulty. The Guardian agrees with his submissions in that regard.

THE BACKGROUND

5. The parties married in 1996. The mother is from Z originally, the father is English. They separated on 14th November 2002 when CD was less than six weeks' old. The father says that he formed a relationship with his present wife, whom the parties had both known before, about three months after the separation. The mother says that she believes that the relationship had already commenced before the separation. I make no findings on this issue,

but observe that the mother appears to believe this, and this, together with the circumstances surrounding their separation when she had but recently given birth, have clearly been among the factors which, in my view, have led to the current difficulties.

6. In late 2003 the father applied for contact at the Y County Court, alleging that contact with AB was sporadic and contact with CD was not happening. The children were then living in Y.

7. On 23rd June 2004 a contact order was made for the father to have four out of five weekends contact for one day of the weekend, and on the fifth weekend for both days. It was anticipated that staying contact would start after a period of visiting contact.

8. On 28th October 2004 a residence order was made in favour of the mother. The contact order provided for contact from 10.30 a.m. on a Saturday to 4.00 p.m. on a Sunday.

9. On 1st December 2004 what was meant to be a final order was made, and that provided for alternate weekend staying contact from Saturday at 10.30 a.m. to Sunday at 4.00 p.m., together with phone contact. The mother gave certain undertakings in relation to overseas travel.

10. The contact did not occur in accordance with that order, and in September 2005 the father restored the matter. The mother then made an application for leave to remove the children permanently from England and Wales. The father's contact was ordered to be alternative Saturdays from 9.00 a.m. to 6.00 p.m., and the mother gave fresh undertakings in relation to overseas travel.

11. On 8th December 2005 the father reluctantly consented to the children's permanent removal from England and Wales to live in Z. The mother had made a case that she needed to care for her mother, who was ill, although Ms. Branson notes that in her evidence in these proceedings the mother referred to the need to get away from all of this, referring to the issue of contact.

12. Contact was to be for 28 days in each summer holiday. Phone contact was to be once a week. The mother and the two boys moved to Z in early 2006. Contact in the summer of 2006 did not take place. There was some contact in December 2006. In 2006 the father remarried.

13. In the summer of 2007 the mother returned to the UK for some month. The father had satisfactory contact to AB. CD was not made available for contact.

14. There was no contact in the summer of 2008. By arrangement, at Christmas 2008 the father flew to Z and brought the boys back for contact. I heard in evidence and read in the papers about an incident whereby the mother came to the United Kingdom during that contact and took CD away during the contact. There is a dispute about when this occurred, but plainly it was in contravention of the arrangements which were for the father to fly back with the children to Z. Contact on that occasion was said by the father to be only a week with CD, but for two weeks with AB. The mother says she only removed CD a couple of days before the contact was due to end.

15. The father had started working in X from December 2008 until April 2011. He would return one weekend a month for contact. By this time the mother had returned to this country

- that was in May 2009 - and moved to Q. The pattern of alternate weekend contact was agreed in principle but was not consistent. The father complains that the mother took several months to get the boys into school. In September 2009 the boys started at E School. In January 2010 AB moved to R School, and in September of that year CD joined him, and CD indeed still attends that school.

16. From the spring of 2010 the father complains that contact was being regularly refused by the mother. The father, as I have said, was then working in X and he would come over for the express purpose of contact, to be refused at the door. On one occasion, in spring 2010, when he did attend, the police were called by the mother but took no further action, the mother having alleged harassment.

17. As I have said, the father issued his current application in July 2012. In summary, the application said he had never had regular contact; the mother had repeatedly breached court orders; she had used financial matters as a barrier to contact; her sons were under pressure from her and were afraid of standing up to her. From the boys return to England, the difficulties continued, and he was effectively only seeing the boys in their school holidays. He complained that the boys' school attendance was poor. He had concerns about the mother's mental health and what he saw as signs of manic depression. He referred in his application to verbal abuse, uncontrollable rage, erratic behaviour, and the mother often sleeping through the afternoon. He also expressed concern about neglect of dental and medical needs. He said:

"I am applying for a residence order because I can offer stability and that is the only way the boys will have a relationship with me."

He expressed concerns about abduction, as the mother had threatened that he would not see the children at all if her demands were not met.

18. At B31 in the bundle, which is part of his application, he said this:

"I am concerned about the children's wellbeing in the respondent's care. Her behaviour is very erratic and I believe the behaviour shows signs of manic depression. The respondent sometimes descends into a manner that is almost an uncontrollable rage. She is abusive, swearing and shouting at me and the children. She is abusive to me and the children on the telephone, and when I come to collect and return the children. She recently threatened me with an injunction when I tried to arrange holiday contact, email attached. When the children return from school, the respondent sleeps for approximately three hours, then rises to feed them. They are left to play computer games the rest of the time. When I call the respondent mid-morning to discuss the problem, she is often in bed. The children have informed me of their irregular bedtimes. My concern is not the sleeping pattern of the respondent but what her sleeping pattern might suggest about her mental health."

I read that passage because it is plain that the concerns ranged beyond the question of contact.

19. The application in fact exhibits one of a number of emails I have seen going between the mother and the father. That email is from July 2012, when the father, in perfectly reasonable tones, asks about when he could have the boys for school summer holiday contact, and suggests half the holidays. The mother's response reads as follows:

"Records of previous emails from you and police records to put a harassment against you and partner. Any more threatening behaviour from either of you and I will go straight down to the police station to register a case and get an injunction."

That, I observe, was the mother's response to the father's request for summer holiday contact. That response is similar in tone and effect to other email responses that I have been shown.

20. On the same day, 10th July, the mother left an appalling series of voice messages, which have been played to the court at an earlier hearing in August and at this hearing. She made overt threats to stop contact and leave the country, and said if the father wanted to see the boys he would have to pay seven years back payment. I will refer to that voicemail in a little bit more detail later in this judgment.

21. The proceedings were then transferred to the A County Court as the mother was then living in Q. On 7th December 2012, by consent, a residence order was made to the mother, and an order for alternate weekend staying contact to the father, from Friday at 5.00 p.m. to Sunday at 5.00 p.m. - the pick-ups and returns to be at the mother's home. Both parents were directed to attend a parenting information programme. A CAFCASS report was directed to consider the children's wishes and feelings; the ability of the parents to meet their needs; any risk of harm from the mother or the father, and the issue of shared or sole residence to the father. The District Judge on that occasion made a prohibited steps order preventing removal of the boys from the jurisdiction, of her own motion, in the light of the voicemail recordings to which I have referred. As I have said, I heard the tapes in the hearing in August and at this hearing. The mother used disgusting language and her anger was uncontrollable, in my judgment. It was recorded by the District Judge in the annex to the order that the mother was not opposed to contact and that she agreed that it was important for the children to have contact with their father. I have to consider whether that was just paying lip service to what the court wanted to hear or whether that represented the mother's genuine attitude.

22. In September 2012 the mother had received the father's application - this application - for a change of residence. According to the father and CH, (the Deputy Head who gave evidence in this application) a phone call was made by the mother to the father whereby she forced the boys to go on the phone and beg the father to withdraw the court proceedings otherwise the mother would remove them to Z. The boys, according to the father, were extremely upset, and the mother could be heard in the background telling them what to say. The mother says that she phoned the father from one floor and the boys then phoned him from another. She accepted that she was shouting and screaming at the father, and that the boys heard this, but not that she forced the boys to tell the father that if he did not drop his residence application, they would be moved back to Z.

23. The father reported this incident to the school, so concerned was he, and when the account of the father was confirmed by AB to CH, the Deputy Head teacher, she, as the teacher responsible for child protection, took it upon herself to make a referral to social care. The mother refused a detailed assessment of the children. Social care reported that there were no child protection concerns, and the case was closed in October 2012.

24. Following on from that referral, the mother contemplated a change of school for AB, and I will come back to refer to that incident later. She did not, in the event, proceed with that step. She gave assurances in a court order that she would not change the school at least before the end of the academic year, and would consult with the father.

25. At Christmas 2012 the mother was planning to go to Z with the boys. The father had concern about abduction. He offered himself or his parents to care for the children if the mother went alone. She chose not to go.

26. On 20th December 2012 the father issued an application to enforce the court order made as recently as 7th December. At the very first contact following the earlier order, the boys would not go. The father describes the boys answering the door, they said they did not want to go, but avoided eye contact and could not explain why. He described that the boys kept looking inside the house. The father gave the boys a hug and described AB fighting back the tears. At that point, the father had not seen the boys since the previous August.

