The Judgment was delivered in private, but the Judge hereby gives leave for it to be published.

The Judgment in this matter is being distributed on a strict understanding that in any report no person other than the attorneys (and any other person identified by name in the Judgment itself) may be identified by name or location and in particular the anonymity of the child and the adult members of their family must be strictly preserved.

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FAMILY DIVISION **CAUSE NO. FAM 29 OF 2021**

BETWEEN: **T** **APPLICANT**

AND **R** **RESPONDENT**

Appearances: The Applicant in Person
The Respondent in Person
Ms. Laura Clemens (Guardian ad Litem) instructed by Ms. Lynne McDonagh of KSG to represent the children

Before: Hon. Justice Richard Williams

Heard: 7-10 March 2023, 13-17 March 2023, 23-24 March 2023, 20-23 November 2023, 4 December 2023, 29 December 2023, 15-19 January 2024, 20-21 February 2024

Further Hearings: 3 April 2024

Handed Down: **12 June 2024**

HEADNOTE

Children Law (2012 Revision) - Single Sex divorced couple with parental responsibility due to shared residence order - Application by one parent to discharge shared residence order and replace with sole residence order in her favour and a no contact order for the other parent - Application by the other parent to vary the contact/child care arrangement order to defined alternate week contact - Consideration of varying/refining a prohibited steps order concerning restrictions on removal of children from the jurisdiction - interaction of human rights considerations and s.10 Children Law applications - A child's welfare is the paramount consideration in the determination of residence and contact applications

JUDGMENT

Introduction - The parties and the children

1. *"Making contact happen and, even more importantly, making contact work is one of the most difficult and contentious challenges in the whole of family law."*[1] That is what this Court is grappling with in these long-running Children Act proceedings. Both parties are seeking to vary the terms of a comprehensive Final Consent Order (Children) reached by them on 4 February 2022 ("the Order"). [2]

2. Both parties are female and are aged in their early forties. They are United Kingdom ("UK") nationals. The Applicant has the right to reside in the Cayman Islands due to her work permit. The Respondent's previous employment in the Cayman Islands came to an end in or around December 2023, after which she returned to the UK. After the hearing the Court has been informed by the Respondent that she will soon be returning to live and work under a new work permit in the Cayman Islands, but no commencement date is yet known due to a delay in her employer completing the work required to set up their business facility. The Respondent stated that she has retained her rental property in Grand Cayman during her absence. I am therefore determining the applications before me and making any resulting orders based on R's clear indication that, by the completion of this Judgment, she will either have resumed residing in Grand Cayman or will resume residing in Grand Cayman very shortly thereafter. The considerations to be had and possible orders made would be different if R were to fail to return to the Cayman Islands and permanently resided in the UK. Any continued absence of R from this jurisdiction would delay the implementation of the child arrangements orders relating to the time the children would spend with her which are made herein.

3. The parties married in April 2016 and were divorced in February 2022. During the latter part of this hearing, in February 2024, the Applicant married her partner ("D") in New York. Although there is no specific date set out in evidence for the start of the Applicant's and D's relationship, it appears that the Applicant has stated that it had been a serious relationship for about nine months prior to January 2023.[3] The Applicant has issued an application to permanently relocate with the children to New York and an application to temporarily remove the children to the UK for an

[1] Baroness Hale at paragraph 41 in ***Re G*** (Children) (Residence: Same-Sex Partner) 1 WLR 2305 when highlighting the benefits of having an experienced Guardian appointed for the children.
[2] See paragraph 20 below.
[3] Although the Respondent did not challenge the commencement date of the relationship, she did question whether it had been a nine-month stable relationship by that time as she said that the Applicant had an active and updated profile on an online dating site in July 2022.

extended period of time over the Summer 2024 school holidays. Directions in relation to both of those applications will not be given until after this Judgment has been delivered.

4. There are two relevant children. The eldest child ("RI") is a 10-year-old female. She was conceived by the Applicant using a sperm donor. She was born 18 months prior to the parties commencing their relationship. The youngest child ("RA") is a 5-year-old male. RA was conceived by the Applicant using the same male sperm donor who donated for RI. He was born during the marriage and both parties' names appear on his birth certificate, so both have parental responsibility in relation to him. They both now also have parental responsibility for RI, as a shared residence provision in relation to both children was in the Order.

5. The Respondent changed her surname to the Applicant's surname as it was also RI's surname and she felt it would make them more of a family unit. For ease of reference, with no discourtesy intended to the parties, I hereafter refer to the Applicant as "T", to the Respondent as "R", to the eldest child as "RI" and to the youngest child as "RA" in this Judgment. T's new wife will be referred to as D.

Background - The procedural background prior to the Order - The Court Welfare Officer's Report submitted by Mrs. Toolsiram

6. T filed a Petition for Divorce on 15 February 2021 on the grounds of behaviour. The particulars of the grounds were unremarkable. The Petition was not contested, and it was proved on 9 April 2021. In the Petition, T pleaded that RA was the only child of the marriage. However, as the evidence of this hearing establishes, RI was brought up in the matrimonial home of the parties as a child of the family. R stated, in her Acknowledgement of Service filed on 23 February 2021, that both children were children of the family and that she sought a shared care arrangement.

7. On 19 February 2021, T filed a Summons dated 15 February 2021 seeking orders for interim spousal maintenance and interim child maintenance for only RA. On 23 February 2021, T filed an *Ex-parte* Summons seeking protection orders pursuant to the Protection Against Domestic Violence Law[4]. The *Ex-parte* Summons came on before the Court on 23 February 2021 and Protection Orders were made, including an Order directing R to return RA to the care of T and a

[4] Now the Protection Against Domestic Violence Act.

Prohibited Steps Order preventing the removal of RA from T's care save for periods of contact that had been agreed between the parties. The return date hearing for the protection orders hearing was scheduled for 1 March 2021, which was the same date that had been allocated for the hearing of T's Summons for interim financial orders.

8. On 24 February 2021, R filed a Summons seeking a discharge of the *Ex-parte* Order and for an interim contact order in her favour in relation to both children. That Summons was also listed for 1 March 2021.

9. The parties, who were both represented by Counsel at the hearing on 1 March 2021, gave mutual/cross-undertakings, thereby bringing the protection order proceedings to a close. Undertakings were also given by R concerning health insurance coverage for both children, payment of RA's nursery fees and payments towards the cost of the nanny for the upcoming half-term break. The parties undertook not to remove the children from the jurisdiction without an order of the Court or the consent of the other parent. Interim Contact Orders were agreed, which included mid-week and weekend contact for R with both children. The parties agreed to attend mediation to try and resolve the wider issues.

10. Between April and June 2021, the parties attended a number of mediation sessions. At that time, they only returned to Court on one occasion (in May 2021) when directions were sought and given in relation to financial disclosure. On 3 June 2021, a Notice of Cancellation of Mediation was issued by the Mediation Officer indicating that mediation had been halted as one of the parties no longer wished to participate in the process.

11. On 11 June 2021, T again filed a Summons seeking protection orders. In the Summons she also sought orders that contact should be reduced and that any contact visits with R must include both children. A prohibited steps order was sought to prevent either party from removing the children from the jurisdiction without the consent of the other party or order of the Court. When the matter came before me on 30 June 2021, I made a referral for a Court Welfare Officer's Report. Directions were given for a one-day final children hearing and for a separate final ancillary relief hearing. In relation to the protection order application, the notes in my notebook record that:

"The Judge, in his case management capacity pursuant to the overriding objective, has expressed views about the merits or not of the protection order application in the recent circumstances of this case and recent evidence filed."

With that in mind, I felt it proper that I recuse myself from hearing the protection order application and I gave directions for an on notice hearing of that part of T's Summons. It is evident that T did not then pursue the protection order application. Neither party has sought my recusal from this children case.

12. On 27 August 2021, Mrs. Renetta Toolsiram, the first allocated Welfare Officer, filed her Court Welfare Report. In her report, Mrs. Toolsiram set out each party's views about the events that had occurred in their relationship and about the children's relationships. Having observed the children with T, Mrs. Toolsiram noted that:

"The interaction was natural and affectionate, there were hugs and the children followed her directions."

She observed R's interactions with RA and recorded that they were also natural and that RA *"seemed comfortable with her"*. She said that R was *"knowledgeable about (RA's) eating habits"*.

Mrs. Toolsiram met with school officials from RI's school[5]. The school painted a positive picture of RI as a student and indicated the school had no child protection concerns. The school told the Welfare Officer that:

"(RI's) parents were involved in her school life" and that: *"the parents showed up for her school activity."*

When she spoke to school officials at RA's playschool, again a positive picture was painted about the child and an indication was given that there were no child protection concerns. Mrs. Toolsiram said that the school had informed her that:

"(RA's) parents were very involved in his school life."

[5] RI still attends that school.

13. T had reported to Mrs. Toolsiram her concerns about R's mental health. At the time of the assessment the family had been receiving therapeutic services from Dr. Lam at Aspire. Dr. Lam informed Mrs. Toolsiram that she had been contracted to work with R individually regarding her symptoms of stress related to the divorce and therefore was not assessing her as a psychologist for the Court. Dr. Lam told Mrs. Toolsiram that:

> *"(R) did not report to have a history of mental health difficulties. She was referred to Aspire following the separation of her wife and what described as a 'conflictual' divorce process. (R) was presented with low in mood, heightened level of anxiety/stress, and adjustment difficulties to perceived traumatic events at the time of this referral. As the situation around the divorce is progressing, (R's) symptoms have improved over time."*

Dr. Lam mentioned that, although she had seen the children, both parents had sought her advice about supporting the children through the divorce process.

14. In her report, Mrs. Toolsiram informed the Court that RI had:

> *"expressed that she likes living with mommy (T)" and that she was "reluctant to discuss (R) but shared that she liked that she had marshmallows at (R's) home but she preferred to be with (T)."*

Mrs. Toolsiram stated in her report:

> *"(RI) has a strong attachment to (T) and has expressed unconditional love for her parent. She appeared confused about the state of her relationship with R. If she is separated or forced to choose between her parents this can have a negative impact on her well-being and contribute to psychological harm."*[6]

Mrs. Toolsiram said that:

> *"(RI) shared with the worker that she witnessed something bad happen between her parents and the police had to come. She did not wish to share more since she expressed that it made her sad. It appears that she was exposed (to) at least one domestic violence incident between her parents and this has had a negative effect on her."*

[6] My emphasis by underlining.

She added that:

> *"(RI) appears to be hurt by her perception of rejection from (R). She could not understand why she was not taken with her brother for visitation with (R). She seemed to feel rejected…."*

Mrs. Toolsiram recorded that:

> *"(R) has reported that RI has exhibited significant behavioural issues while in her care. (T) has also expressed noting some changes in (RI's) behaviour, where she has been shouting at the Nanny and appeared to be very angry because she felt that (RA) was preferred and loved more."*

I note that these observations about RI were made, and the views were expressed at a time when R had not included RI in contact visits since May 2021.

15. At the time of the preparation of that report, RA was too young to express his wishes. Mrs. Toolsiram noted that:

> *"(RA) appears to be a loving child. Both his parents have expressed that they love him and his sibling also cares for him. <u>At this stage it is important that he feels secure in his attachments to significant persons in his life</u>."*

She importantly added that:

> *"(RA) appears settled in both of his parents' home. He is accustom (sic) to attention and love given by both his parents. <u>If he was deprived of either parent this can have a negative effect on his well-being</u>.[7]"*

Mrs. Toolsiram further commented that:

> *"(RA) is not at the developmental stage that he can understand the depth of the contentious relationship between his parents. However, if (RA) is exposed to incidents of domestic disputes and disharmony between his parents this could result in significant emotional trauma."*

[7] My emphasis by underlining.

16. Turning to her observations in relation to the parents, Mrs. Toolsiram commented that:

> *"Both parents appear to love the children and have the financial resources to provide for their needs. (T) and (R) have expressed that they would seek therapeutic services for (RI) so that she is better able to cope. However (R) appears to be more cautious since she feels that she could be accused of child abuse if (RI) hurts (RA) in her care because of the conflictual relationship she has with (T). The decision to stop visits with (RI) seem to have given (RI) the perception that she is being rejected and this rupture in the relationship needs to be addressed."*

17. Mrs. Toolsiram insightfully commented that the parents appear to have:

> *"a very conflictual relationship that has affected their ability to co-parent and communicate with each other"* and that: *"the family would benefit from therapeutic intervention to address the family rupture and psychological impact of the separation and divorce."*

I firmly endorse her observation (which is so vividly illustrated by the parties' conduct almost throughout their relationship and these proceedings) and her recommendation. It is most regrettable that the parents have failed to act on that sage recommendation made at that time and since. Mrs. Toolsiram then went on to recommend:

a. that a shared residence order be made;

b. that the parents complete a co-parenting or other appropriate parenting programme;

c. that RI attend counselling;

d. that the parents together or separately engage in family therapy with the children;

e. that R be granted a phase visitation with RI for a period of one month after which visitation to commence with RA unless advised otherwise by the mental health professional;

f. that each party give 48 hours' notice to the other party if they are unable to accommodate the children on a schedule visitation day; and

g. that each parent pays after-school care costs for the children while they are in their care.

Although she recommended a Shared Residence Order, Mrs. Toolsiram did not specifically deal with what the child arrangements should be under that order, especially relating to the time that the children should spend with each parent. It is very clear that Mrs. Toolsiram was stressing the importance of both parents in both children's lives, and she envisaged them both playing a considerable role in the children's upbringing. Despite the warning signs being there, one would not have foreseen the considerable difficulties that have arisen in preserving that bond with R. The issues have been caused by the conduct of both parents, including R's absences and T's stance of making it patently clear (especially as her separate personal life plan has started to be mapped out) that she does not believe that R should be considered as being a parent or play any role in the children's lives.

18. The parties continued attending mediation after the Welfare Report had been circulated. On 5 November 2021, the Mediator issued a Notice of Cancellation of Mediation, again on the basis that one or both parties did not wish to resume or engage in mediation. Despite that notice, it appears the parties continued to attend mediation sessions, as a Mediation Report dated 28 January 2022 indicated that the case was fully settled.

Background - The Order

19. Following protracted mediation, on 4 February 2022, the parents submitted a Consent Final Ancillary Relief Order as well as the Order.[8] The Orders appear to have been reached before T and D were in a relationship. I reviewed and approved the Orders as they were orders which clearly met the needs of the children, and which put in place financial and child arrangements which were in the children's best interests. The Decree of Dissolution of Marriage was granted on 4 February 2022. The Order in relation to the children was a comprehensive one and was intended to be a final order confirming the importance of the involvement of both parties in the children's lives and which made that clear by ensuring that both parties had parental responsibility for both children. The Order, seemingly reached with the commendable assistance of the Mediator, dealt with the minutiae of the child arrangements, and it contained the parents' expectations about how each of them should conduct themselves in relation to the children. The Order was more detailed than one might

[8] R was represented by McGrath Tonner at that time. T was unrepresented at that time, she having filed a Notice of Acting In Person on 12 August 2021 because she chose to no longer retained the services of Hampson & Company. In or around June 2021, a written complaint had been made by R to the Chief Justice concerning the attorney who had conduct of the matter for T and some possible conflict issues were raised by R.

ordinarily expect, presumably because each party had concerns about how they would be able to co-parent. Those concerns have been borne out by both parents' emotion-driven and at times non-child centric conduct following the approval of the Order.

20. As a consequence of the highly dysfunctional relationship between the parties and their inability to communicate and co-parent, the sensible child arrangements provided for in the Order very soon broke down. Due to the numerous issues between the parties which surfaced soon after approval of the Order and which have further grown to date, it is necessary to now fully set out the provisions and undertakings contained in the Order in this Judgment:

> *"....**UPON** the parties hereto having participated in mediation and the parties hereto consenting to an order in the following terms and so indicating by their signatures hereto;*
>
> ***AND UPON** the parties agreeing that while living in the Cayman Islands it is the parties' intention that (RI) and (RA) shall continue to attend .. School and ....nursery respectively and once (RA) has graduated from.. Nursery, he shall also attend... School. In the event of a change of circumstances either party is at liberty to apply to the Court in respect of the same;*
>
> ***UNDERTAKINGS***
>
> *(i) All interactions between the parties shall be cordial and business like.*
>
> *(ii) Neither party shall question either child as to the personal activities of the other parent and shall pro-actively encourage their relationship with that parent.*
>
> *(iii) Neither party shall disparage or otherwise speak ill of the other, or allow a third party to do so, when the children are present.*
>
> *(iv) Both parties shall continue to be called mother or mum, or any derivative thereof, with respect to the children. Neither party shall impede this designation. No third party, other than the parties themselves, shall be referred to as "mum" or any derivative thereof.*
>
> *(v) Both parties shall limit communication to issues relating to the children only and each party shall confirm to the other their preferred method of timing and mode of communication and both parties shall adhere in this regard, save for emergency situations.*
>
> ***IT IS HEREBY ORDERED BY CONSENT THAT:***
>
> *Children living arrangements*
>
> *1. There shall be a shared residence order in favour of the Petitioner and the Respondent in respect of the children. The children shall live with the Respondent as follows under this arrangement:*
>
> > *(i) Weeks 1 and 3 - overnight Wednesday and Thursday (pick up from nursery/ school on Wednesday and Thursday) and drop-off at nursery/school on Friday morning, recognizing that pick up of (RI) will occur at the Petitioner's work office (at 5:30 p.m. or any other time mutually agreed between the parties in advance), with*

(RI) escorted to the door and (RI) walking independently to the Respondent's car, until the Respondent can arrange for midweek pick up directly from school which shall occur on or before 15 February.

(ii) Weeks 2 and 4 - overnight from Friday (pick-up from nursery/school) and drop off on Monday morning at nursery/school.

(iii) If there is no nursery/school on any day where there is a pickup or drop off scheduled, pick up shall be at 5:30 p.m. and drop off shall be at 8:15 a.m. and the location of those handovers will be determined in accordance with Paragraph 10 of the order.

For the avoidance of doubt, the children shall live with the Petitioner all other times.

Holidays

Christmas

2. The parties shall share the Christmas / New year holidays as follows below:

(i) The parties agree to divide the Christmas holiday period with the first half commencing Christmas Eve at 2:00 p.m., overnight until 2:00 p.m. on Christmas Day and the second half commencing 2:00 p.m. on Christmas Day, overnight until 5:30 pm on Boxing Day. This period will be alternated each year, with the first half of the holiday in 2022, and future even years, belonging to the Petitioner and the pattern reversing in odd years so that the Respondent cares for the children the first half of the holiday in 2023 and future odd years.

In the event the party who has the children for the first half of the Christmas holiday wishes to travel off Island with the children then, in the absence of the other party's prior written agreement, the party seeking to travel is at liberty to file a summons with the Court requesting permission to travel with the children for a two-week holiday period.

(ii) In 2022 and in future even years the Respondent shall care for the children from 4:00 p.m. on New Year's Eve until 8:15 a.m. on 2nd January and thereafter the normal schedule shall resume. In odd years, the Petitioner shall care for the children as per the above time schedule. In the event, however, that a party travels to the UK for Christmas (either with the other party's prior written agreement or Court order), it is recognized New Year's contact may be waived due to the children being off Island.

The remaining Christmas school holidays shall be divided according to the normal schedule set forth in paragraph 1 or the parties' prior agreement.

Easter

3. Easter school holidays shall be divided according to the normal schedule set forth in paragraph 1 or the parties' prior agreement.

Off Island holiday

4. The parties shall each spend a two-week block of time with the children, whether during the Christmas holiday (if that party has the first half of the Christmas holiday and the parties agree or the court has granted permission for travel} or during the summer school break or at any other time which the parties may agree or the Court orders, with the parties providing their proposed travel dates to each other at least fifty-six days in advance of the date of travel.

5. Unless a party is traveling with the children for two weeks off Island in accordance with paragraph 4 above, or a party herself is off Island for up to two weeks of holiday such that the other party would care for the children for that off Island time, the normal schedule set forth in paragraph 1 shall continue unless the parties agree alternative arrangements. Notice of travel shall be given at least fifty-six days in advance of the date of travel.

Other occasions

6. All other holidays shall be divided as per the schedule set out at Paragraph 1 (including half-term breaks and bank holidays).

7. On the party's respective birthday, the party who is not caring for the children shall have the opportunity to have a call on an agreed medium with the children.

8. The parties agree the Petitioner shall have the children on UK Mother's Day from 9:00 a.m. overnight until Monday morning.

9. The parties shall share the children's birthdays with the parties having determined the arrangements for (RI), and herein agreeing that if (RA's) birthday falls on a weekend, the party who does not have (RA) for that day shall collect the children at 2:00 p.m. and care for the children overnight. If (RA) birthday falls on a weekday, the normal schedule shall remain in effect for his birthday save that the party not caring for (RA) shall have the opportunity to have telephone contact on an agreed medium.

In the event one party travels off Island at Christmas with the children, contact would be waived on (RI's) birthday save that the other party shall have the opportunity to have telephone contact on an agreed medium.

Handovers

10. Exchanges of the Children when pick up and drop off cannot occur through nursey/school shall occur at a mutually agreed location set forth in writing that is between the parties' two homes. If a third party is making the exchange rather than the two parties, notice shall be provided in advance.

Telephone/ Face time contact

11. When the Children are in the care of either parent, they shall be at liberty to have telephone/face time contact with the other parent, however, such contact should not disrupt the time with the caring party and such telephone contact will take place via a recorded medium.

General conditions to the children order

12. The Petitioner shall hold the passports for the children, and upon a request by the Respondent for the purpose of agreed travel, in the event of an emergency need for medical treatment off Island or for any official business (for example immigration purposes to obtain visas), she shall promptly provide the same to the Respondent. Upon return to the jurisdiction or upon completion of the relevant official business the passports shall be returned to the Petitioner. The Petitioner shall ensure the passports remain active and shall renew them prior to expiry.

13. The party responsible for the children will be responsible for arranging school/nursery pick up/collection and drop off. This shall include arranging care for a child or the children

if a child or the children is/are ill, or the nursery or school is closed. It is not the responsibility of the other party unless by prior agreement on occasion.

14. When the children spend time with the parties, contact includes both children, and both parties commit to assuring the children feel equally appreciated, valued and loved in both households.

15. The parties shall be at liberty to agree modifications to the specific arrangements in writing between them.

16. In the event, one party is unable to care for the children overnight then they shall firstly ask the other party to care for the children either via email or text message and in the absence of agreement they shall arrange their own care for the children and be responsible for the costs of the same.

17. In the event one party tests positive for Covid-19 when the children should be in their care then the other party shall care for the children (unless the children also have COVID). Upon a written request by the other party, the party testing positive will provide proof of their test result within 48 hours of such a request. The party with COVID, if unable to care for the children, will be responsible for the children's reasonable care costs if the assistance of a fee-charging third party is required by the other party. The party seeking reimbursement of such costs shall produce an invoice setting out the relevant costs within 48 hours of such a request. If the children test positive Covid-19, childcare responsibility will be shared as per the normal schedule whereby the party responsible for the child or children that day would be responsible for care of the children or to arrange and pay for childcare costs.

18. Both parties shall be listed as parents for the children's school or activities.

19. Both parties may attend any activities in which the children participate (and be notified of such activities in the event of an extra-curricular club or event). As a courtesy, if either party is going to include a third party, the other party shall be notified in advance.

20. Both parties shall be involved in decisions surrounding medical treatment (save in an emergency) and choice of schooling.

21. Neither party shall remove the Children from the jurisdiction permanently without the prior written agreement of the other or Court order.

22. Except in the case of medical emergency or scheduled medical treatment, if either party wishes to travel overseas with the Children during their allocated time, the party with whom the Children will be travelling shall provide the other party with a minimum of 56 days; notice of the proposed travel along with the proposed travel itinerary and contact information. If the party objects to the travel, the Court shall adjudicate whether the travel should occur, and under what terms. The Children's travelling expenses and costs of accommodation shall be borne by the party with whom the children are travelling. Medical emergencies should involve both parents being able to travel, if needed, with the Child.

23. If either party takes the Children abroad on holiday, all costs related to the travel (including medical expenses if not covered by insurance when traveling abroad) shall be the responsibility of the party that takes the children off Island.

24. In the event both parties attend an activity for the Children, each shall retain proper distance from the other and neither shall engage in conversation or otherwise interact with

one another unless necessary.

25. In the event of a medical need for either Child, the party caring for the Child shall notify the other party immediately or as soon as possible. For the avoidance of doubt, both parties are entitled to medical information, to be listed as a parent I caregiver on the medical notes and to be present if they so wish.

26. Liberty to apply."

21. Before moving on from the Order, although it was a Consent Order, R had been seeking an equal 50/50 split-care arrangement. T did not agree with that, so R felt that the only way to resolve what had already by then been protracted proceedings and drawn-out mediated negotiations was to agree to the arrangement which was along the lines of T's wishes.

Background - The procedural background following the approval of the Order – Applications filed by the parties in the period February 2022 to March 2023 and their respective positions in relation to the applications - The Welfare Officer Reports submitted by Ms. Watling and her recommendations up to the March 2023 hearing

22. On 26 June 2022, only about four months after the Order had been commendably reached, T filed a Summons for a variation of the Order. This appears to have been filed after the date that T regarded that she and D were in a serious relationship. T sought a no contact order for R with both children, as well as an order for R:

"to immediately have no future decision-making power in matters relating to the children."

She sought an order to:

"compel (R) to stop the systematic abuse and comply with the undertaking provided in paragraphs (i) and(v) of the preamble to (the Order)" and *"an order that (R) be deemed to be in contempt of court for breach of the undertaking provided in paragraphs (i) and (v) of the preamble to (the Order)."*

In effect what was sought by T, and remains sought, is a discharge of the shared residence order and of the contact orders as well as the removal of R's parental responsibility for both children.

23. On 18 July 2022, R filed an enforcement Cross-Summons seeking an order that T comply with paragraph 4 of the Order and that T make both children available for contact with her. When the Cross-Summons came on before me on 22 July 2022, I made a referral for an updated Court Welfare

Officer's Report, which was to be submitted no later than 30 September 2022. At the hearing, I reiterated to the parties that the contact provisions set out in the Order remained in place and that, in effect, dealt with R's Summons of 18 July 2022. However, due to the position being taken by T, I recognised that there would likely still be issues about ongoing contact during the assessment stage and I directed that a Welfare Officer should be promptly allocated to conduct the assessment. I was correct to hold that view, as has been borne out by the ongoing child contact issues that have plagued this family. I stated that if the Welfare Officer felt that there was a need to vary the ordered contact arrangement prior to the final report being submitted, and if the parties were not in agreement with any change in the contact arrangements recommended by the Welfare Officer, then she should inform the Court. T wrongly expressed the view that, despite my clear indication that the contact provisions in the Order remained in force, the Court *"would not forcibly mandate contact until the findings of the Welfare Officer's report*[9]*"* and she could unilaterally stop the contact because she said that she had to *"act in the children's best interest"*.

24. On 10 August 2022, R issued a Summons seeking protection orders to prohibit T from communicating with R's future and present employers as well as any regulatory body which regulated her profession. The application was brought for a number of reasons. The first was that after R lost her job in September 2021, T had contacted R's former employer to ask it to disclose the reasons for R's termination and whether R had received any bonus pay. That information was confidential, especially having regard to the nature of R's profession. T had also contacted Manchester County Court in the UK seeking details of R's divorce and a copy of the divorce petition containing the grounds and particulars of the divorce. In addition, T's father had gone to the storage unit used by the parties in the UK and removed R's work-related documents. The documents, relating to ongoing expert cases, contained confidential information about R's UK 'clients'. T's father told R that he would be returning the documents to their owners and reporting R to her professional body. With some justification, R contended that these actions caused her great stress and could have had a highly detrimental effect on her career[10] and that they had been taken for a *"malicious purpose"* at a time when the divorce proceedings were acrimonious. T initially stated that she had not given permission to her father to enter the unit, but later admitted that she had done that when a report of theft was made to the police. The police attended T's father's home

[9] Email from T to the Judge's Personal Assistant 28 July 2022 at 10:33 a.m. which T failed to cc to R.
[10] The professional body for R's employment in the UK confirmed in December 2021 that they were satisfied that no fitness to practice action was required.

and retrieved R's documents that he had wrongly removed. He was fortunate that R did not insist that the police take further action. T had clearly encouraged this to deliberately happen to cause unnecessary stress to R.

25. On 28 July 2022, T contacted the owner of R's new employer in Cayman to make a *"formal"* complaint about a *"very serious matter"* concerning R. The children are 'clients' of the business. T informed the owner that the parties were involved in a *"very hostile court situation"* (information that need not and should not have been shared with those at the business) and said that there had been a *"very serious data breach"* and that R *"has accessed my personal patient data, and blocked me from information pertaining to my own children"* and had replaced herself in the system as the children's parent. It is evident that R, as one of the persons with parental responsibility, sought to add her own name. Such an act was consistent with a provision in the Order. It appears that the system may have regarded R as the primary contact for the children, as she was the one paying the related invoices and, even though T had been the one who had registered the children, relegated/removed T's name. T said that she was told by a receptionist that only one parent's name could be on the account record. Although T would be justified in being upset if this meant that she no longer had access to the children's records, the nature of the allegation made against R was unfounded and T should have first properly investigated the circumstances with the appropriate person at the business in a less accusatory manner against R to enable her to better understand what had happened to her account before levelling the personal criticism about R in her 28 July 2022 communication to the owner of the business. T's conduct, especially when put in the context of her earlier interferences, was indicative of someone who was trying to disrupt R's employment situation which in turn could have had an effect on the disputed children issues. In the end, R's injunction application was sensibly resolved when T gave suitable undertakings on 12 August 2022, which remain in force to date. When considering this conduct by T, I am satisfied that she, and at times in tandem with her father who sought to inappropriately insert himself in the parental dispute, acted invasively and inappropriately towards R's employment and intruded upon her privacy. The conduct was designed to obtain information which T believed might strengthen her position in the children court proceedings, and T must have known that the various actions could detrimentally affect R's health, a person who T has constantly said has had a mental health fragility throughout their relationship. I am satisfied that this conduct contributed to R's mental health deterioration,

especially when R was having to cope with a situation where T was breaching the contact order, and the proceedings were acrimonious.

26. On 2 September 2022, T filed a further Summons seeking a variation of the Order[11]. T reiterated her earlier request for a no contact order in relation to R and both children, as well as for the making of an order for R *"to immediately have no future decision-making power in matters relating to the children",* thereby bringing R's parental responsibility to an end. However, T suggested that if the Court did not agree with her then, in the alternative, an order should be made for a *"less disruptive"* contact[12] schedule to be put in place, namely longer weekend contact on alternate weekends. An amendment to the prohibited steps order was sought by T to enable overseas travel by T with the children when the children were in her custody at times which would not interfere with R's contact schedule. T also sought a provision in an order that any consent for overseas travel should not be unreasonably withheld. She repeated her claims for orders relating to alleged breaches of the undertakings (i) and (v) in the Order. Save that T is now even more firm in her view that there should be a no contact order, that Summons is one of the summonses presently before the Court and it is the variation of residence, contact and prohibited steps applications as well as the removal of R's parental responsibility which are now the primary issues for consideration at this part-heard hearing.

27. The newly allocated Welfare Officer, Ms. Lydia Watling, filed her report on 5 October 2022 ("the October 2022 report"). Ms. Watling remains as the allocated Welfare Officer. In the October 2022 report, Ms. Watling shared the views that each party expressed to her. Although I do not intend to set them all out herein, I will highlight a few which illustrate the dysfunctional nature of the parents' relationship and inability to effectively co-parent. A number of the matters raised by the parties with Ms. Watling are set out in their affidavits and were repeated at great length in each party's oral evidence and I have noted it all, even if not set out here in any detail.

28. T told Ms. Watling that she had brought the current applications because R had informed her *"on numerous occasions"* that she did not wish to be a part of the children's lives. In light of these comments made to her, T said that she was concerned about the children's welfare, safety and

[11] See paragraph 22 above.
[12] T said to prevent the continuous disruption of the children's school schedule.

security when they are in the care of R. T told the Ms. Watling that R will only *"display positive behaviours towards the children and abide by contact arrangement temporarily"* and that, once the Welfare Report had been submitted, R would again act erratically and cease contact. Ms. Watling reported that T told her that she would not allow an alternate week contact pattern because the only reason R would want that is to *"hurt"* T by reducing her time with the children. The report notes that T told Ms. Watling that she would prefer there to be a no contact order, but if there were to be contact it should be for the same number of days as in the current contact schedule, albeit with more days together.

29. Ms. Watling highlighted the concerns about R expressed to her by T and they included:

(i) R not taking the children to extracurricular activities and keeping them at home when they are with her;

(ii) R wanting *"to keep the children hostage"* by refusing to allow them to travel overseas *"due to need to hurt and control"* T;

(iii) R's past inconsistencies in relation to contact arrangements;

(iv) R refusing to let her speak to the children when they are having contact with R;

(v) R blocking medical care for the children unless it is with the facility where R is employed;

(vi) R being abusive to her in correspondence and behaving in a manner that constitutes harassment; and

(vii) her concerns about R's depression *"disclosed attempts of suicide, self-harm, and displays behaviours suggesting social anxiety"*.

T reported an incident where she said that R *"went berserk"* and slashed various items in the home including Christmas gifts and that four years ago R *"pulled a knife on her in the presence of the children"*. I note that during the hearing no mention of a knife being pulled on T was made by T, with the only references to a knife having been:

(i) where R threatened to cut a tattoo out of the skin on her own hand;[13] and

(ii) when R slashed a canvas with RI's picture on it in the presence of RI and T[14].

[13] See paragraph 264 below.
[14] See paragraph 251 below.

Ms. Watling noted in the "Assessment" part of her report that:

> *"(T) clearly stated that she is not concerned that (R) would harm the children but she does not want (R) in their lives, stating that the inconsistencies in R's behaviors related to seeing the children are abusive."*

30. The report highlights R's replies made to Ms. Watling when the above concerns were put to her. R expressed the view that the only person who was harassing the other was T who made complaints to R's place of employment to cause reputational damage or dismissal and who, she believes, uses the police and the court system to cause her distress and ill-health. R stated that T acts in this way especially when R is trying to exercise her rights under the terms of the Order. R told Ms. Watling that she accepted that she had followed T who had the children with her in her vehicle, but that this was because she was supposed to have had contact on that day and that she had hoped to have had the opportunity to speak to the children.[15]

31. R told Ms. Watling that there is no evidence to show that she would be a risk to the children and that the allegations made by T in that regard are *"slanderous"*. She stated that, when the child arrangements start to seem settled between her and T, T will create a situation *"to perpetuate further conflict"*. In the October 2022 report, Ms. Watling also concluded that:

> *"The children being in contact with (R) would pose no risk to their well-being."*

32. R shared her view with Ms. Watling that it is T who breaks the court orders, and she gave the example of T travelling out of the jurisdiction with the children without her consent or an order of the Court. Ms. Watling indicated in the October 2022 report that she had to remind T that she was breaching the contact provisions set out in the Order and that she needed to observe the children with R to enable her to complete her assessment. She noted that T then agreed that contact could resume and that from that time to the date of the report:

> *"Both parties have been following the contact arrangements without difficulties."*

Ms. Watling commented in her report that the pattern of visitation had been consistent over the period that she had to that time been monitoring the case[16].

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[15] See paragraph 290 below.
[16] The period was about 8 weeks.

33. R confirmed to Ms. Watling that there were occasions when she had said that she did not want to be in the children's lives, but these were after RI had indicated that she did not want to see her, and she did not want to compel her to do so. R also told Ms. Watling about RI's behaviour towards RA which had caused a lip injury and that if contact persisted, she was concerned that she would be accused of physically abusing RA. R also said that she made decisions because she felt that T was weaponising the children and deliberately excluding them from R's life. Ms. Watling's conclusion was that R stating that she did not want to see the children arose:

> *"because there was (sic.) copious amounts of conflict between (T) and (R) was extremely stressed by it that she believed perhaps it would be best to remove herself entirely from the children's lives together."*

Having reviewed all the evidence and seen R in Court on many occasions, this is a conclusion that I share.

34. These factors led R to take a brief break in 2022 from living in the Cayman Islands so that she could *"decompress"* and within one week regain her certainty that she wished to play a role in the children's upbringing. I am aware that T has produced a schedule containing all the occasions that she says R has left the Cayman Islands and she argues that this is abandonment by R. It is evident that the majority of the times that R has left Cayman to the UK have been caused by the stress inflicted on her by these proceedings, her familial responsibilities to unwell family members residing in the UK and periods when her employment situation in Cayman has required her to leave. As an example of the latter when R left to the UK in December 2023, and she has not resided or worked In the Cayman Islands since. In late November 2023 a social media livestream programme entitled "TCHT: ...Practitioner Exposed". The host named R as the practitioner who she felt should be "exposed" and she also named R's employer. The host contacted R's employer to ask questions about her employment status. The overarching agenda for the 'show' was to question the recruitment of persons whom the host viewed as being substandard overseas professionals into posts in the Cayman Islands and then using that employment as a 'steppingstone' to become a public sector employee. R was selected by the host to be the example of such a professional. The submitted reason for R's unsuitability to work in the Cayman Islands concerned R's confidential mental health issues, some details of which were unfortunately shared on the airwaves. It did not appear that R was ever contacted by the show to enable her to comment before the broadcast and therefore the host would have been unaware of the view held by assessing mental health

practitioners that R was fit for work. Although irrelevant to the apparent agenda of the show, as well as being not appropriate to raise in a public forum, the host mentioned that R was involved in ongoing children proceedings in the Cayman Courts, but she very wisely did not comment further in that regard. Although, one might wonder how the host received the type of detail that she possessed about R's private mental health issues and the fact she knew that there were ongoing children proceedings, there was no evidence placed before the Court at the hearing to establish who provided that detail to the broadcaster. Therefore, in the absence of such evidence, I do not include this detail as being what would have amounted to a highly concerning example of T interfering with R's employment situation, but I raise it as it caused R to endure significant mental stress, have difficulties with her then employment in the Cayman Islands, have likely difficulties in regaining employment in the Cayman Islands and it was a reason for her leaving to the UK in December 2023. I note that T expressed no empathy at all for the mental strain that the intrusive broadcast placed on R, nor did she express any concerns about the public being told on the radio that there were ongoing children proceedings relating to the named family's children.

35. Ms. Watling noted the consistency of R's contact with the children upon her return from the UK and upon contact being restored due to Ms. Watling's efforts. I do not find that R genuinely wished to exclude herself from the children's lives. That said, there has on occasion been a lack of adequate notice of some absences and I accept that T has been the constant for the children, providing care for them throughout. The various absences coupled with the unfortunate knock-on effect of contact being suspended due to the need to explore the expressed concerns from Ms. Watling and the regrettable failure of the parties to make the arrangements for a psychologist to assist the children with the reintroduction of regular contact, has resulted in a position where T has become the primary carer of the children.

36. R expressed the view to Ms. Watling that, between the time the contact was reinstated in August 2022 and the report, contact visits had proceeded as scheduled. R highlighted that the previous issues with contact had arisen because the parents had not established satisfactory drop-off and pickup locations and that she was unable to leave work early in circumstances where she was unable to employ a nanny. I note that the Guardian ad Litem has also highlighted the difficulties for these parties in relation to handover arrangements caused by the parties' personalities.

