Case No: ZW19P01392

**IN THE FAMILY COURT AT WEST LONDON**

West London Family Court,
Gloucester House, 4 Dukes Green Avenue
Feltham, TW14 0LR

Date: 13/12/2020

**Before** :

**HIS HONOUR JUDGE WILLANS**

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**Between :**

**FATHER** **Applicant**

**- and –**

**(1) MOTHER** **Respondents**

**(2-4) M, E and P**
**(through their NYAS caseworker)**

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**Ms Helen Jefferson** (instructed by **Joyti Henchie**) for the **Applicant**
**Ms Naomi Wiseman** (instructed by **D&G Family Law**) for the **First Respondent**
**Mr Richard Beddoe** (instructed by **NYAS**) for the **Second to Fourth Respondents**

Hearing dates: 25-26 November 2020

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**JUDGMENT**

**His Honour Judge Willans :**

## Introduction

1. In this judgment I will refer to the parties by reference to their roles as mother and father and to the children by their initials, M, E and P. No discourtesy is intended.

2. In this interim application the father seeks for the younger children, E and P, to be transferred to his sole residence with immediate effect so that an instructed therapist can carry out a plan of reunification. The mother opposes the application and the children's NYAS case worker has switched from supporting the plan to reflecting on the case and now opposing the plan. The application was made on an urgent basis on 27 October 2020[1] and on 5 November 2020[2] I listed this contested hearing. I made clear the very limited court space available prior to Christmas 2020 and the need for efficiency in the presentation of the case. In fact the case had to be spread over two sessions of 2 hours each on consecutive days given other Court commitments.

3. In further complication of the situation the mother issued an application seeking a specific issue order relating to the schooling of E[3]. The father opposes this request. I listed it alongside the father's application only if time permitted but conscious of the possibility that the issues therein might be enmeshed with the father's application. In fact the applications could not be determined within the available Court time notwithstanding I provided additional time on 26 November 2020 with the case being given a further 2 hours of Court time finishing late in the afternoon.

4. I have considered the papers contained within the hearing bundle; the evidence of the therapist (Ms Patricia Barry-Relph ("PBR")[4], the father[5], mother[6] and NYAS caseworker[7] (Ms Tunmisha Ibidun) and the written submissions for each party. In this judgment I focus on points which I consider of particular relevance, but I continue to bear in mind all the evidence placed before me. I offer the parties my apologies for some delay in sending out this judgment. I had planned to provide a judgment no later than 4 December 2020, but unfortunately other commitments have delayed me.

[1] B129
[2] B141
[3] B147
[4] Reports at D36; D79; D139
[5] Statement C55
[6] Statement not in bundle but for purposes of judgment taken to be at C70a on
[7] Position statement C71

## Background

*2017 proceedings*

5. Sadly the parents have struggled to co-parent post separation and there are previous proceedings and final hearings conducted in July 2017[8] (DDJ Sheldrake) and March 2018[9] (HHJ Jacklin QC). The 2017 Order provided for the three children to live between their parents on a 7-day turnaround shared cared arrangement. The proceedings engaged the support of the party's local authority and the Order provided for ongoing family support work to assist the family. I do not have a transcript of the judgment of the Court (2017) but must assume the welfare assessment was supportive of the shared care arrangement. I am aware of no relevant findings of fact. I am of course conscious of the need for family support and the implications of the same. The later judgment of HHJ Jacklin QC tells me that each of the parents had been arguing previously to be the primary carer for all the children.

*2018 Proceedings*

6. I understand the proceedings before HHJ Jacklin QC through an approved note of her judgment[10]. This tells me the mother had applied to enforce the previous order (relating to passports and travel) but by the time of the final hearing there was also an application to vary the living arrangements so that the children would spend the majority of their time in her care. HHJ Jacklin QC was critical of both parents identifying their parental acrimony as the key source of difficulties but I can find no detailed fact-finding conclusions on which to base my own conclusions. The judge was critical as to the mother's ability to shield the children from her own views but was also critical of the father for his approach to the children in certain regards. The Judge resolved the travel issue but refused to vary the living arrangements and in doing so reinforced the need for parental work to reduce levels of disagreement and acrimony.

*These Proceedings (2019)*

7. The father's issued the substantive application on 9 October 2019[11]. He sought a range of orders, but his chief goal was for E and P to live with him as primary carer. He reported that M was now living with him full time and not seeing his mother. He suggested[12] the mother's care of the children was neglectful, and he feared she was alienating or would alienate the younger children from him if they did not live with him. He noted the girls were not seeing him as per the existing order and that E had not seen him by that stage for about 1-month. At

[8] B1
[9] B5
[10] B7a-e
[11] B8
[12] B19-21

the same time he applied to enforce the existing order[13] drawing particular attention to the cessation of contact between himself and E. The application came before the Court on 4 November 2019[14] for a First Hearing (DDJ Wicks). Directions were given for the children to be joined to the proceedings and updating information was sought from the relevant local authority. On 28 January 2020[15] the matter returned before DJ Hussain. It appears CAFCASS were not placed to provide a guardian and the Court requested NYAS to act in place of CAFCASS. The matter was further adjourned pending NYAS's engagement with the case. Unfortunately, Covid-19 intervened and the next hearing had to be vacated[16]. The papers were subsequently placed before me[17] on an administrative basis and I listed the case for hearing before me on 28 May 2020.