27. On 21st December District Judge Wood made a further order, including staying contact over that Christmas from 24th to 27th December at the paternal grandparents in W, and the mother was to drop the children off. The father did not let the grass grow under his feet. He made yet a further application for enforcement on 10th January of this year. The mother attended for contact on 22nd December, two hours late. It has been a hallmark of this case that in numerous different contexts, including the court, the mother is repeatedly late. She agreed, however, to extend contact. Then, when the father returned the children, the mother, according to him, was not present for 50 minutes after their return. Bearing in mind the long car journey from W to Q, when the children were probably tired, that was unfortunate, to say the least. For the staying contact from 24th to 27th December, CD did not attend. The mother said that he had a headache. Therefore the boys were separated over last Christmas.

28. On 4th January of this year again the children would not attend. The father says that AB was clearly distressed. The mother, he says, was filming the discussion at the door and stressed to the children that they did not have to go if they did not want to. Hence the father's application to enforce.

29. On 10th January the collection and return point was changed to a local bowling alley as a neutral venue.

30. On 15th March 2013 the court noted there had been no contact to either boy since 12th January. The children, it was said, were refusing to go. It was at that hearing where District Judge Wood joined the children as parties and appointed a NYAS caseworker as their Guardian.

31. Contact then reverted to the 7th December order, with handover back at the mother's home. The mother was saying that the children needed a break, they did not feel they were being listened to by CAFCASS, she was not opposed to contact but it was the children who did not want a relationship.

32. Further directions were given on 24th May. The mother then applied, in June, for discharge of the prohibited steps order which had been made the previous December. Sadly, her father had died, and she wished to travel to Z with the children. The application was transferred to this court for an urgent hearing, and that was my first involvement with this case. On 8th August I refused to discharge the prohibited steps order, having heard the voicemail tapes and having formed the view that there was a real risk of non-return, given the mother's threats and her hostility to the father and to contact. I transferred the proceedings permanently to this court.

33. Three visits were then set up by the Guardian BH to take place on 10th, 16th and 30th August, with the meeting point being a local golf centre. BH was then to take the children to an agreed contact venue with the father. Thereafter, when term started, the father was to collect the children from school at the beginning of contact, and this was yet another attempt to use a neutral venue. Again, the court ordered that the children should stay with the paternal grandparents if the mother went to Z. Again, she did not go. The mother was prohibited from discussing details of the proceedings with the children.

34. At a hearing on 4th October the father indicated he was proceeding with his application for a change of residence. It was then set down for final hearing, and I directed, amongst other things, reports from the children's schools.

THE RECENT PROGRESS OF CONTACT

35. I have set out the chronology of contact to some extent in considering the history of these proceedings but, to summarise the position, in 2012 the father had four contacts, restricted to school holidays. On three of those occasions, he said there was no trouble getting the boys out of the house. I have already described what happened at Christmas last year. When this hearing started, the children had had no contact with their father in the case of CD since before Christmas, and in the case of AB since 12th January 2013, when AB had day contact to his father only. According to the father, AB said on that occasion that he wanted to come to contact next time, and was reluctant for contact to end. The father then saw AB only on Good Friday of this year when they went for a walk locally for about an hour and a half. Significantly, according to the father, when he asked AB why he would not come for contact, AB simply said: "I can't, I can't".

THE OPTIONS EVENING AND THE PARENTS' EVENING AT SCHOOL

36. In April 2013 both father and mother attended W School to speak to the teachers about AB's GCSE options. The mother, according to the father, tried to lose the father when they went round speaking to the different teachers but, overall, the occasion was tolerable. There was then a parents' evening two weeks later. I heard extensive evidence about this, in particular from CH, the Deputy Head.

37. The father described the evening in this way, at C44 of the bundle:

"Two weeks later, for the parents' evening the respondent arrived at AB's school and immediately dragged him away and started screaming at me at the top of her voice outside the school front doors, that I was harassing her and that I was a racist and the courts are racist etc. They then jumped in her car and drove off. Not knowing what to do next, I waited about for a while, and then started talking to AB's teachers. The respondent and AB returned a little later and I tried to join in the discussions about AB's education. Any criticism of AB or his work, positive or otherwise, was automatically dismissed by the respondent. CH's comments in the W School report are a good summation of that evening."

I will return to what CH said about that evening when I deal with her evidence.

38. There appeared to the Guardian to be a small breakthrough when she attended with the father on a handover for contact on 5th July. The boys remained at the doorway but engaged in conversation with their father for about 30 minutes. The father gave the boys a hug, and

they received pocket money. Significantly, AB was seen to glance upstairs continually throughout the conversation. The mother had gone upstairs. But following that small breakthrough, which gave BH a glimmer of hope, the door was metaphorically slammed shut.

39. The three visits at the golf centre were then set up. On 9th August the boys refused to go with BH. She reported that the mother did encourage the boys to talk to her.

40. On 16th August 2013 the boys were extremely rude to BH when they arrived. They called their mother and she returned in a taxi. She had had some injury to her leg or foot and had crutches. According to BH, the boys were poking at her with the mother's crutches through the door of the cab. She asked the mother to speak to them about their behaviour and the importance of seeing the father. The mother said, according to BH: "I have. You see I have dropped them off". BH described seeing the boys do the same things to their father. The mother denied seeing the boys behaving in this way, and she said that the boys were at the other side of the vehicle where their father was trying to open the door of the cab, and she did not see the boys doing this to BH. She in fact was critical of the father for attempting to open the door of the cab and thus distressing the boys. I prefer the evidence of BH and the father as to what happened, and I am quite clear that the mother was aware of the boys' behaviour, and indeed BH told her to control it.

41. Sadly, the next contact for 30th August had to be cancelled in view of the boys' reactions on previous visits. Contact was to recommence when school started, as I have said, with father collecting the boys from school. Again, the boys adamantly refused to go. The mother suggested again a cooling off period with no contact, save indirect contact or possibly some local contact with the boys having a meal with their father locally. She was very critical of the NYAS Guardian for not representing the boys' views to the court. Again, this is reflected in what the boys say. It is clear that AB had read the Guardian's report and he complained that she was not reflecting his views.

42. When the term started, as I have said, the attempts to pick up the boys from school were wholly unsuccessful, and there the matter lay. The father continued to attend at the school. The boys complained about it, saying it was embarrassing for them, and simply refused to go.

43. At the commencement of this hearing, I indicated my provisional view as to where matters lay. The mother came up with a proposal for contact, and suggested contact using the paternal grandparents' home as a base, as being a more neutral venue, and the relationship between the boys and their paternal grandparents being an easier one. That contact took place. It was not without its difficulties. The children were saying at lunchtime that they did not want to stay and wanted to go home. They were constantly texting their mother, and the mother phoned them at least three times, the father says, during lunch. I accept that that was partly to tell the boys that they should stay for lunch. I have seen the father's attendance note of that contact. He attended at around lunchtime, the boys having arrived in the morning. He describes the ice beginning to thaw with AB at lunchtime. CD, however, was very quiet all afternoon, but opened up a bit.

44. At the adjournment of the hearing part-heard, a second visit was set up at CW as being a half-way point between the mother's home and the grandparents, and that was on the 15th December. Although the mother was half an hour late again, that contact took place and followed a similar pattern to the first, but with AB thawing (as the father put it) a bit earlier.

45. The Guardian questions why contact could not have been started several months previously, given that the boys did attend both contacts. She draws the conclusion, from what has happened, that the boys went because the mother had given them permission to go. She draws, from that state of affairs, the conclusion that it was within the mother's gift throughout as to whether contact happened or not. She says the mother was between a rock and a hard place, knowing that there was a real risk that the children would be moved. The father described it as the last chance saloon. Mr. Samuel, on behalf of the mother, says that the penny has now dropped and these two contacts represent a sea change in the sad history of this case. I will have to decide whether the Guardian and the father's assessment is correct, or whether Mr. Samuel's submission is correct.

THE EVIDENCE

46. I will turn now to deal with the evidence that I have heard. I am going to deal with the parents' evidence first, although I did not hear them in that order.