37. In relation to T's criticism made about R in relation to the children's medical care, R informed Ms. Watling that her then-employer had the largest children's clinic on-island, with high quality pediatric doctors, and she sees no reason why the children should not be taken there. She added that the insurance co-pay is waived at the clinic, which is a sound financial reason for them receiving their treatment there. There was, therefore, good reason for the children to go to that medical provider for both physical care and financial reasons.

38. R expressed a concern that T was trying to create a situation where R would be alienated from the children and that T encourages the children to call R by her shortened first name rather than *"mummy"*. T told the Court and Ms. Watling that she has told the children that they can choose what they call R. One had the impression from the evidence that T is content with this identification and that she and, it appears, Ms. Watling, fail to recognise or acknowledge why this may upset R as it gives the impression that R should be regarded, at most, as being a secondary parent. The approach by T in this regard is arguably inconsistent with the intention of the undertaking in the Order whereby each parent undertook that each of them would be called *"mother or mum, or any derivative thereof, with respect to the children"* and that neither parent would *"impede"* that *"designation"*. R correctly states that T regards the children as being only her children, always referring to them as *"my children"* rather than *"our children"*. I have noticed T saying that throughout the proceedings despite R frequently forcefully reminding her that they are both their parents. The frequency and the manner in which I have observed T saying this gave me the impression that T was deliberately referring to the children in this way, knowing that her doing so would upset and unsettle R. This is one example of T deliberately acting in a way to get a reaction from R. In this case both parties know what will 'push the other party's buttons' and then go on to act in a way to achieve that. They have clearly both breached their undertaking in the Order to be *"cordial and business like"* and to *"proactively encourage"* the children's relationship with the other parent. R highlights her view that she feels that T deliberately excludes her from some of the children's special occasions and other activities. From what I have heard and seen, including from T's demeanor, it is clear that T does not accept that R should be regarded as having the status of being a parent to the children. It is evident that T seeks to reinforce that in the children's minds, often by the subtle use of language. It is very telling when one sees how T has deliberately integrated D into the family and to see the interventionist role D has been permitted to take in the

children's domestic and wider life compared to how T's actions, if they remain unaddressed, will remove R from their lives.

39. I note with interest that R was able to say something positive about T to Ms. Watling when she remarked that:

"Historically, (T) has always been a good mother who has been hands-on."

This was one of the rare instances throughout these proceedings that either parent has in some way complimented the other. However, that positivity was short lived because immediately after saying that R went on to criticise T for using third parties to assist with the care for the children.

40. R told Ms. Watling that she would wish the Court to make an order for the children's time to be equally split between them on an alternate week arrangement and suggested that Sunday to Sunday would work well.

41. Ms. Watling observed the children's interaction with T on a home visit. When she first arrived at the property the children were being cared for appropriately by the nanny. When T returned home the children appeared happy and they returned her affectionate gestures. She noted that:

"(T) was responsive and attentive towards the children" and that *"the children appeared happy, clean, healthy and well mannered."*

Similar observations were made by Ms. Watling when she later attended on an early morning visit to the home. I am satisfied that this persists, and the children are physically well cared for by T and they are comfortable and happy when in her home.

42. Ms. Watling also saw the children with R in her home. She reported that:

"The children appeared at ease and comfortable in the home environment and RI was excited to show me her belongings and gave me a tour of the home."

She added that R:

"actively engage[d] in the children's activities and everyone appeared to be having a good time" and R *"was responsive and attentive towards them."*

She concluded that:

"The home appeared clean and tidy and both children appeared clean, neat and healthy."

Ms. Watling also saw the children and R on the second visit at the home. The children were initially being cared for by the nanny. She noted that when R returned home:

"The children seemed glad she had arrived home were welcoming of (R's) affectionate gestures."

She observed that:

"The children were playing on the living room floor and (R) joined each of them during their activities and interacted naturally and with ease, playfully, and provided healthy modelling behaviors."

Ms. Watling stated that it was during this home visit when she spoke alone with RI who:

"clearly expressed her wishes for contact with her parents."

It strikes me how similar this is to what the Guardian reported when she a year later assessed contact in R's home, in particular between R and RA, after the children had settled in. I accept that RI was, at least initially, more reticent when the Guardian saw her in Rs home.

43. Ms. Watling concluded that both parents had the capacity to parent the children. She added that the children appeared to be *"comfortable"* and in a *"close relationship with both parents"* and that:

"Maintaining a relationship with both parents is important for the children's wellbeing."

Although it is evident that the children's relationships with R have been increasingly detrimentally affected by the parents' poor co-parenting abilities and at times selfish behaviour, I endorse the view being expressed by Ms. Watling in this first report that it is important for their well-being to have a relationship with each parent.

44. Ms. Watling reported that RI asked her whether she believed the current visitation schedule was fair. Ms. Watling quite rightly did not comment, save to ask why RI had raised that. To which RI replied that she was unsure whether one mother was having more time than the other and added:

"I just want to make sure it's fair."

Ms. Watling stated that RI wanted to ensure that each mother had the same amount of time spent with her and that RI added:

> *"…otherwise I will be upset."*

RI told Ms. Watling that she wished for each mother to spend a week with her and then switch, commenting:

> *"So I would be with one mum for one week Monday to Sunday and then the next week with my other mum Monday to Sunday. It would be equal that way"* and adding *"I would miss them both because when I'm not with one I miss her but I get to be with the other."*

It was reported that RI also told Ms. Watling: *"I want to spend time with both mums, I love them both the same"* then *"enthusiastically"* added that she thought that RA felt the same way. When one reads the reports of these heartfelt and, for a child, very insightful comments, it is sad to hear that RI has been so drawn into the parental conflict that, especially in the presence of T, she now feels compelled to express a polar opposite view about R. It is very telling that when RI was in the presence of T prior to the supervised visit with R which the Guardian observed, RI was forcefully expressing an unwillingness to see R, but after a while, after settling into R's home away from either T's influence or away from a situation in which she felt she had to protect T's feelings, a more positive interaction with R occurred despite the period of non-contact.

45. One would hope that both parents would have listened to the voice of RI contained in the above clear statements shared by her with Ms. Watling, rather than elevating their personal self-serving wishes. If they did this, they should have acted in a more acceptable and mature co-parenting manner. The parents' inability to relegate their own animosity towards each other to enable them to act in a way that would be less emotionally damaging to their children does little credit for them. As Ms. Watling rightly observed in the October 2022:

> *"The intense vitriolic behaviors exhibited between them towards each other appears to be a carryover from their divorce. This needs to be addressed as it has the potential to negatively and profoundly impact the children."*

I would go further than Ms. Watling and say that it had already impacted the children at the time of the report, and it has got even worse since then. Ms. Watling remarked that:

> *"The conflict between the parties makes for barriers to communicating everyday issues about the children and talking about simple matters, for example, one party's wishes to have a certain belonging returned from one household to the next."*

Having reviewed all the evidence and observed the parties' demeanour throughout these proceedings, I share the views aptly expressed by Ms. Watling. Sadly, although they say they both *"deeply care for and love"*[17] the children, the parents have not hitherto been able to have the same insightful recognition as that shared by RI with Ms. Watling when addressing the divorce when RI said:

> *"I was kind of sad. I wanted it to be a normal house with two parents. I do have both parents but in two homes. I am happy to switch between homes because I want to see them both. Now that we are in two houses it kind of makes me sad because we used to be one family, now we are two."*

46. These statements made by RI are a clear indication of how important both parents were to her at the time. It is even more telling in this case where there have been breaks in her relationship with R, the uncertainty which that caused could easily have led her attachment to R to decline. Although RA was unable to express a view on the contact schedule, Ms. Watling concluded that he enjoys spending time with both of his *"mothers"* and that he wishes for that to continue. During the hearing, I heard a tape that was produced by R which recorded an exchange at a handover between T's nanny and R. Although the production of the tape was for another purpose, I was able to hear how affectionately R spoke to the children and how warmly and excitedly they replied to her. In the October 2022 report Ms. Watling commented that:

> *"It would appear that (RI) would be emotionally impacted if she has unequal time with both parents."*

Ms. Watling noted that:

> *"It is believed that if (RA) is denied the opportunity to be in contact with one parent it would have an adverse impact on his overall well-being."*

[17] Ms. Watling - paragraph 122 of the October 2022 report.

47. Following her assessment outlined in the October 2022 report, Ms. Watling made various recommendations. I note that it was a comprehensive report in which the reader could see that the reporter had set out a proper review of what she had assessed. Even more importantly, unlike in her later reports, one could see what her recommendations were and how she said she had reached them. There was a link between the evidential content shared in her report and how that led to her recommendations. For example, unlike in her later reports, she applied the Welfare Checklist from s.3(3) of the Act.

48. In the report, Ms. Watling recommended that the contact arrangement be an alternate week arrangement. She stated that such an arrangement would:

(i) lessen issues concerning the movement of the children's belongings:

(ii) would assist with the structure and routine for both children; and

(iii) provide the children to have the opportunity to have equal time with both parents.

49. Wider recommendations made by Ms. Watling included:

(i) the parents attending parenting classes at the Family Resource Centre;

(ii) the children having separate belongings in each household;

(iii) the absent parent being permitted to have 2 phone/zoom calls with the children on a cellular phone that has been provided for the children preferably at an agreed time; and

(iv) the parents developing a means of communication regarding the children's well-being when in each of their care to inform the other about any pertinent issues such as health or school related issues. Having regard to the content of her assessment, one can understand why Ms. Watling made these practicable suggestions.

50. At the case management hearing on 7 October 2022, the Court gave directions to a four-day hearing to be listed on the first available date after 30 January 2023. By consent, the Court ordered that T could temporarily remove the children for a holiday in the United Kingdom for the period 6 December to 24 December 2022. For the avoidance of doubt, the Court also approved an Order which reiterated to the parties that they both have parental responsibility for the children due to the existing Shared Residence Order. Ms. Watling attended the mention hearing held on 7 October

2022. It was mentioned to her that she may well need to file an updating second report prior to the hearing.

51. On 12 December 2022, the matter came before me for further case management. The Court was informed that each party would likely have a number of witnesses and that this would extend the time required for the hearing. Therefore, the January final hearing dates were vacated, and new comprehensive directions were given to an eight-day hearing to commence on 7 March 2023. Due to intervening events the need for a further report became more apparent. With that in mind, directions were given that all the recently filed affidavits were to be provided to Ms. Watling. Both parties agreed to attend parent coordination with Dr. Justin. The parties also agreed that child psychologist, Dr. Lam, should submit a report on any anxiety issues which RI may have by or on 22 February 2023. A case management hearing was set for 2 March 2023. The loss of the January 2023 dates was most regrettable, especially as it meant that the substantive hearing would now be commencing over seven months after the first mention hearing concerning the breakdown of the child arrangements set out in the Order.

52. From 16 December 2022, both parties have appeared in person, as R filed her Notice of Acting in person as she no longer sought to retain the services of McGrath Tonner.

53. On 20 January 2023, T filed a Summons seeking:

(i) permission to travel with the children in February 2023; and

(ii) an order that she could travel with the children going forward without need for a Summons if the travel was when the children were in her custody and it did not infringe on contact visits with R[18].

On 25 January 2023, R filed a Summons seeking permission to take the children to the UK for the Easter 2023 holiday. R sought further orders regulating requests by T to remove the children temporarily. The Court gave a prompt hearing date of 26 January 2023 for both summonses. At that hearing no orders were made concerning the temporary removal applications. However, the parents agreed to attend parental coordination with Dr. Justin or any other agreed parental coordinator. Some further case management directions were given, including repeating the

[18] The application (ii) is the same application made in T's Summons filed on 2 September 2022.

directions in relation to Dr. Lam made at the previous hearing, but adding that a psychologist at the Wellness Centre ("the Centre") could be the alternative expert to report on RI's anxiety issues.

54. A further case management hearing was heard on 2 March 2023, at which further directions were given to the 7 March 2023 hearing. The mention hearing took place after the receipt, on 28 February 2023, of the second Court Welfare Report ("the February 2023 report") drafted by Ms. Watling.

55. In the February 2023 report, Ms. Watling was also able to inform the Court about a referral that had been received by Ms. Felecia McField, a Clinical Mental Health Counsellor/Registered Play Therapist at the Centre, from Dr. Balang at Ocean Med due to the chronic abdominal pain that RI was experiencing. It was felt that the cause of this might be an anxiety related disorder. Ms. McField informed the parties that, due to the limited number of sessions that she would be able to set up prior to the Court hearing, she would not have sufficient information to enable her to provide any written results for the Court process. A report from Ms. McField dated 15 June 2023 was later filed on 16 June 2023 ("the Centre June 2023 report") and some of the matters relating to her work with RI which were mentioned by Ms. Watling in the February 2023 report were again highlighted therein.

56. However, Ms. McField was able to inform Ms. Watling that her observations from having both parents in the intake session were that T and R had strong feelings towards each other and that she had impressed upon them the importance of not having this impact the parent-child relationship. Ms. McField quite rightly indicated to Ms. Watling that when parents are divorcing, especially if there is a custody dispute, it is important to provide the children with a safe place to process feelings. Ms. Mcfield recommended that parent consultation sessions would be beneficial, as they could educate the parents about skills that they could employ to aid the child's emotional support system. It would also educate the parents about the impact on a child of speaking negatively about the other parent and how that affects the quality of the parent-child relationship with either parent. Such sessions would provide the space for the parents to process their own emotions and prevent putting their feelings onto RI. These were all very sound observations.

57. Ms. McField told Ms. Watling that at the first session she noticed that, as often happens, RI wanted a parent present during the session. She said that RI seemed relaxed around T and had a good

rapport with her. Regrettably, after the first session R removed her consent for RI to continue receiving treatment which caused a suspension of the same. The reported unmeritorious reason for the withdrawal of R's consent was because the session included T and that R felt that she was being excluded from the process. In the circumstances this was not a justification for the withdrawal of consent and suspension of the treatment was not in RI's best interests.

58. Importantly, Ms. McField told Ms. Watling that she had observed that RI was concerned with how others think and feel. She said that RI was very aware of her surroundings and was *"very empathetic"*. Ms. Watling reported that Ms. McField told her that RI:

> *"loves both of her parents a lot and impressed upon how unfair it would be for a child to have one parent expressed to her grievances about the other parent."*

However, Ms. McField later clarified[19] that the latter part of the sentence was not expressed by RI. She confirmed that the statement after the words *"impressed"* in that sentence was regarding a general overview for any child to experience, and it was not specific to RI.

59. In the February 2023 report Ms. Watling shared details about a phone call and email correspondence that she had with D. From those brief interactions she assessed that D:

> *"seems to be a well-rounded individual who has the best interests of the children at heart."*

D is not a person on the periphery of this family, and she has had an increasing impact on these proceedings. I note that T said in an affidavit that D FaceTimed the children every evening when they were in T's care (something that R was never encouraged to do by T). D is a person who inevitably has been and will continue to grow as an important person in the children's lives. Sometimes, if able to be emotionally detached, new partners can be constructive figures when it comes to making child arrangements and improving the co-parenting between their partners and the other parent. However, from the evidence of Ms. Watling and from a report filed by the Centre in June 2023 and reported comments from the children's school, it is clear that D shares the same firm views expressed by T. Despite that, the Court has not heard from D, nor has T sought to file any affidavit evidence from D.

[19] Ms. McField's email to Ms. Watling sent on 3 March 2023.

60. D told Ms. Watling that she was happy to talk to the Judge, but that she did not want her surname in the report or to be called to the witness stand by anyone. She had concerns about her surname being known as her job involves working with high-net-worth clients and she did not wish her name to be on Court paperwork. This is consistent with what T stated in her Affidavit sworn on 4 May 2023 when T said that D did not wish to be a witness or file an affidavit for the same reason.[20] The Court and R have known D's name for a long time, at least before the November 2023 stage of the hearing, and R has not acted in the manner predicted by D. These proceedings are held in Chambers and any judgment would be anonymised. The reason given for T not affording the Court the opportunity to hear from D and thereby to better enable it to, in a more informed manner, address some of the factors set out in the Welfare Checklist is not a convincing one. I would have expected D to give evidence as the wife of T and as a person who is now an active part of the children's family and who has for quite some time been forthcoming in providing her views to third parties about what is in the best interests of the children. The unusual approach taken by T in not assisting the Court by having D attend as a witness is a marked gap in T's presented case. Of course, it is a matter for T, and not for the Court, to decide what witnesses she seeks to rely on, and the Court must not speculate about what evidence D would have given if she had been called as a witness, especially in relation to the criticisms that were levied against her regarding her interventions with third parties.

61. Ms. Watling reported that D told her that she is aware of what is needed to meet the needs of children as she has cared for wider family members' children. D expressed to Ms. Watling several concerns that she has experienced. The reported concerns are the same as those that T has made about R. D spoke in very supportive terms about T and how T cares for the children. I note the concerns that Ms. Watling states have been reported to her by D, and although a Welfare Officer may present hearsay evidence, I place no weight on it because R has not had the opportunity to cross-examine D about the same in circumstances in which I would have reasonably expected D to have been called by T as a witness.

62. I note with interest that Ms. Watling, in the report, refers to an email that D chose to send to her on 31 January 2023. The content of that email does not come across as someone with a *"rational side of observations"*. The content is highly partisan and the question one may ask is why, having regard

[20] See paragraph 86 herein.

to the nature of what D is reporting, D (and not T) is the one commenting upon it to the Welfare Officer. At a time when D's relationship with the children was still in its infancy, D seems to be taking on a role of asking the children questions designed to obtain information about what they do on their visits with R. Interestingly what she shares as a result of her questioning is the same concern consistently expressed by T about the perceived lack of stimulating activities for the children at R's house. D also posed questions in the email about R's *"motive"*, and she goes beyond the exercise of simply reporting what she observes. It is significant that D appears to have felt it appropriate to take on an investigatory role in relation to R's employment situation. D reports on what R's work/appointments diary on her employer's website looks like and then comments to Ms. Watling that what she found out was *"unusual"*. The email shows a partisan involvement by D, seeking to steer the Welfare Officer's investigation in a certain way to be supportive of T, in circumstances where she had known the children for under a year and where she was not willing to come to Court as a witness where she could be asked questions about her actions, views and observations.

63. In a later Welfare Report filed 26 June 2023 ("the June 2023 report"), Ms. Watling outlines an office visit that occurred with D. She noted that D was *"highly concerned"* as she said she had witnessed R putting pressure on RI to speak to her during phone contact when RI was unwilling to do so and similarly when she asked RI to bring RA into the video call. I note that D attended the visit with video recordings to support her concerns. I have watched and listened to some recordings[21], and although some of it lacked insight and sensitivity, it would be inappropriate to characterise R's conduct therein as being *"highly concerning"*. What is of some concern is that, if either of the children were reticent or were not coming forward to speak to R during the indirect contact, from the recordings there is a lack of genuine encouragement from either T or D for them to speak to R. Sometimes in such situations, for example if a child is in *"the middle of watching a movie"*[22], when it is the time for indirect contact, children require guidance or instruction and should not be permitted to take on the parental decision-making role. I am satisfied that a significant reason why these issues arose during the calls are because of the way that the calls are conducted, on occasion with both T and D being in the vicinity. The children should be able to speak freely with R, especially in circumstances where they are highly sensitive to the fact that T can become upset by the idea of R playing a role in the children's lives. The children do on occasion say negative

[21] See paragraphs 102-112 below.
[22] Paragraph 24 Report of Ms. Watling dated 26 June 2023

things about R to T to make T feel better and more secure. R's conduct at these exchanges is also not helpful, as the children are placed in the middle of an ongoing open feud between the parents which they witness. R has used inappropriate language in front of the children about T when there have been problematic indirect contact sessions, for instance calling her *"disgusting"*. At times both parents have let their personal emotions come to the fore and be exhibited to the children in a manner that would be upsetting to the children.

64. As set out in the June 2023 report, D reiterated her concerns about how R does not partake in school activities. D told Ms. Watling that R changed the collection for contact arrangements at the last minute to suit her personal needs. It is evident that D also sent emails to verify what she wanted to say about the handovers. Again, contributing to the issues that arise concerning the handovers is the parents' dysfunctional relationship resulting in all communications made at that time being by email, rather than by oral conversation. D expressed a concern to Ms. Watling that she felt that RI appears to be anxious and careful about what she says or does not say after contact with R. In relation to the latter, part of the reason for that reluctance is because RI is aware of the animosity that each parent has for the other and in such circumstances may be unwilling to speak positively about her time with R as RI may believe it is not what T would wish to hear. The family dynamics had reached such a stage that each parent had little interest in the positives that could be derived from the children's relationship with the other and this resulted in them concentrating on putting a negative connotation on almost every circumstance which they felt may be beneficial to the stance they were taking in the legal proceedings. By doing this, they were, not deliberately but with little insight, putting their personal interests above the children's.

65. In the June 2023 report, Ms. Watling reported that D had spoken to the school nurse suggesting that the school should report to the Multi-Agency Safeguarding Hub ("MASH") to inform them that RI is not being fed well by R and that R is not taking RI to see a paediatrician. The school quite rightly informed D that her request was inappropriate. That aside, D's interventionist conduct seems to be at odds with her regrettable unwillingness to take up the opportunity to share her concerns with the Court as a witness in these proceedings.

66. Returning to the February 2023 report, Ms. Watling stated therein that since August 2022, the parties had consistently abided by the contact order with the exception of R's mental health

breakdown in late December 2022. Ms. Watling went into some detail about R's mental health issues which came to a head with an attempted suicide by her on 17 December 2022.[23] That report is the first time that the Court or T became aware of this distressing and significant event. R said that she did not want to disclose that information to T as she believed that T would seek to utilise it in a tactical manner in these proceedings. The Welfare Report informed that, towards the end of December 2022 in early January 2023, T was informed by R's employer that R would be unable to look after the children for her scheduled contact due to undisclosed medical reasons. R informed Ms. Watling that the attempted suicide whilst at home was an unplanned attempt and that she returned to work from the 19 to 23 December 2022 and had the children in her care from 25 December until 5:00 p.m. on 26 December 2022 as well as from the 28 to 29 December 2022. Ms. Watling said that R required medical attention starting on 29 December which prevented R from having the children on 30 December. It was on 29 December 2022 that R informed a work colleague of her suicide attempt and it was at that stage that her colleagues required her to seek psychiatric assistance. That is when T was informed that R would not be available for the contact. R was kept under observation by the psychiatrist between 29 and 31 December 2022 and she was receiving care from Dr. Susanne Neita.[24]

67. Ms. Watling reported that, in or around August 2022, a time of high conflict between the parents, T had informed Ms. Watling of her understandable discomfort with R inconsistently being in the children's lives. She reported that T was upset by the fact that R had made statements that she did not want the children and that this led T to:

> *"wanting (R) out of the children's lives for good."*

She reported that T informed her that she was not concerned that R would harm the children but was generally dissatisfied with the lack of activities that she would provide for them. This is a criticism that T has shared throughout, and which has been reiterated by D to third parties. Ms. Watling reported that T said that her:

> *"first preference would be for R to be permanently removed from being a part of the children's lives."*

[23] See paragraphs 299-301 below.
[24] See paragraphs 301-302 below.

Ms. Watling said in the report that she had assessed in August 2022 that:

> *"With no child safeguarding issues and with both parents having the ability to care for the children the recommendation was for the parties to adhere to contact orders as the children are entitled to a relationship with both parents regardless of the conflict between the parents."*

68. In the February 2023 report, Ms. Watling highlighted her concern that RI was being rather reserved in sharing information related to R and she reiterated that this may be because R had told her that she did not need to answer questions about what happens in her home. Although that may have been done by R because she was concerned that T would seek to gain information which she could use in the Court proceedings to try to establish that R was a bad parent, the detrimental effect was that it may make RI feel that she was doing something wrong and was dragging her into the parental dispute. Ms. Watling felt that, as RI was beginning to show signs of confusion and lack of confidence in speaking about R and what she did in her home, the Centre assistance should continue to provide her with emotional and psychological support.

69. Ms. Watling also mentioned that she met with RI at her school in the absence of any school personnel. She noted that RI expressed the desire to continue spending time with each mother in their respective households and her belief that RA wanted the same. When she saw RI again, this time at T's home in the absence of any of the adults, Ms. Watling said that RI once again asserted her desire to spend time with both of her parents at each of their homes. Ms. Watling observed the children in each parent's home, and she still found them to be comfortable and content in the surroundings and with each parent. Ms. Watling said that she:

> *"did not observe anything of concern during her home visits with (T), (RI) and (RA)."*

70. In the February 2023 report, Ms. Watling said that, although she had seen the children being affectionate and at ease in each parent's presence, it was challenging to ascertain the impact of the parental conflict on them without a professional's assessment. Therefore, she recommended that both parents undergo a parenting capacity assessment. Ms. Watling was of the view that such an assessment could establish whether or not a parent was adequately equipped to provide appropriate physical and emotional care to the children. It appears that it was the emotional care that Ms. Watling felt needed to be the primary focus of the assessment.

71. It was in this report that Ms. Watling placed emphasis on the changes in the parties' and children's lives including T having a *"new partner"*, R's mental breakdown and RI showing signs of confusion. As a consequence, Ms. Watling felt unable to make a final recommendation in relation to contact before:

(i) the parents completed co-parenting classes;

(ii) the parents completed parenting capacity assessments;

(iii) RI's sessions at the Centre recommenced with the parents also engaging in parental consultations in that process and reports then being produced; and

(iv) the DCFS having continued correspondence with Dr. Neita concerning R's mental health.

In the report, Ms. Watling did not consider the 'delay principle' set out at s.3(2) of the Children Act (2012 Revision) ("the Act").

72. Having read the February 2023 report, despite the lack of any long-term contact recommendation, I was firmly of the view, having regard to the delay principle, that the March 2023 hearing should proceed and that, if any expert assistance was required for the family, this could be incorporated into the order and the contact modelled around that. The Court did not deem it appropriate to adjourn the substantive hearing to see whether the parents would engage with such assistance.

73. At the pre-final hearing case management hearing, which was held on 2 March 2023, R's attempted suicide was much discussed. Directions were given requiring R to file an affidavit by 6 March 2023. Ms. Watling was directed to ask Dr. Neita whether she could attend the final hearing. At that stage, the Court was of the view that Ms. Watling needed to provide greater clarity about the reasons for and the content of her recommendations when she later gave her oral evidence at the upcoming final hearing. On the one hand, Ms. Watling was expressing positives about R's relationship with the children and about the lack of any safeguarding issues. On the other hand, concerns were being raised by her about the unclear detrimental impact of the parental conflict resulting in her feeling unable to make recommendations about s.10 orders before both parents completed co-parenting and parenting capacity assessments. What Ms. Watling did not seem to recommend in the February 2023 report was for there to be any change in the existing contact regime, something she only clarified at the March 2023 stage of this hearing when she said that the arrangements should remain the same. I felt that the March hearing should proceed. I reached that decision having regard to:

(i) the delay in these already by then drawn out proceedings;

(ii) the need for Ms. Watling to clarify her position about what should happen if one or both of the parents failed to act upon her recommendation about parental assessments and programmes; and

(iii) the lack of a recommendation about what interim child arrangements should be put in place if the March hearing did not proceed on the basis that the parents agreed to receive that assistance.

I felt that at the March 2023 hearing, especially after considering Dr. Neita's oral evidence concerning R's mental health and how that might impinge on her childcare ability, the Court would be better placed to consider the merits of the non-recommendation stance being taken by Ms. Watling and also determine what s.10 orders would, at that time, be in the best interests of the children. Therefore, I declined T's application made by email on Friday, 3 March 2023 at 11:29 a.m. to adjourn the long fixed final hearing which was scheduled to commence on the following Tuesday.

Background - The March 2023 stage of the hearing - Evidence presented to the Court - oral evidence of Ms. Watling and Dr. Neita

74. The March hearing commenced on 7 March 2023 and concluded on 24 March 2023. The hearing lasted eleven days. The Court heard oral evidence from the parents as well as from Dr. Neita, Ms. Thompson (T's friend), Ms. Houghton Smith (T's friend), Ms. Lomax (T's friend), Ms. McLean (T's helper assisting with contact drop-offs and collections) and RI's teacher who was called as a witness by R. At the end of the March 2023 stage of this hearing, I adjourned to enable myself to a Reserved Written Judgment.

75. A number of T's witnesses gave their oral evidence by video-link. Their remote attendance was agreed by the parties and approved by the Court. Although there were, on occasion, some connectivity issues for those who gave evidence by video-link, I am satisfied that I was able to receive and access that evidence properly and that neither party has been prejudiced.

76. Ms. Watling attended Court and provided oral evidence and was subject to examination by both parties for the whole of day one of the March hearing. Ms. Watling attended Court for the whole

of the March stage of this hearing and she was invited to make further observations at the end of the hearing and a further opportunity was then afforded to the parties to ask her questions.

77. At the March 2023 stage of this hearing, Ms. Watling confirmed that she was withdrawing her previous recommendation that there be alternate week contact for the parents. She stated that the reason for that was because *"a number of processes needed to be completed"* in order for her to be in a position to make a recommendation about any contact arrangement. Importantly, Ms. Watling went on to say that, if the hearing was adjourned, she would not be asking for any change in the current contact arrangements until final determination. She said that it was in the best interests of the children for contact to continue and it was right that they had a relationship with both of the mothers. Ms. Watling stated that RI had been consistent in saying that she wanted fair and equal time with both parents and that RI had spoken quite freely about that in the absence of R, in particular on 8 February 2023. She indicated that it was important to have psychiatric input as that would be needed to identify the impact on the children from what was going on between the parents. She confirmed that she had not personally seen or heard any report made to her by anybody that RI was a violent child or that she would lose her temper. She said that the children were highly aware that the parents do not talk to each other as they had witnessed that. She shared an email from Ms. McField in which the writer confirmed that RI loves both of her parents and that it was unfair to a child to have a parent expressing grievance to that child about the other parent. Ms. Watling told the Court that both children always referred to R as *"mum"* which she felt to be authentic and not staged. Ms. Watling characterized this as being a natural interaction. She recognised that R had experienced feeling under pressure and that she was finding the Court proceedings stressful. Ms. Watling confirmed that the children had a right of contact with both parents and that the previous social worker helped when R had been inconsistent with contact. She indicated to R in her oral evidence that, despite the inconsistency, DCFS had always felt that there was:

"No need for you to not have contact".

Ms. Watling informed the Court that she had not received any safeguarding issues about R.

78. When I considered Ms. Watling's evidence, it was evident to me that she was struggling to provide a long-term recommendation in relation to contact, especially if that might result in a departure from the current contact arrangements. What is clear is that Ms. Watling was not then saying that there should be a cessation of contact for the children with R; she actually stated that the status quo

be maintained in relation to contact. It was clear that, at that time, she recognised in her oral evidence and in her written report that it was important for both children to have both parents in their lives and that is what the children wanted. At the conclusion of the evidence given at the March 2023 stage of the hearing, having considered Ms. Watling's evidence in the context of all the wider evidence, her then expressed views fortified my conclusion held at the time that this was not a 'no contact case'.

79. In relation to the March 2023 hearing, the evidence of what Dr. Neita told Ms. Watling was also supplemented by Dr. Neita's oral evidence at the hearing. Dr. Neita is a qualified psychiatrist who started to see R in January 2023. Dr. Neita told the Court that she had prepared numerous reports for court proceedings. When the referral was made to Dr. Neita, R made her aware that she was suffering from stress from ongoing divorce and child proceedings and that she had attempted suicide by hanging in December 2022. The doctor was made aware that at that time alcohol was also involved. It was her work colleagues who arranged an appointment with the doctor who then made the referral to Dr. Neita. Dr. Neita said that R made her aware that in 2005 she had mental health episodes after her stepfather passed away resulting in her taking medication for eight to nine months to treat her depressive symptoms. R shared with the doctor that she had also seen Dr. Lam in 2021 for symptoms associated with the stress of these Court proceedings.

80. Dr. Neita said that, at first, she saw R every week but that had reduced to every three weeks. At the time that Dr. Neita spoke with Ms. Watling about R, she had already met with R on four occasions. Dr. Neita concluded that her mental condition was a reaction to the stress of the custody proceedings, and she was diagnosed as having mixed anxiety and depression, a similar diagnosis to that given by Dr. Magill. She said that the custody proceedings were a trigger which had spurred her on to act and that drinking alcohol was clouding her inhibitions and contributed to the event. The doctor was clear that R no longer had suicidal thoughts. She said that there are no symptoms of bipolar disorder and no psychotic features. Antidepressant, sleep and antianxiety medication was prescribed. Dr. Neita indicated that, if R failed to take the medication, she would be at risk of becoming depressed again and developing suicidal thinking again. However, she was of the view that someone with her mental condition would hurt herself rather than others and that the risk of her hurting the children was low. In cross-examination by T, Dr. Neita clarified that remark saying:

"I do not think she is a danger to the children, only a danger to herself if anything. I do not think she would do anything to the children, she is protective of them and cares for them. That is not the direction of her actions. No anger towards the children. When people (are) upset (they) sometimes take it out on themselves first…. Even if she hurt you, still very unlikely that she would hurt the children. Real taboo hurt the children."

81. Dr. Neita stated that she had noticed a difference or change in R's mood, commenting that she was brighter and more spontaneous in speech. Dr. Neita felt that R seemed to be coping better with the Court proceedings. The doctor felt that R should be able to care for the children if she was to go to the UK with them for two weeks.

Background - Proceedings and events post the 24 March 2023 stage of the hearing - The Centre June 2023 Report - The Court Welfare Reports filed post 24 March 2023 - The Guardian's Reports

82. Consistent with the history of lack of effective communication between the parents, T filed an *Ex-parte* Summons only five days after the close of the March 2023 substantive hearing. In her Summons, T sought leave to temporarily remove the children for a trip to New York from 9 to 18 April 2023. The Court directed that the Summons dated 29 March 2023 should be heard *Ex-parte* on notice, on 3 April 2023. R attended the hearing via video-link from the UK. After hearing from the parties, I made the following Order:

"(i) T has leave to temporarily remove the children from the jurisdiction to New York from 9 April 2023 to 18 April 2023. The children are to be back in Cayman no later than on the 18 April 2023; and

(ii) T is, by noon on 6 April 2023, to provide R with:

(i) copies of the children's outward and return flight tickets;

(ii) details of the addresses where the children will be staying overnight whilst they are out of the jurisdiction; and (iii) details of the time on 11, 13, 15, 17 April 2023 when the children will have video contact (Facetime/WhatsApp or other similar means) with R; and

(iii) The current contact schedule is temporarily changed as a result of the order made in paragraph (i) above and to enable the children to then have 'make up' contact with the R (a) from collection from school on 19 April 2023 to school drop off on Monday 24 April 2023 and (b) from collection from school on Friday 28 April 2023 to drop off at school on 1 May 2023. Thereafter the previously ordered contact schedule will be resumed until further order of the Court."

83. The conduct of the parties leading up to this Summons, so soon after the March 2023 hearing, resulting in the need for further Court intervention concerning the parenting for these two children is a microcosm of the problems caused by the parents' poor co-parenting and dysfunctional relationship. R states that on the evening after the last day in Court for the substantive hearing, she found out that her father was unwell, and she decided that she had to book a flight for the next day to the UK. The following day, T emailed R to inform her that she had taken RA to the Doctors Hospital for some treatment, and she received a response from R that she was *"off the grid"* and would contact her on the next day. R did not tell T that she would be flying to England on that day. Nothing was heard from R, and on the evening of 28 March 2023, T emailed R concerning the collection contact arrangements for 31 March 2023. R replied on 29 March 2023 stating that she was in England for a family emergency and that she would not be back for the scheduled contact visit and that she envisaged returning to Cayman at some point during the school holidays. This meant that T had to cancel important business commitments on that weekend and left her with a concern about who would be caring for the children when T was due to fly to New York on 14 April 2023, dates when R was supposed to be caring for the children. Although it was understandable that R had to fly to England, one would have expected her to have mentioned in the communication made on 25 March 2023 that she was having to travel to England and that she had a return ticket for 10 April 2023. If this was not done on 25 March 2023, R most definitely should have provided the return flight date when she emailed on 29 March 2023. If she had done that, T would have at least known that R would not be back, and that R would be unable to look after the children when T flew to New York in mid-April 2023 and then there would have been no issue at all. Rather than pushing R for details about the return flight date, T then used this as an opportunity or excuse to immediately buy flight tickets for the children to fly with her to New York on 29 March 2023 and extend the dates that she, and now the children, would be out of the jurisdiction. This episode was a further example, to use colloquial language, of the parties knowing how to behave in such a way to 'press the other's buttons' and to 'wind up' the other party. Although I accept that R was still in a rather fragile mental state and understandably upset at the time of the 3 April 2023 hearing due to the family illness, some of her conduct and language used towards T was inappropriate and excessively abusive at the hearing. Towards the end of the hearing R was venting and was using inappropriate language and this continued even after the Court had invited her to stop. I note that in correspondence R has at times used inappropriate, aggressive language towards T and this has understandably upset T.

84. On 14 April 2023, R wrote to the Judge's Personal Assistant (not copied into T) indicating that T had breached the Court Order in respect of contact with the children and the provision of information. R sought advice about how to proceed and about issuing a Summons. I was shown the email and I indicated that it was inappropriate for the Judge to provide advice to one of the parties and that my attention was focused on trying to draft my Reserved Judgment.

85. On 4 May 2023, R filed an *Ex-parte* Summons seeking:

(i) permission to remove RA to the UK from 5 May 2023 to 19 May 2023; and

(ii) an order for T to deliver RA's passport to her by noon on 5 May 2023.

The Summons was supported by an Affidavit sworn by R on 4 May 2023. When shown the pleadings, I indicated that the parties should be informed that the Summons could only be heard on notice. I directed that the matter come before me on 5 May 2023 and indicated that R should not purchase any flight ticket before the hearing. Importantly, in her Affidavit, R also asked the Court to:

> *"consider the additional information contained and exhibited herein in writing its overall judgment relating to these proceedings as a whole."*

At the outset of the hearing, R informed the Court that she was not seeking leave to remove both children and that she had already purchased flight tickets for herself and RA on 4 May 2023.

86. At 8:50 a.m. on 5 May 2023, I was provided with a copy of an Affidavit sworn by T on 4 May 2023. T also filed a letter written by D. T sought to persuade the Court that the letter should have evidential standing akin to an affidavit, although it did not conform with any of the requirements for such a pleading. T was informed that, for the Court to place any reliance upon the content, the pleading should be properly drafted. I did not read the letter at that hearing. I note that T informed the Court, in her Affidavit sworn on 5 December 2022, that D wished to remain anonymous due to the nature of her work client base and due to her belief that R would harass her and make false accusations. T said that D was willing to file a notarised affidavit and *"has offered to speak to the Judge if he so wishes but only in privacy"* without either party being present. That would not be appropriate. I comment further on this at paragraph 60 herein.

87. The evidence filed by the parties after the March 2023 stage of this hearing and prior to the 5 May 2023 mention hearing was of a similar nature to the plethora of affidavits previously filed by the parties. There were allegations from R about T:

(i) breaching contact orders;

(ii) inappropriately questioning the children;

(iii) wrongly criticising R in the presence of the children;

(iv) inappropriately calling the police who attended at T's property; and

(v) inappropriately communicating with the school.

There were allegations from T that:

(i) R's mental health was deteriorating which in turn was impinging on the children's welfare;

(ii) R was blocking indirect contact when the children were with R;

(iii) RI says that R gets angry and was shouting at her; and

(iv) R was sending offensive communications to T.