8. By that date the father had applied for the appointment of an expert psychologist. On 28 May 2020 I ruled on that application refusing the specific appointment as it appeared to proceed on an established basis of alienation when no such finding had been made by the Court. A transcript of the hearing and my decision can be obtained. I adjourned the matter for the parties to consider the way forward and listed the matter for further directions on 6 July 2020. Given the parties positions my order outlined two possible routes forward giving an opportunity for the family to consider a therapeutic or fact-finding route. I directed each parent to file a schedule of such allegations and responses to the same by the return date. At the resumed hearing I approved a plan under which the case would be adjourned for the family to engage in family therapy provided by the therapist, Patricia Barry-Relph (PBR). I gave permission for the matter to be restored urgently and adjourned proceedings for therapy to be undertaken with a final reporting date of 21 April 2021.

*The therapeutic process*

9. The early signs were positive. PBR provided an initial report on 25 September 2020[18] in which she expressed the view that this was a case of estrangement rather than alienation[19]. A particular point of note is the parent's history within a religiously abusive sect which had left the mother suffering from PTSD and an aversion to having direct contact with the father. The sect was a patriarchal group governed and controlled by men. This experience was felt to have had a significant impact on their parenting and interpersonal styles with a lack of ability to reconcile internal conflicts. All children were born into the religious sect and the parents own childhoods are said to have been surrounded by abusive

[13] B53
[14] B88
[15] B93
[16] B96
[17] B119
[18] *D36*
[19] *§14.1*

experiences. The children's experience of this time was said to be continuing to impact upon them. At that point the therapists view was of a need to move towards developing a '*secure co-parenting alliance'* before any facilitated contact sessions could be set up (between M and mother and E and father). The therapist expressed concern for P stuck in the middle of this problematic family structure. At that point E did not want to engage with PBR who respected her view as a genuine feeling. She described E as a '*highly intelligent and attuned young person who does not trust any adult*'. E justified her rejection of her father by reference to: -

*…bad parenting her father subjected her to at a particularly vulnerable stage and age of her development which left her feeling shamed. [The father] has openly acknowledged it was inappropriate to have been that kind of parent in the moment.*[20]

The interim view was of a need for the parents to work towards a co-parenting alliance and for the mother to take the lead, when she is ready, to support E to re-engage with her father. There was a need for a new family narrative to be constructed. The interim report supported the continuation of the work. Indeed as noted above the plan in principle was for the final report not to be filed until April 2021.

10. On 26 October 2020 PBR filed an 'Addendum Report'. This report has directly led to the application before me. The therapist reports that on 8 October 2020, P without any apparent preceding incident, informed that 'she hated her father, thinks he is manipulative, and does not wish to see him again'[21]. In the light of this the Addendum report states the parents are '*seeking the assistance of the Court for an order to restore contact'* and that they remain engaged in therapy '*and have reached an agreement that it is in the best interests of the family for P and E to be urgently reunited with their father'*. At section 3 of the Addendum the therapist sets out the planned reunification plan. It commences with the therapy team working with the mother to persuade P to leave her mother's house and spend time with her father at his house until such time as the relationship with him can be restored. The therapist continues[22]:-

*Myself and the specialist therapeutic family support practitioner will be available to reside in [the father's] home to support P and to work with [the father] to guide and assist his parenting responses to P so they are attuned, emotionally holding and compassionate in order that the affectionate bond between father and daughter can be restored and repaired.*

It was envisaged this would take 12 weeks during which time the mother would have supervised contact with P and would be offered therapeutic support. The report then proposes following an equivalent course with E. At the end of this period [6 months] the therapist proposes offering the Court recommendations

[20] *§14.11*
[21] *D84 §2.9*
[22] *D84 §3.1(1)*

on residence for the children. The father agreed with this approach and was concerned for his relationship with the girls if no action were taken. The mother's views appeared to have oscillated between agreeing to the plan and rejecting it as being harmful for the children and likely counter-productive. At that point the plan had been promoted as an agreed way forward in the light of the deteriorating position. The mother was being encouraged to work with the plan and the suggestion at that point does not appear to have been of alienation or any lack of goodwill. When the matter came before me on 5 November 2020 it appeared there might be room for issues to be narrowed or resolved through a process involving the professionals and the legal advisors. I therefore adjourned matters to this hearing and approved a plan for an effective round table meeting. A series of meetings took place but did not resolve the issues – although it appears at one point the mother may have moved close to accepting the plan. Ultimately positions remained entrenched and the case returned for me to determine.