47. The father said that contact had never had a settled pattern. The mother would cancel sometimes in advance and sometimes as he would be driving from R where he lives, to Q. He told me about spring 2010 when he travelled over from X, then to R and then to Q for contact, and contact with CD was refused. He knocked on the door and the mother called the police, claiming harassment. He said he has always had a lot more contact with AB who he lived with for longer than he has with CD.

48. As I indicated before, he remarried in 2006, and he and his wife now have two very young children: G, born on 1st February 2012, 22 months of age, and H, born as recently as 27th August of this year, aged four months. The family live in a four-bedroomed house in R.

49. He said that after they returned from Z, things were better for a short while but they then deteriorated, and he said any questions about the boys' lives met with what he described as a wall of noise. In his statement he described how the mother used contact as a bargaining tool for her financial demands. Having heard her, having seen the emails and heard the voicemail, this is plainly correct. He said that the mother would arrange extra-curricular activities within his contact time, such as with a drama group. She would expect the father to pay and then would not stick at them. He said there were other cancellations when events or trips were booked, he saw out of vindictiveness. There were frequent last-minute changes of arrangements scaling back his contact.

50. He gave other examples of the mother's emails, and at C65, an issue had arisen about the father guaranteeing the boys' rent, or financing their housing, and the mother's email says:

"I have let the boys know that you don't deserve to live in a decent house. They are very pleased to know your opinion."

I think she meant that they do not deserve in a decent house. That was, as I said, the mother's response to the father's email refusing her suggestion that he guarantee her rent. The mother suggested that she was angry with him but she did not communicate this anger to the children. I consider it far more likely that she said precisely what she told him that she had said in that email. At C66, again in April 2012, the mother said this:

"I hope she listens enough [and this is a reference to the father's wife] and if she thinks I don't know her pathetic game, she is mistaken. More money for her and her little runt, plus no kids and to disturb her. Good plan. Carry on the selfish bitch's advice, it's your loss."

I have already referred to her email response to the father's request for holiday contact in the summer.

51. The mother referred to having sought an injunction. Proof was sought, but nothing has been produced.

52. At C166 there was another email about the summer holiday contact. The father asked where the mother was going to live, because she was moving, and asked again politely about summer holiday contact. The mother's response was as follows:

"I have advised you more than once regarding the kids' holidays. Moving house is what they will do with their mother this holiday. Since you have refused to help in providing any help in securing a house for the children and defying the court order of maintenance payments for the past seven years perhaps it should be more of your concern rather than summer holiday schedule. As for the new address, it will be sent to you as and when required. I hope it is clear."

This, in my judgment, was a very clear example of the mother using the children's contact as a way of punishing the father over money issues.

53. At C73, the father exhibits a text that the mother sent around this time, which said this:

"Their living arrangements were your responsibility as well. Be a fucking parent. They are not toys you take turns to play with, dickhead."

54. The father says that this text was similar to many other such texts that he had received. He also said that there were numerous occasions when the mother had made phone calls like the one that I heard. He said that the mother was capricious. For example, on one holiday she forbade the father to take the boys to Euro Disney with the paternal grandparents.

55. He said punctuality was a problem, not just at school. She kept him waiting at the house for an hour and a half once when he arrived from X in 2010. He complained also of repeated phone calls by her during contact and then returning the children on occasion to find her out. He would get complaints after contact. For example, if the boys had helped him in the garden, there would be a complaint that he had put them to work in the garden. On the issue of him not turning up, which the mother said had occurred, he said that on one occasion he had been in hospital but he had phoned.

56. After the incident in spring 2010, when he was arrested for harassment, he said that he would email the mother a few weeks in advance to propose dates. If there was no response, he would not attend, fearing further problems about alleged harassment. He said that the mother knew that this was the case.

57. The father said that the situation worsened after he made his application for residence in September 2012. He described the boys being very guarded and on edge when he saw them. They were alternatively hostile and abusive. He said that when the boys talked to him on the

doorstep, both he and they were aware of the mother's presence in the living room, which led off immediately from the front door. He said that the mother sought to record handovers on occasions, and on occasions she was abusive to the father. He expressed concerns, as I have said, about neglect of their medical and dental needs, also about the mother's failure to ensure that the boys' educational needs were met, in terms of lateness, absences and homework not being handed in. He said that this has been the case at every school attended by the boys. The boys told the father that their mother generally sleeps when they return from school, and he considered their bedtimes were very late for boys their age. This I note is consistent with what AB told CH. The father said that the mother was on occasions still in bed when he phoned her during the day to discuss contact.

58. The father set out detailed proposals as to how he would arrange a change of residence. He described his home as adequate to accommodate all four of his children, and that the boys could have their own rooms if they wished, or share and have a second bedroom as a den. He has identified suitable primary and secondary schools for the boys, and has visited some of them. He tells me that places are available. He has also identified private schools, in particular a school called the H School. He believes that AB would benefit from the structure, challenge and discipline as well as the small classes at that school, which has held an outstanding Ofsted rating. He said that that school and another school for AB, start the GCSE course in year 10. AB has currently started a GCSE course in year 9 in his current school in Q. He said there were no places at the H School for CD but he felt CD would achieve his potential in a state school. He is less academic than his brother. All the schools are accessible to his family home. He described how he would take time off work to help the boys settle, and would employ a mother's help to help with the children. He made enquiries as to how they could continue with their Islamic education, and also about local extra-circular activities. His proposals, I considered, along with the Guardian, were well thought out, carefully considered and comprehensive.

59. He recognised the difficulties the boys would be likely to face if they moved, and indeed he had investigated local counselling facilities for the boys. He even said he would continue with the boys' same teacher in terms of their private Muslim education, if the teacher was prepared to travel. He could not, however, because of allergies, take the boys' two cats. He said that such a move would enable the boys to see their extended family, their grandparents, their aunt and uncle, their cousins, and that he would promote generous contact to the mother.

60. In his oral evidence he described the mother more as the boys' best friend than a parent, as she would let the children do what they like. As I have already said, he was convinced that the last-minute offer of contact was, as he put it, a sleight of hand, and a response to the mother finding herself in the last chance saloon. He could not see it as genuine. He gave a poignant vignette of meeting with CD at school over the last few months on one occasion. He said CD was holding back tears when he, the father, said that they could go and see the grandparents if CD came for contact. As soon as CD heard his grandfather on the phone, he was breaking down. He said on every occasion when he attended the school to collect the boys, the mother would be phoned by one or other boy as he arrived, and she was always in the vicinity.

THE MOTHER'S EVIDENCE

61. The mother is plainly pre-occupied with the father's alleged failure properly to support the children. In a position statement made for the December 2012 hearing, when she was acting in person, she said this at para.5:

"His present attempt [this is for contact] for which he has dragged me to court is not only *mala fide*, it is simply to avoid paying the pittance that he contributes in the name of maintenance as illustrated in the letter attached, sent to me by Child Support Agency, dated 27th November 2012, to alter the court maintenance order. I would also like to refer to the fact that the father has taken his share of the property equity in exchange of letting the children be taken to Z forever."

62. For a considerable part of these proceedings the mother has acted in person, and I consider that when she did not have the benefit of legal advice to temper her words what comes out in statements such as these tends to be her raw, unvarnished feelings. The mother said that the father had alienated the boys by pushing his cause too much, for example, attending at their home repeatedly when the boys did not want to go, and knocking on the door for up to 40 minutes. The father said it was more like 10 minutes, and I prefer his evidence.

63. On 21st June this year, the mother had the father arrested for harassment as a result of his knocking on the door, and he was in fact kept in the cells for 18 hours. The police took no further action. The mother said that she had told BH in terms to tell the father that if he called again and knocked on the door, she would call the police. BH said this was not said, and I accept her account. There was a further contradiction between the mother's account about this to the police and in these proceedings. She told BH she had not spoken to the father at all on this occasion, but the father reported, without knowing what the mother had said to BH, that the police told him that the mother alleged he had only stopped knocking when she had shouted at him and told him that she would call the police. I ask rhetorically what sort of message that gives the boys for them to see or be aware of their father being arrested. The mother was asked about that and refused to acknowledge it would have such an impact. Indeed, she said that it was important for the boys to realise that actions would have consequences, and that it would encourage them to stand up for themselves, seeing the mother's actions on this occasion. She makes other criticisms of father's behaviour, and says effectively that he has brought the situation on himself.