88. T also said that MASH had become involved, although I note that a later exhibited Police Report shows that the police had no concerns when they attended and saw the children at R's property. The first referral was made on 21 April 2023 by T in reference to her concerns that:

(i) R was blocking contact between T and the children;

(ii) that R was withholding medical care by refusing the children to be checked by paediatrician especially if R kept them at home during the day; and

(iii) verbal abuse from R aimed at T.

Ms. Watling was the Social Worker assigned to the MASH referral and in the June 2023 report she indicated that it was concluded that R had made the decision in relation to the children's health she would monitor them due to her knowledge and experience as a doctor and have them remain at home. That was an understandable position for R to take and an appropriate conclusion reached by MASH. In relation to the withholding of communication, Ms. Watling highlighted in the June 2023 report that had been an ongoing issue between the parties which:

"Speaks to the level of parental conflict which has yet to be resolved and demonstrative of the absence of co-parenting."

Again, an appropriate conclusion relating to both parents for MASH to reach.

89. The next MASH referral was generated on 1 May 2023 concerning the children's health, specifically that RA was ill, and R was not administering medications prescribed by the treating doctor. The reason given by R for the refusal given to both the Court in her evidence at the November stage of these proceedings and to Ms. Watling was that, based on her medical expertise, she felt that the prescribed medication was not suitable for the child.

90. Although the pattern of complaints and concerns expressed by the parties were a continuation of what they had been stating on a number of occasions during these proceedings I felt, due to the recent evidence filed and the reports made to MASH, unable to complete this Judgment at that stage without there being a further hearing at which I could further hear from the parties and possibly have an update from Ms. Watling. I informed the parties that:

(i) the time needed to review the ongoing flow of updating evidence post the March 2023 stage of this hearing;

(ii) the need for the Court to address Summonses and inappropriate email correspondence received by the Court from the parties; and

(iii) the time taken to prepare for and hear the additional applications that had been made were greatly impinging upon the time which had been put aside in the Family Division Court Lists for the writing of this Judgment.

I was frustrated by the predicament that the Court had been placed in by the manner in which the parties were continuing to litigate this matter, especially as I had intended to hand down the Judgment prior to my departure from the jurisdiction on 11 May 2023.

91. At the 5 May 2023 mention hearing, I informed the parties that completion of the Judgment had to be 'put on hold' pending a further hearing of evidence on 22/23 June 2023 and that a referral was being made to the Department of Children and Family Services ("DCFS") for Ms. Watling to further assess the family and deliver either a written or oral updating report at the hearing. I informed the parties that any further affidavit evidence must be filed by or on 14 June 2023 and that no further affidavits could be filed after that date without leave of the Court. I strongly recommended to R that she obtain an updated report from Dr. Neita concerning her mental health.

Due to the nature of the allegations being raised at the hearing, I indicated to the parties that I was amending the Prohibited Steps Order and was now prohibiting either of them from removing the children from the jurisdiction pending the handing down of the Judgment. This would mean that they should not yet be making any plans for the school Summer holiday. I refused the application by R to temporarily remove the children from the jurisdiction on an application that had been brought on such short notice. I informed them, as I had done since the commencement of these proceedings, that they should be conscious that they were still under assessment and that their conduct pending the next hearing date and the handing down of the Judgment may have a bearing on the outcome of the case.

92. On 15 May 2023, T filed a Summons seeking permission to temporarily remove the children to New York between 26 May to 30 May 2023. She said she was making that application because R had not returned to the Cayman Islands on 19 May 2023. The opposed Summons was heard by Carter J. R argued that the children should not be taken out of school unnecessarily. The removal application was refused, and the Learned Judge ordered that the children were to remain in the care of family friends in the Cayman Islands during T's absence.

93. On 16 June 2023, a report concerning RI's anxiety issues prepared by Ms. McField was filed. Some of the information in this report had been set out in the February 2023 report. RI had been referred to the Centre by her paediatrician, who reported that she was experiencing chronic abdominal pain with no organic cause identified. The paediatrician also reported that the Screen for Child Anxiety Related Disorders questionnaire had been administered and highly suggested the presence of an anxiety-related disorder, particularly separation anxiety. Ms. McField indicated that:

> *"The primary goal for RI's participation in play therapy was to provide (her) with a safe and unbiased environment where she could safely explore, express, and process emotions."*

Ms. McField also highlighted a set of circumstances about the parents consistent with what this Court has also encountered throughout these proceedings. She noted that:

> *"The parents' consultations were challenging, as evidenced by parents sharing information that would incite the other parent and often resulted in each parent interrupting the other and talking over the other. This writer had to intervene and consistently remind parents to*

stop talking over each other, and to remain focused on the goals of CCPT[25], which was to discuss RI's therapy needs and outcomes. Parent consultations were not efficient in discussing RI's emotional needs, as a primary focus is management on parental accusations against one another and sharing of information for the perceived purpose of diminishing the unbiased stance of the RPT[26].

Outside of schedule parent consultation sessions there was excessive email correspondence from both parents to the RPT, the tone and content of which was often accusatory, aggressive, critical, and not aligned to the initially agreed goals of creating a safe therapeutic space for unbiased CCPT.

…. Scheduling of appointments for (RI) was exceptionally difficult. Parents were not willing to communicate directly with each other to schedule appointments. Given the complete breakdown of communication between the parents, The Wellness Centre administrative team needed to exert an unnecessary effort to schedule appointments at a time suitable for both parents. Additionally, at least two (2) sessions which was scheduled by (T) were effectively cancelled by (R) without communication between each other. This type of activity led to the administrative staff at the Wellness Centre needing to provide continuous and excessive assistance to parents to schedule appointments as parents did not communicate directly with each other."

Ms. McField also noted that D:

"would attempt to gain information about dates of future appointments or suggested additional support needed to be provided to parents in order to schedule sessions."

D was not a designated person to whom information could be released and Ms. McField reported that on two occasions when D's requests for information were refused:

"She spoke rudely to the Wellness Centre administrative team, including raising her voice."

Regrettably, although RI had benefited from the play therapy and would have benefited from continued access to a therapeutic space and therapeutic relationship, the Centre was not willing to continue the work due to the difficulties they had encountered with the parents.

[25] Child-centered play therapy.
[26] Registered Play Therapist.

94. In the recommendations part of the report, Ms. McField commented:

> *"**1. Co/Parallel Parenting Support**: (R's) parents are not able to participate in and benefit from parental consultation currently. A structured teaching approach focused on co–parenting or parallel parenting strategies is required. Parents have been directed to the family resource centre to access these important parenting supports.*
>
> ***2. Parenting Capacity Assessment:** given the allegations made against one another in the context of parent consultation and the information shared by (R), it recommended that parents undergo a parenting capacity assessment by a court-approved Clinical Psychologist."*

However, unlike Ms. Watling, Ms. McField was not recommending that the parents must seek or have embarked upon the above assistance before the Court should determine what child arrangements should be out in place. It is evident that she was concerned about and critical of both parents' conduct and defective co-parenting.

95. The matter came before the Court on 21 June 2023 for the continuation of the part-heard hearing at which the evidence about events post-March 2023 was to be presented. However, it became apparent that the parties had not been provided with a copy of the Centre June 2023 report mentioned above. In addition, Ms. Watling orally expressed a markedly changed stance about contact between R and the children, to a no contact recommendation. Although Ms. Watling had not filed a report by this stage, I explored with her at the June hearing the reasons why she had so fundamentally changed her view and was now suggesting that the children should not have contact with R. Partly because I had some concerns about the rather generic replies given by Ms. Watling at the hearing and partly because I felt that the children needed to be able to freely express what their own genuine views were to their own representative, I informed the parties that I was considering whether it would be in the children's best interests for them to be represented by a Guardian ad Litem. I was concerned that in the proceedings the parents' emotions and clear animosity was hindering their ability to have sufficient insight to recognise what the best interests of the children were and how their actions or demeanour could cause the children to express certain views about contact in order to please or protect that parent. The suggestion about appointing a Guardian appeared to be well received by both parties. With this in mind, the matter was adjourned to a mention hearing on 27 June 2023.

96. Following the June 2023 hearing, I explored with the Court Administrator and the Family Proceedings Unit whether a Guardian ad Litem with legal experience could be appointed in this complex matter. I felt that the best interests of the children would be met by them having a Guardian who had the relevant legal knowledge and understanding of the issues that may arise in no contact cases. Ms. Clemens, an experienced family lawyer and Guardian ad Litem, accepted the offer of an appointment and she attended the mention hearing on 27 June 2023. At that hearing, the appointment of Ms. Clemens appeared to be well received by the parties.

97. In the June 2023 report, Ms. Watling set out communications that she had with professionals concerning R's health. Dr. Neita informed her that R was still engaging in psychiatric services. Importantly, Dr. Neita told her that R had the ability to care for the children and to be a good mother to them. Ms. Watling also spoke to the Senior Human Resources Manager at R's employment, and she was informed that a psychological assessment had been conducted on R and that, as she had met the recommendations of the assessment, she was scheduled to return to work on 1 July 2023.

98. In the June 2023 report, Ms. Watling made a firm written recommendation which, in relation to the s.10 orders, was the opposite to any of the earlier recommendations that she had previously made. She recommended that a Residence Order be granted to T:

"with no contact to (R)".

Therefore, she was recommending a variation of the existing Consent Shared Residence Order to a Sole Residence Order to T, and a No Contact Order in relation to R.

99. In the June 2023 report, Ms. Watling primarily concentrated on a number of criticisms that she had about R's conduct since her previous report, and it is evident that her findings about R's conduct form the basis for the sea-change in her recommendations and in how she views R as a parent. In the June 2023 report, Ms. Watling did not seem to take into account any of the earlier factual matters and positives about the children's interaction with R which she had previously highlighted, and which had led her to reach a different conclusion. She also seems to fail to take into account that RA was expressing consistent views, who seems very settled at school, he having indicated to her when they were alone at the neutral setting of the school that he wanted to continue to spend time with R. She also failed to explore why RA later said he wanted to be at T's house full-time when he was asked about it in the presence of RI at T's house. Regrettably, unlike the Guardian's report

filed on 10 November 2023 ("the GAL November 2023 report"), there is no consideration of the Welfare Checklist in the June 2023 report. Having regard to the new recommendations reached, I would have expected to see the Welfare Checklist considered rather than just the statement, set out at paragraph 128 of the June 2023 report, that the recommendations were made:

> *"with the children's best interests in mind."*

However, I note the following comments and Ms. Watling's apparent negative findings of fact, almost all relating to R[27]:

> *"The practice of this writer is to explore all possibilities for contact after separation and divorce and in rare occasions and it's usually only in cases of sexual abuse that we would recommend no contact. However, in this case based on the enormity of the emotional distress being meted out to these children we are compelled to recommend a no contact order. This is not an option or a decision taken lightly but this writer has been involved with the family over a year and sees no hope of this of this situation improving. This writer has a duty to safeguard these children, their childhood, and their mental health. Co-parenting is nonexistent and in addition one parent (R) exerts enormous emotional distress on the children. There's concerns about diet in her care, bedtime routine in her care[28], the children's physical health in her care, the children's access to exercise and activities in her care and the children's general of welling while in her care. We are greatly concerned about the nonchalant attitude toward the payment of (RI's) school fees. As in some cases of divorce (R) continues to immerse herself in the conflict of a relationship that is over. When parents are unable to move on their parenting is often times defective."*

100. I note that the June 2023 was drafted before the Guardian's involvement and before the assessed positive contact session had been facilitated by the Guardian. I mention that because the nature of

[27] Ms. Watling did indicate that co-parenting was non-existent and, although not clear, it may be that this is a criticism relating to both parents and not just about R.

[28] At paragraph 29 in her February 2023 report Ms. Watling recorded that R informed her that the children get their iPads in bed for an hour before they sleep at 8:00 p.m. at which time they are taken from them. From the content of the report, this did not seem to cause Ms. Watling any concerns at that time yet in the June 2023 report she says that DCFS recommended that such technology should be disallowed as a part of the children's bedroom routine. Ms. Watling makes an assertion that this is an unhealthy bedtime routine which possibly could be a contributing factor to the children returning home with dark circles around their eyes and that unnamed studies should that screen use at bedtime is associated with less time spent asleep. I do not agree that using iPad between 7:00 p.m. to 8:00 p.m. as a part of the bedtime routine has any relevance to this contact application and it should not be a factor in recommending a No Contact Order.

some of the Guardian's observations about the children and R's interaction with them are very different to what Ms. Watling reports that she encountered. To reach her conclusions and findings, Ms. Watling, save for speaking to other professionals, had:

(i) one office visit with D:

(ii) two arranged home visits with D and both children in which she spoke to the children separately and to T separately; and

(iii) a meeting at T's workplace with T and the children.

However, she had:

(1) one office visit with R; and

(2) only had one visit to R's house which was an unarranged visit and one at which only RA was present.

It must have been a brief visit because R had to leave *"shortly"* to collect RI from school. In reaching the conclusions that she did, one would have expected Ms. Watling to have conducted a more in-depth assessment of the children with R and to give a more balanced report. When reaching the recommendations that she did in the report, the failure to see and assess both children with R, even if Ms. Watling chose to also do that on an unarranged visit rather than the arranged visit approach she took with T, is a gap in her assessment. When she last saw the children with R, which was reported by her only four months earlier, Ms. Watling painted a very different picture which was consistent with all other positive earlier reports in relation to the children's relationship with R and not what one would expect with a no contact recommendation being made such a short time after in the absence of any highly significant intervening event. Ms. Watling said that she seen the children interacting with R *"in an affectionate manner"* with RA sitting on R's lap and hugging and kissing R and RI also moving closer to sit by R. Ms. Watling said that R engaged in playfulness with the children and that the children were:

> *"observed to be comfortable and content around (R)"* and she *"did not observe anything of concern during the home visit."*

Ms. Watling also saw the children once each at their school for what appears to be a short period of time. It is evident that the time R spent with the children alone and also, for the assessment, was considerably less than that contained in the comprehensive assessment of the Guardian.

101. In addition to the recommendations about the s.10 orders, Ms. Watling made recommendations about interventions including:

(i) parenting capacity assessments for both parents to be completed by SR Law at Aspire Therapeutic Services; and

(ii) both parents to successfully complete co-parenting classes at the Family Resource Center, with a review to then take place in 4-6 months' time.

In light of her comment in the June 2023 report that she saw *"no hope of this situation improving",* it was not clear whether Ms. Watling was recommending that the proposed review could be to consider whether there might be a variation back to a shared residence order and/or whether contact between the children and R might be restored. In the report, Ms. Watling did not indicate whether she had explored the availability of the suggested interventions or whether either parent had agreed to embrace them. Ms. Watling did not indicate what would happen if T, who clearly would not be motivated to do anything that might result in a reintroduction of contact as she had made clear that she wanted R out of the children's lives, refused to co-operate with the interventions, and whether such a position taken by T would mean that there would be no review to try to reintroduce contact for the children with R.

102. Ms. Watling goes into some detail in the June 2023 report about the various events that she relies upon to change her position so fundamentally about whether the children should continue to retain a meaningful relationship with R. One area of great concern to her is that RI felt that she had been left at home alone on 21 April 2023. R says that she had to go to the store with RA to get some medication or toilet rolls for RI who was unwell. R said that she had a female come to the property and stay in a vehicle watching the door for the 5 to 6 minutes that she was away. That does not appear to be disputed, as Ms. Watling had that confirmed to her by that individual.[29] R had not told RI she was doing that. Ms. Watling mentioned the telephone conversation, a recording of which was played in Court, that took place between RI and T when RI was at R's home on 21 April 2023. The conversation commences with T asking RI how she was feeling to then be told by RI that she has diarrhoea. R wrongly told Ms. Watling that T did not at any time ask RI how she was feeling. T then shows empathy towards RI and asks a number of questions including:

[29] RI also told Ms. Watling that she had been left alone for five minutes when R went out to get toilet paper as RI had diarrhoea.

(i) what she had been eating;

(ii) had she been taking her medicine; and

(iii) whether she went to the doctor.

After T asked the last question one can hear on the recording of the call, RA saying that he went. This was then explored by T and at this stage RI said that they had gone, leaving her at home. Although Ms. Watling rightly highlights that RI would not have known that someone was watching over the property, and she would have believed that she was alone at the home, it did not appear from the phone message that RI was distressed or concerned about that. It is evident that R was listening to the call as she abruptly terminated the call when she heard T asking the exploratory questions concerning RI being alone at home and she later told Ms. Watling that she felt the call was being used as an inquisition against her as she felt that the questioning about being left alone, what medications she had taken were intrusive. Although, I accept that T was asking questions to obtain information which she might use in Court, I find that her first and understandable concern was the welfare of RI.

103. This ending of the call, which RI witnessed, was primarily caused by the parents' inability to communicate with each other. If the parents had been able to speak to each other in a normal and civil manner, then R could have explained what had happened and T's concerns should have been allayed. In fact, ordinarily such information would have been expected to be shared between the adults before the conversation started between parent and child. The problem arising out of this is, as highlighted by Ms. Watling, that it left RI:

"…in the middle to provide information to (T) which in a healthy co-parenting relationship would otherwise have been provided from parent to parent."

Unfortunately, what would likely have been a non-event if there had been an appropriate exchange of information, further developed with D, making a call to MASH and then to the police. D told Ms. Watling that she was the one to make the call because T was so terrified, shaken and upset at what she had been told by RI and because she feared that, due to the manner that R ended the conversation, that R may be angry with RI for what she had said. When RI went to school on 24 April 2023 it appears that she was still feeling unwell.

104. Ms. Watling highlights in the June 2023 report the discussions that she had with R concerning her version of what happened when she terminated the phone call and R using inappropriate language towards T in a later telephone call. What Ms. Watling does not comment upon or consider when making her recommendations is the difficulties that R encountered on some of the calls and the fact that her positive engagement, in particular with RI in a number of calls, was what one would normally expect in a child parent situation and in which R spoke sensitively to RI. It is not clear whether Ms. Watling listened to or watched the recording of some of the indirect contact calls which I have played.

105. On 15 April 2023, R had a video call primarily with RI when she was in New York. Early in the conversation R asked RI where RA was, and she was told that he was *"super tired"* as it had been a full day at the zoo. R moved the conversation on to talk about the animals and it appeared to be a happy conversation with lots of smiles between them and terms of endearment from R. R then asked about where RA was, and RI replied that she did not know. R in a gentle manner asked RI to please go find him for her and RI said that she would, and R thanked her. RI came back to the camera and said that she just found out that he was sleeping when she was asked where he was sleeping, she said he was in the bedroom. R asked if she could take the phone into the bedroom so that she could see RA's *"sleepy face"*. RI then went with the camera, and it was clear from the footage that RA was not in the bedroom but was in a sitting area, lying with his face down in a semi-sleepy state. RI then, with some intuition, changed the subject and asked whether she could tell R about the six hours that she had spent at the zoo. They then had a pleasant conversation about that and had a jocular conversation about Easter eggs. It did appear from the way that R was steering parts of the conversation that R was using it to obtain information about where RI was staying as she asked about whether they were at a specific male relation's property and when that was confirmed by RI, R said: *"No, you are not"*. Although that retort did not seem to upset RI, that was not an appropriate exchange for R to have with RI. After a short while R brought the conversation to an end telling RI that she would let RI get back to watching television and that she would call back later to speak to RA when he woke up. Interestingly, after the call ended the recording continued and RI told the adults in the room that R had said that she was going to call back speak to RA when he woke up to which an American woman, presumably D, replied rather tersely: *"No"* and seemed to add the phrase: *"No, she doesn't control…."* This was an inappropriate thing to say in front of RI and it would lead a child to believe that the relevant adults do not welcome its indirect

contact with R. This call is an example of a situation where R was not able to speak to RA, where she appropriately enquired about why RA had not been made available for the call and where she then sensitively handled it with RI. Again, if the parents have the ability and maturity which one would expect, the explanation about why RA was not on the call would have been one given by an adult rather than the information having to be obtained from a child.

106. On 29 April 2023, T called the children when they were at R's home. RI informed her that RA was not well, to which T appropriately enquired: *"How are you feeling my love?"* RI informed her that RA had vomited. On the recording of the call one can hear D in the background whispering: *"Did he take his medicine?"* T asked RI about a mark on her chest and itching herself and then asked further questions about RA's diarrhoea. At T's request RI directed the camera towards RA, who was asked how he was feeling and whether he had been eating or drinking. T then asked RI how she was feeling, and she said that she was alright. At this stage D entered the conversation and said *"Hi (RI)"* and asked her what was going on. R must have been monitoring the conversation, as she shouted from the background that D should get off the call or she would terminate it. The monitoring of such calls, which seems to be done on occasion by both parents, is not in the children's best interests as a child would likely feel stressed by not being able to speak freely. It must have been clear to both T and D that D being on the call was upsetting R, yet D remained in the vicinity and later again commented during the call. This is a further example of T either knowing 'what buttons to push' to upset R or having insufficient sensitivity to recognise that it may be disruptive for the call and thereby not be in the children's best interests. As D was not called as a witness, she was not able to be asked about what her motivation was for joining the call. They then came a rather childish exchange instigated by T in relation to her playing RI's computer game against RI's will. I accept that it may have been intended to be childlike teasing rather than designed to make RI want to get home to the game. There was a rather unusual intervention by, it appears, D at this stage when she whispered: *"Secret, secret, secret, secret"* and both D and T could be heard laughing. D then started telling RI about what they had been doing and at the end of the call bid RI good night. Again, interestingly, right at the end of the recording D could be heard saying *"We got it all in"*. It does appear from that remark that some of the questioning that went on during the call was designed to elicit information that may be useful in these proceedings.

107. On 3 May 2023, R had a call with RI. RA was in the room but was misbehaving, hitting and scratching RI. R appropriately told RA to stop and commented that RA was being naughty and told RI that he was pushing the boundaries. When the children were asked what they wanted to eat RA was shouting from the background that he wanted Burger King, to which R responded she would see, but asked him whether he would eat broccoli. RI said more than once that she wanted R to make Yorkshire Pudding and beans. After that RI said that she would also like noodles to which R said they should have proper noodles in a stir fry. This was an interesting part of the conversation because Ms. Watling, only a month later, was reporting that RI was complaining about the type of food that R provides and RI told the Guardian on 5 July 2023 that one of the reasons why she did not want to have contact with R was because R fed her Yorkshire Pudding which has *"carbs"*.[30] There was then a good conversation between R and RI about her schooling. This is a frequent subject raised in the conversations between the two of them and it shows a keen interest by R into how R is doing at school and is not consistent with the nonchalant attitude towards schooling that Ms. Watling places on R. Throughout the call RA remained in the background and did not contribute significantly to the conversation. Despite that, R remained calm and did not make an issue of it. It was a positive indirect contact session between R and RI and it seemed very natural and the opposite of what was reported in the June 2023 report about RA's relationship with R.

108. On 8 May 2023, there was a further call between R and RI. Again, the flowing conversation between them concentrated on schooling and spelling. When R asked where RA was RI told her in a rather gentle voice that he was *"kind of busy"*. R in a calm voice told RI that she would like to speak to him and thanked RI when she said that she would go and see. RI came back and said that she was sorry, but RA was saying no. At this stage R, still in a calm voice and using terms of endearment towards RI said that she did not believe that and asked if he could be brought into the bedroom. R then suggested the phone could maybe be taken to where he was. RI stated that RA did not want to come. R did not get angry, and she again used terms of endearment and said that it was not a problem and that she would send him an email. R then started to talk about RI's great grandmother who was poorly. It was inappropriate for R to so abruptly say to RI that she thought that the relation was dying, but RI rather sweetly and thoughtfully asked R to tell her that she said *"Hi"*. Although not remarked upon by Ms. Watling this was a further example of a conversation in which R would be entitled to be upset that RA had again not been made available for indirect

[30] See paragraph 173 below.

contact, but during which R remained calm and had a wider constructive, and on the whole, child-centric conversation with RI. It is also an example of a situation in which RI was placed in the role of facilitating the indirect contact arrangements, a situation that would not happen if the parents were effectively able to communicate about why RA was not made available.

109. On 10 May 2023, there was a call when R was in the UK and RI was in her bedroom. RI initially asked if the call could be put off until the next day as she had to go to bed. However, the conversation quickly turned towards RI's school and her presentation on the next day. R then asked if RA was there, and she was told *"no"* by RI. R asked to see if RA would come into the room, and he eventually did come into the room again acting naughtily and scratching RI. He left the room and from his voice in the background it sounded like he was grouchy. Rather than dwelling on that, R changed the conversation to be about RI's spelling and about how she was getting on with her peers at school. After that R asked RI whether she could get RA to come back into the room, but then added that if RI could not do it could she please pass on a message about seeing him. In the recording one could hear RA in the background saying *"no"*. Again, R did not make an issue of it and moved on, and the conversation ended with RI telling R about her extracurricular sports activities. RI sang a playful song about 'Nike Kick' shoes and she was then happy to hear R offer to buy her a pair because she was in the UK, which she would show to her during the next video chat. Again, it was a very pleasant conversation between R and RI, the type of exchange and the content which one would expect between a parent and a child. It was in no way consistent with a position where a child was not willing to communicate with a parent.

110. On 7 June 2023, there was a further indirect contact call between RI and R. The conversation started with a natural and healthy discussion about school, a new teacher and spelling. They discussed R accepting invitations for RI to attend parties on the upcoming weekend. R then asked whether RA was around, and RI rather awkwardly replied *"eh, no"* and said that he was not in the room. R asked RI to take her to where he was and RI replied *"okay, I will be back"*. When RI came back she said that RA did not want to talk and R asked RI to take the camera so that she could see *"his little rotter face, thank you"*. In the background one could hear RA saying that he *"did not like it"* and *"he did not want to talk"*. R tried to speak with him using terms of endearment such as *"stinky bottom"* and told him that she could see the marshmallows around his face. RI said that she did not think he was *"in the mood to talk"* and R replied, *"I don't care mummy is in a mood to talk"*. That

comment was an insensitive one to make to RI, as it was drawing her into an adult role concerning the arrangements. Although this exchange was about RA and not RI seeing R, Ms. Watling elevates it to being that RI could feel that her feelings and wishes do not matter, a conclusion that can only be reached if there is sufficient certainty about what her wishes are about contact. After reading the Guardian's observations, there is no such clarity that the children genuinely wish R to be permanently out of their lives or whether they understand what the long-term consequences may be of them saying at times that they do not wish to see R. What this highlights, including the need to ascertain the children's views and wishes in the context of their understanding and how to appropriately respond to and address them, is precisely why the Court has for many months been advocating to the parties about the need for a psychologist's input, especially for RI.

111. After that exchange, T intervened on the call and said that RA did not want to talk with R but said to R that she could continue the discussion with RI. It was at this stage that regrettably, despite her being relatively calm in the previous calls when R was not made available, R started to lose her temper. R said that RA was her son and that it was not T's place to step in and move the camera away from him. She added that there was a very clear pattern of T not facilitating R's calls with RA and that she was keeping RA away. T then said to RI that, like for RA, she was not forced to speak with R, and that it was up to her if she did. R said that T was saying that the children could not be *"lovey dovey"* with R and that RA had been kept away for weeks and that she was using marshmallows to keep him away on that day. She said that T should be *"ashamed of herself"*. T reiterated to RI that if she wanted to speak to R then she could speak. It was quite clear from the recording that by this stage RI had picked up on the negative tenor of the conversation between the parents. The way that both parents conducted themselves, including the begrudging manner in which T was saying to RI that she could speak to R, that inappropriate pressure was being placed on RI. It is hardly surprising that RI said that she thought that the call had been going on long enough and asked T whether she would mind if the call was stopped. Then R really lost her temper and, in a raised voice, said that T was *"absolutely disgusting"*, that the events would be *"raised in court"* and that T and D were *"alienating"*. The call was then terminated by T.

112. Although some of Ms. Watling's concerns and criticisms of R are justified, she has failed to stand back and consider the calls as whole, rather than concentrating mainly on the 7 June 2023 call. Prior to that call, on a number of occasions, RA had not been made available for the call. After her

handling RA's previous lack of involvement in the calls quite well and sensitively, due to what was happening in the June call and with T interjecting on the call, R could no longer hold her emotions in check. Ms. Watling appears to have focused in on this call in isolation and did not consider or put it into the context of what had happened during the other indirect contact calls that occurred between April and June 2023 and also how T and D on some of the calls had acted in a manner that may have also upset R. What happened during some of those calls is the fault of both parents because of their inability to effectively communicate. If they did so, T should not have felt that she had the need to try to extract information from RI in a series of questions in the call on 21 April 2023 about her being unwell and being left alone. Also as shown by the June 2023 call where events led to R speaking rudely to T, at times parents must place boundaries for the children about the importance of them attending indirect contact. Especially in circumstances where the children know that the parent in whose household they are in and who they feel loyal to strongly dislikes the other parent, that means more than saying to a child that you can speak to the other parent if you want to and you do not have to if you do not want to, it means actively encouraging them and making sure that the children are in place and ready before the start time for the indirect contact. I do not accept Ms. Watling's view that it is disrespecting RI when R points out to RI that when RI is saying that RA does not wish to talk with her that R still expects RA to speak to her. The problem is that the failure by both parents to maturely communicate results in RI having to take on a middleman role which should be one reserved to the relevant adults. Both parents should be encouraging the indirect contact, not creating an atmosphere where the children feel they are the decision makers about contact. This is especially so if the children are being drawn into the parental conflict which is exhausting for them in circumstances where they feel that they have a duty to minimise the upset for a parent, particularly T.

113. Ms. Watling outlined in the June 2023 report what happened when she had a visit to speak with RI at her school. RI mentioned talking about the lack of activities, play dates or interaction with R when they stay at R's house, stating that the time is occupied watching television or playing on their iPads. RI did say that they had been to Cubs once or twice and that occasionally they go swimming. RI said that with T there are plenty of activities and play dates. RI indicated that she felt uncomfortable when she and RA are speaking to T on the telephone because R will sit on the bed listening to them. I have seen a video where they were speaking to T in the bedroom in the presence of R, but from what I saw and heard on the video they did not seem to find that scenario

to be awkward. RI spoke about being present when the phone call between her and T was terminated by R. RI stated that in June she had been upset by R saying mean things to T during a telephone conversation.

114. Ms. Watling reported that RI told her that she wants to spend all her time with T and none of her time with R and was scared of how R might react when she heard that. Ms. Watling reported that RI said that she *"despises"* and feels *"uncomfortable"* living or moving between two houses.

115. Ms. Watling also visited RA at his school. Ms. Watling said that RA appeared healthy and comfortable. She said that he engaged in conversation and nodded with *"yes"* in reference to wanting to spend time with R and T, although he did say he would prefer to spend more time with T because they go to restaurants and shops.

116. Ms. Watling reported on what appears to be an unscheduled visit by her to R's home. She noted that the blinds were down on the property and the home seemed rather dark. She said that RA seemed *"lethargic, tired"* and did not engage with her as he had done at school. She noted that RA also did not engage with R.

117. Ms. Watling reported on what appeared to be an arranged visit at T's home when both the children and D were in attendance. She said that the home appeared to be *"brightly lit, tidy, organized and clean"*. She observed the children to be *"energetic, happy, calm and spontaneous"*. When she spoke to RI privately on that visit, Ms. Watling said that RI expressed her wish to spend all her time with T. When she met privately with T during the visit, she shared her concerns that R had not paid her $650 portion of RI's school fees nor paid for the advance holding fee for the next academic year. T told Ms. Watling that her primary concerns were:

(i) R prioritising her needs over the children's needs;

(ii) the children frequently returning to her care from R feeling unwell;

(iii) the lack of social interaction for the children when in R's care and a failure to take them to the hobbies;

(iv) R's failure to provide nourishing food to the children;

(v) R not consenting to the children travelling overseas;

(vi) R blocking counselling;

(vii) R cancelling contact with little or no notice;

(viii) R sending abusive emails;

(ix) there being a lack of transparency from R; and

(x) R making inappropriate comments about D to the children.

From the June 2023 report, it is not clear whether R had been afforded the same opportunity at that time to express her concerns about T to Ms. Watling or to comment to Ms. Watling upon T's concerns.

118. Ms. Watling also reported that T reached out to her and told her that the children were sick again when they returned after two days of contact with R. It appears that Ms. Watling then deemed it appropriate to immediately visit the children at T's workplace where they were waiting for D to collect them and bring them home. Ms. Watling said that the children appeared:

"unwell, lethargic, dark black under eye circles and with stuffy noses."

She said that RI was *"weak and shakey"* and that RA wanted to cover his head and lay down on the couch. The Court has seen a photo of the children taken at 8.13am very shortly before their return from R to the care of T. What is unusual is that the children in those images appeared very healthy and happy and the opposite of the picture painted by Ms. Watling and T. In her oral evidence Ms. Watling agreed that the children looked well in the photograph, but added that she could only report what she saw when she attended at the office. I am unable to determine why the disposition of the children appears to have deteriorated so rapidly in such a brief period of time on that day. Ms. Watling has determined that she saw the children looking unwell and has found that this was caused by R and she heavily relied upon that conclusion when making her recommendation. However, on the evidence before me, the finding expressed by Ms. Watling that:

"It seems to be the case that (the children) were healthy and upbeat before going to the (R's) home and returned to (T) in a completely different, sub-optimal state" is not as clear cut as she determines.

Also, her conclusion, which she relied upon when making the no contact recommendation, that the above event and RI having diarrhoea after another visit is an indication that the children are

experiencing enormous stress while in R's care which manifests itself in illness is not supported by expert evidence and is an unsafe one for her to reach in the absence of such expert evidence. It seems to place the blame for any such symptoms on R's care rather than factoring in the possible impact of any concerns the children may have:

(i) about the parental conflict when they are in either household; and

(ii) about adopting views about their relationship with R which are inconsistent with T's openly expressed views about R.

119. Ms. Watling also appears to rely upon the issues surrounding the payment of school fees by R when making her recommendations to discharge the Shared Residence Order and the imposition of a No Contact Order in the June 2023 report. Ms. Watling, unfairly in the circumstances of this case, characterises R as having a *"nonchalant attitude"* toward payment of R's private school fees. Even if she is correct in stating that R gave her excuses for not paying the school fees and that R was thereby putting her grievances ahead of the children's educational opportunities, that is not a good reason for making a no contact order. When forming her view that non-payment was due to R's grievances, Ms. Watling seems to pay no regard to the health issues that R had, R's employment issues as well as her having to travel to the UK for various family reasons. The non-payment of school fees or child maintenance is not a relevant ground in contact applications, nor, on the other hand, is the payment of school fees by a parent the test for granting contact to the paying parent. The test is what contact is in the best interest of the child. The argument that some parents put forward that no maintenance means no contact is not an attractive one and neither is a submission that a parent should have certain demanded contact just because they pay child maintenance. As the school fees issues have been relied upon by T, and Ms. Watling has raised it as a criticism of R, although there were periods of non-payment, they should also acknowledge that substantial fees have actually been paid by R during the periods of time when she has had minimal interaction with the children. There may be times when R has been inconsistent with the payments, but my overall impression is that she should also be given some credit for the considerable payments that she has made despite her employment and income difficulties and the lack of contact that she has had to endure.

120. On 23 June 2023, Ms. Watling was contacted by T and told that the children had expressed a wish not to attend R's property for contact and therefore T was not going to force them to visit but would

be keeping them at home for the day. I note that this was a Friday in the penultimate week of the academic year and therefore T's actions would mean that the children were having a further unauthorised absence from school. The merits of such an approach were questionable when one considers that Ms. Watling highlighted in the June 2023 report that RI's school attendance was a low figure of 87.23% with thirty-four unauthorised absences and seven authorised absences. After T had spoken to Ms. Watling, R reached out to her informing her that she had become aware that the children were absent from school and seeking her assistance to facilitate the contact. Before responding to R, Ms. Watling went to see the children at T's home. She spoke to the children privately and they said that they did not want to go to R's house on that day. RI told her that she was scared of going and repeated that she was worried that R would be angry with her if she knew that she did not want to have contact. RI repeated that they spend all the time on their iPads when at R's home. RA said that he didn't wish to be in R's care and that he felt sad when he was at R's home. Ms. Watling said that RA added that he wanted to stay at T's home *"full-time"*. I note that what RA told her when he was out of T's household and away from RI at his school is the opposite of what Ms. Watling states she was told at T's house on a day when the children presumably knew why they were being kept out of school. T reiterated to Ms. Watling that she would not be forcing the children to attend contact against their wishes. After that meeting Ms. Watling sent an email to R informing her of the children saying that they did not want contact and that she was not in a position to force them to have the contact.

121. Ms. Watling insightfully states at paragraph 107 in the June 2023 report that:

> *"The near total lack of communication between the parties"* was *"severely impacting on their ability to co-parent. She added that it appears this has resulted in (RI) feeling anxious, uncertain and fearful not being able to express herself and being unsure what information to share. RI is trying her best not to upset either parent. This is enormously pressuring for a nine-year-old, a huge burden for her to carry. The Applicant and the Respondent don't communicate leaving (RI to answer questions that usually the other parent could answer for putting her in the middle of their conflict."*

She rightly highlighted her concern that neither parent had taken up the recommendation for them to participate in co-parenting classes.

122. In her conclusions, it is apparent that Ms. Watling places great emphasis on what the children have told her and it appears that she accepts that as being their uninfluenced views. She has not considered whether what she says the children have been telling her since February 2023 should be accepted by her without question, despite their great similarity with views expressed by T and D to her and also by T in front of the children for months prior to February 2023. She has failed to consider whether these are the children's views or whether they are expressed to be supportive of T, because the children care and are sensitive about how T feels. When cross-examined on behalf of the Guardian, Ms. Watling conceded that when she was expressing her views RI *"might be parroting the adults in her life,"* but she did not know if RI was.

123. Ms. Watling made findings about a lack of activities and poor diet for the children when in R's care. In relation to the latter, in the June 2023 report, Ms. Watling states that not enough attention is paid to the provision of healthy meals by R. She bases her conclusion in the report on RI stating to her that she ate Burger King two nights in a row in June 2023. Although Ms. Watling is correct in her view that such 'fast food' should not be frequently consumed, I do not accept that the evidence establishes that healthy meals are not provided by R. In fact, there is evidence that appropriate food, albeit possibly not what might be labelled superfoods provided when one is following a fitness regime, are provided. Ms. Watling saw R making food for the children when she visited her home and at that time there was no criticism of what was being prepared.

124. After considering all the evidence at the final hearing, I am left with the impression that Ms. Watling, at times in the June 2023 report, was over-concentrating on trying to find and set out negative matters to raise about R. It appears that this may have been done to justify or fit in with her already reached recommendation of a no contact order, whilst at the same time failing to acknowledge or factor in the positives, some of which she has relied upon in her recent previous reports in which she had firmly recommended a shared equal contact arrangement. She also considered the negative events in isolation and did not put them into the wider context of what was happening at the time. The correct approach would have entailed:

(i) the carrying out of a thorough and balanced assessment; and

(ii) showing a balanced review of all the information gleaned and then to formulate the recommendations.