11. On 17 November 2020 PBR produced a Proposed Reunification Plan (PRP). In this report PBR shifts her analysis and whilst acknowledging she is working without a factual matrix identifies in detail a list of hallmarks which identify E and P (but not M) as being '*alienated children within the therapy sessions'*.

**The evidence**

12. When fixing the hearing the intention had been to hear from PBR to test and investigate the plan under consideration. However, I heard evidence from the therapist, parents and caseworker. I found both parents to be unable to restrict their answers or to give focused answers. As a consequence the available time was taken up despite the Court finding additional time and sitting late. I do not intend to fully detail the evidence but rather to highlight the central themes.

*PBR*

13. She considered the plan viable and in the best interests of the children. She was now more open to the suggestion of parental alienation but her views on the plan were the same irrespective of whether this was the case or not (i.e. estrangement). She felt P would resist the move and work would be required (having particular regard to her special needs). She could not be forcibly removed without completing anticipatory work. She noted there had been more recent video contact with the father that went well and felt there might be transitory stress, but this was better than allowing things to become entrenched. In the case of E matters were more difficult and the therapist would want to work with her autonomy and would want to work with the mother to bring her on board to support the move. It seemed clear to me her plan envisaged the mother continuing to take a central role in supporting the move. She accepted P may have been influenced by E. Her plan was not for both P and E to transfer

at the same time and this might traumatise P if E was threatening to run away. The children would be told about the move by their mother supported by the team. The team would work with the mother so she could accept the ruling and give authentic permission to P to transfer. The therapist for the first time expressed a view doubting as to whether mother had in reality authentically engaged with the process. She told me about her success rate (95%) but also told me all moves had been with the consent of both parents. She agreed there was no factually accepted matrix which could guide her understanding. She had been given no reason for the refusal to see the father. She was of the opinion the situation was one in which the children were suffering significant harm due to the inability to maintain the relationship with their father. Indeed I understood her to characterise a situation where a child was not seeing a parent without a good reason as amounting to child abuse. Pressed as to whether she would propose removal without the mother's support I understood her to be cautious believing that without emotional permission the children would be unlikely to agree. She agreed the children had no knowledge this plan was being discussed. She was concerned the children's expressed views were not the genuine wishes and feelings but flowed from the mother's narrative. The therapist felt it was not normal for a child to express a wish to not have a relationship with a parent without being able to give a reason. She acknowledged the mother had expressed the view that the father had been abusive to her. I asked the therapist as to whether there was a Plan B and if so, what would it be. I understood her to tell me the plan B would be to carry on with systemic therapy with gradual exposure by video calls, building to supervised and then unsupervised contact. Dependent on the family narrative changing I understood her to have the view there would be good prospects within 3-6 months. However, I acknowledge she expressed reservations as to the prospects of the narrative changing whilst the children remained in their current setting, i.e. she had limited confidence in the mother in such regard.

*The father*

14. The father confirmed he supported the plan. He accepted that he had not succeeded in enabling M to see the mother in breach of the same section 8 order. He had been powerless to prevent this. This was not alienation but a tragic breakdown of the relationship between child and mother which he hoped could be restored. He agreed the mother had accepted M's views and not sought to enforce the arrangements and to give M time. He agreed he had made serious allegations about the neglectful parenting style of the mother. The father was challenged as to his monitoring of internet usage but saw nothing inappropriate in his actions, but he accepted E had spoken of feeling controlled and without privacy in his home. He did not appear to agree to the suggestion that he had adopted the tenets of his previous religious sect in holding woman subordinate to men, but he had lived within this church environment for 13 years and the

children had been born into this setting. He does not accept the church viewed woman as second-class citizens. When questioned about E's wish to change schools the father appeared to suggest she needed to engage with him before he could consider this proposal. He accepted there had been no fact-finding process. His views as to alienation are drawn from the manner in which E and then P have seen a break in their relationship with him. He had researched the subject and by a process of elimination reached the conclusion as to alienation.

*The mother*

15. The mother views on the reunification plan had not changed. The children's relationship with the father should be based on consent not force and this was an extremely disruptive means of achieving a relationship. She felt E had refused to engage in therapy due to her lengthy experience of the Court process and the multiple professionals with whom she has to be required to engage. She is a shy child and has found this stressful and fatiguing. She had bravely reported a traumatic incident with her father but had not been listened to. She noted P had recent video contact with her father and E had attempted to message M without success. She wanted the children to have a relationship with both parents. The children are exhausted and want to move on and this is harming not helping them. In the case of E she (the mother) had been working hard to keep contact going only for E to see her brother decide for himself. In the end she had to force E who would then run away from her father. She was no longer willing to force her. In the case of P she had kept contact going despite the child's reservations and at points panic attacks. It had reached the point with P that she would also have to be forced. Things were different when they were younger, but they are now older and cannot be forced. She disagreed the children had been influenced by her views. She felt the talk about changing the narrative was wrongly focused on her alone and required changes from the father. She was in fact unclear what the narrative was, and the proposed alternative narrative suggested by the PBR. P has complained about her father taking her phone at the end of the day and checking it but then sitting in her room and going through it in detail with her. This need to debrief her was excessive. The children complain about being forced to do things they do not want to do. The meetings went from co-operation and collaboration to being put before the Court without her agreement. Recently P had contact with her father and this was positive. It is working and she felt an unorthodox approach would not help or work. The mother told me she did not think she could now work with PBR. She did not want to engage in therapy to achieve the reunification plan as she felt this would be harmful for the children.