64. Whilst in her written evidence she referred to the benefit to the boys of contact, in her oral evidence, she referred only (on more than one occasion) to the fact it would give her some breathing space and time to herself. She told me about the boys' religious teaching on a Friday evening. She was asked about why she had arranged this when contact was meant to be on a Friday evening, and she said, well, it was flexible and he would only come when contact did not occur. This would be very short notice for a teacher and I have real doubts about her account.

65. In her oral evidence she spoke about the boys' two cats and how attached they are to them, having had them since they came back from Z.

66. She said, as she had said to the CAFCASS officer in March of this year, that she had sought to address the homework situation with the teachers, and was in fact critical of the

teachers for putting too much pressure on AB. She said that Mr. G, the Year Head, was very happy with AB and his attitude, which contradicts what CH says. She said that she would now not get really any complaints and she mentioned how proud she was of her son. It is significant, in my judgment, that she said: "My son I have raised turning out to be someone like that" (my emphasis).

67. She said she had gone out of her way to promote the relationship with the father and his family. She could not explain why it took the best part of a year before she made the suggestion of taking the children to the grandparents. She said she had made them available for all appointments suggested by the court. She said the boys were point blank refusing to live with their father, and indeed were threatening to run away. She denied being in bed for long periods and said it was in her culture to have a siesta. She said: "Sometimes I get a bit angry", when asked about, for example, the voice messages, "and I do apologise". She said she was very angry when the father would not hand the children's passport back to allow her to visit Z. In relation to the voicemail, she said this: "I could have handled it a better way. I should not have lost my temper to that extent". She said she had always promoted contact and she had done everything to get contact going since the children were little. While she agreed that she had described contact to BH as horrendous, this did not mean that she had not pushed the children into it. As I have said, she maintained she had had to seek an injunction against the father in late 2003 but, despite an invitation to produce it, it has never been produced. She said they had been in court proceedings every year from separation until she left the country, and she said the father likes coming to court.

68. She was asked about contact at Christmas 2008 when the father had not seen the boys for 18 months. The father had paid all the travel costs of collection and return to Z for the Christmas contact. She said she flew to the UK because her son AB, then eight, was upset and bedwetting. However, having said that, it was then CD whom she removed from contact. She said that she took CD away on 2nd January. The father says it was Christmas Day. It would not make sense, in my view, to take him away the day he was due to go back anyway. I consider it more likely that the father's account is correct. Whichever day it was, plainly it was unacceptable to interfere with contact in that way, as well as causing enormous financial difficulties in that the father had bought tickets to return the boys to Z.

69. She said that she only shouted and swore on the phone on one occasion when the father refused to accept changed arrangements. She said again that she should have dealt with it in a better manner than she did. She said the tape of 10th July were things said in the heat of the moment. She said, tellingly: "It looks like I put in the issue of money in a lot of emails and maybe I should not have confused the two together", i.e. money and contact. She accepted that she had told AB that the father had not turned up for contact, but she said this had happened, and it was not done maliciously.

70. At other times in her answers she was argumentative. She was asked about the boys' reactions when collected from school, and she said: "Well, if I am not there, how can I encourage them?" In relation to education, she said that teachers now had no complaints whatsoever about homework, which cannot be correct in the light of CH's evidence. She said they are only a few minutes late any day, and that the attendance has improved quite a bit. Again, that is not borne out by the figures. She said, when asked about the children being described as distant from adults, that they were both reserved by nature, and that it would not be normal for two boys of their age to have heart to hearts with older people.

71. She was asked about a picture that CD had drawn for the CAFCASS officer, which in my view plainly shows CD, his brother and his mother with wavy lines coming from their heads, looking like steam coming out of their heads, suggesting how angry they are with the father. She sought to justify that by saying: "Well, the children like curly hair".

72. She said again in relation to the situation leading to the child protection referral that she could have handled the situation better, but she did not force them on to the phone, and I have already related her account which differs from the father's and CH's account of what AB said. She said that she simply said to CH that she was not following the guidelines and should not have spoken to the children without speaking to her. That is very different from what CH reported.

73. She sought to justify her behaviour at the school parents' evening, and she said that the father had already been there half an hour before they arrived and had already seen all the teachers. She used the same expression again: "Well, it was perhaps not ideal". She said that it was the school's fault for not setting up proper arrangements.

74. I have already referred to the incident with the crutch, where she denied what BH said, and I prefer BH's and the father's evidence.

75. She said that the boys have an impeccable record at school, they are good boys with beautiful manners. The only thing that has stressed them is this situation, which is making them do something they do not want to do.

EVIDENCE OF OTHER WITNESSES

76. I heard firstly from the paternal grandmother, LS. The father is one of three children. The paternal aunt has two girls. The paternal uncle still lives at home. She said that after the separation of the parents she and her daughter - their aunt K - continued to have contact every four to six weeks until the mother stopped it, and thereafter she had contact only when the father had it. She said that until the recent contact she had last seen the boys the previous Christmas. She said that AB had spent three days with them and, after some initial diffidence, he settled in well. He saw the father and the extended family members. He has a good relationship with his aunt and uncle, as well as with them, the grandparents. Indeed, the boys confirmed this when I saw them because they described the aunt and the uncle as "cool". I impression I formed of LS was of a loving and caring grandmother who plainly had the best interests of her much-loved grandchildren at heart, and I am sure her husband is of precisely the same mind.

77. I saw the father's current wife, SB. The grandmother described her as a calm and serene woman, and her view tallies with mine. She wholly supports her husband's application. She, wholly understandably, expressed some apprehension. In particular she was worried that if the boys' behaviour became challenging, it would be upsetting for their own very young children. She said that AB did, in her experience, take a limited time to settle, but would then be quite relaxed. CD took more time to relax. She was realistic enough to recognise that a change of residence would be a great upheaval. She said they had family and other support, and she said that they were prepared to rise to the challenge, however difficult they realised it might be. The boys have only met G a couple of times, and they have only seen the baby, H, for the first time on the recent contact. She said it surprised her that CD in fact was quite interested in G when he met her, although AB, as a teenager, was indifferent. She described

the family dog and the children being keen on him. As well as the paternal family members, her parents lived within an hour's distance.

78. I then heard from CH. I observe that in fact her oral evidence, which supplemented her report, was extremely helpful and it reinforces the importance in cases of this sort of having first-hand evidence from people who are involved with the children's daily lives, such as their school teachers. She is the Deputy Head of W School and, as I have said, is the teacher responsible for child protection.

79. She spoke of AB's attendance and she said that the school's expectation was 98%. The last academic year, AB's attendance was 88.2%. He has been at the school three years, and she said that his attendance has been in the 80s every year. The last academic year, he was late 31 times. She said he has been consistently late over three years. She finds this surprising because the family live nearby, and the mother seems to have little insight into this concern. She said both lateness and poor attendance impact on a child's educational attainment. She explained how registration is a key time of day. It helps focus a child on the day ahead. She stressed the paramountcy of having a good routine. She said that the current attendance is 88.7%. 85% would lead to court action. She said that AB had been late 10 times from the beginning of the academic year, which was a significantly high proportion. The CAF/CASS report already had reported that the school were concerned about the mother's ability to prioritise the children's educational needs, as well as establish a good working relationship with the teachers. (The mother of course denied that.) She said that since the GCSE course started this September, AB has not handed in 10 pieces of homework, and homework has been a concern throughout his school career. He is a very bright boy academically but, in her view, and the view of the school, he was generally academically under-achieving. He was well behaved and polite, but was quiet and reserved and reluctant to participate in class. She said that he can seem a little distracted, drifting away into his own world, and relations with adults were distant. He was reluctant to ask for help.

80. She said that she made the referral to social care on 21st September. That was following a phone call from father, when he described the mother putting the children on the phone in the way that I have described, to their great distress. She spoke to AB and he confirmed that the account given by his father was correct. She said that he gave her much more detailed information than she had received on the phone and indeed, significantly, he seemed pleased to tell someone. He said he did want to see his father but that his father had made arrangements to visit as his mother had told him and then did not turn up. I am quite satisfied that, other than the occasion in hospital, the father did turn up. He said he was worried because his mother spent a lot of time in bed whilst the boys were left to play computers in the games lounge. He said his life was in three parts - at Y, Z and Q. In my view, that demonstrated a child who was very conflicted and had to compartmentalise different aspects of his life. He said he did not want to live in Z and he had heard his mother say this, that they would have to go and live there, many times. He wanted to stay at Q with his friends.