125. At the hearing on 11 July 2023, due to the nature of the content in Ms. Watling's Report and her oral representations then made and after hearing from the Guardian, I suspended the Contact Order in relation to RA and R. It was intended to be a temporary suspension, with there being such contact as may be recommended by the Guardian and Ms. Watling, who should have by then received a preliminary view from a child psychologist who both parties had agreed should be promptly instructed. I hoped that part of the psychologist's work with RI (and if needed, also with RA) would be to advise if or how contact could take place in a manner that would be in the children's best interests in circumstances where the Court was being told by T and the Guardian that RI was saying that she did not want to see R and was distressed at the thought of seeing R and where RA had reportedly given her mixed messages about contact. The intention of the Court was that contact would hopefully soon be reintroduced with psychological support for at least RI and guidance being given by the psychologist as to how contact could be best facilitated. At that time both parents were still agreeing that a psychologist should be appointed for that reason, to report to the Court and also to provide some guidance to the parents about the long-term therapeutic input that would benefit RI. At the hearing, directions were given to a five-day hearing commencing on 20 November 2023 to conclude the part-heard substantive hearing. A further case management hearing was scheduled for 14 August 2023.

126. Within a week of the hearing, on 18 July 2023, T filed a new Summons seeking *"emergency"* permission for the children to travel with her to New York for 14 days from 23 July 2023. Despite T not mentioning this at the 11 July hearing, due to the imminence of the proposed travel, on very short notice, the Court accommodated her by fixing a hearing.

127. When the matter came on before the Court for the 14 August 2023 mention hearing, further directions were given to the 20 November 2023 substantive hearing, with an increased estimate of eight days. Importantly, a further direction was given about the instruction of a child psychologist who should file their report by 20 October 2023. Ms. Watling had approached Dr. Anguelova and the Guardian provided her details to the parties. However, R disagreed with that appointment and said that she would prefer it to be Dr. Lam. This would inevitably cause further delay and it frustrated the Court's intention of having a psychologist's prompt input and guidance to assist with the reintroduction of contact. A pre-trial mention hearing was set for 3 November 2023, but that date was changed to 26 October 2023 to accommodate T's personal circumstances.

128. On 29 August 2023, the Guardian felt compelled to write to the Court to seek the Court's assistance due to issues that had arisen, and which were preventing her from carrying out her duties. The Guardian's concern related to a request made to her by T that the Guardian's meetings with the children should be conditional on all visits and questioning being recorded and/or that a third party should be present to witness the conversation/questioning. The Guardian reminded the Court that, at the case management hearing held on 14 August 2023, I had indicated that she should meet with the children individually, and in particular RA, in the days following the hearing. She recalled that I placed some emphasis on the meeting with RA because it was important to ascertain whether RA was expressing any reluctance about contact, whether he had positive emotions about it, or perhaps even had neutral emotions about it. This information could then inform the Court as to potential next steps which may be taken in relation to reintroducing contact between R and RA, including in relation to R's request that she be permitted to attend the 'parent morning' at RA's first day of school on 30 August 2023.

129. The Guardian informed the Court that, on the evening of 14 August 2023, T requested to reschedule a telephone call which had been arranged for that evening. In that email, T asked whether Ms. Watling could be present at the Guardian's meetings with the children, indicating that this would make her feel more comfortable. T suggested arranging a time for later that week while she was at work so she would not be in the home. In response to this latter suggestion, the Guardian indicated to T that it was not necessary for both a Welfare Officer and the Guardian to be present at the same meeting with the children.

130. On Wednesday, 16 August 2023, T cancelled the appointment and indicated that she would email the Guardian to reschedule the meeting. On Monday, 21 August 2023, T wrote to the Guardian at some length about a variety of issues which she indicated she had been considering since the 14 August hearing. T indicated that she had concerns about Ms. Clemens' role as the Guardian and her execution of her duties to that date. T indicated to the Guardian that prior to the Guardian's next meeting with the children, T would:

> *"need to understand what questioning will take place and what the procedures are to ensure an unbiased process,"* and T requested sight of: *"the framework/policies/procedures for how this happens with young children."*

It was in this email that T made the request that all visits and questioning be recorded, and/or that a third party be present as witness to the conversations/questioning. T offered to meet the Guardian to discuss the concerns raised in her email.

131. The Guardian responded on 23 August 2023, correctly informing T that much of what was raised in her email, for example in relation to the nature and scope of the psychologist appointment and questions and concerns in relation to her role as Guardian, were matters that would have been more appropriate for her to have raised at the previous Court hearings and particularly at the case management hearing on 14 August 2023. The Guardian, in consultation with Ms. Watling, went on to address T's questions about the child psychologist's report and the Guardian suggested that she would write to the proposed psychologist (at that time, Dr. Basson) for further information. This was agreed and was done. In relation to the other matters raised, the Guardian indicated to T that she was concerned about addressing the assertions by way of email correspondence as she had already provided her oral report for the Court and would need to provide a written report for the November 2023 hearing. The Guardian told T that she would have the opportunity to question her at the hearing.

132. T replied to the Guardian on Friday, 25 August 2023 indicating that she could speak over the weekend, and they agreed to talk at 7:00 p.m. on the following day. The Guardian stated that, during their lengthy phone call on Saturday, 26 August 2023, T made no mention of any concerns. The Guardian indicated to T that she would like to meet with the children on Sunday, 27 August 2023, and this was scheduled for 3:00 p.m., to take place at T's home. The Guardian duly attended T's home on the Sunday afternoon and spent just over two hours with the children, however T did not leave the room and T's father later also came into the room. The Guardian informed the Court that during previous visits, T would stay for a short time until the children were settled and comfortable, and then she would absent herself. The Guardian felt that due to the open plan nature of the living area, she was not able to have any meaningful time or substantive discussions with the children (in particular with RA) and felt only able to have exchanges about their play. In the November 2023 report, the Guardian felt that this had made it an *"unproductive"* meeting with the children save that she was able to reinforce her positive relationship with the children through playful interactions. She did note, from observing the children's interactions when they were playing, that, unsurprisingly due to the five-year difference in age, RI was very much the leader RA clearly

looked up to her and follows her lead. Unlike on previous occasions when T had been sensitive to the need to absent herself from the vicinity, her decision to remain around the area prevented the Guardian from conducting her duties as the Guardian for the children.

133. Understandably, the Guardian felt it necessary to make different arrangements to enable her to properly discharge her duties. On the Sunday, she sent an email to T indicating that she would like to meet with each child individually at her office. She asked that T's father (who was then visiting and providing childcare when T was working), bring them to her office on Monday at 1:00 p.m. She did not receive a response to this email and the children did not attend as requested on the Monday. The Guardian sent a follow-up email to T that evening requesting that the children be brought her office the following day (29 August 2023) at 2:00 p.m. The Guardian indicated to T that if the reason she did not have the children come to her office for the requested meeting was that her position remained as it was in her email on 21 August 2023 then T needed to let the Guardian know right away so that the Guardian could write to the Court for directions.

134. The Guardian stated that T confirmed by email later that night that that was her position. T asked that the Guardian provide her with a draft of her email prior to sending it to the Court, as she had offered to do in her email on 23 August 2023, so that T could ensure that it properly reflected T's concerns and suggested solutions. Given the time constraints, the Guardian provided a draft of the email she sent to the Court to T in advance of sending it to the Court. This is not something that the Guardian needed to do and neither did she need to wait for a reply before submitting it. However, the fact that Ms. Clemens did this is an indication of her sensitivity and courtesy towards T.

135. On 29 August 2023, following receipt of the Guardian's draft email to the Court, T sent an email to the Court. In that email she said that she needed to clarify some points for the Court as to why the Guardian and she were now seeking Court directions. T stated that her request that the individual conversations between the Guardian and the children be recorded or be held in the presence of a *"neutral"* third party was not an unreasonable request due to concerns she has about how (RA's) opinions have been relayed, and:

> *"…how gaining (RI's) perspective was handled."*

136. In her email to the Court, T shared some of the content of the email that she had sent to the Guardian. She informed the Guardian that she had:

"…concerns about the role of the Guardian as it's being executed…the way it's currently being executed is to abide by the legal system regardless of what they want and what's in their best interests."

She questioned why the Guardian had been appointed only after Ms. Watling had:

"recommended a no contact order."

T also shared her belief that:

"After 18 months with the family, DCFS has a full understanding of the dynamics, and their findings and recommendations reflect that."

T imputed that the Guardian's appointment had occurred because R had insisted on it. That is wrong, although R may have wished there to be an appointment, it was something that the Court raised and the Court felt to be, in this case, necessary and in the best interests of the children. I was conscious that this had the hallmarks of a potential child alienation case involving parents whose emotions and thought processes were often consumed by their animosity to the other and their personal emotional needs resulting in them, at times, conducting themselves in a non-child centric manner.

137. T stated to the Guardian that at all visits with the children to date, she had explicitly asked the Guardian to speak to RA about his wishes. The Guardian disagreed and said that on each occasion T told her that she did not feel that RA was sufficiently mature enough for the conversation or to understand it. T highlighted that the Guardian stated in Court on 14 August 2023 that RA had expressed no view that he did not wish to see R as being a reason for contact resuming. T questioned how the Guardian could express such a view if she did not ask RA and said that:

"This causes huge alarm bells for me, as you purposely did not speak to him or ask him his views even though I asked you to."

138. Due to her views, T told the Guardian that prior to the next Guardian visit, T needed to understand what questioning would be taking place and what the procedures would be to:

"ensure an unbiased process."

T added that:

"Thus far, the process, from my perspective, has not been to understand their wishes. It has been to re-instate contact. As such, and as per the legal framework regarding guardians, I feel I need to see the framework/policies/procedures for how this happens with young children so I can understand it further."

139. T told the Guardian in the email that she was happy for her to speak to both children:

"...once I receive above mentioned policies/procedures" as she needed *"to ensure that the interaction will be neutral and unbiased to allow the children to have a real opinion."*

T said to the Guardian:

"My perspective of your interaction with (RI) was not questioning to establish what she wanted but rather a coercion to attempt to get (RI) to agree to visitation."

140. With this background, at the hearing on 31 August 2023, the Court had to consider the issues relating to the Guardian ad Litem. T was clearly questioning the Guardian's competence, impartiality, assessment procedures and professionalism. In my *Ex-tempore* Ruling given at the hearing, I stated that:

"There is nothing presently before me to justify the holding of such views. It is yet another example of one of these parents questioning the impartiality of a professional who expresses a view that does not concur with their wishes. It is an approach that both parents have adopted during these proceedings. The Court must be careful not to permit a parent to persist with inappropriate complaints about the competency of a professional at the assessment stage to such an extent that it becomes a litigation tactic as it places undue pressure on that person when trying to carry out their professional duties."

I concluded at paragraphs 41 and 42 in the perfected transcript of the Ruling:

"41. I have regard to the abovementioned duties and assessment methods of a Guardian. I have carefully reviewed T's concerns about the Guardian's performance of her duties hitherto. However, I am satisfied that the Guardian has been acting appropriately in what are trying circumstances. The professionals who have been involved in this case have at times had to endure conduct from the parents to a level that is not acceptable. The

Guardian must be able to complete her assessment and representation of the children in the manner that she feels is necessary to enable her to discharge the duties in the best interests of the children. For the avoidance of doubt, a parent may request recording of an interview with the child, but there is no requirement for the Guardian to record interviews with the children and there is no requirement for there to be a third person in the room when she is representing the children's interest by interviewing them. It is a matter for the Guardian whether such a recording takes place.

42. In this case I am not satisfied that it is appropriate to attach the conditions sought by T on the Guardian and I direct that T make the children available for interview by the Guardian upon sufficient notice from the Guardian. Although I have indicated that there is no need to attach a condition, there is an expectation that notes shall be taken of the meeting which may become evidence at the hearing."

141. In my *Ex-tempore* Ruling, I went onto highlight my ongoing concerns, despite both parents still saying they agreed that a psychologist should be appointed, about the failure of the parties to engage one. This was clearly undermining the informed consideration of a potential reintroduction of contact between the children with R in a manner that would be in their best interests. I noted in the Ruling that the latest issue seemed to be about payment for the expert's services, with T now stating that she could only contribute $2,500, which would be far less than 50% of the cost.[31] I indicated that if the parties continued to fail to instruct a psychologist that, upon my return to the jurisdiction in October 2023 after an extended period of required leave, I would have to decide whether the Court would proceed with the November 2023 hearing without a psychologist's input.

142. On 12 October 2023, the Guardian provided a written update by email for the Court. In the update, the Guardian informed that she had carried out an observation visit of contact between both children and R on Sunday, 24 September 2023. She reported that:

"One of the difficulties that arose on the day of the 24 September visit was that (RA) struggled to leave (T) when it was time for me to take him to (R)."

[31] One of the psychologists had indicated a preference that both parties pay equally for her services and via a third party, to ensure that there is no perception of bias. At the time T had been asking the Guardian and Ms. Watling about insurance coverage for the psychologist.

She also said that:

> *"Prior to the 24 September visit, (RI) told me that she did not want to attend. She was very adamant about it, and disclosed that she has been made aware that (R) had called (T) names in the past, which made (RI) conclude that (R) is mean to (T). From my discussions with (RI), I concluded that going forward it will likely be necessary for (RI) and (R) to engage in family counseling/therapy to help them work through this issue together. I also felt that forcing (RI) to go on the visit would be counterproductive, for several reasons. I spoke with (RA) after my meeting with (RI) and told him that (RI) would not be on the visit and asked if that would be okay with him. (RA) said it was okay and we discussed what types of activities he wanted to do when at (R's) house."*

Adding that:

> *"...when the time came to go to the visit, (RA) was reluctant"* and she indicated that: *"In the end RI decided to go to the visit as well, essentially to make things easier on RA."*

143. However, when it came to the actual visit to R's home, the Guardian reported that:

> *"The visit went very well. (RI) was reluctant to engage in the first 20 minutes or so after our arrival at (R's) home, but soon warmed up. Both children engaged very positively and playfully with (R), and over the 4 hours that we were at (R's) home it was clear that they enjoyed their time with her very much. (RA) was quite affectionate with (R). (RI) was more reserved with her affection than (RA), however that lessened over the course of the visit. Both children talked about what they would like to do next time, and (R) and (RI) discussed what (RI) would like (R) to make for dinner on that occasion. (RA) was quite sad and teary when it was time to depart…. I have spoken to Ms. Watling regarding the success of the visit and suggested that we arrange for contact to resume between the children and R, or at the very least between (RA) and (R) Ms. Watling has confirmed that the Department is not in agreement, and that their position remains as it was in Ms. Watling's last welfare report."*

A more in-depth analysis of that important visit was set out in the GAL November 2023 report and that detail is more fully set out from paragraph 190 herein.

144. T sent a lengthy email to the Guardian in the evening after the visit. In the email T said that:

> *"…it's way more emotional than I would care to write but I genuinely need some support at this time. I personally need a little bit of time out from this process…. A few days without calls and emails."*

She set out in detail about the family background and stated that:

> *"I'm trying to give you background you can see why I'm so emotionally drained by all of this and why the kids are so confused and messed up by yet another round of this process. They just want to be left alone to live."*

T said that RA was a *"very upset little boy"* who was *"literally screaming"* at the thought of having to go on another visit with R and that she was *"struggling watching my son suffer"*. T wrote that RA was *"clinging on"* her and saying that he *"won't leave me again"*. T said that RA told her:

> *"…mummy I missed you and got upset because I wanted to come home to you."*

If RA said that, it is an indicator that he is sensitive to T's emotional upset when he is under R's care or in R's company. T added that:

> *"Contact has ceased (every time but this time by (R) herself) and been re-established by lawyers, mediators, DCFS and now you. If re-established now, in 12 months' time I will be here again the kids will be even more damaged."*

T wrote:

> *"…I am their mother and the only constant they have ever known who they turn to for everything. I am not just their primary caregiver now; I have been their only real caregiver their whole lives and they can go six months without speaking to (R) and it have zero impact."*

145. In light of the fact that the input from a child psychologist was not eventually felt to be necessary or a financial priority when considering the welfare of RI due primarily to the late position taken by T in relation to that, I note with interest when T wrote the following about RA and RI:

> *"He has been such a stable and happy little boy his whole life whatever is going on in his head, this whole court process is psychologically messing with him…. But within this process he is starting to suffer, regardless of what the court views R visitation, that is*

fact…I have already been through this same pattern of psychological damage with RI when contact was re-established in a very similar way by DCFS and it took me a long time to get hurt emotionally straight again. Now RA is following the same pattern and to be honest I'm absolutely distraught about it tonight. I know the court is trying to 'see things' but no one takes into account how damaging this process is the children who have been thriving until this point."

If a child psychologist had been instructed the veracity of these concerns would have been explored by that expert and it would have better informed the Court when it is trying to *"see things"*.

146. What is interesting about this email, sent so soon after T had been informed that it had been a very good visit with the children having lots of fun, is that nowhere in the email is there an enquiry made to the Guardian to elaborate further on what happened during the visit. There is a total failure and a disinterest on T's behalf to consider any of the potential positives. It is quite clear that at that time and thereafter T was not willing to accept that there were any positive elements to that visit, and this is because it did not fit in with her position that she, and only she, should be regarded as being a parent for these children. That sentiment has been frequently expressed throughout these proceedings, and again in the email sent to the Guardian on 24 September 2023.

147. In the update the Guardian mentioned:

"In preparation for making my recommendation, I met with both children at school last Friday. (RI) has expressed that although the 24 September visit was "fine" and (R) is "nice" ((RI) actually decided to throw away a note that she had written to the Court at our previous meeting indicating that (R) is mean to (T) because she calls her names), she still does not want to go on any visits. She did say, however, that if she has to go, she does not want the visits to be overnight."

The Guardian then insightfully said:

"(RI) confirmed that she is not worried about anything in particular happening at such a visit, but from our discussions it seems she may (be) concerned about how (T) would feel if she and (RA) were away for that long. I asked her whether or not she thought school pick-ups would be easier than having to switch between (T) and (R) directly - she confirmed that it probably would, but she added the caveat that she would prefer not to go at all."

This does seem to be an unfortunate situation where both children know that their visiting with R would be upsetting for T, her being the parent who has been their primary carer in recent times, and they are taking on a more adult role of trying to minimise her distress and not go against her perceived wishes. Although not uncommon for children to wish to be supportive of the parent that they are with and tell them what they feel that parent wishes to hear, especially if they are their primary carer at the time, this is an unfair burden for children to believe that they should carry.

148. In her update, the Guardian reported a meeting that she had with RI after the contact visit. They talked about RA going to contact without RI and she said that seeing him having fun on the visit did not make her feel better about him going alone, but it helped her to understand that he is fine going on the visits. RI said that it is up to RA, and if he was okay with going on a visit then she would be fine with that. The Guardian said that, in her contact visit meeting with RA, he confirmed that he had a fun time at R's home. The Guardian said that RA initially agreed with the idea that school pick-ups would make transitions easier for contact, but then he changed his mind and said that it would not. RA told the Guardian that if he was going on the contact visit that he would like RI to be with him. The Guardian felt that RA became reserved at their meeting when talking about that visit and any future visits. The Guardian said that she had a concern that RA was:

> *"feeling conflicted"* adding that: *"he has previously expressed to me that he thinks (T) is scared and sad when he and (RI) are with (R), and I believe that may be impacting (RA).*

149. I find that the Guardian's summary of the visit presented a positive interaction between the children and R having regard to:

(i) what T had been saying about the children's views concerning R prior to the assessment contact visit;

(ii) some of the negative things that had been said to the Guardian by the children about seeing R; and

(iii) having regard to the passage of time that had passed since the previous contact had taken place.

What was observed on the visit also seems 'to be at odds' with the communication made to the Guardian from T about how RA reacted when he returned to her home in the evening after the visit.

Despite the content in T's email, having regard to the first-hand observations made by the Guardian, it is not surprising that the Guardian wished to encourage and explore the development of contact between R and the children (in particular with RA).

150. In her written update, the Guardian indicated that she had spoken to Ms. Watling regarding *"the success"* of the visit and she suggested that they arrange for contact to resume, at the very least between RA and R. It is evident, from the Guardian's evidence at the hearing, that she was rather frustrated by Ms. Watling's confirmation in reply that the DCFS was not in agreement and that the Department's position remained as in her previous report.

151. In her written update, the Guardian turned her mind to the possibility of arranging further contact. When highlighting potential scenarios in relation to the contact issue, consistent with my long held and expressed view, she indicated:

> *"The first, and most ideal, being that the psychologist appointment would have taken place, her assessments would have begun and she may have been in a position to provide some preliminary recommendations."*

As the parties had been unable to put this in place, the Guardian suggested that if she and Ms. Watling were able to agree that contact should take place, then the Guardian could make those arrangements directly with the parties without the need for Court intervention. She stated that, as no such consensus had been reached, she would notify the Court that her view is that contact should be arranged and ask the Court to give any necessary directions. The Guardian highlighted that an opportunity for contact could be during the school mid-term break (23-27 October 2023) or RA's birthday on 23 October 2023. The Guardian also made recommendations about the handovers with a view of minimising parental conflict.

152. T took issue with the content of the Guardian's written update. Within an hour of receiving that update, T circulated an email in which she expressed a view that the account given by the Guardian was:

> *"very one-sided and unrepresentative of fact…"* and it gave *"… a false perspective to the courts."*

T said that the visit had been delayed for two hours because the children were extremely stressed on the day and were adamantly stating that they were not going to R. T wrote that the Guardian had said that she would force the children to go, but that they would be told that they would only have to go once. T said that the Guardian said that the visit had to take place *"to satisfy the Judge"*. T said that after two hours of *"coercing them"* the children reluctantly went on the visit, but only on the basis that it would be just for one supervised visit. T wrote that, on the very evening after the visit had taken place, the children were stressed and that when she asked them how they felt about another visit to R, they were both distraught. T said that RI told her that she was sick of the whole process and of not being heard and that RA asked if they could *"pack bags and leave"*.

153. Upon reviewing the Guardian's written update, the Court reached out to the parties and indicated that the Guardian should feel free to arrange any contact visits that she wishes to attend/supervise as a part of her assessment. The Court also expressed that it was:

> *"alarmed and astonished to hear that there appears to be no advancement on the psychologist's input."*

With this in mind, noting that the final stage of the part-heard hearing was scheduled to restart within the month (in November 2023), on its own motion, the Court indicated that there should be a further mention hearing on 20 October 2023. Taking into account the non-availability of T and Ms. Watling, the proposed mention hearing date was changed to initially 23 and then finally to 26 October 2023.

154. On 19 October 2023, the Court received an email communication from the Director of the DCFS. In that email the Director raised her concerns about the impact that the required Court attendances were having on Ms. Watling's wider work commitments, as she had been reassigned to the Child Safeguarding Team on MASH. It was evident that the Director was indicating that she did not believe that she should make Ms. Watling available for all the days of the upcoming part-heard hearing because of her caseload. In an email in reply sent on 20 December 2003, copied into all the parties, the Court indicated that events had occurred since the last hearing date held in March 2023 which Ms. Watling had not had the opportunity to address or comment upon. The Court highlighted the clear conflict in the positions being taken by DCFS and the Guardian and also the fact that one

of the parents was levelling a number of criticisms about the conduct of Ms. Watling. The Court indicated that:

> *"In such circumstances, I had presumed (to ensure fairness to the officer) that the welfare officer and the Management at DCFS would wish her to be afforded the opportunity to be at Court to enable her to hear what was being said about her conduct/recommendation(s), thereby leaving her in a position to then address (if she deemed it appropriate) the representations made and evidence produced relating to her. It would, of course, be inappropriate for me to correspond with the Director or meet with the Director, in the absence of the other parties, to discuss the nuances or case management of this or any ongoing case. However, the Director is invited to attend the mention hearing next week to enable her to make any representations in the presence of the other parties concerning the role of and attendance of the welfare officer in this case."*

155. On 25 October 2023 at 1:30 p.m., T emailed the Court seeking to adjourn the case management hearing fixed for the next day. She sought the adjournment because she said:

> *"I have been strongly advised that "given the manner in which the case has been conducted and the interventions of the Court" I need to get Counsel before proceeding."*

She stated that she was in the process of seeking legal representation. The Court acknowledged the communication and indicated that its present view was that the 26 October 2023 hearing should proceed.

156. At the pre-trial review hearing held on 26 October 2023, T made an application to adjourn the substantive hearing due to start in November 2023. T also indicated that she now objected to the instruction of the child psychologist because she could not afford to meet the expenses and because she felt that the proposed instructions for the psychologist were not appropriate having regard to the decision of ***RE GB (part 25 Application: Parental Alienation)*** [2023] EWFC 150. The Court declined to accede to the application for an adjournment and the reasons for this were set out in an *Ex-tempore* Ruling.[32] The parties are referred to the content of that Ruling, as I do not intend to set out in detail herein the content of the Ruling. In the Ruling, I noted the positive contact report provided by the Guardian, but I also indicated that:

[32] A perfected version of *Ex-tempore* Ruling provided on 31 October 2023.

> *"Despite the positive observations about contact in the Guardian's email report, partly because there remained such a difference of opinion between the Department and the Guardian, I formed a view, which I still hold, that it would be inappropriate for the Court to make any change to the current contact arrangement without concluding the evidence and making findings based on all of the evidence. This is a further reason why the final hearing must be able to proceed in a timely fashion and why any further delay would not be in the children's best interests."*

Ms. Watling was the Social Worker assigned to the MASH referral and in her June 2023 report[33] I then expressed a concern that T may be seeking to adjourn the hearing to enable her to issue an application to remove the children from the jurisdiction which she would attempt to latch onto the current part-heard hearing. I said that because T's position statement for the pre-trial review hearing indicated for the first time that she had recently become engaged to D and that she would be making a removal application because she wanted to relocate to the USA to live and work that:

> *"At this juncture, having regard to the significant delay already, it is extremely important for the welfare of the children and the parents that the current proceedings are concluded. Then, any findings made following the substantive November hearing and any order made, the Court and the parties will at a later date be in a better and more informed position to consider the merits of any removal application."*

157. In the *Ex-tempore* Ruling, I considered the impasse concerning the long-overdue appointment and much-needed involvement of a child psychologist. I noted that it appeared that the parties were not going to be in a position to instruct a psychologist even if the case was further adjourned for that to be done. I noted that T no longer felt that a child psychologist was needed for these proceedings, and regrettably presumably also to give guidance and assistance to particularly RI. One would have expected both parties to have recognised that the recent report from the Guardian concerning what happened before, during and after the assessment visit that the children had with R, illustrated why a psychologist report was necessary. Of course, by this time T had for many months formed the unwaivable view that the children's future should be one without R in it. With that in mind, T should have considered that, if the children's (in particular RI's) mental and emotional well-being would be detrimentally affected by contact to such an extent that attempts should not be made to

[33] See paragraph 96 above.

reintroduce or develop it (which T submits is the position), the psychologist would have been well placed to share relevant expert evidence about that which in turn may have bolstered T's case.

158. I reluctantly decided *"balancing all of the factors, and having regard to the delay and the impact that further delay would have all the welfare of the children"* that the part-heard hearing should continue and conclude without evidence from a child psychologist. When reaching that decision, I did not rely on the case of ***Re GB*** or ***Re C (Parental Alienation: Instruction of Expert)*** [2003] EWHC 345 (Fam) as, apart from one question in the draft letter of instruction prepared by the Guardian, the expert was not being asked to determine the factual matrix of disputed allegations. I accepted the concern expressed by T in relation to a question requesting an opinion on whether there had been parental alienation and I indicated that the other questions on the draft letter of instruction would have been appropriate, and if answered, helpful to the Court and likely beneficial to the longer-term interests of RI. The failure of the parties to instruct a child psychologist over the course of these drawn-out proceedings is most regrettable and one sincerely hopes that they will now have sufficient insight to both take a different path in relation to this avenue of assistance, particularly for RI after this Judgment.

159. After the 26 October 2023 hearing, and in compliance with the directions:

(i) the Guardian filed the GAL November 2023 report;

(ii) Ms. Watling filed an updated report dated 9 November 2023 ("the November 2023 report"); and

(iii) T filed two affidavits on 17 November 2023.

On 2 November 2023, R provided the Court and T with unsworn statements from Amanda Walker and Red McCarthy. T emailed the Court that she did not require Mr. McCarthy to attend, but she did require Ms. Walker to attend not by video-link for cross-examination. I replied to the parties:

> *"Having read the submissions made by both parties, who it appears are both asking me to make an administrative decision about the issue, I have decided that these witnesses' oral evidence can be presented by Zoom. I will have regard to (T's) expressed concerns when I decide what weight or importance to the issues to be resolved, if any, are to be placed upon Walker's evidence. It is a matter for "T" whether she wishes to cross examine Mr. Red McCarthy. It is a matter for "R" as to whether she wishes to call him to speak to the*

content of his affidavit. "T" should be aware that, even if she chooses not to cross examine, the Court may have regard to the content of his affidavit. Again, the Court will decide what weight or importance, if any, to the issues to be resolved should be placed on his evidence."

In the end, at the hearing, R did not call either witness and did not seek to rely upon their evidence.

160. In the November 2023 report, Ms. Watling sought to address why she did not agree with the Guardian's recommendations. Ms. Watling initially had informed the Guardian that she would revert to her about the Guardian's contact recommendation, after she had discussions with DCFS management. Ms. Watling reported that she had told the Guardian on 4 October 2023 that:

"DCFS is not in agreement with contact being reinstated and that the recommendation from her June 2023 welfare report continues to be recommended. The recommendation to have no contact between the children and (R) while parenting capacity assessments on both parents take place has not changed. Additionally, the children are old enough to articulate their resistance and hesitancy for contact. They are letting the adults know they don't want contact. When I met the children on 26 October 2023 the children expressed not wanting to have contact with (R). (RI) gave the reason that she feels generally uncomfortable around (R), not because of anything she says or does but because of who she is. (RA) didn't articulate a reason for not seeing (R)."

She added that:

"My concern regarding the children while in (R's) care, is that they seem to be experiencing a level of psychological and emotional instability which needs to be further assessed."

I note that, the clear recommendation had been given at paragraph 128 in the June 2023 report that there should be a no contact order. I accept that Ms. Watling then indicated that there should be a review in 4-6 months, but it was unclear why she was suggesting that as she had reported that she saw:

"no hope of the situation improving."

It appeared by the November 2023 report, and after possibly seeing the disparity between her position and the one being suggested by the Guardian, that Ms. Watling was back-tracking from such a draconian recommendation. In the report, her revised position was that she was saying that

the intention was always that a no contact order was possibly only to be in place until the parental assessments were completed. Ms. Watling again did not elaborate on what should happen in relation to the children maintaining a relationship with R if T refused to engage in that process. The written recommendation in this report was reconfirmed by Ms. Watling when she gave her oral evidence.

161. In the November 2023 report, Ms. Watling indicated that she:

> *"feel(s) that the children's psychological health is at risk and it's already been confirmed by expert at the Wellness Center that (RI's) is."*

It is important to note that the report which Ms. Watling relies on for her opinion, the Centre June 2023 report, is a *"Summary Report of Play Therapy Interventions"* prepared by a clinical mental health counsellor/registered play therapist. Ms. McField was careful to state, in the header of the Centre June 2023 report, that:

> *"This report does not represent a comprehensive psychological assessment of (RI), nor does it represent expert testimony."*

The primary purpose of the RI's participation in play therapy was to:

> *"provide her with a safe and unbiased environment where she could safely explore, express and process emotions."*

It is right to highlight that Ms. McField said that RI's mental health was at risk due to the highly contentious family system. What emerges from Ms. McField's report is that she assessed both parents as being *"at risk"* for concerns related to anxiety and her criticisms relate to both parents' actions and inability to manage their own emotional needs and not, as Ms. Watling now seems to suggest, that they should solely relate to R.

162. In the November 2023 report, Ms. Watling states that:

> *"My concern regarding the children while in (R's) care is that they seem to be experiencing a level of psychological and emotional instability which needs to be further assessed."*

Apart from again straying into the area of giving expert psychological evidence, it is not clear how she reaches the conclusion that this concern is only when they are in the care of R. Prior to 2023,

she consistently expressed the view, albeit with justified balanced concerns which she levelled towards both parents, that contact should continue and that was what the children wanted. However, her view has fundamentally changed based on fairly limited interaction between herself and the children and hardly any assessment observations of the children with R in 2023. When one looks at the November 2023 report it appears that, after the June 2023 report, Ms. Watling only met with the children once, namely on 26 October 2023. Prior to that, in preparation for the June 2023 report, she saw them once each alone at their school, once at T's home and once at T's office. For the June 2023 report she only saw RA briefly at R's home. She had one home visit with both children at R's home when preparing the February 2023 report. Therefore, Ms. Watling has only seen both children with R only once in 2023 before the November 2023 report and later saw just RA one additional time with R. In her oral evidence Ms. Watling stated that the information she had gathered was sufficient and that she did not need to see the children again despite her changed recommendation. In the November 2023 report, Ms. Watling did not consider any of the positives about the contact interaction reported to her by the Guardian, who had recently assessed them in R's care, when she repeated her view, without balancing the detrimental effects of a further extended period of no contact, that there must be no contact before both parties have completed parental assessments.

163. Ms. Watling's summary sets out the reasons that she says that children gave to her on 26 October 2023 for not wanting to see R and they seem rather unconvincing. She said that RI said that she:

> *"feels generally uncomfortable around (R), not because of anything she says or does but because of who she is."*

Noticeably, RA did not articulate a reason for not wanting to visit R, he just:

> *"kept shaking his head and putting his thumbs down."*[34]

I do not accept Ms. Watling's view that the children were *"letting the adults know"* that they do not want contact. In fact, Ms. Watling stated in her oral evidence that, although RI was very clear about not wanting contact, she accepted that both children must be looked at separately and the objection to contact was clearer from RI than from RA. It is correct to report that they were expressing that view to T, who they wished not to upset and that they were repeating that during their brief meetings with Ms. Watling. However, their interaction with R and the content of some

[34] Ms. Watling's oral evidence on 20 November 2023.

comments made by them at school (when away from T's oversight) which are reported by the Guardian paint a far more positive and different viewpoint from the children about contact with R, especially for RA. Although Ms. Watling opines that the children are old enough to articulate their resistance and hesitancy to contact with R, as evidenced by what the Guardian has seen and their reported change of view in relation to that occurring immediately after they return to T, I do not agree that they are able to do so freely or independently from what they feel T may wish (and for RA independently from what he feels RI may wish).

164. The impression I garner from Ms. Watling's written and oral evidence is that insufficient consideration was given by her to the observations reported by the Guardian and to her suggestions. In fact, when cross-examined by the children's attorneys, Ms. Watling stated that she had *"not read in full"* the GAL November 2023 report.

As mentioned above, Ms. Watling stated in the November 2023 report that, before she could *"communicate"* about whether she agreed to the Guardian's recommendation of reinstating contact, she would need to have a discussion with *"DCFS' management"*. Ms. Watling had not observed any meaningful contact between the children and R in 2023. To reject the possibility of exploring the setting up of some form of contact for the reasons expressed by her with over reliance upon her views expressed in her previous report, does not give the impression of a child agency being willing to adequately consider, what was highly relevant new information about the recent contact visit with R. What was observed at the contact visit was inconsistent with Ms. Watling's earlier expressed and ongoing view. It appears that Ms. Watling, and the team members she discussed this case with at the DCFS, were placing a great deal of reliance upon views and information being frequently shared with them by T and at times by D and adopting an unbalanced interpretation and application of parts of the recommendations in the Centre June 2023 report.

165. In the November 2023 report, Ms. Watling refers to the therapeutic input from the Centre and her view that the Centre was saying that they could not continue to offer the therapy for RI because:

> *"They could no longer ethically work with the parents."*

In fact, the Centre could not work with the parents due to the manner in which both parents and D were inappropriately engaging with the Centre and between themselves. In light of the views expressed by the Centre, Ms. Watling restated in the November 2023 updating report that a

parenting capacity assessment must take place to assess whether the parents can act in the children's best interests, adding her view that must happen before the DCFS and the Court can make a final decision regarding contact. She, similar to the June 2023 report, did not report anything about what she/DCFS or the parents had done to set up such an assessment. She again failed to comment on whether, having regard to T's unhelpful stance in relation to assessments (including her obstructive conduct relating to the Guardian's contact assessment), how such an assessment could actually take place. Ms. Watling added that:

> *"It is important to be able to clearly ascertain whether the children are psychologically safe."*

Ms. Watling failed to comment on the fact that it was T, who is the parent who has belatedly decided that the previously long agreed assessment by a child psychologist of RI was not appropriate, or she would not equally contribute to its cost, and that as, a consequence, that assessment has not been able to take place. It is evident that post that time to the date of this Judgment, T's household has been able to locate sufficient funds for social travelling off-island and the Guardian with some force has expressed her disappointment that those sums have not been better allocated to obtaining the assistance of a child psychologist. It could be argued that Ms. Watling's recommendation might enable a parent who is seeking a no contact order to extend a no contact situation if she does not actively seek to put in place the third-party assessment that the Welfare Officer says is required before consideration can be given to the children having any contact with the other parent.

166. The Guardian filed the GAL November 2023 report for the hearing. It was a very comprehensive report and it repeated most of the details shared in her earlier interim report. In her oral evidence the Guardian took the Court through the GAL November 2023 report in great detail and in cross-examination she re-emphasised the events and her views set out in the report. At the end of the hearing the Guardian confirmed that having been present throughout the hearing, and after considering all of the evidence that she had received and heard, her recommendation and views remained the same as that set out in the GAL November 2023 report.

167. In the GAL November 2023 report the Guardian agreed with Ms. Watling that the parents should attend parenting classes. She also said that the children attend family counselling[35]. However, that is where the Guardian's recommendations diverge from Ms. Watlings', as she recommends that the Shared Residence Order remain in place for both children and that there should be a:

> *"defined care schedule providing for the children to be cared for by both parents on a relatively equal basis"* with *"a phased reintroduction to any care schedule put in place by the Court."*

The Guardian recommends that the Court consider other changes to the parenting arrangements necessary to reduce the opportunity for parental conflict to arise and that would include a care schedule being set up designed to give limited opportunity for parent-to-parent handovers; school/camp pick-ups.

168. The Guardian indicated that she had:

(i) conducted numerous meetings and phone calls with both parents; and

(ii) corresponded by email and text with the parents on numerous occasions with them.

She also met with RI's teacher and previous year teachers, RA's teacher, the school counsellor and the school nurse at the children's school. She met T's father and had many meetings and dialogue with Ms. Watling. The GAL November 2023 report included the following list of her in-person meetings with the children post her appointment and pre the filing of the GAL November 2023 report.

Date	Child	Location	Duration
2 July 2023	RI & RA	T's home	3 hours
5 July 2023	RI & RA, together and separately	Dart Park	35 minutes
8 July 2023	RI & RA, together, and RI separately	T's home	2 hours
27 August 2023	RI & RA, together	T's home	2 hours
13 September 2023	RA, by himself	RA's school	35 minutes

[35] The Guardian recommends that this should be arranged by R and should take place during her scheduled time with the children only, to avoid the difficulties previously faced by the Centre and detailed in their report.