*The caseworker*

16. The caseworker continued to support the plan whether the mother was able to work with it or not. She agreed she had not spoken to the children about the plan

and they were unaware of what was being suggested. She accepted the children might be competent. She was unfamiliar with a plan of this sort but accepted she had been told it had been utilised successfully in other cases. She agreed she had opposed a forced move in April, but this was before PBR's involvement. She had expected the therapy to work and it had not. She could see no alternative way forward. She had understood things were going well until the updating report. She explained her own limited involvement with the children given she felt they needed to build a relationship with the therapist. She was concerned as to whether the children were being given permission to have a relationship with their father; she could not see how things would change and was concerned as to whether things could work with the children travelling between the parent's homes (elsewhere this was described as the risk of wounds being constantly reopened). She felt the situation was causing the children harm and was of the view the mother was unable to support contact.

*Submissions*

17. I received very extensive submissions from counsel for the mother and father running to 21 pages in each case. It would not be possible to summarise their detailed content within this judgment without weighing down the judgment. I have read and carefully considered all the submissions put before me. I gave permission for the parents to file response submissions on sight of the NYAS submission. I was then informed that the caseworker had reviewed the situation and no longer supported the plan – principally as she felt in the absence of the mother's support it was unworkable and likely to cause more harm than good. Counsel for the father objected to this volte face and suggested a need for the caseworker to be recalled. It is not my intention to reconvene the hearing. I agree NYAS cannot give new evidence within submissions, but I see no reason why NYAS should be prevented from revising their position in the light of reflection. That of course does not remove the evidence of the caseworker or the weight I might intend to attach to it. I therefore proceed on the basis of the evidence I have heard, and the submissions now made upon that evidence.

**Discussion**

18. I am no doubt my decision making should be shaped in the case of each child by reference to the welfare checklist[23] as the children's welfare is the paramount factor in resolving this application. I entirely accept the Court can act by transferring residence on an interim basis[24]. The Court is often called upon to consider interim placement decisions in urgent circumstances and without the opportunity and time to gather all the evidence that would be available for a final or a fact-finding hearing. In my experience such considerations tend to

[23] *S.1(3) Children Act 1989*
[24] *s.11(3) ibid*

arise where there is a clear safeguarding issue that must be confronted **there and then** and where to delay would leave the children at risk of harm. Nonetheless in such cases the Court must act with caution given the potentially profound impact on a child of such a move. The Court must also be astute to the possibility that 'first appearances' are not necessary 'last appearances' and that many cases take significant changes of direction as the evidence is gathered and then carefully examined. My judgment is that interim decisions shifting residence can, and sometimes must be made but the arguments underlaying the proposal must always be considered with robust scrutiny and a transfer should typically not be granted where the case appears unclear or finely balanced. In such circumstances it is likely to be better for the 'fog to clear' or the evidence to be fuller before reaching a decision on the application. For the avoidance of doubt this logic is entirely consistent with the welfare of the child as paramount factor as it is placing particular regard to 'the likely effect on the child of a change in circumstances'[25]. In considering applications for change of residence I also accept that the language of 'change of residence as last resort' is an inappropriate gloss on the paramountcy principle.

19. I accept fact finding is not required prior to an interim decision or change of residence. By way of an example only, a Court may order interim transfer where a child suffers serious physical harm in the care of the other parent and the surrounding circumstances remain unclear. The factual matrix may not be agreed but the Court may be required to elevate safeguarding over the risk of a child being moved from a safe carer. For completeness I have regard to two cases cited by the father being:

**Re M (contact) [2012] EWHC 1948 and**

**Re L (a child [2019] EWHC 867**

I am not entirely sure they make the point suggested (of there being no need for fact finding) as in the latter case HHJ Tolson QC had conducted a fact-finding into serious allegations of sexual abuse. In the former case whilst there was no fact finding as such Peter Jackson J. highlighted: -

> *At the outset, however, a central factual question must be resolved. Why do two children, who enjoyed seeing their father as recently as April 2011 and at New Year 2012, appear now to be so violently resistant to doing so again?*[26]