81. CH said that he has a small friendship group but is well liked. She had spoken to his form teacher and head of year, and he was described as quite an unhappy boy, withdrawn, rarely smiles. His behaviour, nevertheless, was impeccable. He was well-mannered, polite, had good values and treated adults and other peers with respect. I note that that is not always the case and I compare what is described with the behaviour demonstrated to his father and, for example, the Guardian. She said that he is more reactive than proactive, he lacks confidence and has low self-esteem, and these traits were worrying in someone so able.

82. She said that after the child protection referral she received a threatening phone call from the mother. The mother accused her of breaking the law by speaking to the child and that she would take her to court. The mother denied that the father had parental responsibility over the children. CH required her to produce some documents to support this, and obviously nothing was produced.

83. She then referred to the parents' evening in April of this year. Her description is at p.D44m. She described the situation as horrendous. She said that it must have been extremely embarrassing for AB. What she described was mother plainly being very angry about the fact that the father had attended. AB and mother would arrive at a member of staff, father would follow, the meeting would begin, mother would position her chair very pointedly away from father to the extent that other parents could be heard making comments. She described AB looking very uncomfortable, and father standing or sitting as close as he could to hear what the subject teacher was saying. Once the mother had finished her discussion with the staff member, she immediately left taking AB, even if father was still asking questions. She would go to the next teacher without father and he would then be peering over the large hall trying to locate them. She said the emotional impact on AB was visible. He looked extremely anxious and embarrassed, as many of his peers were able to witness this, and it was clear that other adults were picking up and commenting on the behaviours. She then went to speak to father, who was clearly upset and embarrassed, and suggested that he should leave and see the teachers separately, to which he agreed.

84. She, as I have said, in oral evidence described this evening as "horrendous and horrific", "very childish." She said that it was obvious to staff members and other parents what was going on, and she said:

"I have never been in a school and seen behaviour like that to the detriment of a child. There was no untoward behaviour by the father."

I comment that for a teenager in particular, and in this case a rather quiet and sensitive teenager, it must have been excruciating.

85. In her oral evidence, as I have said, she was much more graphic than her report and really expanded on it in a number of areas. She said there were now 27 homeworks not handed in. There had not been a response to using the school homework club. She said that AB was academically very bright. He had just had his first progress check, and she explained the RAG system with green representing the child attaining the minimum target grade for a GCSE, amber one grade below, and red two below. While he obtained an amber in science, it was red in all other subjects. So far as attitude to class work is concerned, she said there are four levels: at the top is plus 2, then there is good, then satisfactory, then two minus grades. She said AB attained satisfactory in each subject. She would expect better, given his ability. Homework, however, in all but one subject was unsatisfactory. He got minus 1 on every subject except one which was minus 2, which was a major cause for concern. She said he was seriously under-achieving. She said that there would be a review of any child under-achieving which can lead to a homework report book, a meeting with parents, or other steps. She told me that a move for any student during GCSEs is not good, and if they are going to move, better sooner rather than later. She told me that many schools do not start the GCSE curriculum until year 10. She felt there was enough time for a child to establish a relationship with staff and peers and to be successful. She said the priority was for AB to be happy and attain his potential. She said that the father had always followed the advice given.

86. She said that when she made the referral, she spoke to CD's school and they reported they had had attendance concerns in relation to both boys, and queried whether mother was depressed. She did say that since the parents' evening, Mr. G, the head of year, had given a positive report as to the mother being very supportive, and he had nothing but praise for her.

87. She was cross-examined about the accuracy of her child protection referral, and she said she had taken notes during the meeting with AB's permission. She denied that AB was upset or angry or tearful at the time, but she felt that he was worried about what he had told her, and wanted to know if his mother would find out. I found CH a very impressive and transparently honest witness. She is plainly very proactive. I am not sure every teacher would have made a referral about something as subtle as emotional abuse to social care, but it is impressive that she did. I entirely accept all the evidence she gave me and found it both helpful and illuminating.

88. I did not hear from CD's teacher, but I had a report from the R School. His attendance for the last academic year was 91%. The target is 95%. He was currently at 96% after 26 days of school. He had been late six times, and he was not regular in handing in his homework, although he was not alone in this. He was doing averagely well. He could seem distracted. He was well liked but, significantly, his relationship with adults was described as distant, just like AB's school had described it.

89. As well as having four reports from BH, I also had the benefit of the report prepared by the CAF/CASS officer, SO, in March of this year and it contained many similarities to the observations of BH. The mother told SO that the children were not benefiting from contact, it was causing them emotional distress. SO said that it was very apparent someone has been saying things to them or giving them information on the court outcomes. CD said he did not want contact as the father forces them to do things they do not want. Their mother listens to them, CD said, and allows them to do what they like. CD was of the opinion that his father had stopped them travelling to Z in December and that his father was not a good man. Again, the views about the inability to travel, she felt, came from what the children had been told or had heard. Mother was suggesting contact in a contact centre, and mother told her that she had a good working relationship with the teachers and that she would make sure she prioritised attendance, punctuality and homework. Well, it is plain from the recent reports that that simply has not occurred. SO concluded, that the children's opposition to contact was coming from their loyalties to their mother and their inability to travel abroad, which they blamed on their father, as a result of what they had been told or heard. She recommended a shared residence order, with fortnightly contact and half the holidays. The worksheets that she produced clearly displayed the children's anger with the situation. CD in particular blamed the father for all the difficulties and, significantly, said: "My dad keeps pulling my mother to court". I have already referred to the stick figures looking like the mother and the two boys with smoke coming out of their heads as if in anger.

90. BH has produced four reports. As she has got to know the case and appreciate the dynamics better, in each successive report she expresses herself more strongly as to the mother's role in the difficulties. In her first report, she said that the mother referred to so much interference with the family, but did not appear to consider why this was the case. The mother stated that the boys had always been upset by contact but was unable to give any reason. She said that when she first met the children, AB was emotionally withdrawn, as the school describes him, and his eyes saddened as soon as contact was mentioned. The children told her that they were fed up with the process, they had been spoken to by so many people,

they just wanted it to stop. They clearly held their father entirely responsible for the court proceedings, and had no understanding as to why the intervention in their lives was continuing.

91. BH received a call from the mother when the father was there at her door, and she could hear persistent knocking, and advised him to stop, which he then did. He explained, contrary to what the boys had said, that he did a number of activities with the boys on contacts, but the mother would phone repeatedly during contact. BH, having listened to the voice recordings, formed the view that the mother had the potential of being both disruptive and manipulative. At D38, para.4.2 she said:

"I believe the boys were reacting to their perceived conflict between their parents and this may be informing their decision. During conversation with the boys, they appear to have knowledge of discussions that had taken place in court. Therefore I believe their expressed wishes and feelings are a response to the conflict they are picking up between their parents."

92. She said at 4.11, p.D40:

"It is clear that the boys are aware of the current conflict between their parents and this may have forced them into a situation where they feel they have to decide between one and the other. This is not in their interests."

93. She noted that the boys could not verbalise why they did not want to see the father, and this has been a running theme for her. When she observed the boys in August, this was in stark contrast to what she had seen previously. She was concerned about the mother's failure to exercise parental control to reprimand the boys. The message being given, she felt, was that the boys' behaviour was acceptable, and she felt the mother did little to support them in attending contact, and it made her question how much she supported them at home.

94. In her second report she was stronger in her words. She said:

"I am not convinced that the mother understands that she is undermining the boys' general stability and sense of emotional wellbeing and how this could possibly affect them in later life."

She concluded that contact would not take place due to the mother's hostility, and suggested a suspended order for residence.

95. In her third report, she met the boys in early November with their solicitor. AB was very clear that he was not being listened to and his wishes and feelings were not being represented. It was plain that his attitude had hardened over the period she had been involved. He was extremely derogatory about his father and referred to him as "psychopath, bastard, retard, arsehole". He complained, as he had before, that the atmosphere at home was stressed and he was having arguments with his mother. BH considered it likely that the mother was telling them that they would have to go to contact or she would get into trouble, but was not encouraging them. AB was clear that he would not abide by a court order if residence was granted to his father. He would cause as much trouble as possible within the home. AB, she felt, had got more entrenched in his views. He still was not able to adequately verbalise why he hated his father. She said this at p.D51, para.4.9:

"AB says he hates his father and does not want anything to do with him. I do not believe that AB has hate inside of him. What I do believe is that AB and CD in their attempts to obtain peace have internalised their feelings of upset, fear, annoyance and possibly even love towards their father, having been manipulated by their mother over a period of time, and simply want it to stop."