Date	Child	Location	Duration
13 September 2023	RI, by herself	RI's school	45 minutes
21 September 2023	RI, by herself	RI's school	45 minutes
21 September 2023	RA, by himself	RA's school	25 minutes
24 September 2023	RI & RA, together and separately	7 Mile Shops	2 hours
24 September 2023	Observation visit with both children & R	R's home	4 hours
6 October 2023	RI, by herself	RI's school	30 minutes
6 October 2023	RA, by himself	RA's school	45 minutes

One can deduce from the above and from the content in the GAL November 2023 report that this was a very thorough assessment conducted by the Guardian. In addition to that, it is the most recent in-depth assessment of the family especially when compared with the reduced interaction that Ms. Watling had had with the family in 2023. This, coupled with the fact that the Guardian's oral evidence was a presentation of her written evidence, means that there is merit in setting out in some detail the content of the GAL November 2023 report.

169. The Guardian set out in some detail in the GAL November 2023 report of what happened at some of the meetings that she had with the adults and with the children. There is no need to rehearse all that she says about each meeting, but there are certain interactions that should be highlighted herein. During her first meeting with T, which was via video-link on 30 June 2023, the Guardian informed T that she would like to see the children in R's care in R's home on the Monday. The Guardian reported that T became visibly upset when she heard that and began to cry. The Guardian expressed a concern about the children picking up T's emotions and her anxiety about the visits if T spoke to them about it over the weekend and she suggested that she would discuss it with the children when she saw them at T's houses on the Sunday.

170. At the Sunday visit, the Guardian noted that the children were happy and comfortable in their environment with T. She said that T left her with the children in the room to give them some time to talk. The Guardian reported that RI told her that she did not want to meet with R whether it be at her house or in a park. RI said that would not like it if RA went to R's house alone, because she

wanted her and RA to do things together. RI said that she was worried that R might be angry with her because she told Ms. Watling that she did not want to see her. RI said that she thought that R had shouted at her when she called her by her shortened name rather than *"mommy"*. It is clear that R gets upset when the children no longer refer to her as mummy and use the shortened name. That is understandable, because it does not identify as a parent but just as an adult. R contends that T actively encourages the children to call her R by her shortened first name and does so to diminish her as a parent. Whether that is accurate or not, it is clear from T's evidence that she, for quite some time, has not discouraged the children from calling R by her name. I am satisfied that part of the reason for T adopting that approach is because T feels that she and not R should be regarded as a parent of the children and also that it is a way of unsettling R and in turn her relationship with the children.

171. The Guardian reported that on the Sunday visit, RI told her that she did not like the lack of activities that they did at R's house and that they stayed at home and spent most of the time playing on their iPads. I note that this echoes the concern expressed by T even when the parties were still in a relationship. RI commented that in the past she had said that she had wanted to go with R but, after D told her that she could tell Ms. Watling what she really felt about going, she said that she told Ms. Watling that she did not want to go. It is questionable, in the absence of any expert assistance (for example a psychologist that the Court tried to persuade the parties to engage to assist and guide them about addressing contact issues with the children in a manner that would be in the children's best interests), whether D should have been advising the children, especially as it appears from the filed evidence that her personal view echoes T's view that R should be removed from children's lives. RI said she wanted the break in going to R's house not to be for a few weeks, she wanted it to be *"forever"*. I note that the Guardian recorded that RI said that, when she is at R's house, she thinks about T and that T is *"sad and lonely"* when she is there. RA was at the table when this discussion was taking place and heard what was said. It is clear, as already mentioned in this Judgment and as observed by Ms. McField in her report, that RI is a sensitive child who seeks to please and there is evidence to show that she seeks to minimise any distress that might be caused to T.

172. After the meeting, T continued to raise reservations about contact taking place. She sent an email to the Guardian informing the Guardian both children were upset about the prospect of seeing R

and she asked the Guardian if she would be willing to see the children again before arranging any contact visit. The Guardian did not proceed with the suggested visit with the children and R and instead agreed to meet with T and the children at the Dart Park. Before that meeting, the Guardian spoke to R and shared with her what RI had told her. R, at the Guardian's request, provided an appropriately worded brief note to be given to RI by the Guardian.

173. At the meeting with the children at the park, T moved away to enable the children to speak with the Guardian in her absence. The Guardian noted that RI straightaway was ready to go into talking about additional reasons why she did not want to see R anymore. The Guardian, concerned about the effect of a conversation that nature in the presence of RA, stalled the conversation until RA had moved away to T. RI then asked the Guardian if she could tell her about the two reasons that she wanted to discuss. The first reason concerned R feeding her Yorkshire pudding and Burger King because they contain carbs. This was noteworthy because on one of the indirect contact calls RI specifically asked R to make her Yorkshire pudding and beans[36] and there is evidence that T places great emphasis on minimising carbs and healthy diets. The second reason was because of the lack of activities whilst at R's home. These both repeat concerns that T has had for quite some time. The Guardian changed the conversation in relation to the calls involving the children when they are in each parent household. RI agreed with the Guardian's observation that it is stressful and that it is difficult when parents are getting divorced with lots of arguing with the child being stuck in the middle. The Guardian indicated that it is hard for a child being put in that position and for that child to then make sure that nobody got their feelings hurt and that RI was *"very much in agreement with that"*. The Guardian then gave RI the note written by R and RI asked her if she had to read it. RI read the note and said that it was *"nice"*. The Guardian reported that RI asked her if she could meet with and talk with her again. The Guardian concluded from the discussion that RI was under a lot of stress because of the parental conflict which was spilling over into the contact time in each household and that RI was finding it very difficult to *"navigate"*. The Guardian added when talking about RI:

> *"The tension between her parents has taken away the fun part of being able to spend time with both parents. It was also clear that (RI) was not at all excited about the idea of having to go back to splitting time. This is understandable; it has clearly not been a good experience for her. When splitting time is not done correctly and sensitively by the parents,*

[36] See paragraph 107 above.

it can be very stressful, draining and tiring for children and it can make them want to stop altogether."

174. In relation to her initial visits with RA, including at the park, the Guardian reported that he did not express or demonstrate any reluctance or hesitation about going to R's house or having a contact visit with R. The Guardian said that she paid particularly close attention to RA's reactions at the meeting at the park because of what T and indicated to her in her earlier email and the Guardian stated that she did:

"not observe any fear or trepidation when speaking with RA about going to R's house for a visit."

175. On the day after the visit at the park, T sent an email to the Guardian in which she said the children *"didn't react brilliantly"* to (R's) letter and that RI had written a response to be given to R. The response was rather abrupt and terse and said:

"To (name), I'm good and happy were I am I don't miss you and I will not see you. Good bye (name) from (RI), Ps: me and RA do not miss you."

On the next day T called the Guardian and reiterated that both children had been upset by the letter, that RA had been with R when she wrote the reply letter and that RA had told RI to throw R's letter *"in the bin"*. It was during this call that R tried to make arrangements with T for the overdue observational visit between R and the children. T said that she did not want to be the one to transport children to visit because she felt she would be breaching their trust, but the Guardian expressed the view that it would be better if T took them as it was important that the children saw her as being on board with the visit and did not pick up upon her anxieties and negativity. T also told the Guardian that she did not feel that the Guardian was properly fulfilling her role because she was still trying to set up the visit between R and the children (or at the very least with RA) despite the fact that RI was saying that she did not want to go.

176. The Guardian was due to attend T's house in the morning to try and help the children feel more comfortable about the proposed visit in the afternoon. In the morning T sent the Guardian an email commenting that RA was really upset and that he:

"strongly does not want to go"…"why is (the Guardian) so mean to me."

The Guardian was concerned that, due to these comments and what T had said about her not fulfilling her role, a mentality was developing of the Guardian being on an opposing side which was possibly already being passed on to the children. With that in mind, the Guardian expressed a view to R that it would be better to cancel the imminent meeting to enable the Guardian to continue developing her rapport with the children. Although disappointed by the further delay in seeing the children, the Guardian reported that R understood the Guardian's observations and concerns.

177. The meeting still took place between the Guardian and the children at T's home on that day (8 July 2023). The Guardian stated that when she came into the kitchen RI gave her the letter which she had written to R, but RI asked her not to open it. During the visit, T helpfully arranged it so that RI and the Guardian could speak privately. The Guardian felt it better not to tell RI that she had read the letter, especially when RI reiterated to her that she should not read it. The Guardian noted that this was a very different request to what she had been told by T in her email with the attached letter, namely that:

"(RI) keeps asking me to get it to you".

RI indicated to the Guardian that it was polite to respond to letters when someone writes to you, and she said that R would *"feel fine"* when she read the letter, and that RI was *"not trying to be mean"*. Of course, a letter *phrased* in the way that it was would have been very upsetting for any parent to receive.

178. The Guardian reported that RI again stated that she did not want to go to R's house. RI told her that she was happy and settled at T's house and is not very happy at R's house. RI said that RA feels the same as her and he does not want to go to R's house anymore. RI said that she knew that as that was what RA told her when she asked about it.

179. The Guardian had time to do some worksheets with RA during the 8 July 2023 visit. The Guardian told him that he could draw anything he wanted in a blank space on one of the worksheets. RA drew three hearts and a fourth shape. RA told the Guardian that the three hearts were one for Mommy, one for D and one for *"mommy (R)"*. The Guardian said that she again observed R carefully during this visit and that he did not have any negative reactions when she mentioned R or R's home.

180. The GAL November 2023 report shows that the next visit with the children (partly due to her and the children being away) took place approximately six weeks later, on 27 August 2023. Because of what happened on that day and since 14 August 2023, the Guardian felt compelled to write to the Court to seek the Court's assistance. Her concerns and the relevant events were set out in an email sent on 29 August 2023, which have been detailed at paragraphs 129 to 139 above and which were considered at the 31 August 2023 hearing and resulting *Ex-tempore* Ruling.[37]

181. After August 2023, the Guardian met with the children separately at their school on 13 September 2023. The Guardian felt that meeting them there was of great assistance because it was a neutral location outside of either parent's home. She felt that, as the meetings were held at the school, they went very well, and she was able have more focused discussions with RI and was able to speak more directly with RA about his feelings. During the meeting with RA, one of the worksheets that she drew on was called *"a map of me and the people who matter"*. On that sheet RA drew RI, himself, T, a dog, a centipede and a rock which he had seen in the room she thought looked funny. The Guardian asked him what he wanted to put any other person in the remaining box, and he drew a picture of D. The Guardian asked him if he wanted to put (R) on the page and he initially pointed to a blank space at the bottom and said that he could put her there. He started to do the drawing then stopped and handed the page back to the Guardian, saying that he was done. When the Guardian asked him to confirm that he did not want to put mommy (R) there, RA shrugged his shoulders and shook his head a little. She asked him about how he felt when R came to the school on the first day of school and after him thinking about it for a little while and as he was not answering, the Guardian asked him if he wanted to use one of her emotion stickers. RA asked her where a smiley face was, and he was going to take one, but he eventually changed his mind and picked a sticker with a face which looked like it was yawning. When the Guardian asked him whether he had chosen that one because he had been tired, he said "*yes*". He then kept looking for a different sticker and after a while he picked one up which had a frown on it which he put next to the yawning sticker. He drew another sticker which looks similar to the frowning one, but he said that it was not a sad face but was a:

"I don't know face".

[37] See paragraphs 129-139 above.

He said that the face is:

"like when you're not sure how you feel".

He nodded when he was asked whether he felt confused when R came to the school and that he was not expecting her to be there. He talked about when he got a certificate at his previous school, and he said that he had felt happy because both of his *"mummies"* were there on the day that he got the certificate. Later, when dealing with a sheet which had a 'your wishes box', the Guardian asked RA about R's house and he mainly shrugged his shoulders in reply. When she asked him whether he wanted to go to R's house he initially started to say yes but then shrugged his shoulders and said no. The Guardian had the impression that RA was struggling, and he was not quite sure how to answer so she took a different approach and asked him questions about R's house and things he likes to do when he's there. The Guardian reported that:

"When I would ask about whether he wanted to see (R), (RA) seemed unsure of his answers, so I asked him if he was worried about going. He nodded, and I asked him what he was worried about and he shrugged his shoulders. I asked if he was worried about how someone else will feel if he goes there, and he said yes. I asked if he was worried about how (T) feels and he said yes. I asked him how he thinks she feels when he is at (R's) house, and RA said that he thinks she feels "scared and sad". I asked if he would want to go to (R's) if he knew that (T) wasn't going to feel scared and sad, and that she was happy, and RA said yes."

This exchange gives important insight into how RA is sensitive to T's feelings and how and why he worries about how she feels if he spends time with R.

182. In the Guardian's meeting with RI at the school, she utilised a workbook. In relation to the people that live with her, she mentioned T, RI, D and D's dog and that she has only one house. On another page she mentioned that D and T help her with homework. When dealing with the question about what she likes about her life, she said that she wanted to travel to places in the world and it seemed that New York was her favourite place as she had recently taken a trip there. Later they got onto a 'sorting things out page' and there was a picture of a Judge. When she was asked about the decision that she would like the Judge to make, she wrote that she did not want to go to R's house and asked the Guardian whether she would be telling the Judge that and she reiterated several times that she *"never ever"* wanted to go there. RI elaborated saying that she was happy now and did not want to

be switching back and forth between houses again as she found that tiring and later added that they have no activities at R's house and:

"…just sit on our iPads playing games the whole time…like 24/7."

RI said that she had changed her mind about equal time and that she was insistent when saying that she was:

"…not trying to be mean, it's just that I don't like (R)."

RI said that it was not T telling her to say these things. RI told the Guardian that she does not really love R and that:

"I wouldn't really say that she's one of my moms…. I don't really think she' my mom. I don't wanna call her Mommy (name) anymore, I just wanna to call mommy 'mommy'." RI said that R was not mean, but *"she's just kind of there and kind of calm."*

The Guardian noted that, when she told RI that she would be telling the Judge about RI's views that he might order something different to what she said she wanted, RI was *"clearly disappointed"* and not happy with *"the notion that a different decision could be made"*. RI said that she would feel *"super duper good"* if the Judge decided that she did not ever have to go to R's, but if you made a different decision to that she would feel *"super duper bad"*. When she was asked about RA going alone to R's house, RI said that RA would not want to do that because he would be scared without RI, he does not like to do anything without her, and he would not want to go anyway. RI said that she might be *"ok"* going to see R for a month as long as it would then stop forever. The Guardian then mentioned to RI that she needed to see her and RA with R and would she be willing for that to be arranged for the weekend. RI said that she would only be willing to do it for a month and that that did not mean every weekend, so just for two weekends. As it turned out T and the Guardian could not arrange that visit for that weekend, and plans were made for it to be the following weekend of 24 September 2023. The Guardian said that she would meet with the children during the week to let them know about the plan for the weekend visit.

183. On 21 September 2023, the Guardian again saw the children separately at their school. The Guardian told RI that the arrangement would be for T to take them to Icoa restaurant for breakfast and then the Guardian would walk them over to R's house for a short visit. RI immediately said that she did not want to go and was getting upset. There was an exchange between the Guardian

and RI, the importance of which requires me to set out in some detail herein. The Guardian said that she could see that RI was *"struggling with herself"*, and asked RI what was going on. RI's response was:

"(R name) is mean…. She's not mean to us, she's mean to mommy."

When the Guardian explored this with RI, RI took a blank page and wrote:

"She is mean to mommy."

and then drew a line to the "She" and wrote R's shortened name. RI said that R was mean because she calls T names then added the words:

"She calls mommy names" as a second sentence so that the note then read: *"(R's name) is mean to mommy. She calls mommy names."*

The Guardian said that RI then folded the note and wrote:

"To: Judge From: (RI)" and gave it to the Guardian.[38]

The Guardian then enquired about calling of names thinking it might be in relation to words said in verbal exchanges on FaceTime calls which had been highlighted by Ms. Watling. However, RI informed her that the name-calling had been in an email which T had shown to her, but she could not remember any of the names used. RI became worried saying:

"Is mommy going to get in trouble?"

RI said that T told her that she was old enough to see these things. The Guardian then asked whether she remembered any of the names that (R) had used, but she said she could not really remember. The Guardian understandably felt that this was *"quite a breakthrough moment with RI…a bit of an "a-ha" moment for RI, and for me"* as RI had previously been holding back on the reasons why she was angry at R. It was highly inappropriate for T to have allowed RI to read the negative comments written by R about T, especially as, as is highlighted by the Guardian in her evidence, RI is a child who is sensitive to T's emotions. It draws that child into the conflict. It clearly upset RI, and at times has clearly influenced her views about her own relationship with R. Although R's language may on occasion have been more intemperate and abusive than T's, they have both

[38] The note has not been produced to the Court because RI crossed out all of the words with a black marker and threw the note away at a meeting with the Guardian on 6 October 23.

exchanged indelicate words about each other in their correspondence. I am sure the children would be upset if they had read what each parent has said about the other, and, of course, they should never be privy to those exchanges. When Ms. Watling was cross-examined about this email, she accepted that it was:

"very concerning" and was: *"definitely not appropriate."*

However, Ms. Watling stated that she had not spoken to T about it and had not put it in her which ?? report as it:

"was not in (her) mind" and as it *"did not fit in with (her) recommendation."*

184. As the conversation continued RI was adamant that it was not going to be possible to fix the relationship between her and R. Importantly RI told the Guardian that T and R *"hate each other"* and when asked what makes her think or feel like that RI responded:

"Are you kidding me?" Adding: *"They don't speak to each other, they don't say hi to each other, they don't even look at each other. They just hate each other."*

The Guardian then told RI that this must make it stressful when moving from one parent to another to which RI agreed then saying that she never wanted to have to do that again.

185. The Guardian was concerned by what she heard especially about the email, and she justifiably stated in the GAL 2023 November report that:

"I expect that part of the difficulty here is that the disclosure of the email to (RI) may have occurred at a time when tensions were high and (RI) was under a lot of stress from the conflict between her parents, which she clearly perceived to be hatred for one another, and when (RI) had become fairly exhausted with switching between houses and unpleasant FaceTime calls, etc. If it was coupled with discussions - either with (RI) or overheard by (RI) - about the activities, food, etc., while in R's care, that would only have added fuel to the fire. The effect of it all is that (RI) has started to express feelings that R is not her mom and not part of her family.

This is a view that has also been expressed to me by (T) several times, which may be having an influence on (RI's) views as well, regardless of whether or not it has been expressed to

her verbally. As such, when I am trying to work through these issues with (RI), there is a significant barrier impeding and blocking the discussions.

Being able to talk about the importance of family in our lives and ideas on how to mend the family relationship and repair any hurts that might have occurred, requires the common ground that the child recognizes that the person is in their family. It is clear from the various welfare reports filed in this matter that (RI) did not always hold the view that (R) is not one of her moms, and my observation visit on 24th September…provided several indications that it may not have pervaded too deeply yet, as did my meeting with (RI) on 6th October, however therapeutic intervention is likely needed. I expect both individual therapy and family therapy between (RI) and (R) *will be beneficial.*

This need for therapeutic intervention was very evident to me at my meeting with (RI). Given how upset (RI) was, I told her that was OK that she that she not go on the visit, that she had discussed some very real feelings about what's been happening, about how everyone has been behaving, and that I could see that she was very mad at (R). I said that we can just put a pause on things for now and we can see what is going to happen beyond that, but that as far as this visit was concerned, she did not need to go."

186. The Guardian told RI that RA would still be going to visit R because he said that he was *"OK"* going as long as he knew that (T) was happy about it because his main concern was how it was making her feel. RI was not happy to hear that and said that RA would not want to go. The Guardian expressed a view in the GAL November 2023 report that:

> *"(RI) was in a real battle with herself at that point in our meeting, and it was very evident. She was going back and forth between saying she doesn't want to go and saying that she needs to go for RA's sake. I became quite concerned about this – at the age of 9, it isn't RI's responsibility to be RA's protector."*

The Guardian felt it was important to take the burden off RI about RA and she said that she was the one making the decision that RA was going to go and not RI, so RI need not worry.

187. Before the meeting ended, the Guardian then went through some more worksheets with RI. In the box labelled *"Where you live?"*, RI wrote: *"Mommy's house"*. In the *"Contact with family and friends...(say who)?"* box, RI wrote R's shortened name and then crossed out the words *"family"*

and *"friend"* in the question and wrote in *"not my family"*, referring to her view that R is not part of her family. In the *"Anything else?"* box, she wrote R's shortened name. For the question *"Is there anyone you can talk to about how you feel?"*, RI circled the word *"Yes"* and answered that she could speak to D and T. On the *"Feeling safe"* page, under the heading *"What makes you feel safe?"*, RI wrote: *"mommy"*, *"Laura*[39]*"*, *"RA"* and *"my relatives"*. On the *"My hopes for the future"* page, the prompt at the top is *"Sometimes we don't know what is going to happen in the future, but we can help you think about it"*, and then under *"Family section"* she wrote: *"to never see (R's shortened name) again"*. On the *"Worryometer"* page, RI wrote R's shortened name above *"Huge, scary worry"*.

188. After RI left, the Guardian started her meeting at the school with RA. The Guardian informed him that she and T had spoken and that they both felt it would be a good idea for him to go have a visit at R's house on the Sunday. RA said that would be *"OK"* and repeated that when he was told that it would be just him going without RI. They then had wider discussions about what he might do when he is at R's house. The Guardian was of the view that RA was *"very positive about it all"*.

189. In the GAL November 2023 report, the Guardian set out her observations arising from the Sunday, 24 September 2023 visit between the children and RA. She had already provided some details in her 12 October 2023 written update provided for the Court.[40] In the buildup to the visit correspondence was exchanged between T and the Guardian. At times the correspondence was quite heated especially when the Guardian raised the way in which messages should be relayed to the children by T about R. T reiterated RI's reluctance to attend, which the Guardian accepted and recommended that she did not attend. There was a clear disagreement about what RA's views were about the visit to R. In the emails T set out what her views were about R and those written in her final message prior to the meeting taking place concisely encapsulates what T had been saying throughout these proceedings. T wrote:

> *"And I am very sorry but you absolutely do not understand my frustration as a mother who has been fighting to protect her children for many years against an abusive, drug and alcohol addict with severe mental health issues who was incredibly violent in front of the children on many occasions in their short lives (including with knives) and who weaponises*

[39] The Guardian.
[40] See paragraphs 142-143 above.

them and creates nothing but chaos in their lives. I remind you I walked out of the family home with them in pjs in a foreign country with no family or stable job because she was violent in front of the children again and attempted to strangle me with them screaming in the room. I walked out to protect my children even when I had nowhere to go and no support network. I worked incredibly hard to build a life for us and keep my children safe, all whilst attempting to shelter them. I will never stop fighting to protect my children. (R) may be a medical doctor but her job does not actually detract from what she really is. A violent abuser with a long history of abuse against partners and mental health issues. She also has at least twenty years of addiction, whether that be gambling, opioids or alcohol. And she has admitted to being addicted to opioids and having several severe breakdowns; all whilst the children have been visiting her home unsupervised.

I also know my children very well and we are extremely close, mainly because I have raised them alone my whole life. I have to stand back and watch my children constantly go through this and have their whole childhoods ruined. They deserve a normal life free from this. I do not wish to take a call today because I have worked 70 hours this week and I'm trying to enjoy my kids today. I have 5 kids here today to give my kids a nice Saturday. Once again we all deserve a normal life.

They used to come back from (R's) home mentally and physically Ill. The schools commented they were different children when I had sole custody. They were happy, stable. As you have seen them. When (R) also has visitation they are very different children."

T then added when referring to the Guardian:

"I then repeatedly have someone[41] who knows neither them[42] or I, tell me they are appeasing me. I'm sorry but that is extremely patronizing."

190. In the GAL November 2023 report the Guardian went into more detail about what happened immediately before and during the important 24 September 2023 visit, adding relevant detail to the summary I set out from paragraph 142 above. The Guardian said that she met T and the children at the restaurant as planned and that RA smiled and had no negative reaction when he saw her. There was then a discussion about where R's house was, and the Guardian said that RA did not have any

[41] The Guardian.
[42] The children.

negative reaction to that discussion. When RA finished his food, the Guardian indicated that it was time to go, and RI responded that she did not want to go. The Guardian replied that she did not need to go, that it was fine if she did not want to, and that she and RA could go without her. The Guardian reported that by that time RA had climbed onto T's chair, climbed up in her lap and was starting to say that he also did not want to go. T comforted him and told RA several times that it was *"ok"* if he wanted to go and that she just wanted whatever he wanted. RI, in the view of the Guardian, unhelpfully interrupted occasionally, indicating that RA did not want to go. To her credit, T tried to keep RI from making those comments which RA could hear. The Guardian tried to encourage RA, and reassured him that T was "*ok*", that she is not sad. When T and RI went to the bathroom RA did not say that he did not want to go, but that he wanted RI to come also. The Guardian spoke separately to T and told her that she needed to be telling RA that she would be happy for him to go rather than just saying that whatever he wanted would be alright with her. The Guardian said that she told T that if RA had told her at home that the Guardian had been lying when she said that RA said that he was willing to go that indicated to her that he was very concerned about T's feelings and therefore felt he should not go. T did try a few ways to get RA to go, but the Guardian reported that T was unable to hide her emotions and at one point started crying and that RA was *"reading her mood"*.

191. The Guardian reported that it took about two hours after her arrival until they began walking to R's home. This only happened when the Guardian made clear that it was time to go, started gathering up RA's belongings, and at that stage RI said: *"OK, I'll go"*. On the way RA was calm and RI said she was only going there for RA and not because she wanted to go.

192. Upon arrival, the Guardian said that the children settled at the table and RA gave R hugs. RI was initially more *"standoffish"*, and her responses to R's greetings and queries about whether RI wanted anything were short. The Guardian felt that R handled this well. R sat between the children and put her arm around RI and asked her some questions, but RI gave fairly reserved responses initially and she did not return R's physical affection. RA showed no reluctance and freely hugged R and engaged with her. The Guardian felt that it was clear that RI still needed a bit of time before she might engage with R. This changed, around fifteen minutes into the visit, when the discussion changed to the holiday that they had been taken to Universal Studios and RI joined in when they were looking at photographs and videos of that. Thereafter, RI began to engage freely with R. The

children took the Guardian to show her their room. RI found some of her bathing suits in her closet and suggested going for a swim, but RA did not want to. R suggested that they plan on it for next time since the visit had started a bit later than expected, and both children seemed content with that. R and RI were talking about how RI had grown taller and about clothing, with RI deciding that she wanted to dress up and put on a fashion show for them. However, RI then got distracted by playing a new game with R, and Guardian felt that R *"was clearly having lots of fun with it"*. For about two hours in the middle of the visit, RI, RA and R sat at the dining table together and played without interruption with R ably switching back and forth between both children, as both wanted her attention. When one of the children raised D's name during their playing with R, R simply continued on with the flow of the play. The Guardian saw the children enjoying making pictures for R and helping her decide the places around the kitchen where they wanted her to hang them. RI told R that she was going to draw something *"really nice"* for R and they both hung up that drawing.

193. R's dog needed to go out for a walk and, although RA did not want to go, RI said she wanted to go with R, and the two of them left. When they returned a few minutes later the Guardian noted that they were *"chatting away"*. The Guardian shared a summary prepared by R in which she detailed what happened during the short dog walk. R said therein that the two of them talked about and put on sunglasses which R had bought for RI in the UK. In her summary R said that on the way back on the walk she told RI that she had *"missed her and loved her always"* to which RI responded with a *"yes"*. R said that she then asked RI to reflect upon all the times since RI had been little when they had done fun and nice things *"just one on one and with other mummy,"* with RI responding with a *"simple yes"*. R wrote that she said to RI *"that I will always be her mummy as I have been since she was a baby"* to which RI gave a similar reply to those previously given. R felt that the walk was relaxed but *"not quite like the "normal (RI)" she still came across as guarded but not rejecting or cold - especially when I told her I missed and love her always"*.

194. After the dog walk, they all played a ball game in the house. The Guardian noticed that when RI was on a team with R and needed to get R's attention before throwing the ball to her, she seemed conscious of not using the word *"mummy"*. The Guardian reported that:

> *"There were one or two times during the visit that she called her mummy, but she stopped herself the second time and it was noticeable to me that she was struggling to figure out*

what to say when she wanted R's attention. (RA), on the other hand, said "mummy" freely throughout the visit."

195. Later in the visit the discussion turned to where the children wanted to have their dinner. It was decided that, as it was a school night, the children would get back to T's home in time for them to have their meal there, but that they would plan to have dinner together on the next visit to R's. They discussed what R should cook for them on the next visit and the Guardian reported that RI had *"lots of fun naming fancy ingredients".* Then, towards the end of the visit, RI, RA and R settled down on the sofa to watch videos and RA *"cuddled with (R)"* and RI *"held R's hand"*.

196. When R had to tell the children that it would be time to go soon RA became upset and started crying, saying he did not want to leave yet. The Guardian reported that R:

"comforted him, gave him hugs and kisses and told him that he would come back again soon."

The Guardian said that:

"It took about 15 minutes or so of comforting, and RA was still quite teary on the walk across the street, but (R) joined us most of the way, which seemed to help. When (R) hugged him goodbye, (RA) began tearing again, but (R) handled it well. (RI) was quiet during the departure, but didn't cry."

When the children were returned to T, the Guardian let her know that:

"It was a very good visit and that both kids had lots of fun" but that RA *"had been a bit teary and needed some comforting."*

197. When summarising the visit in the GAL November 2023 report, the Guardian stated that:

"Overall the visit was extremely positive."

Having read her review of the visit and having no reason to believe that it is an inaccurate report of the visit, the Guardian's expressed view is certainly a valid one. She noted that although RI had been clearly resistant about going there:

"She soon let her guard down and very clearly enjoyed her time with (R)", interacting "freely and playfully" with her.

The Guardian observed that:

> *"When it came to physical shows of affection, (RI) was clearly more guarded, but did eventually accept (R's) hugs and held her hand when they were watching TV together. She felt that although RI called R "mommy" at least once and then stopped herself doing it, she also did not want to say (R's shortened name) or R's first name either, which made it quite awkward when she tried to get R's attention."*

198. The Guardian's summary in relation to RA was that he did not need much more than a minute or two to settle in with R and he interacted with her almost immediately, including giving her hugs and kisses and being playful and loving with her. The Guardian noted that RA referred to R as *"mommy"* several times throughout the visit.

199. From page 41 in the GAL November 2023 report, the Guardian spoke about what happened after the 24 September 2023 visit, adding some detail to the summary that I set out from paragraph 144 above. From page 43 to page 47 in the GAL November 2023 report, the Guardian provided more detail about the meeting she had separately with the children at their school on 6 October 2023, this being the next time that she saw the children after the visit between them and R.

200. At their meeting at the school, RI saw the note to the Judge which she had written at their 21 September 2023 meeting and RI said that she no longer wished to send it. RI said that she was feeling a bit better after the meeting with R but added:

> *"I still don't want to go"* and *"she's nice, but I still don't like her."*

RI said that she did not really have a favorite thing that she did during the visit with R and was reluctant to admit that she had enjoyed playing any games there. When the Guardian asked RI how she would describe the visit, she replied:

> *"Fine, it's just that I don't want to go."*

When the Guardian asked RI if there was a reason for that, she said:

> *"I just don't like to go."*

The Guardian asked RI if the visit helped her feel better that if she needed to go again, it would be alright to which RI responded:

"No, I still don't want to go…. I was having fun, but I still don't feel comfortable there. Like, I don't feel comfortable to stay overnight…or visit."

When the Guardian told RI she would likely want to schedule another visit soon, RI replied in a bit of a whiney voice:

"Why?" and then: *"Do I have to go?"* adding: *"I don't think I will want to go this time."*

The Guardian asked RI if she was worried about how T was feeling, and RI responded that she does not worry about T's feelings, but she cares about T's feelings. RI said T feels *"upset"* when her and RA are at R's *"because she misses us"*. RI said it was different when they are away from T at school, as that is for a shorter time than when they are at R's, and she still would not want to go to R's home for shorter visits. When RI was asked whether a contact pick up at school would make things easier, RI said: *"Sure, I guess"* but added that it was *"hard to plan it out in my head"*. It is evident that RI was still expressing negative views about having contact with R, but her views about RI as a person were nowhere near as negative as those which she had previously expressed to the Guardian.

201. When the Guardian asked RI whether seeing RA having fun on the visit with R made her feel any better about RA going by himself in the future, RI replied:

"It didn't make me feel better, but that it made me understand a bit more that he was fine going."

RI later added that she did not know whether RA was fine in going to see R and suggested that the Guardian should ask him.

202. After the meeting with RI concluded, the Guardian met with RA at the school. The Guardian asked him if he had fun at R's house on our visit and he said he had, although he could not recall his favourite part. RA smiled when the Guardian told him that she enjoyed watching him and R play with his dinosaurs and his superheroes toys. When the Guardian asked him what he would like to do next time they went to see R, he responded: *"I don't know"*. He shrugged his shoulders when he was asked further questions about what he did during the visit with R.

203. RA agreed that the Guardian did not really need to be at his next visit with R and he nodded when the Guardian said to him that he was *"pretty sad"* when he had to leave the last visit and that it is always hard to leave. The Guardian reported that RA again nodded when she said to him that at least he gets to go back. He nodded again when the Guardian asked him if it is hard to leave one mommy for the other and when she agreed that it can be tricky to have to do that. When she asked RA if it would help if he was picked up at school for the visit instead of having of leave one mommy for the other, he nodded but then changed his mind and shook his head. When the Guardian asked RA if it would be alright with him if he went to some visits at R's without RI, he again shook his head. RA did not say anything in the affirmative when he was asked questions about R doing anything with or for him for his birthday.

204. The Guardian felt that RA was struggling with their exchanges, so she introduced some worksheets for him to play with. One of those was a family tree worksheet and she told him that one can draw a picture of yourself and pictures of the people in your family in the spaces in the branches, like sisters, brothers and parents. The Guardian reported that RA drew a picture of T first and gave her short hair. Then he drew a picture of himself, and then a picture of RI. The Guardian told him that family did not all have to be in the same house to be on the same tree, but RA shook his head and said he was done. The Guardian said *"what about mommy (using R's shortened name)?"* and RA said, *"no"* and he did not take up the opportunity to draw her into a different tree. The Guardian felt that RA was *"getting a bit sad"* and despite her making gentle suggestions to him, he did not wish to take up the opportunity to draw R at all.

205. The Guardian reported that she told RA that:

(i) families look all sorts of different ways;

(ii) no two families are exactly the same;

(iii) it is alright to have two mommies or two daddies, or one mommy and one daddy;

(iv) it is okay if they are not all in the same house; and

(v) it is alright to like to be with both of them.

The Guardian noted that at this stage RA started *"tearing up",* so she comforted him and asked what was making him sad, but he did not answer. They then played some games and did some coloring which cheered him up and by the end he was *"his usual self"*.

206. In the GAL November 2023 report, the Guardian shared the views that she held following the observed contact visit and the concerns that then arose after the above school visits. The Guardian stated:

> *"Having observed the children at the visit with (R), I had seen how much they thoroughly enjoyed their time with her, and had noted the affection showed to her by (RA)in particular. Although I maintained the view that (RI) and (R) will benefit from participating in family therapy to further mend their relationship, (RI's) behaviour on the visit on 24th September suggested clearly that there was fertile ground for contact to resume even without therapy taking place first.*
>
> *At my meeting with (RI) on 6th October, there had been a marked difference in her demeanor. Her decision that she did not want to provide the judge with the note she had written to him previously about being (R) being mean to (T), expressing a desire to shred the letter and when that was not possible, crossing out all the words and throwing it away, spoke volumes.*
>
> *(RA's) demeanor at the 6th October meeting was also different and I was very concerned that he is feeling confused and torn between his love for both of his mothers. As Ms. Toolsiram noted in her 26th August 2021 report, although she was speaking about (RI) at the time, being separated or forced to choose between one of his parents can have a negative impact on his well-being and contribute to psychological harm."*

207. The Guardian's above views are shared by the Court. Understandably, accentuated by the separation and break in contact that have occurred, RA views T as his primary parental figure and carer. However, despite that, it is clear from the Guardian's evidence that R is still a significant person in RA's mind. Despite the passage of time, RA is still emotionally attached to R and he positively interacted with her and enjoyed visiting with her. He was clearly upset when the visit came to an end and the position that he has been placed in by parental conflict is something the parents should feel ashamed about. It would be wrong to say that the parental conflict is solely due to the child issues, it is much deeper than that. The parents dislike each other intensely for a wide number of reasons, including their obvious incompatible personalities and their emotions which have clouded their insight as to what may be in the best interests of the children. The result of their, at times selfish and self-centered approach, manifests itself in the upset exhibited by RA (and RI) and in how conflicted they have made him.

208. In the GAL November 2023 report the Guardian set out her attempts, even if contact could not be agreed, to set up some further observational visits and she rightly remarked that**:**

> *"…the resumption of contact would have provided me the opportunity to see the children and (R) during a time when there was regular contact taking place, which would have been helpful to my assessment, even having additional observation visits would have been of assistance. In addition, it would have enabled me to assess whether having (R) collect the children directly from school created less stress for the children and, in particular, (R)."*

Even if Ms. Watling/the DCFS were maintaining a no contact order stance, one would have hoped that they would have expressed a similar view to the Guardian's one above, especially as they had failed to meaningfully observe any supervised contact for a very long time. Regrettably, there was no comment from Ms. Watling on the merits of observational visits and, by the DCFS' unsupportive silence, the impression was given that the obstructive position taken by T to the setting up of assessment visits was the correct one and thereby hindering the Guardian's assessment.

209. In the GAL November 2023 report, the Guardian indicated that on the morning of Wednesday, 18 October 2023 she wrote to T to inform her that she wished to schedule a second observation contact during the afternoon on 19 October 2023, with R picking up the children from school and T then later collecting them from the Guardian at a shopping center. Very shortly after the message was sent, T replied indicating the children could not attend due to football practice and tutoring after school. T added that:

> *"You are also not taking into consideration the mental distress this is having on the children. Your inability to understand their needs is causing them mental distress and I will be presenting this to the court next week."*

210. T sent a further email lambasting the Guardian for not asking her about the children's schedule and availability and for lying to and manipulating the children because she told them that it would only be for one visit. T concluded the message saying:

> *"This is not acting in the children's best interest which again is against the role of the guardian."*

The Guardian sent a very short reply to the first message from T seeking details about the start and end time for the children's mentioned activities. T replied supplying the requested times and she complained about the short notice given by the Guardian for the proposed visit. She reiterated that she and the children were *"hugely distressed"* and asked the Guardian whether she was expecting T to break a trust with the children by making them attend the visit. T stated that:

> *"My children's mental health should be the most important factor in this as should their need to be heard."*

I note that T was saying this although she would take a position about the instruction of a child psychologist at the hearing held a week later, on 26 October 2023, which meant that that long overdue instruction could not occur. Before the Guardian had an opportunity to reply, T sent a further email to add *"important factors"* that she failed to mention in her earlier email. T wrongly stated that I had stated that R could not be present at the children's school. T wrongly wrote that I had *"clearly stated"* that any contact should be supervised. In fact, I had said that the Guardian should feel free to arrange any contact visit she wishes to attend/supervise; however, I can understand why T might have chosen to interpret my written comment in the way that she did. T mentioned the non-payment of RI's school fees, but this was irrelevant as to whether there should be a contact visit set up to enable the Guardian to further assess the children and R. Similarly, T's comments in relation to R's employment situation in the Cayman Islands again was irrelevant when considering whether there should be an assessment contact visit set up.

211. The Guardian replied to the email in which T had provided the information about the time of the children's activities and asked:

(i) whether the visit could now take place on 24 October 2023; and

(ii) details about the children's movements on that day to enable the necessary arrangements to be made.