I accept this is not the classic fact-finding debated in the hearing before me, but it is quite clear to me that Judge had a far more extensive opportunity to investigate the factual matrix before reaching his conclusions. However, there will be cases where fact-finding is a pre-requisite before approving a change of residence. Each case will turn on its facts as to the relevance and necessity of

[25] *s1(3)(c)*
[26] *§55*

fact-finding whether at an interim stage or later within the proceedings. In many cases where alienation is alleged the Court has to properly examine the circumstances of the case to ensure a welfare focused decision has been reached. Too often one parent's allegation of alienation is met by the other parent's reference to inappropriate conduct on the part of the applying parent (and often vis a vis). The Court has experience of both alienating conduct but also estrangements that derives directly from the actions of the applying parent. In the latter case in my judgment it would be contrary to the welfare of the child to enact an interim transfer into the care of the applying parent where the underlying circumstances had not been properly considered and the move itself might therefore cause harm to the child.

20. This is why the available guidance indicates the need for the Court to grapple with a case early on giving appropriate case management decisions to ensure the issues can be determined before a breach in relationship has crystallised. I appreciate those acting for the father criticise the approach of the Court in this case in that it is said the Court refused the father a fact-finding exercise[27]. I do not accept that submission. On 28 May 2020[28] the Court adjourned the matter for the parents to consider whether (a) they wished to pursue an alternative therapeutic approach, or; (b) they wished to pursue a fact-finding hearing. I gave directions for schedules to be filed and the resolution of the way forward was held over to the next hearing. On 6 July 2020[29] I heard the submissions of the parties and adjourned for the parties to engage in agreed therapy. True I refused to list a parallel fact-finding exercise later in the year but as I made clear this was because I considered one could not have meaningful therapy undertaken at the same time as the parties continued to prepare to litigate fact-finding. This would not have been an appropriate atmosphere for real therapeutic engagement. However, the father was not refused a fact-finding, he was given a choice as to election and selected the therapeutic route. Indeed I provided for the case to be brought back urgently if therapy did not proceed as intended. It is noteworthy the father's principal fact-finding allegation then, as it is now, was parental alienation. It is not for me to say why he choose the therapeutic route, but it might be he was influenced by the then view of the NYAS caseworker that this was a case not of alienation but of estrangement. It is noteworthy that in her interim report PBR echoes this view[30].

*What is the father asking the Court to do?*

21. In her closing submissions for the father counsel indicates:

[27] *F's submissions §26*
[28] *B122*
[29] *B126*
[30] *§14.1*

` ***TO BE ABSOLUTELY CLEAR the Father is NOT asking the court to approve the reunification plan*** *set out in PBR's report.*[31]

For my part I had understood that to be exactly his position. In his C2 application[32] the father states: -

> *In light of the report from [PBR] we seek further direction from the Court and a change in residence to allow E and P to temporarily reside with their father to enable the further therapeutic intervention work to be undertaken as recommended by PBR*

Further much of the examination focused on the perceived challenges of such implementation; the position document filed on his behalf stated this aim: -

> *The rationale for such an order being that it is necessary in order to allow the jointly instructed family therapist Patricia Barry-Relph to undertake the therapeutic reunification intervention work that she has recommended in her report dated 26 October 2020*[33]

and in his statement in support the father stated: -

> *As such, and faced with no other alternative, my C2 was lodged with an application for the Court to consider the reunification plan and to make the appropriate orders in order to facilitate that plan.*[34]

This is why the hearing was set up to allow PBR to be examined and was originally structured for this to be considered on the first day with submissions on the second day. As it was both parents also gave evidence and the caseworker also gave brief evidence leaving no time for judgment. But it should not be thought that I therefore conducted a quasi-final hearing. I did not. The examination remained limited as set by the time constraints and I did not have before me the wealth of evidence I would have expected for a final hearing. My intention was, and remains, to make an interim determination and in the light of that consider the future management of the case once the parties have had the opportunity to digest that determination.

*A failure to provide adequate special measures*

22. Before turning to my welfare analysis I should briefly deal with a procedural point raised on behalf of the mother with respect to the conduct of the hearing. This related to her vulnerability and whether the Court ensured her ability to properly engage with the Court hearing. It should be noted I agree with counsel that it was not my understanding that both parents would be expecting to give evidence and so there had been no suggestion or consideration of 'special measures'. In fact it

[31] *§3*
[32] *B137*
[33] *C86 §5*
[34] *C59 §15*

was only shortly before the hearing that this point was drawn to my attention. I do not recall there being any preliminary point taken as to whether the mother should give evidence but in due course her request for the father to turn off his video when she was giving evidence was approved. As to the length of her evidence I agree she gave evidence for 2 hours, but my note is that this was broken by both the lunch break and an intervening case. As such the mother gave, I believe two portions of evidence over 1 hour each. It maybe it would have been better for there to have been a break mid-point in the evidence but equally (and as with the father) I have no doubt the process would have been easier had the mother focused on the questions and provided direct answers. In different circumstances I might have required counsel to limit their questioning time, but this is not necessarily a fair request where answers are unnecessarily expansive and eat into the available time.