96. She said that the level of manipulation was unacceptable and emotionally damaging to the children. She considered in detail the effect on them of a change of residence and the obvious disruption to family life, school and friendships. She considered the mother had failed to ensure that the children met their educational potential. She balanced the short-term distress against the long-term benefits of being brought up in a calm atmosphere, with extended family around, with the ability to achieve their educational potential and the ability to enjoy a relationship with both parents. She weighed the apparent depth of feelings of the boys against the emotional harm that remaining with their mother would cause, who was plainly manipulating them. She was of the view that if the boys were given the opportunity to spend time with their father, without the influence of the mother, they would be able to reconcile their feelings towards him. She recommended a change of residence, using the paternal grandparents as a bridging placement, and recommended one-to-one counselling. In the last report she prepared, she set out detailed proposals for how a transition should be effected in terms of bridging placement, contact with the mother, and initial contact by the father whilst they were at the paternal grandparents.

97. In her oral evidence before me today, she said that sitting through the hearing and hearing all the evidence had made her feel more confident and secure in her recommendations. She said that the mother had shown, in her view, an inability to understand the emotional harm that she had caused and would be causing to the children in the long term, and that mother had shown an inability to change because she, the mother, did not understand the fact that she needed to make changes. In other words, there was a lack of insight into the mother's actions on a number of fronts, and the impact on the children. She said that without a capacity to change she did not see how the situation could be ameliorated. She referred to the mother's reaction to anyone she came across who challenged her: that she would simply stop working with them, an example being CH, whom the mother considered had lied in her evidence.

98. She said that the boys had a different reaction to their father. AB, who had known his father for longer before the separation, she felt had an attachment to his father and was struggling emotionally with the conflict that he was exposed to. She said that, so far as CD is concerned, his father had left when he was but weeks old and he had not built up any meaningful relationship with his father, and CD's views were almost a mirror of the mother's attitude, so there was not the same painful conflict as AB, but plainly a situation which was just as damaging to him.

99. In contrast, she considered the father had always put the needs of the children first and had gone out of his way to put forward a transition plan looking at every aspect of it and how it could best be managed. She agreed with me that there were concerns not just about contact and the educational issues, but also in terms of the role model the mother presented in the context of her rejecting anyone's opinion that did not agree with hers, and she considered that if the boys picked up on that approach, and they were likely to do so, that would impact on them in their adult lives in terms of dealing with employers or anyone else that they came across. So, for her, it was wider than an issue of promoting the parental relationship. She said

that she had taken fully into account the very real short-term difficulties which could arise from a change of residence.

100. I find the Guardian has done a thorough and child-focused piece of work in this case. She had attempted in many different ways to get contact off the ground. She was right to have concerns as to how, when the mother's back was against the wall, contact had now been achieved, and why that had not been achieved before. She did not consider that the mother had demonstrated a capacity to change.

FINDINGS IN RELATION TO THE PARENTS

101. As must be clear from some of the findings that I have rehearsed along the way in this judgment, I found the father to be an honest witness, and, where the parents' evidence differed, I undoubtedly preferred his evidence to that of the mother. His frustration and distress at this long-standing situation were palpable during his oral evidence. He has been tenacious to the extent of being dogged in his pursuit of a relationship with his sons. I do not criticise him for his tenacity. Many fathers would have given up by now. He has, in my view, demonstrated far better insight into the needs of his teenage and pre-teenage boys, for example, around issues of guidance and boundaries, than the mother. Their parenting styles are very different. He is much more in favour of structure, boundaries and discipline, and I can understand why the boys might baulk at that, given what I consider to have been the very permissive atmosphere in which they have lived at home. He is totally committed to his sons. He has given his proposals a great deal of thought, and I was impressed with the breadth of the proposals and their depth. I was impressed with how he said he would deal with difficulties, for example, if either of the boys ran away. His analysis of what he saw facing the boys if they stayed with their mother was insightful.

102. My only minor criticism of him - and I stress that it is minor - is that he may sometimes have handled situations somewhat maladroitly or clumsily in the past, for example the knocking repeatedly at the door. But he did, I stress, take advice when the Guardian spoke to him. I recognise also that he was between a rock and a hard place. On the one hand, his tenacity was alienating the boys further but, on the other hand, if he did not attend with the tenacity he did, no doubt it would have been represented to the boys by their mother that he did not care about them. I make a minor criticism that he turned up on 8th December with the whole family. My intention had been that it would just be him and his parents, so that he could have one-to-one time with his boys, but it is a minor criticism. As I have said, he has frequently been between a rock and a hard place and cannot do right whichever way he goes. The boys found it embarrassing his attending at their schools, but the court had endorsed that and, as I said, if he did not attend, he would be equally culpable in their eyes.

103. So, overall, I consider that, as I have said, he has a good understanding of what these boys need and he is, in my judgment, up to the challenges that a change of residence would entail. I consider he has extensive support not only from his partner but also from the paternal extended family. I have no doubt that they will give him as much support as they can bring.

104. I will turn now to my finding about the mother. I found the mother to be a very angry and wilful woman. Her hatred of the father is almost pathological. In my judgment, this is likely to have its origins in the circumstances of the breakdown of their marriage: the father leaving when CD was but a few weeks' old, and her belief that the father had already begun an affair with SB. That has been fuelled, in my judgment, by financial issues, in particular the

mother's assertion, which has not been tested in these proceedings, that the father walked away with all the funds obtained by re-mortgaging the marital home. In her oral evidence, she accused him of adultery and of fraud on her. The years have done nothing to abate this anger. I consider that the fact that the father has made a new life, when she does not appear to have really moved on, has further fired her up. She also asserts that he has years of unpaid maintenance and, again, this is simply an allegation which was not pursued in evidence. To cap it all, from her point of view, the father has now had the nerve to apply for a change of residence. So preoccupied is she with her own sense of grievance that she completely overlooks the effect of her behaviour on her children. In my judgment, she has prioritised her own needs and feelings at the expense of the needs of her children. That is not to say that she does not love her children, I have no doubt her does, although I find her love to have something of a possessive quality about it.

105. A key example, a glaring example of her prioritising her own needs was the parents' evening when her behaviour was petty, childish and petulant. She has done nothing to shield the children from the fallout, rather, the converse. She has consistently and repeatedly put them in the centre of this dispute and has used them, or their contact, as a weapon against the father. In my view, her anger is always ready to spill over into uncontrollable rage at the slightest perceived provocation. This was clearly demonstrated by the voicemails. I am quite satisfied that, contrary to her denials, there have been numerous occasions when the father has been exposed to outbursts like these. I reject her evidence that the children have not been exposed to such outbursts other than during the September 2012 phone call, which led to the child protection referral.

106. In my judgment, she has either been untruthful in her evidence when she says that she has done everything to promote contact, or she is in denial about the concerns. Her evidence was characterised by denial and minimising, and she showed no insight into the harm she has caused the boys. Indeed, I found her complacent about the educational issues and that she minimised the concerns about lateness, homework and general progress. I agree with the Guardian that she has not got to the point where she can acknowledge that anything is wrong, and it is difficult to see, in those circumstances, how a change can be effected. It is sometimes referred to as the pre-contemplation stage of change.

107. I consider it also to be quite likely that she may be depressed to a greater or lesser degree. I accept the evidence of AB, as related to CH, that she does spend hours under the duvet, on the phone or using her iPad, and that the children are left to their own devices. It also seems to me to be likely, from what the father and AB said, that they are spending a lot of time playing on their own on their Xboxes. I cannot imagine why AB would say such things to CH unless they were true, given his loyalty to his mother. As I said, they tie in with father's perception of the situation. I consider, in fact, that it might have been very helpful to have had a psychological assessment of the mother. I agree entirely with the Guardian that the children have done what so frequently happens in such a dispute: to remove themselves from the conflict which is painful and distressing to them, they have firmly aligned themselves with one side, and that is always likely to be the primary carer who is providing for their day-to-day material and emotional needs, and rejected the other parent. This is their attempt at self-protection, and in that view I am at one with the Guardian.