The Guardian disagreed with T's assertion that she had told the children that they would only have one visit with R. T did not reply to that email and so a further message was sent by the Guardian to her on 23 October 2023, again requesting the details about the children's movements to enable the visit to take place on the following day. T replied overnight setting out a list of her concerns and then commented:

"I am always open to facilitating your interaction with the children, but am not comfortable with scheduling further visits with the Respondent, given the distress from the children after being asked if they will go again. You told me a number of times it's not what they want it's what the Judge wants and I may have to force them. I will not do that and quite frankly it's a disgrace to be put in that scenario as a loving parent."

T added:

"I am committed to cooperating within the judicial system while prioritizing the welfare of my children but I will not do what is inherently wrong for my children. I note that historically, my cooperation with the existing order and judicial process has caused severe emotional and mental distress for my children and it is also now causing this in myself due to having to continue to watch my children suffer."

212. The Guardian replied saying that the observation visits were important and needed to take place and she quite rightly reminded T that she was:

"empowered to conduct further observation visits between the children and (R) as part of the assessment process" and that *"observation visits are essential to the assessments that guardians must carry out, and are informative on a number of issues."*

With that in mind, the Guardian made further proposals about the logistics for a visit on the following day. T replied to that email that evening and she made forceful statements in relation to R and the tenor of her reply was that she would not make the children available for a visit with R. T wrote:

"I am committed to ensuring the safety and well-being of the children, which is why I am unable to support any action that goes against their will or puts them in harm's way. I will not go against my children's wishes or encourage them into a situation that is wrong for them."

T then added:

"What I will not do, after my children have had the courage to speak up and ask me for protection as their mother, is go against them, and encourage / force them into a situation that is both physically and mentally detrimental for them. I did that on 24 September and it created huge confusion and distress in them. They are completely exhausted with not

being heard. I am very well prepared to defend this stance in court. I cannot bring the children tomorrow as I have a job….. However, I am more than willing to accommodate you personally visiting the children at my home if you need to speak to them."

213. What followed after this email exchange and T's refusal to cooperate with the Guardian's assessment proposals is already set out herein and need not be further analysed at this stage in the Judgment. Therefore, I move away from the Guardian's interaction with T and comment upon her interactions with the children's teachers which she sets out in her GAL November 2023 report. The Guardian met with RI's previous year teacher on 13 September 2023, as she had been the teacher during the academic year when the litigation was ongoing. The teacher commented upon RI's unapproved absences from the school but said it had got better and RI was able to catch up on her schoolwork. The teacher reported to the Guardian that she felt caught up in the parental conflict because of the numerous acrimonious emails that they sent through the school until the school told them to desist, adding that she did not notice much of an effect on RI for the majority of the school year. She stated that the change began in the latter part of the school year which seemed to correspond with the involvement of D. The teacher informed the Guardian that there were *"some oddities"* that started to occur, of such a nature that she made a record of them. The first concerned RI raising questions of diet and eating Burger King. The teacher told the Guardian that she felt that:

"The conversation played out in the way that RI worded things was very odd, and the sense (the teacher) got was that it was coming from another source and that (RI) seem to be repeating something she'd heard or been told by an adult."

The teacher also recalled a parent open day at which T and D attended and she felt that comments made by D to RI on that day were *"affected and unnatural"* and *"almost scripted"* and said for the teacher's benefit. Similarly, the Guardian reported that the teacher told her that at a swimming gala she felt that T and D were making a point to appear very involved and make their presence known, to such an extent that it seemed *"very unnatural"* and *"put on"*. The teacher said that D attended the school administration on at least one occasion to complain about R and her parenting, especially in relation to nutrition and activities. As I previously stated herein, this propensity of D to involve herself with third parties concerning the parenting issues relating to R's involvement with the children and the reluctance to participate as a witness in these proceedings seem to be at odds.

214. The Guardian reported a concern expressed by the teacher about RI towards the end of the academic year coming to her on a regular basis and saying that she had a stomach ache *"from anxiety"*. The teacher wondered where the source of reference to the anxiety came from because it was nothing that RI had previously complained about and it came from *"out of the blue"*. The teacher informed the Guardian that due to the number of unusual occurrences she referred RI to the school counsellor because she wanted RI:

> *"to have a space to open up about her feelings about anything that might be bothering her in relation to her parents' divorce."*

215. The teacher informed the Guardian that, during the relevant school year, R was as involved as T was in RI's school life. The teacher mentioned a parent orientation day beginning at school year which she noticed RI going between both of the mothers fairly equally and did not seem to have any reservations in speaking to either of them. The teacher highlighted his recollection of an event in June 2023 when R was supposed to be collecting RI from school on a day on which the teacher had scheduled a parent/teacher conference. On that day the teacher received an email from T indicating that RI had told her that she did not want to go with R on that day and RI did not attend school. That is the same un-authorised absence from school set out at paragraph 120 above.

216. The Guardian met with RI's current teacher shortly after the academic year started on 21 September 2023. There was no contact taking place at this time between R and RI. The teacher indicated that she had not mentioned any issues with RI or the parents.

217. The Guardian met with RA's reception teacher who indicated that all was well in the classroom and for him with his peers. The teacher did not raise any concerns about either parent and stated that, when she met with R, R concentrated on what RA was doing at school and did not delve into the legal case or the divorce. The teacher talked about the first day at school, which is when T and her father brought RA to school and R and her friend attended unexpectedly. The teacher said that T came into the classroom to speak with her and was visibly distraught when she had RA in her arms. The teacher and T went into a side room to enable them to speak without the other parents around, but she had to leave T with two of the school administrators as she had to assist other students. The teacher noted that RA was not crying but he did seem upset, and she felt this was

because T was so upset and that he was in her arms at the time. She said that after T had left the school, RA settled with no issue into the school day.

218. I have watched the video of what happened on that day. Although one can understand the milestone importance of a parent attending a child's first day at school, it may not have been the most sensitive or sensible thing for R to attend, especially without any notice. It was inevitable that there would be friction and that T would become upset. When R arrived, she did not do anything that was inappropriate or aggressive; in fact she approached T and RA in a gentle manner. However, her presence was not well received. It was clear that T was immediately upset, but to her credit she did not say anything untoward. A lot of evidence was given about how RA reacted to seeing R: R saying that he was smiling and T saying that he was clinging to her for support. When one looks at the video one could argue an interpretation either way. It was clear that T was holding on to RA and was not going to release him and that she was not going to allow him to interact with R. There are two things that unfortunately inflamed the situation. One was R's friend openly videoing the interaction, and one might question whether that was to have a keepsake of the day or to have some form of record for these proceedings, probably the latter. The second was T's father's reaction to R being there and to the videoing. One can understand him trying to be protective of his upset daughter, but his manner on that day was aggressive and he did follow R around the playground, using colloquial language he was *"in her face"*. Unfortunately, this was another example of both parents placing their personal emotional needs above those of RA; with R prioritising her emotional needs to be in attendance despite knowing that there would likely be a scene if she attended and with T failing to recognise that it was an important day also for R and that she could have taken a conciliatory action by allowing RA to interact with R at the school rather than transmitting her emotional upset to RA who is known to be sensitive about picking up on her upset feelings. As the teacher reported to the Guardian, what upset RA was unlikely to be the presence of R, but more likely his mother being *"so upset"* being transmitted to him whilst he was in her arms.

219. As a part of her assessment set out in the GAL November 2023 report, the Guardian also met with the school counsellor and school nurse at the same time at the children's school on 21 September 2023. They were both concerned about the extent to which the parental conflict was affecting the children. They, like RI's previous year teacher, began to notice changes with RI towards the end of

the last school year. They commented that RI began reporting stomach aches, which at the time the school felt that there was some sort of emotional component to this.

220. They raised some concerns that the school had in relation to D, in particular about potential coaching due to a child using terminology that is not typical for them. The Guardian was told about when D came into the school office and raised a number of issues she had about the care the children were receiving while with R, for example not eating healthy food or having enough activity. The school indicated that the question which arose following that attendance was as to why a person who does not have parental responsibility would be coming to the school and making such complaints to school staff in that way. This is a valid question to ask, and I have already commented on this incident and others relating to D herein.

221. At this meeting at the school, again, concerns were raised about the excessive email correspondence sent to the school by T and R. The school felt that T did this the most and she would often bring the teacher and staff in on matters that really were not appropriate for them to be brought in on. The Guardian was told that the school felt that there may have been a strategy of providing it with information that would then result in the school having to report things to MASH as mandatory reporters, especially as MASH may have felt that T and D had already made too many reports themselves directly to MASH.[43] An example of that was T sending a WhatsApp message to a teacher indicating that R had *"flipped out"* or *"lost it"*.

222. The Guardian, like a Welfare Officer, may present hearsay evidence to the Court in their reports. When I have regard to the above evidence, which I do with some caution, I am conscious that the above-mentioned members of the school team did not attend Court and were not cross-examined. Neither party requested their attendance and I find the insight provided into the family dynamics given and concerns expressed about T and D to be relevant to my determination.

223. After the GAL November 2023 report had been filed, on 17 November 2023, KSG Attorneys came on the record instructed by the Guardian to be the attorney for the children. The Guardian, although an experienced family practitioner, felt that there was a need for the children to have legal representation as the parents would have to be cross-examined at the hearing on behalf of the

[43] T had informed the school of reports she had made to MASH.

children. She felt that, in her role as an independent Guardian, this would put her in an awkward position and that it would be better if there was a degree of detachment which would come with having Counsel for the children instructed to then conduct any cross-examination.

Background - Proceedings - the November, December 2023 & January/February 2024 stage of the part-heard hearing

224. The second stage of this part-heard hearing commenced on 20 November 2023. This stage of the hearing occupied thirteen days of Court time, concluding on 21 February 2024. The total hearing was therefore spread over an astonishing twenty-four days. At this final stage of the hearing, the Court heard oral evidence from the parents, Ms. Watling and the Guardian. I received further oral evidence from the parties to primarily afford them the opportunity to introduce evidence about relevant matters which they said had arisen post the end of the March 2023 stage of this hearing. Although invited to do so, Ms. Watling (who was the first witness at this stage of the hearing) chose not to remain in Court after she gave her evidence and took no further part in the hearing. At the end of the hearing in February 2024, I adjourned to enable myself to prepare this Reserved Written Judgment. Unfortunately, this Judgment is of extraordinary length. Due to the fact that the parties have asked the Court to review events which have spanned a period spreading over at least ten years and as their approach to parenting issues is a litigious one, I see a need to deliver a comprehensive Judgment to ensure that there is a 'one stop' source of findings which need not again be explored and which can be relied upon should the matter return to Court in the future.

225. On 4 December 2023, T filed a Form C3 Application to discharge the Prohibited Steps Order which was preventing the removal of the children from the jurisdiction without the consent of the other parent or an order of the Court. This was brought because at the time T believed that R had no intention or capability of returning to reside in the Cayman Islands. R has since made it clear that she is shortly returning here for work, but as of the date of writing a firm date has not been confirmed.

Background - Proceedings - After the January/February 2024 stage of the part-heard hearing

226. Although it does not have a bearing on the decision I must make in this Judgment, for completeness sake, I note that on 27 March 2024 T filed a Form C3 Application seeking leave to temporarily remove the children to take them to her stepbrother's wedding in Mexico between 4-12 May 2023

and for extended periods during the Summer 2024 school holidays. In the end, a contested hearing was not required for the Mexico trip as R consented to that application at Court. The Court informed the parties that it would not be considering any application in relation to the Summer removal application (and the earlier made permanent removal application) until after this Judgment had been delivered because the content of the Judgment would be relevant to any consideration that would have to be given to those applications.

227. I also felt it prudent, partly due to the recent additional applications that were now being made, to tell the parties at the temporary removal hearing that I had reached a stage in the Judgment preparation at which I could inform them that I would not be making a No Contact Order between the children and R. I stated that the reasons for that and any other orders that I would be making would be set out in this Judgment.

The parties' present positions in relation to the applications

228. After the March 2023 stage of the hearing the parties filed a total of eleven affidavits sworn by them and there have been two witness affidavits filed by R[44]. The affidavits show a hardening of the parents' respective positions and highlighted a continuing inability to co-parent as well as a concerning degree of hostility and lack of respect towards each other.

229. As mentioned above, both parties still seek a variation of the Order. T's application is the variation of the Shared Residence Order into a Sole Residence Order in her favour. T seeks a No Contact Order in relation to R and she no longer canvasses, as previously expressed in her June 2022 Summons, that there could be any form of alternative contact arrangement. T seeks a termination of R's parental responsibility in relation to both children. She seeks a discharge of the Prohibited Steps Order preventing the children's removal from the jurisdiction without the consent of the other parent or Order of the Court.

230. R's initial application had been for an Enforcement Order that T comply with paragraph 4 of the Order and that T make both children available for contact with her. At the March 2023 stage of the hearing, R contended that the Shared Residence Order should remain in place and that the contact schedule be varied so that the children spend equal time with each parent on a week on week off

[44] At the hearing R chose not to rely upon these affidavits.

basis. She sought a Specific Issue Order that she retain one of the children's passports. She did not object to the Court considering a revision of the holiday arrangements for the children. This still seems to be her position in relation to the long-term arrangements, although in her written notes submitted to the Court for a hearing on 3 April 2023, R requested for the first time that:

> *"the court digs deep into the evidence, events, summonses and evidence given to consider a sole residence order in my favour."*

At the hearing it did not seem to be an 'application' made with much thought being given to it and appeared to be an application governed by her emotions at that time rather than child welfare.

231. By the close of the hearing in February 2024, R sought an immediate order for both children to be placed with her for a period of six to twelve weeks in either the UK or in the Cayman Islands (if R was back on Island) with no contact for the children with T. She felt that this arrangement, with the children being away from T's *"influence"*, was needed to be able repair the damage that T had caused to her relationship with them. She said if the Court felt that would not be in RI's best interest, the arrangement could be put in place for RA alone. Once that had happened, with the expectation that R would soon be again living in Grand Cayman, R submitted that the Shared Residence Order could remain with both children spending equal time with T and R. R added that if she was to relocate to UK, then she would be applying for a Sole Residence Order for both children and that the children could visit T in the USA (if she had relocated there) whenever T wanted them. R said if they were both living in the UK then the shared 50/50 arrangement should be put in place. However, as R's clear position post hearing is that she will be imminently returning to work and live in Grand Cayman, I do not consider the relocation option herein.

232. The Guardian, who is a party representing the children, recommended at the close of the detailed 73-page GAL November 2023 report that the Shared Residence Order should continue, but with:

> *"a defined care schedule providing for the children to be cared for by both parents on a relatively equal basis."*

She stated that a phased reintroduction to any care schedule put in place by the Court was needed. As she had concerns about how the parents interact, the Guardian recommended that the care schedule *"provide for limited opportunity for parent-to-parent handovers"* and suggested that pick-ups occur at school or when there are extracurricular activities like camps. The Guardian

recommended that the children attend family counseling which should be arranged by R and should take place during her scheduled time with the children only, to avoid the reported difficulties previously faced by the Centre. The Guardian felt that the parents should attend parenting classes. At the close of the evidence the Guardian confirmed that the recommendations made in the GAL November 2023 report had not changed after she had heard the further oral evidence given by the parents and Ms. Watling during the last stage of the part-heard hearing.

The function and obligations of the Court in relation to both the March 2023 and November 2023 stages of the part-heard hearing

233. I must now turn to an analysis of parts of the parties' evidence not already dealt with in the above background sections. When I do so I am conscious of the fact that both parties have appeared in person throughout this hearing and that, at some earlier stages of the proceedings, they had both previously had the benefit of being assisted by legal representation from experienced members of the Family Bar. The Guardian ad Litem instructed Ms. McDonagh to represent the children at this hearing.

234. A number of aspects of the right to a fair hearing, guaranteed by common law and s.7 of the Cayman Islands Bill of Rights ("BOR")[45], were applicable at both stages of the part-heard hearing. These uncontentious aspects are very helpfully summarised as follows by Peter Jackson LJ[46] at paragraph 23 in his Judgment in ***Re C (Children)(Covid-19: Representation)*** [2020] EWCA Civ 734:

> *"(1) Fairness is case-specific and is to be assessed in relation to the proceedings in their entirety:* Ankherl v Switzerland *(2001) 32 EHRR 1 at [38].*
>
> *(2) There must be protection not only from actual unfairness but also from the risk of unfairness:* Kanda v Government of the Federation of Malaya *[1962] AC 322 (PC) at p.5.*
>
> *(3) The right of access to the court must be effective, so that the individual has the opportunity to address all material that might affect the court's decision and is placed in a position to call evidence and to cross-examine:* Mantovanelli v France *(1997) 24 EHRR 370 at [36].*

[45] The Cayman Islands Constitution Order 2009.
[46] In relation to the mirror provision at Article 6 European Convention on Human Rights.

(4) The importance attached to the welfare of the child must not prevent a parent being able effectively to participate in the decision-making process: L v UK *[2002] 2 FLR 322 at 332.*

(5) The principle of equality of arms entails a reasonable opportunity to present one's case, including one's evidence, in a way that does not place one at a substantial disadvantage to one's opponent: Dombo Beheer BV v The Netherlands *(1994) 18 EHRR 213 at [33].*

(6) The administration of justice requires not only fairness but the appearance of fairness: R v Leicester City Justices ex p Barrow *[1991] 2 QB 260;* P, C & S v UK *[2002] 2 FLR 631 at [91]. However, the misgivings of individuals with regard to the fairness of the proceedings must be capable of being objectively justified:* Kraska v Switzerland *(1994) 18 EHRR 188 at [32].*

(7) The determination must be made within a reasonable time: Article 6 itself."

235. I have at all stages of this part hearing had regard to Peter Jackson LJ's summary and to the Court's responsibility to ensure that this family has a right to a fair trial. Both parents are intelligent people and were able to fully present their respective cases at the hearing and were not prejudiced by their lack of legal representation, especially as appropriate and acceptable leeway was afforded to both in relation to procedural issues. Although conscious of the comments made in ***Barton v Wright Hassall LLP*** [2018] 1 WLR, 1119, UKSC, that a litigant in person does not form a privileged class for whom the rules are modified or disapplied, and that a litigant in person is expected to familiarise herself with the relevant procedure and take legal advice if necessary, they were both permitted to include new pieces of documentary evidence belatedly during the hearing if it did not unfairly prejudice the other party.[47] Leeway was also given to the parties to enable them to explore and to develop areas in their evidence in chief and during cross-examination (albeit it was sometimes in a rather overly repetitive manner), so as not to restrict them having a full opportunity to present the case that she wished to present. It was explained to the parties that, due to the existence of the Order, this hearing was not a hearing to determine for the first time what the final order determining child arrangements should be. The parties should also recognise that the Order was reached with both parties being knowledgeable about the background and allegations that pre-dated the Order

[47] On 26 October 2023, I delivered a detailed an *Ex-tempore* Ruling in which I refused the mother's application to vacate the November 2023 stage of the hearing due to her belated desire to obtain legal representation. That recent Judgment, in which I considered a number of issues including each parties' ability to represent themselves, can be reviewed in tandem with this Judgment and I do not intend to rehearse the detail therein again herein.

and which the parties now seek to rely on to vary the Order. The Court will look at the events that have occurred since the making of the Order, placing those in the context of the full chronology (including the pre-Order events), when determining whether there is a need to vary the parties' clear agreement having regard to the best interests of the children.

General observation before reviewing the background facts - function of the Court in relation to making findings on the presented evidence

236. Prior to the March 2023 stage of the substantive hearing, although the parents had filed a large number of affidavits in the proceedings, the parties had not yet received any detailed oral evidence. It was quite clear that they both had a lot of information which they felt they needed to share with the Court in their oral evidence. Unfortunately, a great deal of what they presented in their written and oral evidence throughout this hearing, which was challenged at length in cross-examination was not relevant or particularly helpful. The parents were determined to trawl in great detail through the history prior to and throughout their relationship, primarily concentrating on their personal disputes and interaction rather than on what was of importance and relevance when considering the welfare of the children at the time of the hearing. However, the Court recognised the emotional and therapeutic need for these unrepresented parties to feel that they had been given the opportunity to share their whole stories with the Court and that is why so much Court time and flexibility concerning the evidence they gave was afforded to them. However, having provided the parties with that opportunity, I adopt the observations made by Thorpe LJ in ***Re F (Shared Residence Order)*** [2003] EWCA Civ 592, [2003] 2 FLR 397, namely that although one of the functions of the Judge is to make findings, the Judge is to be selective and to make findings that are relevant and necessary for the disposal of the issue. Accordingly, when considering what orders would be in the best interests of the children at this time, I am not required to set out an analysis of all the evidence presented by the parties or to make findings on every area or issue that has been presented to me or which have become apparent during the hearing. I must determine the factual issues that have implications for the decisions that I have to take in relation to the children. Therefore, although cognisant of all the evidence that has been given when considering the welfare of the children and what orders should be made, there are parts of the very detailed evidence given that I need not and do not review herein.

237. I also wish to note the number of applications that have been made in the Grand Court, some concerning child arrangement issues, are ones which the parents should be resolving without the need for Court assistance. There is an expectation that parties will have exhausted all avenues before making an application to the Court to determine issues, something that the parties did in the early stages with mediation, albeit with an unrealistic and inappropriate expectation that the mediator should get involved outside of mediation process to assist with the minutiae of day-to-day child arrangements. I recall HHJ Wildblood's observations in ***Re B (A Child) (Unnecessary Private Law Applications***). The Learned Judge referred to requests from parties to the Court to micromanage child arrangements. His given examples were (i) at which junction of the motorway should contact handovers take place at or (ii) which parent should hold the child's passports or (iii) how contact should be arranged to take place on a Sunday afternoon. HHJ Wildblood was lamenting the overuse of Courts and distinguished safeguarding issues and parental/logistical issues and stated:

> *"Do not bring your private law litigation to the Family court here unless it is genuinely necessary for you to do so… If you do bring unnecessary cases to the Court, you will be criticised…."*

It is the Court's responsibility to allot to a case an appropriate share of the Court's resources, while taking into account the need to allot resources to other cases.

Factual Background - Prior to the parties' relationship - Oral evidence primarily given at the March 2023 stage of the hearing

238. Both parents spent a disproportionate amount of time talking about the other's relationship history with former partners. For example, at both stages of the hearing R spoke at length about the breakdown of T's relationship with her partner who had 3 children who spent 50% of their time with their father and who started to cohabit in T's purchased property in Lancashire around the time that she was 6 months pregnant with RI. Even though the November 2023 stage of the hearing was intended to be used to enable the parties to present evidence about events that had arisen since March 2023, R believed that there was merit in filing an affidavit from T's former partner and calling her to give evidence. However, in the end she chose not to call that person and did not rely upon the content of her affidavit.

239. T stated that although the relationship was one year in length at the time it was rather casual until they began to cohabit in her home. T's partner paid rent to T. T was clear, despite R's contention to the opposite, that at the time of insemination in relation to RI, the intention was that RI would be her child and not her and her partner's child. T had a medically problematic birth with RI and this has evidently given her a heightened need to be protective towards her. T did not view her partner's children as being children of the family. The relationship broke down with T leaving within five months to her parents' home. T had to seek legal advice to try to get her partner out of the property. After about five months of cohabitation, T paid her partner GBP4,000 and gave her a low value vehicle in exchange for her leaving the property. R said that T's father had got involved in trying to get the partner in trouble. It seems that R was relying upon this alleged background to try and establish a pattern of behaviour from T and interference from her family members in relation to partners and in relation to any children of the family.

240. T cross-examined R about her relationship with her former wife. R explained about the difficulties in that relationship and the fact that her former spouse had mental health and alcohol abuse issues. T placed importance on the fact that the former wife was the one that petitioned for divorce on the grounds of behaviour and about an incident where the police got involved and arrested R but later released her without charge.

241. I was not helped by this dated evidence or any of the evidence about the parties' previous relationships. That is why my summary set out above is so brief. However, on the information before me, I accept T's evidence concerning the intention she and her former partner had towards the family status of RI and that their relationship took a natural course to its conclusion. It has no bearing on my present determination.

Factual Background - From when the parties' relationship started until RA's birth - Oral evidence primarily given at the March 2023 stage of the hearing

242. The parties physically met in June 2015 after corresponding on a dating website. At that time RI was aged about 18 months. T said that from the time when she could speak RI always called T *"mummy"* and R by her shortened name, and that prior to their separation this was not an issue because at that time T could not recall R saying that she wanted to play a full parenting role in RI's life. R got a job near to T's home and she rented a property nearby. Although renting, R spent the

majority of her overnights at T's property. The parties began to fully cohabit shortly after that. At that time, T worked for a local college and R worked as a locum. R was working long shifts which often meant that she did not get to the property until about 11:00 p.m. The nature of their relationship progressed quickly and in December 2015, R proposed marriage. In April 2016 they were married and after R sold her house, T and R purchased a house in Worley in December 2016.

243. A great deal of evidence was given about the parenting roles played by T and R in relation to RI and then, after RA's birth, in relation to both children. Two of T's friends from the UK, Ama Houghton Smith and Karen Thompson filed affidavit evidence and gave oral evidence in which they spoke about the parties' roles at those two periods of time. Their evidence was consistent with T's, portraying a picture of R being socially awkward with T's friends and of T taking on the majority of the day-to-day parenting responsibilities. I accept that this was the general situation, but it was understandable with the long hours that R was working in a very stressful job. A great deal of R's employment required her to undertake locum work evenings and night and resulting in her having to sleep during the daytime. I do not accept T's contention that R played no meaningful role in the children's lives when the parties lived in UK, pre and post RA's birth and I am satisfied that she has overly-minimised R's input. I accept that initially both parties were working, but in a situation where one parent is working hours that run into the evening or involve an over ten-hour working shift, even with some days off in the week, it is not uncommon for one parent to take on the greater home maker and parenting role. On the other hand, I do not accept R's assertion that she played the greater parenting role that she seeks to portray at this hearing. Although T for part of the time during this period was working for a college, R was the main financial provider for the family unit (especially between March 2017- March 2020 when T did not have a formal job save for a limited time running her home fitness business). R took on some limited day-to-day parenting functions and was involved with a number of the important child-related events in and outside of school, but the degree of her involvement was usually dependent on her work commitments. R was involved in the decision making about RI's upbringing, health and schooling. However, it is clear that, pre and post the birth of RA, the parent carrying out the vast majority of the normal childcare duties for both children whilst in the UK was T. In fact, that type of arrangement continued after the parties later moved to the Cayman Islands.

244. About a year before RA's birth, with R's blessing and it appears some encouragement, T took redundancy and started a business in an area in which she had (and still to this day retains) a great interest, fitness provision. R was willing to take on the financial responsibility for the running of the home whilst T underwent the required training. R also spent a great deal of money on purchasing fitness equipment for a business which was run from the parties' home. Sadly, the business was not a success, primarily due to the misconduct of T's business partner. During the hearing, T was unable to give sufficient credit to R or to recognise that R had worked long hours in a taxing job to try and make T's *"dream"* a financial reality as well as put up with the inconvenience of having her home being used in this way. R said that she paid over 9,000 GBP for the business's equipment. R said that she felt isolated in her own home and was *"given the silent treatment"* by T if she did not agree with everything that she wanted concerning the business and use of the premises. R said that she would, in the end, say she was sorry and placate T, just to try to get things back to normal. I am satisfied that at that time R was a good financial provider for the family and that she did seek to placate T by providing financial backing to support T's wishes.

245. T indicated that she felt that R was using finances as a mechanism to control her. She said that R persuaded her to take redundancy and that she had to be pleasant to R or R would leave insufficient sums in the joint account for her use. T said that R made her pay her redundancy monies into the joint bank account and that, when they rowed, R would take money out of that account and leave her short of funds. R says that the money was paid into a bank sole account that T had. I have not seen any supporting evidence concerning that and I am unable to make any findings, but in any event, I would reasonably expect some of the redundancy funds to have contributed to the setting up of the fitness business. However, although I do not find that R acted in a manner that amounts to financial abuse, I accept that, due to their financial disparity, T felt economically vulnerable and overly financially dependent on R at that time.

246. T said that she had always made it clear to R that she wanted to have a second child to be conceived using the same sperm donor as the one used for RI. However, R later stated that, as she was older than T, she wanted to have a child. T said that she reluctantly agreed that R would try to get pregnant using the same donor. For almost a year R tried using sperm from the same donor but was unsuccessful. This situation caused great distress to R, and it is apparent that she still carries the mental scars from the experience. Her upset was heightened at the time when T informed R that

she would try and get pregnant using sperm from the same donor. R felt angry at the time, as she felt that T was going to do that regardless of how she felt. T's insemination was soon thereafter successful. Although happy that there would be an addition to the family, this also caused distress to R as she realised that the parties wanted to have only a two-child family and that, coupled with her age, would mean that she would likely never give birth to a child. In her own words, when T informed her that she was pregnant, she was:

> *"shocked and grieving the loss of a chance to have a child."*

It is evident that the deep scars from this experience detrimentally affected their relationship, with T stating that the marriage was:

> *"already on the rocks"* and that after she became pregnant, *"the marriage deteriorated rapidly because of jealousy and resentment."*

R said that she found trying unsuccessfully to conceive herself to be:

> "very emotionally *distressing, affecting our sex life and we became more distant."*

At the time, it led to R forming an overly close relationship with a same sex work colleague and, before RA was born, even downloading draft divorce papers on her computer which T later discovered[48]. R said that she downloaded them as she was *"so upset about the whole pregnancy thing"* and because of how she felt that T had generally been mistreating her.

T says that this is illustrative of how for much of that period of time they were in reality living separate lives albeit under the same roof.

247. All these circumstances contributed to the increasing strain on the parties' relationship culminating with T locking R out of the property and police involvement at a time when she was five months pregnant with RA. T opened R's laptop to send an email and found photos and conversations between R and her female work colleague. T sent a text to R informing her about what she had found and that she was packing R's bag and leaving it at the front door for her to collect. T did not want a confrontation as she was pregnant. T said R came and tried *"kicking the front door in"*. R stated that she kicked the bottom of the door and sent a text threatening to break a window if the

[48] T discovered the specimen divorce papers on the computer in April 2018.

door was not opened. R left to stay overnight at a friend's property and came back to the property the next day to find that nobody was at home. R said that she made a report to the police and explained to them the recent and historical events between the parties, but in the end decided not to provide a full statement and the police took no further action.

248. T highlighted that R had stated at paragraph 40 in her Affidavit sworn on 24 February 2021 that upon discovering the *"emotional affair"* in July 2018, T threw a coffee cup at her when R came into the house. R elaborated further at paragraph 48 in the Affidavit that, when she tried to come into the property to discuss it, T launched the cup saying then that it contained tea. However, that clearly did not happen on that occasion and in fact in the written report of the police dated 10 June 2018 emanating from the 'locking out' the police recorded that R had reported that the cup had been thrown at her back in April 2018 leaving a mark on her leg. There is also a separate exhibited police report recording that R said the cup incident was on 19 April 2018. T denies ever throwing a cup of tea or coffee at R. Having the inconsistencies drawn to her attention during the earlier oral evidence of T, R stated in her oral evidence that it was after T found the divorce papers as well as the communications between R and her work colleague that she threw the cup of coffee. This was still inconsistent, as the communications were not raised until a later date. Realising that there was that inconsistency in that part of her oral evidence, R then again changed her evidence to say that it happened only after the discovery of the divorce papers. Although there is a photograph of a mark on a leg exhibited to R's February 2021 Affidavit, due the inconsistencies highlighted by the various very different versions given, R's evidence about a cup throwing is too unreliable to be proved on the balance of probabilities. Despite the above 'locking out dispute' the parties soon reconciled and T says that she *"stupidly"* agreed to try again.

249. The unhealthy state of the relationship was emphasised during an argument that took place on the evening before T was due to go to hospital for the cesarean for RA's birth. T stated that R told her:

"I don't fucking love you, it isn't mine."

R said that although there was a row at that sensitive time, she did not think that she said that. In the end, R attended the hospital for the birth.

Factual Background - From when RA was born until the parties moved to live in the Cayman Islands - Oral evidence primarily given at the March 2023 stage of the hearing

250. RA was born in October 2018. The parties' relationship remained a strained one. T states that, save for a *"handful of times",* they had slept in separate bedrooms from the time when she became pregnant with RA. R disputes that they had been in separate rooms to that degree. I need not determine who is correct for the purposes of this Judgment, but the state of affairs illustrates that the marriage was in an unhealthy condition.

251. In March 2019, R's employment on a full-time contract came to an end after 9 months. T characterises it as an immediate dismissal inferring that R had done something improper in the workplace. R spoke to it being due to her 'whistleblowing' about poor professional practices that the business adopted and that she had to seek legal advice concerning salary still due to her. I accept what R said about that. R was vulnerable at the time, as she was suffering from depression, and she was affected by the stress brought on by her employment issues. I do not accept T's contention that R *"lost her job due to a mental breakdown".* R's mental health was further exasperated by the growing instability in the marriage. On 25 December 2018, after the family had visited T's parents' home, R became upset and took a knife and slashed up a canvas with RI's picture on it in the presence of RI and T and damaged some items. R denies doing that but admitted that she threw a canvas into the dustbin after T told her that the children were not hers and that she was a *"waste of space"*. Having reviewed the evidence given by the parties, I preferred the evidence given by T and I am satisfied that R did slash up a picture with a knife and that RI saw her do that.

252. On the evidence before me, I am satisfied that the different parenting roles that the parents had adopted in relation to RI continued for both children after RA was born. T still undertook the day-to-day parenting functions, although R did take on the same more limited role that she had played prior to the RA's birth. R was still the financial provider for the family, and she was instrumental in financially facilitating RI's attendance at a renowned private school.

253. In early 2019 R, who clearly was passionate about travel and was interested about exploring the possibility of working abroad, was searching for employment in the British Overseas Territories. This was a lifestyle change that primarily R desired, whereas T did not want to disrupt RI's schooling and still saw England as being the country for the family home. T stated that:

"I love my life in UK. I had a brilliant support network, family around the corner."

T said that she was pleased that R was going as she *"wanted to get rid"* of her, but accepted that she may have said that she might join her in Cayman in the future. R obtained a post in Grand Cayman and negotiated a six-month contract which allowed R to take an extended three-month break back in the UK. T stated that she felt that the marriage was over at that stage and that the parties were no longer in an intimate relationship, something which R refutes. Although the parties' relationship was clearly an unstable one at the time, it is evident from the exhibited text messages sent between them that the parties still retained some emotional feelings for each other.

254. R stayed for only one day in Grand Cayman before immediately returning to the UK. T said that R contacted her saying that she could not cope in Cayman and that she felt unable leave the hotel room. R states that upon arrival in Grand Cayman, she decided that she did not wish to be separated from her family. T contends that R returned to the UK so promptly as she was having a *"mental breakdown"*. R returned to the property in UK. T said that R had told her that she could not stop her returning to the home as she owned half of it. T characterised the next few months in the home as her *"having to walk on eggshells",* with R promising to get some mental health assistance. R took on some locum work, but shortly thereafter again began researching employment opportunities in Grand Cayman.

255. Despite her very brief initial experience in Grand Cayman, R reiterated her wish to work in Cayman and she found another position here. T stated that, in June 2019, she agreed to also come to Cayman because R had promised her that she would change and take her medication. T said she was also concerned about her own financial position with two young children if she remained in the UK, a position that she felt R took advantage of and which amounted to emotional/financial abuse. In relation to agreeing to move to Cayman, T stated:

"I can't believe some of the decisions I made and I am ashamed of myself. Coming here was not rational."

T said that there is an element of her feeling *"trapped"* due to her financial insecurity and the difference between her and R's financial status.

Factual Background - After the parties move to the Cayman Islands until their separation in December 2020 - Oral evidence primarily given at the March 2023 stage of the hearing

256. The family moved to the Cayman Islands on 27 August 2019. R started work on 2 September 2019. RI was enrolled at one school and RA at a nursery. The move meant R's working pattern was now one she was happier with 9:00 a.m. - 9:00 p.m. shifts on an alternate week and with only 2 workdays in week 2[49]. This amongst other reasons may have led to a temporary improvement in the parents' interaction with each other, with T characterising R as being a *"happier person"*. T accepts that, on a few occasions after they arrived in Cayman, she and T shared the same bedroom.

257. The initial plan was that T would not work, but they soon realised that T would need to work due to the high cost of living in Grand Cayman. T found employment as a marketing consultant. The evidence establishes that T has always had a much more outgoing character than R and she very quickly started making friends with people at her gym and with some mothers from the children's schools. R appears to struggle in social settings and her character is such that she would prefer to come home and relax rather than go out socialising.

258. Only a couple of months after their arrival to Grand Cayman, the parties had to move from their first rental property in South Sound to a two-bed rental property located in the Seven Mile Beach Corridor. Despite the stress caused by the housing upheaval, at first, the relationship remained fairly stable. R said that they both would drop the children off at school/nursery on the way to work, so that T could keep the family car for the rest of the day and attend the gym. R stated that, on the days when R was not working, T would take RI to school and sometimes RA might stay at home with R.

259. In December 2019, although not particularly enamored by it, R agreed to T's request to take the children on an extended trip from December to January. R could not join them as her contract of employment prevented any leave being taken for six months. This meant that R was separated from the family and would not see the children over Christmas and on RI's birthday. Although R had reluctantly agreed, the fact that she did agree shows a degree of sensitivity by her. Regrettably, T did not show the same degree of sensitivity when she returned to Cayman with her father who

[49] However, R highlighted that the shifts soon had to be changed because the facility was understaffed. This meant that she had to work extra shifts in the second week and that this cause stress in the relationship as she could not be at home to look after RA and that resulted in T having to take him with her when she went to use the gym.

stayed at the matrimonial home for three weeks. T knew that R was not close to T's father, and it appears that she did not ask her permission for him to come and stay. His presence was destabilising for the parents' relationship.

260. The increasing cracks in their relationship came to the fore due to the restrictions that were imposed due to Covid-19. R, due to the nature of her employment, still went into work. T was at home caring for the children all day, so had to conduct her recently acquired part-time marketing consultancy job during the night. T is an active individual and enjoys the company of her friends and she found the isolation and inactivity caused by the Covid restrictions coupled with her responsibilities in the home and work hard to deal with. R said that she would significantly help with the care of the children and with the house. T stated that, despite her evening work obligations, T had to continue to undertake all of the day-to-day parenting functions. T said that R refused to help with the children and that when she came home she would sit in front of the television. T added that R cooked for them only once and that only on a couple of times did she bring a bottle up to feed RA. The parties' recollection which they presented to the Court, as with a lot of the evidence they have given, is rather exaggerated. I am satisfied that T wrongly minimises R's role but, on the other hand, R unsuccessfully attempts to persuade the Court that role was greater than it actually was. T was, and remained when the parties were living together, as the parent who took on most of the general parenting roles, but R also participated to a greater degree than T suggests, albeit not to the level that R submits.

261. The parties moved to a bigger property in August 2020 on a twelve-month lease to try to improve their home life. Although disputes arose about T not having sufficient opportunities to attend the gym and R not having the opportunity to help at a dog charity by walking dogs, it appears that the parties were of the view that things may be getting better. However, this positivity was short lived. In late September 2020, T went out on a social night with her gym friends. T did not return until 2:30 a.m. R said that, after that night, T did not return to the marital bed. R said that T would not talk to her about it, was avoiding her and R felt that *"something was off"*. It seems that this event was a significant date in the final breakdown of the relationship.