***The Welfare Assessment***

*Wishes and feelings*

23. What do these children aged 12 and 13 think about the plan for them to transfer to their father's care and thereafter live with him full-time for the next 12 weeks (at least) supported by a therapeutic team and seeing their mother only on a supervised basis? I do not know the answer to this question as no one has asked them. Indeed, the children have no understanding that this issue is being considered by the Court. Neither the NYAS caseworker nor the therapist has brought this suggestion to their attention. I consider this a concerning state of affairs. That they have not been consulted presupposes to do so would be harmful or that there is no benefit in hearing their response. I consider the children have a right to have their voice heard (whether or not the Court ultimately agrees with their view). It might be said there is no benefit as one can readily predict their response, but this is to miss the point that valuable insight might be shed as to their views on the actual plan (rather than the goal of a relationship with their father). It might be said it is harmful to make this enquiry. On balance I doubt this when one weighs this against the eventual need to both make the children aware and then effect the plan if approved. I am told the plan will be underpinned by the ongoing work of PBR with the children, but little thought appears to have been given to the potential rift that is likely to be created between the children and therapist if they feel they have been seriously misled. If this were to materialise then one ends up countenancing a largely unsupported placement with the father in which the children are placed against their wishes and antagonistic to the support required to stabilise the placement.

24. My concern is magnified when I read the views of PBR that E is a '*highly intelligent…young person…'.* She is not very far from being 14 years of age and has not seen her father for over 1 year and yet it is proposed she be 'forced' to transfer into his care without her views even being sought. It was only in late

September that PBR was indicating the need to have respect for E's '*autonomy*' when considering the route forward. So far as I can see there has been no material change with regards to E since that date. I cannot understand what is said to have happened since that date that merits wholesale ignoring of the same autonomy. My understanding of PBR's reporting is not to support an immediate transfer in the case of E. I understand this likely reflects her entrenched views; the likely impact this will have on any transfer and the further complications this would bring as to the predicted success of a move for P.

25. Counsel for the mother pointed to the very limited direct contact between the caseworker and the children and the failure to directly enquire as to their position on the application. It fell to me to ask whether any consideration had been given to their competence/whether they should be separately represented. In submissions counsel for father notes my enquiry did not arise until the second day of the hearing and that the instructing solicitor for NYAS had never raised the point. It should though be clear that I was not expressing a view on the answer to the competency assessment but considered it was an inescapable line of enquiry to be undertaken in circumstances such as this. My sense of the response was that there had been nothing approaching an appropriate consideration of the issue. Furthermore it is perhaps not surprising that the issue was not raised until late in the hearing given that it was only at about that point that the caseworker provided a note of her meeting with the children for the purpose of the hearing and that note demonstrated that the issue under investigation (transfer) had not been raised with the children by 'agreement' (albeit not my agreement). In such circumstances I consider it was a bold and unfounded suggestion on the part of counsel for the father to suggest that both girls lacked competence. Whilst is right to say E has a history of anxiety and some educational needs, this is a point which does not necessarily touch on competence but plainly does have relevance when considering the prospects for an enforced transfer. It is true to say P does have 'special needs' but this of itself is not a basis for closing the question of competence. A diagnosis of ADHD is an important factor, but it does not answer the question.

26. In reality one can likely predict the views of the children. E has made clear her wish not to see her father and P had become increasingly oppositional to seeing him (although she has engaged in recent video contact). But this really does not engage with the question of their views in the light of their maturity and understanding. I acknowledge the therapist has reached the conclusion that their stated views are not their ascertainable views. But in considering the expert assessment of this feature I have only very limited information from the caseworker and must bear in mind that E has largely not engaged with PBR and that the sessions with P have been conducted on a remote basis (and are themselves relatively limited). My sense is that her judgment on alienation founds her views on the stated wishes of the children not being their ascertainable views.

But this takes one back to the factual determination as to alienation. The danger in this case is of the cart being placed repeatedly before the horse.

27. I do have regard to the argument that if the children are alienated then their views are ones which flow from the alienation and carry limited weight. To give weight in such circumstances to those views would be to effectively endorse the alienation. This point is clearly made by PBR and is one I fully accept. I fully accept that an assessment of competency might conclude the children have views which are so affected by their mother's views as to mean the competency test has not been met. But for it to hold one must either presuppose alienation to be in effect or the Court must find it to be the case. Pending such a conclusion one should not shut one's ears to the views of the children. The reality is that the voice of the child when heard and considered may validate the concerns as to alienation. Here a conclusion has been reached by PBR which I do not dismiss out of hand. But it has arisen late into her assessment role and in reality, on a rather slender evidential base having regard to the time she has spent with the children.