108. This is, however, in my view, a profoundly unhelpful coping mechanism from the point of view of their own emotional development. A child should not be forced to choose one parent over the other. Further, in my judgment, by all her sayings and doings, the mother has

exhibited, with capital letters, her negative feelings for the father, which have been adopted wholesale by the children and particularly CD, who has not got the same pre-existing link with his father. The children have been wholly inappropriately drawn into the court proceedings. They have been allowed to read the report of BH, and their statements to BH and indeed to me make this absolutely clear. They talked to me about the meal with their father and the grandparents being a biased test and about seeing the grandparents as strengthening the father's case. They talk in the language of court proceedings and tactics. I note that AB said to the Guardian: "He is tactically lying in court. Technically he is harassing us". As I have said, it is quite plain that the mother has exposed them to the details of the court proceedings. Because their information has come solely from her, they have a wholly distorted view of what is going on, and lay the blame at their father for their discomfort at having been involved in these proceedings for many months and having to be interviewed by different people. That is because, as I have said, they have been presented with a wholly distorted picture.

109. The mother is a powerful personality. She presents as tough and somewhat arrogant. She seemed to me to show no regret for or insight into her behaviour in her evidence. Her expressions of regret, for example, for the voicemail messages and other incidents, referring to them as "not being an ideal situation", I found to be half-hearted and unconvincing. I considered the regret related more to the fact that they showed her in a bad light. I agree that in her evidence she repeatedly sought to deflect the question, and at times was argumentative. At other times her evidence was self-justifying and minimising. There was not really a chink in the armour until she showed some signs of distress right at the end. Whether and how far her face to the world is a defence mechanism is hard to say. I consider another explanation for her behaviour may well also be her fear that she will lose her children, who are the central focus of her life. I note that in the father's position statement, made in March of this year, he reports that AB said that his mother was apparently worried about losing them. I do not consider that she understands the importance of a relationship with both parents for a child's healthy, emotional development.

110. The mother has failed also, in my judgment, to meet the children's needs in other important respects. She has, in my judgment, consistently failed to meet their educational needs and therefore risks compromising in particular AB's educational prospects. It is likely that CD would be in the same situation as he grew older. I consider that she does have a very permissive style of parenting, and I accept the father's evidence that she is more like a friend than a parent. I am satisfied that there is a failure to provide proper guidance and boundaries essential for the social and emotional development of these pre-adolescent and adolescent boys.

111. Further, I have real concerns about her as a role model. I agree with the Guardian that she turns on anyone who challenges her or does not seem to agree with her. Examples are the Guardian herself and CH. She has effectively said that they are lying or have been lying. She was going to change AB's school after the referral, despite his being settled at the school and it being a good school. I consider that these attitudes are picked up by the boys, especially AB. I consider that AB was reflecting the mother's belief when he referred to CH as a liar when he saw me, and I find that their hostility to BH has been largely due to their following the example provided by the mother. I note her evidence that she did have the beginnings of a relationship with them when she first met them, but then the door was firmly closed. I find the mother allowed the boys to be profoundly disrespectful to both the father and BH when she did not take them to task for poking them both with the crutch from the cab in August of

this year. On other occasions the father has reported the boys shouting abuse to him when he attended contact, and in April holding up a sign telling the father "I've told you a million times to fuck off. Go away you gay bastard". This behaviour went unchecked by the mother. In fact, so far as the April incident is concerned, the mother was challenged by the father, and laughed. This lack of respect for the father and other adults is profoundly unhelpful to these boys, both now and in later life, for example, in a job situation or when they are in disagreement with anyone in authority. Further, the mother has no respect or regard for the father as a father.

112. I am sad to come to the conclusion that I find on all these fronts this mother has significantly failed these boys. Their views across the board faithfully reflect hers. Their repeated complaints of being dragged through the courts by the father are a precise echo of the mother's own words. Any decision I make has to have their welfare as my paramount concern, and I have to apply the welfare checklist set out in section 1(3) of the Children Act. I have to consider first of all, the boys' wishes and feelings. In this regard I have been referred to some helpful case law as to how to approach children's expressed wishes and feelings in a situation where there has been alienation. In particular I have been referred to the case of *Re S* [2010] EWHC 192, a decision of His Honour Judge Bellamy sitting as a Deputy High Court judge. In the headnote to the case at (2) it states:

"Section 1(3)(a) of the Children Act 1989 did not permit the court to pay no regard to the clearly and consistently expressed wishes and feelings of a child, but such wishes and feelings were to be assessed in the light of his age and understanding, in particular the impact of alienation upon the reliability of the child's wishes and feelings, and some modest signs that his expressed views might not in fact reflect his true feelings were matters to be taken into account when assessing the weight to be attached to his expressed wishes and feelings."

113. At para.69 of the judgment, the learned judge said this:

"S's wishes and feelings must be assessed in accordance with his age and understanding. It is here that the assessment becomes more difficult. I have found that S has become alienated from his father. S has said that his father is a 'monster' and that he 'hates' him. It is clear from Dr. W's evidence that such behaviour fits within the pattern of behaviour of children who have become alienated from their non-resident parent. In his report of 18th July 2008 Dr. W was very clear. He said that

'It is also important for both parents and for all professionals working with the child to recognise that the child's expressed wishes and feelings are irrational and should form no part in the Court's decision making.'

70. The law requires that the court should take account of S's wishes and feelings. It would be wrong, therefore, for me to pay no regard at all to the views which S has so clearly and consistently expressed. The Act, UNCRC and case law all emphasise the importance of listening to and respecting the wishes of the child. As a general proposition I accept that the older the child the greater the respect that should be accorded to his or her wishes and feelings. As Butler-Sloss LJ said in *re S...* a case involving two children aged 13 and 11,

'Nobody should dictate to children of this age, because one is dealing with their emotions, their lives and they are not packages to be moved around. They are people entitled to be treated with respect.'

I cannot and do not ignore S's expressed wishes and feelings. However, in the light of Dr. W's evidence, it would be equally inappropriate for me to proceed on the basis that those expressed wishes and feelings should necessarily be taken at face value. They need to be assessed in the light of S's age and understanding. The impact of alienation upon the reliability of those wishes and feelings and the signs (albeit modest) that they may not in fact reflect his true feelings, are matters to be taken into account when assessing the weight to be attached to them."

114. That judgment was expressly approved in the more recent Court of Appeal decision of *Re A* [2013] EWCA (Civ) 1104. At para.68, Lord Justice McFarlane said this:

"The evaluation of the weight to be given to the expressed wishes and feelings of a teenage child in situations where the parent with care is intractably hostile to contact is obviously not a straightforward matter, no matter how consistently or firmly those wishes are expressed. In this context, the decision of HHJ Bellamy in *Re S...* provides a good illustration."

115. I take into account all those observations in my evaluation of the wishes and feelings of the children. I have very much at the forefront of my mind that I am dealing with two young men, aged 14 and 11 respectively. Their expressed wishes and feelings have consistently been not to see or have a relationship with their father. Indeed, as the Guardian says, their views appear to have hardened over time, and I note the penultimate report of the Guardian as to how AB referred to his father. I have to evaluate how reliable those expressed wishes and feelings are.

116. It is a consistent theme throughout all the reports of BH and her predecessor from CAF/CASS that the wishes and feelings expressed are a result of the mother's negative influence and/or are derived from loyalties to the mother and from being provided with inappropriate and often misleading information about the court proceedings. For example, the boys blame their father for not being able to travel to Z last December. What they did not appreciate, as they only had their mother's side, was the reason behind the court imposing the prohibition, namely the mother's behaviour and her threats to remove them. The mother's unhappiness at being, as she put it, dragged to court, has clearly been communicated to the boys, and they then express this as being the reason for their anger with the father. I have referred to the work done with the boys by the CAF/CASS officer. Again, they could not appreciate that the reason for the repeated court hearings was the behaviour of their mother. They also referred to their father lying in court. Otherwise, it is a consistent theme that they could give no adequate reason why they did not want to see their father, and they would refer to historic incidents, which the father in any event denies, and which the Guardian concludes would not in any event lead them to have the apparent hatred that they have expressed of their father.

117. AB sent his mother a long list of complaints about his father by an email sent at 3.22 in the morning on 16th August. He said it had been prepared some time before. I am unclear how that came about. What he said in the email to BH and to me was about the father being aggressive. In her statement, the mother said this referred to two incidents in contact going back to 2004 and 2005. AB refers to an incident in 2012 when the father allegedly dragged him on to an underground train, and he referred to lies being told to his school and Social Services. As I have said, CH told me exactly what AB said to her, leading to the social care referral. My concern is that both these boys have a distorted view of the reality. Some of the complaints they make, or AB makes in his email, such as hardly having any food and doing

practically nothing at his father's I simply do not accept. It is also a factor that these boys worry about the mother. They see the proceedings as causing her stress and, because they have been manipulated by the mother, they blame the father for this.