262. T said that, as the relationship then further deteriorated, R attacked her after T had asked her for help with the children. Arising from her social night out, T said that R falsely accused her of having

an affair. T said that she believed that she had RA in her arms at the time and that R started the row in front of them. T said R lunged at her and put her hand around her throat. T said RI was screaming and RA was crying with R shouting:

"I am going to fucking kill you."

T said in her oral evidence, but not in her affidavit evidence, that as she swung around to try and get R off her, RA's arm may have struck the wall. T said in her affidavit evidence that, when she tried to phone the police, R grabbed her phone and smashed it on the floor. However, in her oral evidence she made no mention of this. T's text messages to R at the time mention the incident, but R neither refutes nor accepts the version of events in her reply texts. R accepts that there may *"have been words"* but denies this happened. I am satisfied that there was a very heated exchange on this date being primarily driven by R in which R had inappropriate physical contact with T. However, due to the different versions of the event that were given by T, I am unable, on the balance of probabilities, to determine whether the laying on of hands was to the degree presented by T.

263. In early October 2020, R says that, when she was getting dressed for work in the morning, T informed her that she did not wish to be married any more. R said that T repeated that again on the weekend. T would not tell R why she felt that way and R asked her if something happened on the above-mentioned gym night social and if that was the reason. R said that it was an unpleasant environment to live in and the situation in the household was becoming more and more strained.

264. The next incident was later in 2020. R said that she went through T's phone and looked at her messages. She said that she had invaded T's privacy in this way as she was suspicious and at the *"end of my tether"*. R said that she saw messages from a woman and some deleted messages. R said that a few days later she then asked T about them, and T told her that they were work related messages. It appears that this was the occasion when T was cooking in the kitchen and R came down from the bedroom. T said that R had been drinking. R came into the kitchen where she took out a knife and threatened to cut out a tattoo of the letters T and R (for RI) on her finger. The tattoo had been made instead of having an engagement ring. T said that the children saw this happen and became upset. R does not deny that she did this and tried to justify this by saying that she would have had the requisite medical experience to cut it out and that there were no tattoo removers on island. Although R said in examination in chief that she did this when the children were in the bath

and not present, something she failed to put to T during her earlier cross-examination, it was still rather bizarre and highly inappropriate conduct on her behalf. It would have been a distressing incident for T and for the children to witness.

265. It was an incident that occurred on 1 December 2020 that finally brought the parties' relationship to an end, and it can be seen as being the date upon which they separated. The parties were occupying different bedrooms. R had the master bedroom and T had some of her clothes in the chest of drawers there. T wanted to get the children ready for bed and she walked through R's bedroom to run a bath in the attached bathroom. T said that R was under the influence of drink and R said:

"Fucking get out of my bedroom, this is not your fucking bedroom."

R said that she asked T for privacy and requested her to remove the clothes, to which T replied:

"Fuck off."

T said that R opened the chest of drawers and started throwing T's clothing everywhere. R said that because of T's reply she started moving the clothes and placing them on T's bed in T's room. T said that she then left the bedroom with R following her. R said that T told her:

"Don't you touch my fucking things" and grabbed R by her throat briefly and pushed R back.

T said that the children were very upset as they had witnessed what had happened. R said that RA was still in the bath, but RI was out of the bath and was distressed as she saw what T did towards R. T said that she put the children in the car dressed in their pajamas and left to stay at a friend's house. R said that T said she was leaving and R said that she did not want to stop her doing that as she did not want the children to see any further conflict. R asked her not to take the children and R said that T's parting words were:

"You will never see the kids again."

266. This incident is a vivid example of the parties' inability to communicate with each other in an acceptable manner. It was at a time when it was clear that their relationship had, in reality, been over for some months and that living in the same household had become unbearable for them both. I am not satisfied that the evidence establishes on the balance of probabilities that R used any force

on her. What is clear is that both parties were swearing at each other in the presence of the children and were unable to continue living with each other in a civil manner. They are both at fault for how this heated exchange concerning the storage of clothing and room access escalated. Their conduct was upsetting to the children and was not in the best interests of the children.

267. On the following day T returned to the property to collect items for the children. T said that the curtains were drawn and that things were thrown everywhere. She thought that the house was empty as it was silent when she walked in. T went to the children's bedroom, and she said that R came in and stood behind her. T said that R then lost control swearing at her and slapping her with an open palm on her face, head and body. T said that she hunched herself up and let R hit her for a few minutes, but the hits got heavier, so she had to grab R's arms to try to stop her from hitting her. T said that she was able to release her arms and R carried on hitting her. T said that she then pushed R off by using the two arms on her chest and that R *"crumpled to the floor"* crying and saying:

"Sorry. I love you."

T said that she picked up her bag and left the property.

268. R gives a very different version of the incident on that day. R said that she heard someone in the house, and she came out of her room and met T packing up more items. R said that they exchanged words and that she asked T where the children are. R said that T was angry and that she was pushed, punched on her left upper arm and kicked on her lower leg. R said that T also grabbed her by the neck and then rammed her head into the door. R said that she fell to the floor *"seeing stars"* whilst T went back to packing up her things. The Court was provided with a number of photographs taken on the same day as the incident which showed injuries which were to a degree consistent with T laying hands upon R. T said that the marks on R's arm were caused when she had to grab R's forearms to stop her attacking her.

269. The parties' relationship was clearly at an end and the tension on that day between them was very high. I am satisfied that both parties, in this deeply unpleasant incident which quickly escalated with them both losing self-control, acted aggressively and improperly, with them both laying hands inappropriately on the other. Neither party comes out of this incident with any credit.

Factual Background - Post the parties' separation in December 2020 until the February 2022 consent order - Oral evidence primarily given at the March 2023 stage of the hearing

270. As T had been unable to collect sufficient belongings on 2 December 2020, she returned to the property with her friend. T removed all the children's Christmas presents being stored there. When asked by R's attorney to return some of them, T's attorneys replied that their client was justified in refusing to do so as she was saying that the gifts were from Father Christmas. This was an act which T must have known would have upset R and potentially portray R in a bad and ungenerous light in the minds of the children. It is clear to all, including T, that R was struggling at this time with the breakdown of her family and her being distanced from the children. This led to her drinking in the evenings, which R said both calmed her but made her more emotional. In addition, the day before or immediately after the bath/clothes incident, T, who had an income of around $5,500/month, unilaterally removed $16,000 from the joint bank account and she also used the other $16,000 in the account for her rent and outstanding bills. This was inappropriate conduct in the absence of any agreement. Despite this, R made it clear that she was willing to pay school fees and medical insurance which meant that their incomes would then roughly be at the same level.

271. During this period in early December 2020, T said that she went to the property with her friend and saw that R had a bottle of wine with her. I am not clear if this was on the 2 December 2020 visit. R says that when T's friend went into the bedroom to get some items, T said that R informed her that she had unsuccessfully tried to commit suicide a couple of days earlier by taking a mixture of alcohol and pills. R said that T had come round with her friend to return R's passport which she had wrongly removed and which she had initially denied taking. R said that initially it was the friend who came into the house with T remaining in the car. T then came to the door where there was a conversation with T saying that she did not want to be married anymore. R says that they all then sat down with the friend acting as a mediator. R said that nothing productive came out of the conversation and that she did not tell T about trying to commit suicide and denied that T had ever seen a suicide note. R rightly highlights that the text messages that she sent to T around that time did not say that she wanted to commit suicide, in fact she was telling T to leave her alone and stop imposing on her and in her oral evidence said T kept wanting to *"make everything into a drama"*. R said it was overwhelming when T came to the house when she was not expected. R said that if T had seen a suicide note why would she simply go home and do nothing about it. I have found R to be frank about her mental health issues and I specifically recall the vivid and upsetting details that

she gave about her attempted suicide in December 2022. I accept R's evidence that she did not mention suicide to T on this visit.

272. T said that on a separate occasion, in December 2020, she received a FaceTime messenger call from R's best friend in England. She said that the friend told her that R had taken an overdose and that she had been talking to her for a week to stop her killing herself. T said that the friend told T to call an ambulance urgently. There are messages from the friend exhibited to T's first affidavit which are consistent with this. T said that she called 911 to get assistance.

273. R accepts that the marriage breakdown, the recent unpleasant physical exchanges between the parties and the children being removed greatly upset her and caused her to drink more than she should. She said that she did not have a social network in the Cayman Islands, save for people she meets at the pet charity. R confirmed that she did tell her friend in the UK about how upset she was as she felt that her *"whole life was falling apart"* but could not recall saying that she wished to commit suicide. R said that she had been drinking and mixing that with medication that had been prescribed to help her sleep and for her arthritis. The combination made her slur her words, sleepy and confused. R believed that her friend was concerned about the medication that she had taken. R said that she passed out while on the phone due to the drink and drugs and was in such a deep sleep that she could not hear her friend trying to contact her. As a result of T calling the police, R said that the police came in the next morning, and they saw that R did not require any assistance. R put the events of the night in context by saying that the day had been a very stressful one. R said that on that particular day, after much effort to persuade T, she was able to see RA at the former matrimonial home. R said that although she had been told that RI did not want to see her because she was scared, RI spoke to R and said that she missed her every day and asked her if she would come to her birthday. It was later that night between midnight and 1:00 a.m. when she called her friend.

274. R was keen to have contact with the children. T was adamant that it be supervised due to her concerns about R's mental health. R agreed that it could initially be supervised so that contact could take place on 17 December 2020 and on Christmas Eve/RI's birthday. T insisted that Christmas day would have to be at her home. R said that T was scowling throughout the contact and made it a bad atmosphere for everyone. R stated that T chastised RI when she called R *"Mummy"*. R said

that she realised that T felt that contact would always have to be on T's terms and that R would have to agree with that. T indicated that there was a break in contact into the New Year as R did not reply to her. This was after T said she had been trying to arrange a contact schedule and R had told her that:

"it was too painful, it hurts too much, I can't be in their lives."

275. In early 2021, R's attorneys had filed for a children hearing which was due to be heard on 26 January 2021. That filing appeared to have focused the parties' minds and led to a degree of civility and cooperation between them relating to child arrangements. R, because of this, against her attorneys' advice, agreed to vacate the hearing. R indicated that shortly after she had done that there was a meeting with T at which she was informed that any contact would be on T's terms. R said that she felt:

"deflated, manipulated, and foolish."

R indicated that her expressed position then and has always been that she seeks a 50/50 shared care arrangement for the children. At this time, January 2021, R was paying the school/nursery fees as well as the children's medical health insurance. Although T had removed $16,000 from the joint account, T was still saying that she had no money and could not afford to live. Therefore, R transferred $1,000 to T and then later that week she transferred another $2,500, leaving only limited funds in her own account. R was surprised to later find out that in fact at this time T still had $9,700 in her account.

276. Overnight contact between R and the children started on 13 January 2021 and it also occurred on 16 January 2021. T was angry and shouting when she turned up with the children at R's house at the outset of the latter contact visit because R had informed T that she was going to be 20 to 30 minutes late to collect the children from R's house. R said that T *"shoved her"* and said:

"I could punch you so hard now."

R told the Court that after witnessing this commotion RI said to T:

"Mummy, you promised me that you would not shout."

277. Apart from that, the contact visits were uneventful until the contact in mid-February 2021, which was going to only be contact with RA, as R said that T had informed her that RI did not want to

attend because RI was frightened of R. T states that at that time R was not asking to see RI, but in December R had filed an application in relation to contact with both children. What then occurred is illustrative of the rather immature way these parents operate. R went to T's house to collect RA. RA had no shoes on and R asked T if she could have some shoes to take out. T replied that R had shoes for RA at her house. R said that the shoes were not there, that T had sold some of them and that she could not buy any shoes because the shops were shut as it was a Sunday. R then said she wanted to take RA out, but she did not have a car seat as the car seats were in the car which T had taken when they separated. R suggested that T let her have the keys for her rental car and that she would take the vehicle with the seat in it. R said that T was abusive to her. In the end R took the keys for the car with the seat in it. R said that she picked up RA and that T tried to snatch him from her and said I want you to leave. RI had seen all of this and said:

"Why can't you both get along? I hate you both."

It is quite telling that RI was clearly upset by T and R's conduct and was pleading with them to act in a civil manner. Even a child of RI's age saw fault in both adults' actions. To T and R's shame, RI appeared to be the individual acting the most maturely of anyone at that incident. R said that she then called the police as she felt that T was not going to let her have contact. R then telephoned a friend who came and took RI to their house before the police arrived. R said that when the police arrived, they had a conversation and they facilitated her taking RA for the contact visit. When the due time had arrived for R to return RA to T's home, R said that RA was sleeping. R said that she sent a photograph of him sleeping to T, but T said she wanted RA brought to her home immediately. R did not take RA back to T. It appears that within a quarter of an hour T (who did not have legal representation at the time) contacted R's attorney. R said that, after RA woke up, she drove him back at around 7:30 p.m. When she got to the property T snatched RA from her and did not let R say goodbye to him. T did say that R could say hello to RI. It was clear that RI was upset by what the police had said earlier because she said:

"Mummy you should have just agreed with (R's shortened name), why you not agree with (R's shortened name). You are stupid. You are stupid. You could have gone to jail today."

Despite RI pleading with T and R to behave themselves earlier in the day, their personal emotions still overtook their common sense and dictated their poor interaction, and they continued to act in a selfish manner that upset the children. After what must have been a very trying day for her, RI

again shared a wise observation as to how the adults should conduct themselves. It is a shame that the parents failed to listen to her.

278. As R's grandfather had passed away on 18 February 2021, R was understandably upset. She asked T for additional contact time with RA, but the parties had not been able to agree that in the texts between them. R informed the Court that her attorney had advised that, as she had parental responsibility for RA, there was nothing preventing her from taking him from the nursery, but she could not do the same in relation to RI for whom she did not have parental responsibility at that time. On 22 February 2021, R collected RA from the nursery. She told her attorney that she had collected RA and she then took RA to her attorney's office so that they could see that he was being well cared for. Almost immediately after the collection, R's attorney sent a pre-prepared email confirming that RA had taken her from the school and that he would be returned at 6:30 p.m. Meanwhile, T telephoned the police, but she failed to inform them that R also had parental responsibility for RA. When the police attended, R informed the police that she was entitled to remove RA from nursery because she had parental responsibility for him. The police recognised that there was no action to be taken by them.

279. R returned RI to T's home at 6:25 p.m. When she got to the property KL (one of T's friends) answered the door. R says that although RA was clinging to her crying, KL took him from her and shut the door. T denied that the child was crying and said that she took RA from R, whereas KL confirmed that she was the one who took the child from R, as T was inside the house.

280. Although T had only just given the impression to R that she was reticent to get the Court involved, she was, unbeknownst to R, taking the opposite approach, as she had filed a divorce Petition on 15 February 2021 as well as a Summons for the child and spousal maintenance on 19 February 2021. On 22 February 2021, T had filed an *Ex-parte* application for a Protection Order. The Listing Officer provided me with a copy of the Summons and supporting affidavit and sought my directions concerning the listing. I informed the Listing Officer that there was nothing in the pleadings that explained why an *Ex-parte* hearing was required and I suggested that both the protection order and maintenance Summonses be listed for an 'on notice' hearing. After T had been informed about my direction, in an email to the Court, she indicated that she was hoping that the hearing date could still be in the week of 22 February 2021, as she started a new job on the following Monday. In that

email, which was sent at 2:13 p.m., T also mentioned about R taking RA from the nursery and that R had told her that the child would be returned at 6:30 p.m. A reply was sent by the Court indicating that, although I still felt it should be an 'on notice' hearing, I would accommodate an *Ex-parte* hearing to afford T with an opportunity to explain why such a hearing was appropriate. T was also informed that if any *ex-parte* orders were made then there would be a need for a prompt return date. When the matter came before me in the late afternoon on 23 February 2021, I made various protection orders plus an order that R return RA to the care of T forthwith. A return date was set for 1 March 2021. With hindsight, and having had the benefit of hearing from R, my provisional view that the matter should have been dealt with on notice was the correct one. Although it was rather antagonistic of R to remove RA without notifying T in advance, there was nothing preventing R from collecting RA from nursery. R mitigated the concerns that might arise from her actions by having her attorney notify T by email about the removal as well as T being provided with the drop-off time in the evening. I am satisfied that T had inaccurately stated in the 2:13 p.m. email sent to the Court that R's attorneys only sent the email to her after she had her friend ring them. The communication from R's attorneys had already been drafted and it was ready to send out as soon as R had informed them of the collection of RA. T overreacted and, as she has done at different stages these proceedings, she sought to use an action of R as a litigation tool when in reality there was not a need to get the hearing as urgently as she submitted.

281. On 24 February 2021, before the return date, R filed a Summons seeking a discharge of:

(i) the *Ex-parte* Order*;* and

(ii) Child Contact Order.

As a result of the commendable involvement of the attorneys on the record at the time, a consent order had been prepared and submitted for the hearing of 1 March 2021 containing the cross-undertakings and interim provisions mentioned in paragraph 9 above. This is when the mediator became involved and the discussion with her involved the parties' finances as well as the child issues.

282. In or around May or June 2021, R had concerns about RI's behaviour when she was caring for her. R said that RI was becoming jealous of RA and was being disobedient and combative with R. An incident occurred at R's home during which RI injured RA's lip and RI would not accept

responsibility for doing it. R was worried that T would use the injuries to raise a spurious allegation of abuse by R. R also felt that RI should see a psychologist to help her with her emerging behavioural issues. R informed T that she would stop her contact with RI if the behavioural issues were not resolved. Despite saying that, on 31 May 2021, R wrote to T seeking agreement for her to take both children to Disney in Florida in October. Contact between R and RA continued save for one missed contact in May and one in June due to R's ill health. This still happened because R remained in Grand Cayman despite telling T that she was going to leave as she felt overwhelmed by all that was going on and by what she called a bombardment of emails and applications being made by T and her legal team. Discussions continued in Mediation about contact with RI.

283. Unfortunately, R lost her employment in August/September 2021, which was just a matter of days before she was due to receive her bonus. As she had no residency status, she had to leave to the UK and this meant that child contact ceased. T laments that this happened after R had cancelled at least six contact visits with RA on short notice from April 2021 to August 2021. T criticises R for having no contact with RA between August and November 2021, but she seems to disregard the employment issue being a cause of that. I am, on the evidence before me, unable to determine whether T blocked her emails and messaging in around September, but it does appear that she changed address and failed to inform R of the new address she was residing at with the children until R's lawyer got involved. R found new employment in the Cayman Islands and returned in early November 2021 and contact initially resumed with only RA and with the help of the Welfare Officer, a little later with RI. It was around this time that T's father went to the parties' UK lock up and removed her documents. It was evident that this was a rather malicious act by T's father, seeking to cause problems for R and thereby insert himself into their child dispute[50].

Factual Background - Post the February 2022 consent order until T's June 2022 Summons - Oral evidence primarily given at the March 2023 stage of the hearing

284. Regrettably despite reaching a comprehensive child order T and R continued bickering when it came to child arrangements. There was a dispute over contact when R had Covid and could not care for the children when T had work commitments in Cayman Brac. Another occasion when R requested to take the children to the UK for Easter 2022 and because it had taken T so long to finally agree, with the assistance of the mediator, the flights had become prohibitively expensive

[50] See paragraph 24 above.

over Easter for the trip to occur. In the end T travelled alone from the end of April to the end of May 2022 during the school term time as T did not respond to R's request to take RA with her at that time.

285. Unfortunately, upon her return to the Cayman Islands, R's mental health took a turn for the worse. She was drinking and taking medication. R told the Court that she was worried that she may take too many pills and added:

"At that time I do not think I would have been too upset if I had not woken up."

R said that she did not seek help as she believed that T would use that information against her in the child proceedings. On or around 15 June 2022, R decided to leave the Cayman Islands. She told her employer that she needed to take emergency leave and sent a message to T saying that she was going back to the UK and was *"done with it all"*. She said that she had felt *"ground down piece by piece"* by the proceedings and her interaction with T about the children. She said that:

"I could not have stayed. I would have ended up dead one way or another if I had stayed. Psychological stress (was) constant, not a single day or week (when) I had a normal week. All these things eroded me as a parent."

She felt that she had heightened suspicions due to the psychological warfare she said she was enduring from T and that T had asked her friends to watch her and that T knew *"an awful lot"* about her personal life and her comings and goings. I do not find that that was happening, although I accept there were times when T made over-intrusive enquiries to R's employer about R.

286. Within seven days of arriving in the UK, R wrote to the Mediator to inform her that she *"felt [like] a different person"* and that she wished to retain a relationship with the children and therefore was not going to sign any revised children order. She said that she intended to come back to the Cayman Islands. R mentioned that her earlier texts in which when she said that she did not want anything to do with them were not how she felt about the children and that those messages may have been sent when she was intoxicated. She stopped taking the medication and drinking and came back to the Islands with a *"much better and stronger mindset"*.

287. With that background T issued the Summons, which I am dealing with at this hearing, seeking a No Contact Order. In her Affidavit sworn on 5 December 2022 T stated:

"55. It is imperative to remember why I, the Petitioner, brought a further summons to the Court in June 2022,……This action was not brought about by the respondent asking for additional time with the children. This court action spanning six months from June 2022 to present day was because for the fourth time since February 2022 (and the seventh time in two years) the respondent had stated that she 'did not love the children, they were not hers and she never wanted to see them again'. The court action was implemented to have her removed from the children's lives in their entirety, forever, at her wishes.

54. Over the past two years the Respondent has provided no stability to the children, has walked in and out of their lives, spent up to 6 months without even contacting them, return to the UK to live twice and threatened to return to the UK or move overseas on many more occasions, as stated on multiple occasions that they are not hers as she does not love them and even accused RI of being a violent child and split the two siblings for a period of nine months. This behaviour is completely unacceptable and could have been hugely detrimental to the children's mental health, had I not shielded them as much as possible."

288. I note that T's Summons was filed shortly after R did not take up contact with the children on 7 June 2022. I am also aware of the various messages sent by R to T about contact and about her relationship with the children sent leading up to the filing of the Summons. Examples of these are:

"I'm going to apply for a variation of order as (RI) doesn't want to come any more. So, I'm terminating all contact.";

"…She told me she doesn't want to come. She didn't cry at all. So, visitation will cease.";

"She doesn't want to come and I'm happy to respect that and not have her here and enter into permanent arrangement in respect of that."[51]*;*

"I want taking off (RA's) birth certificate. They aren't mine; I don't love them and I don't want them. Find another mug that will pay to support them.";[52]

"You asked me to make a decision about the kids. I have. I don't want to play any part of their lives moving forward. They aren't mine. They aren't part of my family, and I don't want to continue to have a relationship with them. I want to come off (RA's) birth certificate."; and

[51] In relation to message dated 9 February 2022 in relation to RI.
[52] Message dated 7 March 2022.

"As of this week, I no longer wish to see either of the children. This will be a permanent arrangement. This is not up for debate."

288. When I read R's above comments and the above messages, I am of the view that it is important to acknowledge that commendably T has been the constant in the children's lives. Whenever R was having mental health issues resulting in her not being able to take up contact or resulting in her leaving the Islands for periods of time, T has been there for the children to ensure that they were cared for. T is justified in being upset by the various highly unattractive statements made by R about not wanting to see or be involved with the children and one can see why T might, at that time, have questioned whether R was genuine when she renewed her contact demands and request the Court to review the provisions in the Order. However, there is no doubt that the proceedings have been emotionally draining for both parties, but they have had marked consequences on R's mental health. There are times when it is quite clear that, for health reasons, R needed to take a 'time out' away from the pressures caused by the co-parenting disputes and deeply hostile relationship between the parents. There are other times when she had changes in her employment or had to care for a relative in UK which caused her to travel to UK. I do not regard these actions, although not helpful to the children, to mean that she should no longer play a role in the children's lives. When one looks at R's comments, in the context of the surrounding events and the parental interaction, one can see that they were inappropriate emotional outbursts. A number of the comments should not have been made, they were not child centric, and the aim of some of them was to upset T. If these parents show sufficient insight and begin to co-parent as the Court would expect them to, the factors that contributed to R's health issues should diminish. That said, the reality of what has happened, including some of R's actions and comments understandably highlighted by T, has resulted in T at this time becoming the children's main and consistent carer.

Factual Background - Post T's June 2022 variation Summons and R's July 2022 enforcement Summons to the March 2023 substantive hearing - Oral evidence primarily given at the March 2023 stage of the hearing

289. Despite the Court making it clear to the parties at the 22 July 2022 hearing that the contact provisions in the Order remained in force and should be complied with, contact did not resume until around 10 August 2022, which was after R met with Ms. Watling on 5 August 2022. The contact was restored to the level set out in the Order. Unfortunately, it was at this time that T

deemed it appropriate to make unattractive complaints about R to her employer. The types of complaint, if they had been justified (which they were not), were of the type that could have caused R harm and therefore her ability to remain in the Cayman Islands. This is an example of T inappropriately drawing third persons into her family law dispute with R.

290. Regrettably, on 6 August 2022, there was a further incident involving the parents. It was supposed to be R's contact weekend, but T said RA was unwell and had been kept out of school. When R was driving her vehicle, she saw the children in T's car. R followed the car as she hoped to have the opportunity to say hello to the children if T parked the car. T states that she felt threatened by the way that R was driving her vehicle, but R states that she was driving appropriately. T did not stop the vehicle but drove home and R did not follow her to her home. On the evidence before me I am unable to find, on the balance of probability, that R's driving was dangerous, but I accept that T may have been upset by seeing R following her and the children. It was rather an overreaction of T to again involve the police complaining that R was stalking and harassing her and that the children were incredibly distressed by the incident. In the end the police took no further action and no charges were forthcoming despite the involvement of the DPP.

291. In September 2022, T temporarily removed the children from the Cayman Islands, giving 14 hours' notice to R. The reason for the removal was due to concern about a possible Hurricane. T did not provide any of the flight or address details, so R involved the police. The police attended at the property and T told them that she was going to leave for three days, although she had told R it would be for five days. For some reason, despite the fact that her trip was to the United States and not to the UK, T informed the police that her father had cancer. After T left to the US, R again contacted the police and the police reported that R stated that the children had been *"kidnapped"* by T.

292. It appears that this last complaint to the police emanating from this family was not well received by the police. The police were clearly exasperated by the fact that the parties were frequently drawing them into this civil family dispute. On 28 November 2022, Inspector Christsandra Dingwell-Mitchell emailed the Court's Family Unit. She attached an email chain and asked that it be presented to the Judge:

"so the RCIPS can be properly guided by the family court how to address this feuding pair."

The emails included mention by the Inspector of both the September 2022 removal by T and the August 2022 driving incident and she added:

"There are quite a few incidents (about 8) on record between the two women which is using up quite a bit of resources to address obligations in order which are not being met."

In a further attached email[53] she wrote:

"I fear there will be more issues between the feuding parties and we need to properly direct them as it relates to the issues around the breaches. The break up is causing quite a bit of Police man power around matters which can be dealt with rationally however, these ladies are bitter one against the other throwing all reasonable responses toward each other out the window." Officers are growing weary of the repeat "trivial matters" from the pair."

Mr. Walkington from the DPP replied in one of the attached emails:

"My firm view is that both sides of these issues need to be told to behave and to comply with the order, without which they would be in contempt and could be dealt with summarily."

293. From her email it appeared that Inspector Dingwell-Mitchell wanted the Court to speak to *"the couple"* at an upcoming hearing and asked that the Judge:

"include a penal component so the police have the power of arrest to guide our actions."

The Inspector went on to say:

"I anticipate further breaches and as such, I respectfully invite the family court to address the pair and cause all breaches to be dealt with by the family court to prevent the parties from getting the police involved in these civil matters (tying up resources which can be better utilize on other more deserving incidents). All obvious offences (assaults, the insulting the modesty etc.) outside of the stated breaches we will attend to if necessary, but the continued complaints being made by each of the party against the order all connected to reports of alleged breaches should be put to an end.

[53] From Inspector Mitchell to the DPP's Chambers.

I await the Justice's response on the way forward as it relates to the course of action RCIPS should take in addressing the continued non-observance of the order and irrational or illogical responses these females have one towards the other."

294. When the emails were shown to me, I felt obliged to reply to the Inspector and I instructed my Personal Assistant to do so on 29 November 2022 in the following terms:

"I have also seen the emails with exchanges between the Police and the DPP, I imagine that the Police did not intend the Court to see those exchanges.

It is quite clear that the police intended that I see the content of the below email (or at the very least have its contents relayed to me). In ongoing family matters it is not appropriate for the Court to see material or have discussions about a case that are not shared with the parties.

It is not for the Family Court to get involved in the progression of any report to the police of an alleged criminal offence, for example kidnapping, no matter how frivolous the Police may view that report to be. The Family Court, of course, will deal with any alleged breaches of a prohibited steps order. The Authorities (the Police and DPP) will decide how to proceed with or dispose of any report of an alleged criminal offence unfettered by the Family Court. However, it is not the Police's task (which I have in the past seen happen) to get involved with, for example, marshalling compliance with contact orders as the enforcement of such is clearly a matter for the Family Court to deal with.

Please note that powers of arrest orders are not ordinarily attached to s.10 Children Act orders, but may be attached, for example, to protection/domestic violence injunction orders.

If a member of the RCIPS would like to attend the upcoming hearing to explain, in the presence of the parties and the Court, the difficulties that they may be encountering then they are most welcome to do that. The Police could then hear the Court's views."

295. On 1 December 2022, the Inspector replied confirming that the police had:

"no criminal matters we wish the family court to get involved with regarding the feuding pair."

She said that she had contacted R and told her that she:

> *"will be requesting the Family Court make comments on behalf of the RCIPS regarding the constant feud between her and her ex-partner."*

She asked the Court to read out her following words to the *"feuding parties",* namely:

> *"I anticipate further breaches and as such, I respectfully invite the family court to address the pair and cause all breaches to be dealt with by the family court to prevent the parties from getting the police involved in these civil matters (tying up resources which can be better utilize on other more deserving incidents)."*

The Inspector added that:

> *"We have quite a few complaints on record from both women hurling accusations one toward the other. Hopefully the court can get through to this couple to ensure that all breaches go back to the family court for proper resolution. I request they be sternly admonished on the seriousness of the order they signed and the unfavorable responses the court can administer when they act contrary to the order. We wish them to direct all breaches back to the family court to prevent unwarranted police engagements or investigations for matters best suited or needed to be funneled back to the family court."*

296. These were highly unusual communications for a Judge sitting in the Family Division to receive. I have only referred to them because what the police report they had been experiencing from the parties is highly consistent with the manner in which the parties have litigated this private law matter throughout these proceedings. Phrases such as: *"feuding parties"*,*"hurling accusations", "irrational or illogical responses"*, *"bitter one against the other throwing all reasonable responses toward each other out the window","trivial matters being raised"* are all consistent with:

(i) how I have seen the parties conduct themselves in Court throughout these drawn out proceedings; and

(ii) the nature of the copious amount of evidential evidence they have presented orally or in writing.

When the parties came to Court on 12 December 2022, I shared with them the communications sent by the police to the Court.

297. The parties were able to agree that R could take the children to Universal Studios in Florida from 10-16 November 2022. It meant that the children would miss three days at school. R said that T required daily photographs of the children to be sent via R's lawyers. R said that was not appropriate, as the lawyers would charge her for that. There was an issue about the indirect contact that took place. There is no need for indirect contact to take place daily, and at times that can be inconvenient for the children whilst they are on holiday with the other parent. A dispute also arose because R said that T was saying inappropriate things to RI about her weight, and R terminated the call. R said that T then threatened to involve the police and a number of emails were sent to the attorneys. There was no need for R to abruptly end the call, she could have informed R that what she was saying was inappropriate. On the other hand, there was no need for T to get the attorneys involved and then to call the police. It is disappointing, having taken the positive by reaching agreement that R could take the children overseas, for them to then act in this way. There was also a dispute about the passports and T's request about the manner in which they should be handed back to her after the trip. It seems that it was at the Airport on the return from this trip that T informed R that she was in her new serious relationship with D. This trip encapsulates the parties failure to co-parent at a fairly basic level.

298. To the parties' credit, especially R's, they were able to agree that T could remove the children to the UK for an extended period in December 2022. The children were away from 6 to 25 December, which meant that R did not see them for an extended period. Despite that, I note that T refused R's request to take the children to UK in April 2023 and that T later indicated that she wanted to take them away Easter 2023 as well as December 2022. R filed a Summons in January 2023 to take the children away in February, initially saying to Disney, but then later say it was Miami and possibly Disney.

299. As already highlighted herein, R's mental health deteriorated in December 2022. This coincided with the time when the children were in the UK for an extended period with T. It also coincided with the time when R's close friend ended her three-week holiday with her on 10 December 2022. R said that she then felt very isolated and that she began drinking again, taking medication to sleep and that her sleep pattern was *"all over the place"*. She said that due to the number of applications she was facing in the affidavits that she needed to draft she felt that her whole life was revolving around a person whom she had been divorced from for over a year. She said it got to a point where

she thought she could not cope with life anymore and that the only time she was happy was when she had the children with her. She said that during that period in December she did not want to be in the Cayman Islands anymore and that she felt totally humiliated because she says that T was telling people that there was an open police investigation going on. R said that she was lonely, and she felt that T was inappropriately involving herself in R's employment as well as trying to close down her friend circle. R said that in addition to this, her father and grandmother were very unwell and that in December she got to the end of her *"tether"*. In her evidence she set out the details of how she attempted to commit suicide. It was clear that the proceedings resulting from the breakdown of her relationship and the issues with the children all became too much for her to handle.

300. Ms. Watling rightly dealt with the events of December 2022 in the February 2023 report. Ms. Watling helpfully assessed the supportive position being taken by R's employer and she then notified T that R would not be able to look after the children during the scheduled late December visit due to medical reasons. R informed Ms. Watling that she attempted unplanned suicide on 17 December 2022. Ms. Watling had said that she was informed that R had returned to work between 19 to 23 December and that she had cared for the children from 25 to 26 December. Ms. Watling reported that R also had the children in her care on 28 December and on 29 December she had taken them to a children's camp. The intention was that the children would then stay with R overnight after the camp and then be returned to T on 30 December. Ms. Watling reported that, on 29 December, R informed a colleague about her attempted suicide and the medical team recommended that she should be psychiatrically reviewed, and she was taken to a psychiatrist and was told that she must be further assessed between the 29 and 31 December. This meant that R could not collect the children from the camp. R told Ms. Watling that the medical practitioner advised her that she should not have the children during that contact session because of the side-effects from the medication.

301. Ms. Watling in the June 2023 report mentioned that she had carried out further enquiries about R's mental health and she spoke with Dr. Neita who had been her psychiatric provider since 5 January 2023. R was diagnosed with adjustment disorder with mixed anxiety and depression, and she participated in follow-up appointments every two weeks for the purpose of assessing a patient's overall well-being. Dr. Neita advised Ms. Watling that R was fit to return to work, but understood

that she was still undergoing a psychological assessment which was required by her employer. Dr. Neita informed Ms. Watling that (R) was not a threat to herself at that time as she was not in the same frame of mind as she had been in December and added that she was never a threat to others. Dr. Neita informed Ms. Watling that any relapse could not be predicted, but a difference now was that R was under psychiatric management and that along with her treatment should improve her situation so that she would not reach the low point that she got to when she attempted suicide. It was highlighted that the stress that R had been experiencing was related to the external stressor of the divorce and the children proceedings. It was hoped that, once the children proceedings concluded, the stress would reduce. Dr. Neita told Ms. Watling that she did not foresee any issues for R with coping with and having the children in her care and with functioning normally. Although Dr Neita's evidence is accepted by the Court[54], it is understandable that T had concerns that she was not earlier informed, and that R continued with the scheduled contact so shortly after the attempted suicide without notifying her or anybody else.

302. R produced a report dated 20 June 2023 from Dr. Neita which was headed *"Psychiatric Update"*. The doctor mentioned that he had seen R on four occasions, approximately a month apart, since 8 March 2023. The doctor stated that R had maintained her improvements with no untoward events during that period. However, the doctor flagged the ongoing concern arising from R's intermittent use of alcohol when she was stressed and advised that she should only drink in moderation. The doctor believed that she was compliant with her medications and that psychometric testing done in the week before the report showed no significant level of depression and mild levels of anxiety. The doctor indicated that R's updated diagnoses are:

> *"Major depressive disorder and anxiety disorder-unspecified."*

She added that the acrimonious child custody proceedings are a *"psychosocial stressor"* for her, but her clinical status was stable. She went on to say:

> *"As of the assessment on June 16, 2023, it is this writer's clinical opinion, with a reasonable degree of medical certainty, that (R) is fit to exercise parental custody of her children and she does not pose a risk to them, or to herself, it is also this writer's opinion that she is fit to resume work. These opinions have not changed since they were expressed in court."*

[54] See paragraphs 79-81 and 97 above.

303. R also produced a letter from Dr. Tobain, a Recovery Services Supervisor and Psychotherapist at Infinite Mindcare dated November 16, 2023. The writer indicated that:

> *"Based on my personal assessment, there is no evidence of any active, diagnosable substance use disorder based on available information. I would also rule out any historical opioid or sedative/hypnotic use disorder based on available information. In the report by Dr Brannon[55], he notes both opioid and sedative/hypnotic use disorder as 'rule- out' conditions and suggested further assessment from a substance use specialist. Based on my assessment, I do not believe either of these rise to the level of diagnostic substance use disorders. There are no current concerns in this area and historically I would describe use of these substances as 'misuse' vs. a substance use disorder.*
>
> *Regarding alcohol use, (R) was diagnosed with 'alcohol use disorder' by Dr. Brannon. There is no specification of severity on the diagnosis, which is an incomplete diagnosis. I understand Dr Brannon's concerns for (R's) alcohol use, which I share and would again categorize a reported consumption of alcohol as misuse vs. a diagnosable substance use disorder. To expand on my rationale, the majority of (R's) heavy misuse of alcohol occurred during a very specific and limited time period which coincided with a major depressive episode which culminated in a suicide attempt. While (R) reported to have used alcohol non-recommended limits and other various times, a reported use outside of that limited period, does not rise to diagnostic levels…*
>
> *While it can be difficult to diagnose and monitor substance use conditions as we rely heavily on self-reported information, it is my overall opinion is that (R) has been honest, open, and forthright in her engagement with therapy services. There are numerous pieces of information which (R) has disclosed which would negatively impact on evaluation of her potential substance use disorders. She openly shared these pieces of information despite having no way to have learnt this information otherwise. She has also been consistent with sharing this information across her personal providers. In my opinion, this indicates a high degree of authenticity in her reporting and reflects her personal desire to make and sustain changes in these areas."*

[55] R produced a heavily redacted report from Dr. Brannon dated 15 April 2023. Having read the content of the report and the views expressed thereon by Dr. Tobain I do not separately comment on that redacted report in this Judgment.

304. When I consider all the medical evidence, I am satisfied that, when R is compliant with her medication regime, her mental health is stable. I am satisfied, particularly from what Dr. Tobain reported, that R is motivated and forthright in her disclosure to professionals concerning her health. I note that, when she had attempted suicide, R did not disclose that fact to anybody until her work colleagues became concerned and sought assistance for her. That was at a time when these proceedings were at an elevated contentious stage, and R understandably felt that T would have welcomed the disclosure of such information to bolster her case. That said, R should have disclosed the information, especially as contact took place with the children after the episode. I am satisfied that R would not take that same secretive approach again. I am satisfied, having read the observations and use of the medical practitioners, that R's historical mental health issues do not mean that she would harm the children and do not prevent her from being able to safely care for them.