28. In different circumstances this (the views of the children) might matter less. But here I am being asked to change residence and I am bound to evaluate the likely responses of the children if I am to properly evaluate the impact upon them of the proposed move. The evidence I have heard in this regard did not fill me with great confidence. Much of PBR's approach rested on the mother being part of the process of transition to enable the children to move with her permission. But this missed the obvious point that the mother does not agree this is best for the children and I question whether it is safe for me to presume she will work with the same plan. Without her support it is unclear to me where PBR's approach is left. I have considered the very detailed 'Proposed Reunification Plan'[35]. At section 7 the Plan turns to the route map proposed for transfer before setting out the following steps: -

> *7.5 Risk assessment of [parents] homes.*
>
> *7.6 Dates and times to be agreed with [parents] if the reunification plan is ordered.*
>
> *7.7 Graduated exposure for E to have supported indirect contact leading to direct contact.*
>
> *7.8 Introduction of Kayla Smith, senior therapeutic family support practitioner. Meeting with M, E and P to devise methods of managing sensory dysregulation in M and P.*
>
> *7.9 Dates and times of the setting up of the reunification plan.*

[35] *D139-217*

The Plan is silent as to what approach or resource or indeed strategy will be used in the event that the children are resistant to such transfer. It has as a pre-requisite the support of the mother which is unlikely to be forthcoming and understandably does not factor in the additional complication were E to be inserted into the plan from commencement. I consider I am left to determine what may likely happen and what this will mean for the children's welfare. I do not wish to be overly critical of PBR in this regard. It is plain from her evidence that her experience is of transfer with parental consent; it is plain she does not go so far as to incorporate E into initial transfer plan, and it is plain she continues to see the mother as an integral component to success. It may be these complications explain why the father feels the need to clarify his position as he did in submissions. I accept that PBR may be contracted into the father's house post move to support the placement. But with respect this is a very different proposition to the implementation of an agreed reunification plan – a plan which even if agreed must have been surrounded by significant uncertainty.

29. I was told there would be initial distress, but this could be overcome. Elsewhere I have been told that E on previous occasions simply ran away from the father. I had no sense as to how the wishes of the children would be managed on transfer or how PBR would expect to then engage with E given her unwillingness to engage with her to date. It is assumed that P will re-establish an ability to engage with PBR (and new professionals who will join the team) notwithstanding the potential distrust that may naturally arise on the shift in residence. I am told by the mother the children will need to be forced and she is unwilling to do this. The Court has to confront the possibility of the father (and his partners?) being required to forcibly move the children. I question whether the therapist would be willing herself to engage in forcible steps given her plan is based on consensus. What will this do to the children and to their relationship with their father? In my experience where this is necessary it is often requiring of state agency support – but none is obviously available on the facts of the case.

30. I am not suggesting the children's views are deterministic, but it is deeply troubling to me that their position has been so superficially considered given the profound quality of the proposal. I equally accept I did receive the opinion of PBR of the potential shaping of the children views as a result of not being shielded from the mother's views and the ultimate conclusion (found in the Plan for Reunification) that this may be a case of alienation not estrangement. I acknowledge HHJ Jacklin QC expressed views offer support for the suggestion the mother struggles to protect the children from her feelings. For the avoidance of doubt HHJ Jacklin QC's observations fall short of a finding of alienation.

31. However, matters do not end there. I consider a range of additional features were placed before me, each of which had the potential to shape or influence the children's views separate from the mother's role. This limited hearing gave me

no real chance to examine these aspects, a fact which concerns me when considering whether I properly understand the dynamic in operation. I note the following:

i) The family experience in an abusive religious sect in which the children have been born and raised and in which they have suffered emotionally abusive experiences. The mother contends the cult operated a system of male dominance and female subservience. The therapist places significant weight on this developmental experience in shaping the family dysfunction. My hearing did not even begin to scratch the surface of this complex and potentially relevant factor. Although I understood the father to deny the structural bias within the sect, I note from the interim report the following: -

> *[Mother and father] were involved in an abusive religious group which had a very bad influence, where it was men first, and children second and women third. The women had to submit to the men. It took some time to escape the religious sect and the family moved to the UK in 2013.*

This feature may be of limited ultimate relevance, but it might be of real significance. It is identified by the therapist as lying close to the problematic behaviour patterns in the family. Before me the mother and father disagree as to its continuing relevance in gender roles within the two homes with the mother claiming the father retains a controlling attitude. He denies the same. I have not been able to properly investigate or resolve the dispute. It is unclear to me why this issue, which was of real significance to the therapist as at 25 September 2020 seems to have dissipated in significance two weeks later in her addendum.