118. In my judgment, their consistent expressed wishes and feelings are not reliable for a number of reasons. Firstly, because I accept the Guardian's view that AB does not feel hate for his father inside. Glimpses of the real AB have been available during these proceedings at different stages. I note the evidence is that he relaxes once he has been with his father for a period of time. The wishes and feelings are not reliable for these reasons. Firstly, these boys have been manipulated by their mother and greatly influenced by her in their views of their father. Also they have aligned themselves with her in the mechanism I have described to protect themselves from the ongoing dispute. Further, they have a wholly distorted view of the reality of the situation because the information they have received has come from one source, their mother, and therefore, despite their ages, in particular the age of AB, I do not consider that their wishes and feelings are reliable. CD, who does not have the same attachment to his father, I consider is simply mirroring what his mother says about his father, and that this situation therefore is akin to the situation faced by His Honour Judge Bellamy in considering the wishes and feelings of the child in the case before him.

119. I consider that if these children had emotional permission to have a relationship with their father, they would be able to do so, and that has been shown to a small degree by the fact that they have been able to have contact on these two occasions, albeit with some difficulties.

120. Turning to the particular characteristics of these boys, I do not think either boy is a particularly happy boy. Of course in part that is due to the ongoing nature of these proceedings, but I consider it is due centrally to the parental conflict, where they find themselves as innocent parties in the middle. I consider that the boys are guarded. It is no coincidence that neither interacts with adults at the school. I find that they are both anxious about the mother's reactions should they speak out of turn. I find it likely, for example, that AB said to his mother that CH upset him by talking to him in school to appease her and/or deflect her questioning, because CH's view of it was that he seemed quite relieved to have someone to talk to.

121. The boys' needs

The boys' primary need is to be relieved from this parental conflict, to be able to have a relationship with both parents, to achieve their academic potential, and to have the guidance and boundaries appropriate for teenage and pre-teenage boys. They also have needs to have exposure to and experience of the extended family of the father in this country, and they have been significantly deprived of that for many years.

123. Any harm the boys have suffered or are at risk of suffering

It must be clear from this judgment that I acquit the father of having any responsibility for the boys' expressed views about contact. I am satisfied that for her own motives this mother has sought to alienate these children from their father, and that behaviour is a form of emotional abuse. Not allowing them to have a relationship with the extended paternal family is similarly abusive. The mother's involvement of the children in the court proceedings and the provision of distorted information about those proceedings is harmful. I am satisfied that AB in

particular is not achieving his educational potential, which is harmful to his future prospects in a competitive world and where he is a boy capable of great things academically. I consider that there is a risk, if the children remain with their mother, that CD will go the same way. I also consider that the boys' behaviour towards adults - and I take into account the very positive statements made by the school - as I have highlighted in this judgment shows a lack of discipline and structure. I consider the mother's parenting has been permissive and, although the court must be tolerant of different standards of parenting, I consider the permissive parenting in this case has caused the children harm.

124. The effect on the children of a change in circumstances

I have to weigh the short-term harm against the long-term benefits. I do not underestimate that there is likely to be a significant short-term fall out if I make a decision to transfer residence. I am painfully aware that AB will feel that his autonomy as a young teenager has not been respected. Both boys will resent the fact that their voices have not been heard, and will blame the father. They will be required to leave the home and their mother, with whom they have always lived. They will be required to attend new schools and make new friendships. Plainly their existing friendships will be affected, whatever efforts the father makes to maintain them. AB is at a key point in his education. I do not think CD even knows his father very well at all. Neither of the boys knows SB very well, and they do not know their little half siblings at all. There is a risk that they may attempt to vote with their feet, but I have to measure the short-term harm against the long-term benefits.

125. I also take into account the views of the court in cases such as this if the court takes what can be seen as the least line of resistance, and I have been referred in particular to the case of *Re A* [2013] EWCA (Civ) 1104. I have to consider also whether a lesser response to the concerns I have highlighted can be achieved, and I have to make sure that my decision is proportionate to the harm I have found.

126. Mr. Samuel submits strongly that I should make a suspended order for residence on the condition that it will not be activated if contact is maintained, and he relies upon the case of *Re M* [2012] EWCA 1948, a decision of Peter Jackson J. I consider that there are very real difficulties in his submissions. Firstly, despite his submissions that the penny has now dropped and the mother has seen the light, I have rejected that contention. I do not consider that in her evidence the mother has shown that she has a capacity to change because she does not see the problems in the first place, which is a prerequisite for change. Further, it leaves everyone in a constant state of suspension, and that uncertainty and unsettlement will plainly be communicated to the boys. It means the court proceedings are not effectively over. Secondly, how does one achieve a change of the arrangements at the drop of a hat if the suspended residence order became activated? Thirdly, how does one assess whether the mother has in fact breached the condition? She may argue that she had done everything in her power to make the boys attend contact. Would there then have to be another court hearing to determine whether the activating condition had been satisfied? I consider that the proposal, frankly, in the circumstances of this case, is wholly untenable. All of these cases are fact-specific, and I note that in the *Re M* case the mother's care of the children was otherwise exemplary and that the children also had two siblings to whom they were strongly attached.

127. Measuring the short-term harm and risks against the long-term benefits, the children will, in my judgment, have the emotional permission to be able to enjoy a relationship with both parents. They will live in a household where I consider there will be guidance, routine

and proper boundaries. They will have the benefit of good role modelling and exposure to a different type of family life. They will be able to develop relationships with their half-siblings and enjoy relations with the extended paternal family. I note that, through no fault of her own, the mother is quite isolated in this country and there are no family members living here on her side. I do not consider it acceptable to these boys simply to roll over and say that nothing can be achieved. I consider that if the mother is able to put the boys' interests before hers, to exercise parental responsibility properly, and to ensure that she takes all steps she can to make this order succeed, that that is the key to it succeeding. If she does not do that, it may not succeed, but I owe it to these boys to try. The alternative of doing nothing is simply unacceptable.

128. I have considered with care the transition plan that the Guardian puts forward, and it is plain from her evidence that she had given that a great deal of thought. I consider that delaying the transition is more likely to cause problems than solve them, and that this is something which needs to happen quickly. I consider that there is no obvious right answer to the transition, it is not a science, and that the Guardian's proposals, in my judgment, have as good a chance of succeeding as any other alternative proposals that might be put forward. It is really a matter of "test it and see". So I approve what she suggests. I consider in particular there needs to be a hiatus when the boys do not have contact with their mother, difficult as that may be, to enable them to settle, and to enable them to do so without countervailing influences.

129. I am fully aware that this judgment must have been extremely painful to the mother and I have been extremely critical of her. She must understand that my primary concern is the interests of her boys, and she now owes it to them to ensure that she takes all steps she can to implement what the court has decided is the best solution for the boys.

130. I am therefore quite satisfied that it is in these boys' interests and their welfare requires me to transfer residence to the father, and I make an order varying the residence order in his favour. I make a contact order in the terms that the Guardian has proposed. I do not consider that it is appropriate to end these proceedings. I consider that there is considerable benefit to these boys to continue to be represented and for the parents to have the assistance of the NYAS Guardian. Therefore I direct a review of the arrangement, and in particular that can look at contact, because, as I have said, we are making something of a stab in the dark in relation to contact, and I will hear from counsel as to when would be an appropriate time for the review.

131. I consider that the mother should give undertakings that she will not attend at the father's home or the boys' schools, and I will ask Mr. Samuel to take instructions on that issue.

POSTSCRIPT TO JUDGMENT

The hearing concluded late on 23rd December 2013 which was far from ideal but unavoidable. I ordered that the mother take the boys to the paternal grandparents by 2pm on 24th December. She refused to comply with the court order. Late afternoon on 24th December the father made an urgent application to Cobb J by telephone for a collection order. He had a note of this judgment. The application had the support of the Guardian. The police failed in a timely way to assist the Tipstaff to enforce the order. The result was that the paternal grandparents spent the whole night of 24th December at the police station and the

collection order was not enforced until early Christmas morning. This too was unfortunate and unavoidable. The mother brought this situation on the boys.

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