The Law

305. In the House of the Lords decision in ***Re G (children) Residence: Same- Sex Partner)*** 1 WLR 2305, the Court was considering a child dispute involving a lesbian couple who made a conscious decision to have children together, who together arrange for an anonymous donor insemination, and who brought up the children together until their relationship broke down. CG was the birth mother. Both parents had entered into new relationships with the intention that they register their new civil partnerships. The parent who was not the natural mother (CW) had a 17-year-old son born using an anonymous donor insemination during a previous relationship, and it was agreed that he had had a positive relationship with the other two children.

306. Although CG moved out of the area to live with her new partner, an alternate weekend order was made in favour of CW. CG's new partner was playing a major role in the children's lives and CG questioned CW's right to be involved in the children's lives and opposed a shared residence order. CW was applying for a residence order with the children living primarily with her. CG was seeking to move with the children much further away from where they currently were living, to Cornwall. The CAFCASS officer reported that the children enjoyed life in both homes. The Court of Appeal overturned the Judge's decision and granted a shared residence order defining the time that each child would spend in each household and the order requiring CHG to remain living in her current town was expressly affirmed. In breach of the Court order, CG moved with the children to

Cornwall. When the matter came before Mrs. Justice Bracewell she rejected the recommendation of the appointed Guardian and preserved the shared residence order but reversed the times allocated to each home. That decision was appealed to the Court of Appeal.

307. The Court of Appeal dismissed the appeal, Thorpe LJ upheld the decision and rejected CG's submission that:

> *"Cogent reasons must exist if a court is to prefer the claims of a person who is not a child's natural parent to one who is", although he accepted the propositions that "the identity of a child's natural (biological) parents is always a matter of significance" and that "in each case the weight to be given to the blood relationship will depend upon the matter in issue, the identity of the parties and the court's assessment of all other factors in the welfare checklist."*

Hallett LJ, however, agreed to affirm the Judge's order with a degree of hesitation and stated:

> *"I am very concerned at the prospect of removing these children from the primary care of their only identifiable biological parent who has been their primary carer for most of their young lives and in whose care they appear to be happy and thriving. She is both a biological parent and a 'psychological' parent. Mindful as I am of the changing social and legal climate, on the facts of this case, I would attach greater significance perhaps than some to the biological link between the appellant and her children."*

308. When the appeal came before the House of Lords, Baroness Hale stated that:

> *"They are locked in a dispute about the future of those children which is just as bitter as the disputes which arise between heterosexual couples. And the issues arising are just the same as those which may arise between heterosexual couples."*

Importantly she added:

> *"The legal principles are also the same."*

Baroness Hale noted that in this "novel context" there were two issues of principle. The first was the weight to be attached to the fact that one party was both the natural and legal parent of the

children, and the other is not.[56] The second was the approach to be adopted by the Court where the party with whom the children have their principal home is reluctant to acknowledge the importance of the other party in the children's life.

309. Baroness Hale discussed parenthood and said that there is a difference between natural and legal parents. She pointed out that a natural parent could be a genetic parenthood[57], gestational parenthood[58], and social and psychological parenthood[59]. An example of the last-mentioned parenthood is where there is an adoptive parent. Baroness Hale stated that CW was a psychological parent whereas CG was the children's biological and psychological parent.

310. Baroness Hale allowed the appeal, reversing the names in the current allocation of time between the two households, and she placed great emphasis on the fact that, after the children have been located in Cornwall, contact had been reinstated and the previously ordered arrangements abided by CG. She said that she found it impossible to believe that, if this had been a dispute between a mother and father, a court would have changed the child's primary home schooling if contact was continuing in accordance with an order. Baroness Hale stated at paragraph 44:

> *"I am driven to the conclusion that the courts below have allowed the unusual context of this case to distract them from principles which are of universal application. First, the fact that CG is the natural mother of these children in every sense of that term, while raising no presumption in her favour, is undoubtedly an important and significant factor in determining what will be best for them now and in the future. Yet nowhere is that factor explored in the judgment below. Secondly, while it may well be in the best interests of children to change their living arrangements if one of their parents is frustrating their relationship with the other parent who is able to offer them a good and loving home, this is unlikely to be in their best interests while that relationship is in fact being maintained in accordance with the court's order."*

[56] CG argued that the Courts below had wrongly attached no significance to the fact that she was the biological mother.
[57] The provision of the gametes which produced the child.
[58] The conceiving and bearing of a child.
[59] *"The relationship which develops through the child demanding and the parent providing for the child's needs, initially at the most basic level of feeding, nurturing, comforting and loving, and later at the more sophisticated level of guiding, socialising, educating and protecting."* Paragraph 36 in ***Re G***.

311. Therefore, the principles to be applied in this case are the same as they would in a case involving a male father and a female mother. I accept that I must have regard to the fact that T is the biological mother of the two children and who, for a variety of reasons, is now viewed by them as being her primary carer. I must also have some regard to the fact that R has been their psychological parent. Accordingly, when I consider the detailed background spreading over a number of years and the orders to be made, I recognise that, pursuant to s.3(1) of the Act, the children's welfare is my paramount consideration. As Lord Fraser said in ***Gillick v West Norfolk and Wisbech Area Health Authority and Department of Health and Social Security*** [1986] AC 112 at 170:

> *"...parental rights to control a child do not exist for the benefit of the parent. They exist for the benefit of the child and they are justified only in so far as they enable the parent to perform his duties towards the child."*

312. In ***Re B (A Child)*** [2009] UKSC 5 Lord Kerr gave a reminder of the approach to be adopted by the court when dealing with private law disputes. He began by referring to observations made by Baroness Hale in ***In re G (Children) (Residence: Same-sex Partner)*** at paragraph 30, where she had said that:

> *"...The statutory position is plain: the welfare of the child is the paramount consideration. As Lord MacDermott explained in* J v C *[1970] AC 668, 711, this means that it "rules upon or determines the course to be followed". There is no question of a parental right."*

313. Lord Kerr then added that:

> *"37. This passage captures the central point of the in Re G case and of this case. It is a message which should not require reaffirmation but, if and so far as it does, we would wish to provide it in this judgment. All consideration of the importance of parenthood in private law disputes about residence must be firmly rooted in an examination of what is in the child's best interests. This is the paramount consideration."*

314. Therefore, the core principle is that any decision about the children's residence and contact arrangements must be firmly rooted in an examination of what is in each of their best interests.

315. I also must have regard to Article 9[60] rights. This means not only the Article 9 rights of the children but also those of T and R. As stated in The European Court of Human Rights decision in ***Kosmopoulou v Greece*** [2004] 1 FCR 427:

> *"The mutual enjoyment by a parent and child of each other's company constitutes a fundamental element of family life, even if the relationship between the parents have broken down, and domestic measures hindering such enjoyment amount to an interference with the right protected by Article 8 of the Convention."*

The role of both parents in the lives of a child can be critical and it has long been accepted that the children of separated parents are entitled to know and have the love and society of both of their parents.

316. Before I move on to the Welfare Checklist, although I accept that RA was the only child born during their relationship, I believe it be helpful to share the following remarks by Baroness Hale set out at paragraph 45 in ***Re G*** which one would hope the parents would have regard to:

> *"It is, however, always possible for parents to modify their arrangements by agreement. Modifications become inevitable as children grow older and develop lives of their own. Agreed arrangements are almost always preferable to those imposed by a court. I am sad to see these two women, who deliberately brought these children into the world for them to share, and who both love and want the best for them, locking themselves into the same sort of battles that, sadly, we so often see between mothers and fathers. I hope that they can now move on from this dispute into a happier and more co-operative future for the sake of their children."*

The 'Welfare Checklist'

317. In exercising my broad discretion when determining what orders are in the children's best interests, I must consider the factors contained in what has become known as *"the Welfare Checklist"* found at s.3(3) of the Act. In relation to the Welfare Checklist Baroness Hale stated:

> *"…in any difficult or finely balanced case, as this undoubtedly was, it is a great help to address each of the factors in the list, along with any others which may be relevant, so as to ensure that no particular feature of the case is given more weight than it should properly*

[60] The Bill of Rights - Cayman Islands Constitution Order 2009.

bear. This is perhaps particularly important in any case where the real concern is that the children's primary carer is reluctant or unwilling to acknowledge the importance of another parent in the children's lives."

318. In relation to the **wishes and feelings of the children**, I must have regard to the same in light of each child's understanding and the fact that RI is aged 10 and RA aged only 5.

319. The Guardian accepts that RI's feelings may have been confused during the periods prior to February 2023 when she did not see R (for instance June 2022 to August 2022 or before to the August 2021 report) but then compared that to when contact was taking place regularly in a stable manner between August 2022 and February 2202 when RI was clearly expressing her love for both parents. The Guardian also highlights the increasing involvement of D with the children and in relation to third parties who have played a role in these proceedings as well as in the children's out of the home lives, for example at school. The Guardian is rightly troubled by the fact that T enabled RI to read an email from R in which there was name calling by R. This clearly had an impact on RI and on her views about R. Concerningly, although not something accepted by T, RI told the Guardian that T showed her the letter and said that she was old enough to see such things. When considering how to approach RI's post June 2023 comments about not seeing R, I agree with the Guardian's conclusion that RI:

"has been triangulated between (the parents) and she has started looking for a way out of the distress that she has been subjected to."

320. Despite filing three later reports, Ms. Watling only considered the Welfare Checklist in the October 2022 report. At that time, she stated in relation to 'the wishes factor' in the Welfare Checklist section the October 2022 report that both children wanted to see R. She was reporting that RI was at that time telling her that she wanted to ensure that the child arrangements should be fair for the parents and that they both have equal time to spend with her, otherwise RI would be upset. She said that RI articulated that she wished it to be:

"with one mum for one week Monday to Sunday and then the next week with my other mum Monday to Sunday" then adding; *"I would miss them both because when I am not with one I miss her but I get to be with the other."*

RI's then clearly expressed view that she wished to spend equal time with her parents could not have been more clearly stated by her. I note that this was when T and D's relationship was in its early stages.

321. In the February 2023 report, Ms. Watling was reporting that RI was again asserting her desire to spend time in both parents' homes. I note that, in the same report, Ms. Watling informed the Court that, when she attended a home visit between R and the children, both children interacted with R in an *"affectionate manner"* and were *"observed to be comfortable and content around (R)"*. She also reported that Ms. McField at the Centre had stated that RI loved both of her parents. Mrs. Toolsiram stated, in her August 2021 Welfare Report, that at that time when R had requested that RI not attend for contact with RA, RI, who had a resultant feeling of rejection, told her that she preferred to be living with T.

322. However, only four months after that report, in the June 2023 report, despite the above, Ms. Watling reported that RI was expressing a totally different view, saying that she loves D and *"despises"* living between houses and that she wanted to spend *"100%"* of her time with T. This was, of course, at a time when D's relationship with both T and the children had developed and her position within the family setting would have become more significant. The reasons that RI was providing for this new viewpoint seemed often to be an echo of what T's frequently expressed personal views had been for some time, for example lack of activities for the children and the food diets offered by R. I am conscious that the children often seem to be repeating, almost verbatim, the concerns and reasons for ceasing contact that T and apparently D have expressed to a large number of third parties when trying to 'get them on board' to their way of thinking. The police graphically made their concerns known about both parents inappropriate reporting of matters to them and the teachers expressed the same, albeit primarily about the nature of and volume of T's information sharing with them. As the school noted, the children's comments do at times come across as being coached.

323. These were not new concerns arising post the February 2023 report and although there may have been heated exchanges on contact visits post February 2023, RI's witnessing the vitriol between her parents started well before February 2023. The Guardian rightly states in the GAL November 2023 report, when considering RI's wishes and the Welfare Checklist that it was:

> *"important"* for her *"to consider not only what (RI) has expressed to (her) since (her) appointment, but what has been documented by two social workers over the past two years as well"* and that it was *"vitally important to look at what (RI's) actions and behaviours have revealed about how she is feeling."*

324. I do not agree with Ms. Watling's assertion that the children:

> *"are letting the adults know that they don't want contact."*

As the Guardian rightly observed, when one considers the force of RI's wishes reported in Mrs Watlings' October 2022 report and some of the content in her February 2023 report, one must look deeper than the very recent verbal statements that they have made, including those made by them to Ms. Watling during her infrequent 2023 meetings with them, as well as the reports from T and D to her which she appears to have fully accepted as being accurate. If Ms. Watling is of the view, unlike the Guardian, that the children are clearly stating that they do not want to see R, then she has failed to place them in the wider context and adequately explore or address why such a dramatic change has come about in such a short space of time.

325. RA, unlike RI, was a planned child born during the parents' relationship. In August 2021, Mrs. Toolsiram spoke about his affection for both parents. In October 2022, Ms. Watling reported that RA had a:

> *"secure attachment to both parents"* and *"enjoys spending time with both of his mothers and wishes for this to continue."*

In February 2023, Ms. Watling reported that RA said that he was happy spending time with both parents, and, around June 2023, he gave the same indication to her when he nodded to that question. RA is clearly torn between wishing to keep the presently diminishing attachment or bond with R (which was illustrated during the Guardian's assessed visit) and being supportive and protective of T, who he knows dislikes R and gets upset when R is caring for him. RA also seems to succumb to the views of RI, who is the more dominant older sibling. RA seems to not want to say anything about seeing R that might be different to what RI is expressing at the time about that, and it is noticeable that he speaks more freely and is, on the whole, more receptive to R when he is not under RI or T's influence. I note that RA appears not to have involved himself in some of the video contact calls with R, but it is clear that at times he has a propensity to play up and be naughty as

any child of his age may be, for instance when striking or scratching RI during the calls. I do not read this as RA not wanting to have a relationship with R. When considering what his wishes may be one must look at his physical actions as well as his words and mannerisms, including his interaction when in the presence of R. The Guardian rightly states that:

> *"Perhaps the most salient representation of RA's feelings on contact with (R) was his demeanor and behaviour at the visit on 24th September. (RA) was affectionate towards (R) and clearly regarded her as a parent, not just because he called her "mommy" but because of the manner in which he interacted with her. There was no denying that he was happy and well-settled throughout the visit."*

326. I am satisfied that, at this time, if able to express it freely without having a concern about how others may feel, RA would want to retain a relationship with R. Therefore, all the adults who should be close to him (T, R and D) should seek to be supportive of that need for him despite their personal animosities towards each other.

327. It is evident that RI, who was born before T and R were in a relationship, now views T as her mother and primary carer. Her relationship with R is more complex than RA's is with R, and this may have partly been caused by R's unfortunate stating at times that she did not want RI to come to contact with RA and R's absence from the jurisdiction. Although, RI had expressed to professionals that she wanted to spend time with R after that, it is possible that RI may still harbour some feelings of rejection from those periods of time. RI has recently been reported as being consistent in saying that she does not want to visit with R. RI is sensitive to T's feelings and understandably wants to alleviate any concerns and distress for T. Some of the supporting evidence before the Court (for example a recorded exchange at a handover from one car to another and some of the photographs) show a natural and warm interaction between R and RI. The Guardian's assessment illustrates an expected initial coldness and hesitancy from RI towards R at the observed visits but during the visit this changed. RI is not in a position to understand the complexity of her situation and the family dynamics. What the Court had been hoping for many months (and still expects the parents to do) was that a child psychologist would have been engaged by the parents to help, in a neutral setting, RI work through her feelings towards R and to see if the seemingly damaged relationship could be repaired if the psychologist felt it would not be detrimental for RI for that to be done.

328. In such cases, courts sometimes must make difficult decisions which may not appear to be in line with what at first glance appears to be a child's wishes and feelings. Noting RI's historical interaction with R, and the observed contact by the Guardian, I am not satisfied that RI, if allowed to express her feelings in a neutral and therapeutic setting detached from what she believes may please T concerning her relationship with R, has firmly decided or wishes to end all attachments with R. I am of the view, especially having regard to what the Guardian has reported, that despite the minimal levels of contact in recent times, RI remains attached to R and if allowed to freely engage with her would wish to retain his bond and a child/parent relationship with her. However, RI will need assistance with a transition back to recommencing her relationship with R and the support of all adults.

329. I have considered **each child's physical, educational and emotional needs**. RI is doing fairly well at school. Unfortunately, her school has been brought into the dispute between the parents, primarily by T and to an extent by D and R. During the course of these proceedings her unapproved absences (usually at T's bequest) have been at a level that needs to be monitored and it is clear that she has had to do some catching up with her classes. She seems to be maintaining a reasonable standard at school. RA is of course at a less rigorous level due to his age, but by all accounts, he is doing well and appears settled. I am satisfied that the children's educational needs are being met in T's care and were being met when they were in the care of both parents.

330. When Ms. Watling considered the children's physical needs when addressing the Welfare Checklist in October 2022 report she noted no developmental issues or chronic health issues for either child and she felt they were both *"happy, healthy"* children. The children then and still have no unusual physical needs.

331. In relation to their emotional needs, it is evident that the children have been detrimentally affected by the ongoing feud between their parents. Their parents, due to their lack of coparenting skills and due to them allowing their animosity towards each other and them elevating their personal life goals and life plans have acted in ways that have caused a rupture in the children's emotional stability due to the resultant breakdown of them having a meaningful relationship with R. Ms. Mcfield has set out in her report, in which she recached a conclusion that RI loved both of her parents, the type of emotional support that RI needed. This support is still required and the parents, if genuinely

concerned about RI's emotional welfare, will engage the services of a child psychologist to address those emotional issues as well as assist the parties with the best way to handle the reintroduction of contact between RI and R and how best to repair that damaged relationship. At this time, RA seems to be more emotionally secure than RI. However, if the current pattern of behaviour by the parents continues or if R becomes fully excluded from his life this will change. It is well known that a child who has a parent excluded from their life at an early age may in their later child years react negatively towards the parent it believes has caused them to lose that family member.

332. The children's emotional needs are not currently being met. Most regrettably, the parents did not heed Mrs Toolsiram's warning contained in her 26 August 2021 welfare report when she wrote:

> *"If (RI) is separated or forced to choose between her parents this can have a negative impact on her wellbeing and contribute to psychological harm."*

Ms. Watling has spoken about RI appearing:

> *"to be experiencing immense emotional distress from parental conflict."*

The Guardian highlights the dramatic *"about face"* change in RI's description of her feelings towards R from February 20223 and especially June 2023 and stated that it was:

> *"extremely concerning and suggests a significant impact on RI's psychological well-being."*

333. RI told the Guardian that the parental conflict has been stressful and tiring for her and that her parents hate each other and do not speak to each other or even look at each other. A child's emotional needs include them having a meaningful relationship with both parents now and throughout their childhood and their knowing that by them having that they are 'not letting the other parent down.' They need to have the opportunity to form meaningful emotional bonds with all significant members of their family and this includes note only T, D and R, but also wider family members. There is a need for a stable and supportive home environment in which each parent does not undermine the other parent. It is important for the children's well-being that they see R and T cooperating in relation to their upbringing. For that to happen, it is vital that their relationship with any significant adult is not obstructed or undermined by another adult figure. Their emotional well-being will be greatly enhanced if the adults in their life can cooperate and, when in the presence of the children, speak positively about and encourage the relationship with other significant family

members. However, it also requires both parents to be there consistently and not intermittently for the children and at times one can understand why T feels that she has been the one left caring for the children due to R's absences, some of which have been for good reasons, some debatably not.

334. When considering the **likely effect on the children of any change in their circumstances**, I remind myself that in ***Re B*** Lord Kerr commented that the status quo:

> *"will not always command the importance that must be attached to it in the present case."*

This means that the weight to be attached to it depends on the circumstances in each case and it is therefore only one of the factors to be borne in mind when ensuring that the child's welfare is the Court's paramount consideration.

335. I note that in the only report in which Ms. Watling considered the change of circumstances factor in the Welfare Checklist[61] she stated that RI would be emotionally impacted if she had unequal time with both parents. In the same section of the October 2022 report, she said that RA was of an age where attachments are forming and it is important to maintain consistency in terms of the caregivers in his life, adding that:

> *"If he is denied the opportunity to be in contact with one parent it would have an adverse impact on his overall wellbeing."*

Only a few months later, although not stated in an analysis of the Welfare Checklist, Ms. Watling was advocating that unless both parents undertook parenting capacity assessment and successfully completed co-parenting classes, the opportunity, namely that the children should be denied the opportunity to be in the contact with R. Presumably, the change of circumstances to a no contact arrangement was felt to be a change that would be in the best interests of the children. I do not agree.

336. The Guardian rightly highlights that the present situation is that the children have been exclusively cared for by T from about June 2023. This arrangement has most regrettably continued far longer that the Court had ever intended because:

[61] The October 2022 report.

(i) there was a thwarted expectation that the parties would engage a child psychologist to help address issues being raised at the time and to advise on how to possibly restore contact in a way best for the children, particularly for RI; and

(ii) due to the manner in which the parties have chosen to litigate this case causing the trial to run to an inordinate length.

Prior to the above mid-June 2023 change, there was a commendable fortnightly pattern whereby the children were cared for by R on Friday to Monday on "week 1" and Wednesday to Friday on "week 2". If the Court reinstates the pre-June schedule or orders a new schedule, there will be a change in the children's current circumstances. I agree with the Guardian that could be disruptive to the children's schedule and routine which has been established since June 2023 and therefore, any change would need to be managed carefully. That is why there will be a gradual introduction of contact during the school holidays, something which is feasible if R has returned to the Cayman Islands. The suggestion by R that the children be placed with her either in the UK or the Cayman Islands for the larger part of the Summer school holidays as some sort of deprograming exercise from T's influence would not be in the children's best interests and would be too great a shock for them. As suggested by the Guardian, and as mentioned by me above, due to RI's expressed views about her relationship with R, counselling and/or a psychologist's input should be sought for her, at least in the short term during the transition, but possibly longer.

337. Looking at the best interests and welfare of both children separately, I am satisfied that a change of circumstances reverting to regular contact between RA and R is more easily manageable than it might be for RI. For this to happen in a way that meets this child's needs (and RI's needs) the parents must remove the children from the fields upon which their parental conflict is being fought. As already mentioned herein by Ms. Watling, Ms. McField and by the Guardian, as they are unable to put their children's needs above their own, both parents should access therapeutic intervention to assist with the transition back to contact and the operation of contact thereafter. As suggested by the Guardian, measures can be put in place to reduce the incidence of parent-to-parent handovers, for example by the introduction of a schedule which provides for changeovers to occur through school/camp pick-ups and drop-offs as much as possible is essential.

338. I share the Guardian's view expressed on behalf of the children which she succinctly set out at page 69 of her report when she states:

> *"Although we often think of the negative effects that change will have on children, positive effects should not be overlooked. When there was a stable shared residence schedule in place in the past, the children were doing well emotionally, as is evidenced by Ms. Watling's October 2022 and February 2023 reports."*

However, I cannot disregard the fact that the children's primary carer for almost a year has been T when I consider how much of a change of circumstance is in their interests. I feel that at this time an equal sharing contact order would be too great a change with the issues the children need help with, in particular RI, to assist them to repair their relationship with R. There should be a gentle reintroduction during the upcoming school holidays. As it is a gradual reintroduction, although I have considered each child separately, I think that it would be preferable for both children to be involved together. After the Summer school holidays, the arrangements should revert to something similar to the child arrangements agreed by the parties in the Order.

339. Save for taking into account the **children's age and sex** when reviewing this case, there is no need for me to additionally comment on the same or on their **religious persuasion**, or on their **background.** There are no **other characteristics** of theirs which I consider to be relevant.

340. At **paragraphs 329 to 333 above**, I have already touched upon matters relating to **how capable each parent, and any other person is of meeting the children's needs**. I am satisfied that they can both meet the children's educational needs. Although R has in recent times only been able to play a minimal role in the children's lives, it is evident from the indirect contact conversations with RI, which I have seen and heard, that she has a keen interest in how they are doing and in assisting them with matters such as spelling. It is also evident that, despite the above and her employment and health issues, save for some payment disputes, R has made a substantial contribution to the children's private school fees. When the family lived in the UK before coming to Cayman it was R's funds that enabled RI to attend a prestigious private school.

341. T and R can both meet the children's physical needs, although I accept that T offers a more stimulating environment, although I note also includes playing indoor electronic computer games. I am satisfied that T meets the children's day to day physical needs very well. Although there may not be so many extracurricular activities with R and the use of iPads' when in R's care, there is nothing unusual or alarming about how the children occupy their time there. Although, due to her

active lifestyle, interests in health and fitness, T provides a more balanced and healthy diet and daily routine for the children, the children are ordinarily appropriately fed at R's house. R's personality is very different to T's, and she may be viewed as being more laid back without the same 'get up and go' drive that T has. I do not share Ms. Watling's view that, in this case, diet and activities at R's home are significant factors to be taken into account when considering whether there a no contact order should be made, even if such an order would at first instance only be until both parents agree to and completed the parenting programmes recommended. I do not find that the children return from R's care unwell to a level that is above the norm. They have been unwell in both households.

342. There are issues concerning the parents' ability to meet the children's emotional needs. On a day-to-day level when not pre-occupied with their feud with the other parent, they can. However, the Guardian understandably expresses a concern about the extent to which R and T are able to appreciate the long-term negative effects of their conflict on the psychological well-being of the children. She is right to say that:

> *"It is not clear whether they recognize their own role in and responsibility for the emotional issues currently being faced by the children."*

It is important, as stressed by Ms. McField and Mrs Watling, for both children's emotional well-being, that the parents seek assistance for themselves to educate them as to how they may best to co -parent and do not drag the children into the never-ending conflict between them. However, I do not agree with Ms. Watling, and neither does Ms. McField suggest, that it is in the best interests of the children for there be a no contact order pending both parents engaging with and completing such assistance. The delay in repairing the fractured contact arrangements is already causing harm and is not in the best interests of the children. The abject failure to engage the assistance of a child psychologist for RI or to properly engage with the Centre has been to the detriment of RI and illustrates a failure by the parents to meet RI's emotional and arguably physical needs.

343. I have considered **any harm that the children have suffered or are at risk of suffering.** I have already addressed this when highlighting the negative impact upon them arising out of them being drawn into their parents' long running dispute and inability to properly co-parent. The children have been put into a position in which they must take sides in the dispute and also take on a protective role for T, who they now view as their primary carer. The Guardian correctly labels the

situation to be one of *"conflict of loyalty"*. This is not a child's role, and it puts a child at a real risk of emotional harm, harm which is already emerging for RI and for which both parties should ensure she gets assistance to enable her to understand that it is not her fault and that she should be able to concentrate on being a child. The children have been brought into that dispute by being shown inappropriate materials or being put in circumstances in different environments (including at home, at school or on video calls) where they witness their parents' hostilities. I have little doubt that T has made it clear to the children, either directly or rather insidiously by means such as name identity, as she has made clear to the Court and to the Guardian, that she does not, and they should not view R as their mother. This causes confusion and stress to the children and can cause harm, especially as the reports up until February 2023 showed that R was a very significant family figure in both children's minds.

344. I accept that the parents' stress levels have been markedly increased due to what has been years of drawn out and highly contentious court proceedings. These proceedings have created an environment of evidence gathering and planning to assist each party's cases in Court. The videoing and the line of questioning by parents during indirect contact has made those conversations less child focused and more stressful for the children. The negative and investigatory atmosphere created and the nature of some of the exchanges have created an environment in which the children will not have look forward to the contact conversations. The parents must now surely recognise that their approach must change.

345. **The range of the powers available to the Court in these proceedings** are wide**.** I have the jurisdiction to make the orders sought by both parents, namely variation of a Residence Order, a Contact Order, Discharge of Prohibited Steps Order. When making my determination I have considered whether such orders would be in the best interest of both children (considering them separately) in the circumstances. I have also considered whether other orders might better meet the best interests of the children.

Conclusions

346. This is a truly upsetting case where both parents should take a good long hard look at themselves and how their actions have impacted upon the welfare of the children. It may be that they both genuinely feel that they are without blame and that they always act with their children's best

interests at the forefront of their minds. The evidence shows otherwise and, if they do hold such a view, that is illustrative of their lack of insight in relation to the consequences of their actions. There is evidence that, if the current state of affairs is not addressed, the children will be emotionally harmed. No matter what s.10 orders are made, the current situation cannot persist and, for the children's sake, the children and, I stress, the parents must engage in the recommended wide-ranging therapy or counselling highlighted by the professionals who have been involved with this family.

347. As already stated, it would not be in the children's best interests for there to be a no contact order and thereby remove one parent from their lives. That might be a convenient outcome for T and D and their life plans, but it would not be in the children's best interests. There is a need to concentrate on reintroducing contact. I do not feel that equal contact is the level of contact that would be appropriate at this time. I agree with the Guardian that there should be a phased reintroduction to any care schedule. There will be a period of adjustment for both children while a contact routine is being reestablished.

348. The transition and reestablishment of regular contact for RI to R will require more sensitivity. This means that the parents must start to act as effective parents and themselves seek out and engage the assistance they themselves require. A failure by T in that regard will not bolster any application she may make to vary my orders.

Order

349. The living arrangements orders that I make at paragraphs (ii)-(xii) below are premised on R's evidence that she will shortly be returning to and then again residing and working in the Cayman Islands. The wider evidence and submissions of the parties (including the Guardian) and the witnesses (including Ms. Watling) were made on the basis that R would withing a short period of time be back residing in the Cayman Islands. Therefore, if R fails to return to the Cayman Islands, I am not in a position to make any informed orders in this Judgment for any child arrangements governing the children living with R. I therefore make the following orders:

(i) The shared Residence Order for both children is not discharged and remains in place. Therefore, there is no discharge of R's parental responsibility and the requirement for both T and R to have input into major decisions relating to the children remains.

(ii) The following provision will come into effect a week after the date of this Judgment or a week after R's return to reside and work in the Cayman Islands (whichever is the later) for a one-off eight-week cycle:

(a) For weeks 1, 3, 5 and 7, the children will live with R from 5:00 p.m. on Tuesday to 5:00 p.m. on Wednesday.

(b) For weeks 2, 4, 6 and 8, the children will live with R from 5:00 p.m. on Friday to 9:00 a.m. on Monday.

For the avoidance of doubt, at all other times the children will reside with T. The parties may agree arrangements for collection and return as per paragraph 349 (xi) below.

(iii) Thereafter the following repeated four-week cycle arrangement will immediately be put in place for the school terms and the Christmas holidays (subject to the Christmas schedule set out below):

(a) Weeks 1 and 3 - The children will live with R overnight Wednesday and Thursday with pick up from school on Wednesday and drop-off at school on Friday morning.

(b) Weeks 2 and 4 - The children will live with R overnight from Friday with pick-up from school and drop off on Monday morning at school.

(c) If there is no school on any day where there is a pickup or drop off scheduled, pick up shall be at 5:00 p.m. and drop off shall be at 9.00 a.m. and the location of those handovers will be determined in accordance with Paragraph 349 (xi) below.

Again, for the avoidance of doubt and subject to the below provisions, the children shall live with T at all other times.

(iv) The parties shall share the Christmas/New Year holidays as follows:

(a) For the Christmas holiday period will be divided with the first half commencing Christmas Eve at 2:00 p.m., overnight until 2:00 p.m. on Christmas Day and the second half commencing 2:00 p.m. on Christmas Day, overnight until 5:30 p.m. on Boxing Day. This period will be alternated each year, with the first half of the holiday in 2024, and future even years, belonging to R and the pattern reversing in odd years so that T cares for the children the first half of the holiday in 2025 and future odd years.

(b) For December 2024 and in future even years, T shall care for the children from 4:00 p.m. on New Year's Eve until 8:15 a.m. on 2 January and thereafter the normal schedule set out at 289 (iii) above shall resume. In odd years, R shall care for the children as per the above time schedule. In the event, however, that a party travels to the UK for Christmas (either with the other party's prior written agreement or by a court order), New Year's contact may be waived due to the children being off Island.

(c) The remaining days in the Christmas school holidays shall be divided according to the normal schedule set forth in paragraph 289 (iii) above or as the parties may agree.

(v) Easter school holidays shall be divided equally between T and R, with R to have the first half in odd numbered years (2025, 2026, etc) and T to have the first half in the even numbered years (2026, 2028 etc).

(vi) From the Summer of 2025, the children will live with T and R for an equal number of days during the summer school holidays. This may include extended periods of time out of the jurisdiction. The parties are to provide each other with a schedule of their proposed dates with the children at least four months before the last day of the relevant academic school year to enable them to agree the schedule.

(vii) Half-term school holidays shall be divided equally between T and R, with R to have the first half in odd numbered years (2025, 2026, etc) and T to have the first half in the even numbered years (2026, 2028 etc).

(viii) Commencing from the school new academic year, the Bank Holidays will alternate between T and R. The first bank holiday will be Remembrance Day on 11 November 2024 and the children will be with R.

(ix) Arrangements should be made for the children to spend time with each parent on each parent's respective birthdays.

(x) The parties shall share RA's birthday. If RA's birthday falls on a weekend, the party who does not have RA for that day shall collect the children at 2:00 p.m. and care for the children overnight. If RA's birthday falls on a weekday, the normal schedule shall remain in effect for his birthday save that the party not caring for RA shall have the opportunity to have

telephone contact on an agreed medium. Due to RI's birthday falling over the Christmas holiday period, the parties should make arrangements dividing the day to enable each of them spend time with both children on that day. In the event that one party travels off Island at Christmas with the children, contact would be waived on RI's birthday save that the other party shall have the opportunity to have telephone contact on an agreed medium.

(xi) Exchanges of the children when pick up and drop off cannot occur through school shall occur at a mutually agreed location set forth in writing that is between the parties' two homes.

(xii) When the children are in the care of either parent, there shall be indirect phone/social media contact with the other parent every evening for at least 15 minutes between the hours of 7:00 p.m. and 8:00 p.m. or at any other time agreed by the parties.

(xiii) The Prohibited Steps Order in relation to leaving the jurisdiction is no longer required and that order is discharged. However, this does not mean that each parent should not still be notifying the other parent, well in advance, of any overseas trips for the children and providing the requisite travel and contact details. Therefore, except in the case of medical emergency or scheduled medical treatment, if either party wishes to travel overseas with the children during their allocated time, the party with whom the children will be travelling shall provide the other party with a minimum of 56 days' notice of the travel along with a short summary of the proposed dates of travel and proposed flight schedules. Firm details of flights and accommodation should be provided to the other parent as soon as booked or arranged and, in any event, this should be no later than one week prior to departure.

(xiv) If a parent objects to the travel, then they will be the one who needs to make any requisite application to the Court. It is hoped that the parents will by now have understood that travel should not be unreasonably opposed and that it is for them to arrange such matters and not the Court, which is not the children's parent.

(xv) At this time, T shall hold the passports for the children, and upon a request by R for the purpose of agreed travel, in the event of an emergency need for medical treatment off Island or for any official business (for example immigration purposes to obtain visas), T shall promptly provide the same to R. Upon return to the jurisdiction or upon completion of the relevant official business the passports shall be returned to T. T shall ensure the passports

remain active and shall renew them prior to expiry. Both parties, if required, shall promptly sign the passport renewal application forms prior to the expiry of a passport.

(xvi) The parties shall be at liberty to agree modifications to the above specific arrangements in this order in writing between them.

Observations

350. What shines out from the papers that we have read and from the various recordings I have played is that these are delightful children. It is no good for anybody, for these parents or the children for them to be continually litigating. The children's childhood will slip away whilst the parents litigate over their future. The children are unable to settle whilst the parents continue to litigate over them. I feel that the following vivid expressed sentiments set out by Wall LJ in the Postscript in the Court of Appeal decision in the implacable hostility case of ***Re R (residence)*** [2009] EWCA Civ 358 are worth sharing with the parties in this case with the hope that it will jolt them into seeing some sense:

"123..... I cannot leave the case without addressing some remarks directly to CR's parents. In a recent case, Re T (a child) [2009] EWCA Civ 20, I conducted a similar exercise, and expressed myself in wholly conventional terms. Both of the other members of the constitution expressly associated themselves with what I said, which was as follows: -

> *"66. .....the judge was also right, in my view, to find that there is a risk to L if her parents "continue to be at loggerheads". Indeed, I would put the matter more strongly. If the parents retain their current hostility to each other, they will undoubtedly cause L serious emotional harm.*
>
> *67. ..... What matters, in my view, is that L should have love and respect for each of her parents and should be able to move easily between them. To achieve this, the parents must have respect for each other.*
>
> *68. .....Children, moreover, learn about relationships between adults from their parents. In twenty years time it will not matter a row of beans whether or not L spent x or y hours more with one parent rather than the other: what will matter is the relationship which L has with her parents, and her capacity to understand and engage in mutually satisfying adult relationships. If she is given a distorted view of adult relationships by her parents, her own view of them will be distorted, and her own relationships with others – particularly with members of the opposite sex – will be damaged.*
>
> *69. L must therefore be able to appreciate that even though her parents are separated, they have respect for each other. Most disputes about children following parental separation have nothing to do with the children concerned: they are about the parents fighting all over again the battles of the past, and seeking retribution for the supposed ills and injustices inflicted on them during the relationship. This case shows every sign of going that way.*

> *70. The father and the mother share equal responsibility for this state of affairs, and the father in particular should not regard the outcome of this appeal as a victory: it is, in reality, a defeat for both parties, who have been unable to resolve their differences by sensible agreement. They are fortunate in having a daughter whom they both love and who loves them. Each must fully appreciate the role the other has to play in L's life, and the current hostility between them must cease. Otherwise, in my judgment, the emotional damage to L will be serious and lasting."*

124. I resile from nothing which I said in Re T. In the present case, however, I propose to express myself in similar terms, but more forcefully, I do so because, in my judgment, the damage in the present case has gone well beyond that foreseen in Re T. Indeed, as I read the papers in the instant appeal, and, in particular, the report and the oral evidence of Professor Zeitlin, and listened to the careful arguments addressed to us, I was powerfully reminded of the first four lines of Philip Larkin's poem 'This be the Verse':

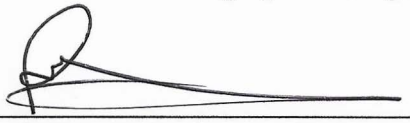
> *'They fuck you up, your mum and dad. They may not mean to, but they do. They fill you with the faults they had. And add some extra, just for you.'*

125. The rest of the poem seems to me to say more about Philip Larkin himself than it does about the human condition, but these four lines seem to me to give a clear warning to parents who, post separation, continue to fight the battles of the past, and show each other no respect.

126. Separated parents, in my experience, frequently fail to understand that their children love both of them, and have loyalty to both. Such an attitude on the part of children is normally as it should be. The fact that one parent has come to hate the other, or that both hate each other is no reason for the child not to love both and have loyalty to both. It thus poses the most enormous difficulties for the children of separated parents when each parent vilifies the other, or makes it clear that he or she has no respect for the other.

127. CR's parents have undoubtedly caused him serious harm by their ongoing, mutual dislike and recriminations....

128. This mother and father are no different from many separated parents who make the damage to their children caused by their separation much worse by continuing their battles against each other in legal proceedings. They have already caused CR serious harm...."



THE HON. MR. JUSTICE RICHARD WILLIAMS
JUDGE OF THE GRAND COURT