ii) The background concerns of E as to her treatment by her father: on one occasion stripping and showering her with cold water. I note he apologised for the same and this suggests the event is accepted. What role might this play in her opposition to seeing her father? The therapist draws upon this event in her interim report as being of relevance, but I question to what extent she has left the children to explain their reasoning failing which she had concluded there is no rationale for their views. It is of course entirely possible the children are unwilling to be open with the therapist given their history and limited relationship with her. To be clear I am not suggesting there are grounds for opposition I am merely questioning whether one can be so confident the explorative process has revealed all there is to be known in this regard.

iii) The dynamic involving M. He has been seen to unilaterally decide he need not see his mother without sanction and without apparent challenge. What potential role has this had in influencing E in her

decision making at times when she has not felt a wish to see her father? To what extent is P now a witness to her sibling decision making and considering she should have the same autonomy?

iv) To what extent is the father's parenting impacting on the children? I heard about internet screening and it might be felt I expressed an understanding that the father was operating a well-known application to ensure his children did not abuse their screen time. To that extent that was my view. The father cannot be criticised for placing a screen time system on his children's devices. This is well within his parental responsibility. But this is not the same as (it is alleged) confronting his daughter every night at bedtime and taking her through the range of social media she has engaged in that day, opening all her applications and looking at the contents. Many children would find this both oppressive and a fundamental breach of their developing right to privacy. There is a fine line to straddle but this might be an area of importance in considering why it is that P has moved away from her father? The therapist drew upon the very different parenting approaches of the parents but did not appear to have this issue in focus.

32. These are just some of the points which might be relevant to an understanding of the shaping of the children's wishes and feelings. Yet I have only the most limited understanding of the weight each have played (if any) in forming the children's views. Importantly they may (but may not) fill the gap of understanding that PBR is currently perplexed by, in stating that P was unable to provide an answer as to why she did not want to see her father. At no point in her analysis did I understand her to consider that P might not want to engage with her on this issue and that the absence of an explanation was of itself not a conclusion to the question. Many children are averse to talking about private matters with professionals and there is at least a suggestion of these children being fatigued from significant professional engagement. I of course accept that a failure to provide a reason might be indicative of a lack of reason and supportive of alienation. But once again the challenge for me is to fairly resolve these issues which are complex within the dynamic of a short interim hearing and without an agreed factual matrix.

33. The simple reality is that I do not know at this time exactly what the children would want to say, and I do not feel I have before me sufficient evidence to determine what has shaped the children's views in this case. This is a highly complex case with an unusual and acknowledged complex history. I consider it would be most unwise to draw simple conclusions based on the evidence I have.

*The age, sex and other relevant characteristics of the children*

34. These points are dealt with throughout this judgment. I can add nothing additionally useful at this point.

*Needs of the children*

35. There are some basic points that need to be acknowledged. These children have an essential need for a sibling relationship and a relationship with both parents. This is confirmed both in legislation but also through the earlier judgments of the Court under which the children are to live with both parents on a shared care basis. Yet neither M, E or P are having this need met. Neither M, E or P are having a positive ongoing sibling relationship and I heard evidence of difficulties between M and the girls and a failure on his part to respond to them. He has his own significant needs as set out within the various reports. Whilst the focus of the hearing has been on E and P, I am bound to observe the evidence does not give real confidence as to how the sibling relationship will be re-established. Likewise the father has seen his relationship with E apparently end and that with P fracture. He understandably seeks to do everything possible to turn this around. At the same time the relationship between M and his mother seems to be little further forward since his refusal to return to her care. The process appears to consider that in the case of M there is no alienation and one must simply take things slowly. There is no plan for reunification as in the case of the girls and no apparent thought given as to how this divergence will be viewed by the girls or how it will impact on the Reunification Plan itself. It is not clear to me as to how M's place in the father's home is worked into the Reunification Plan. It certainly has the potential to be a complicating feature and particularly so if both E and P are transferred together as sought by the father. I am told the father's two partners will leave the property for this period. This might be important as P refers to there being no privacy in the father's home with adults on every floor. Elsewhere in the evidence there is reference to not only the father but also his partners role: -

> *[The father] and his partners can track P's internet usage and reports that she is often online until early hours in the morning. [The father] and his partners raised concerns about Ms Abrams overall care of the children including lack of boundaries*

I can find no reference in the therapist's report to how the dynamic with the partners may improve or diminish the prospects for the plan. I am not sure the therapist has had any dialogue with either of the father's partners or indeed the mother's boyfriend.

36. I have referred above to the wishes and feelings of the children. The children have in principle a need to have their voices heard. At the same time the children have a need to be parented and a need to have permission to be children. The therapist is concerned as to the roles being taken by each of the children. The essential question in this case is as to whether the plan is the only route towards

permitting the girls to have a relationship with their father. The therapist has reached this conclusion. My understanding is that the plan was only forwarded when the relationship between P and the father was seen to deteriorate. Prior to this the parents were working on building a '*co-parenting alliance*' and adapting the family narrative. At first the plan was felt to be an agreed route forward and was not based upon a conclusion as to alienation. As such the plan is not a consequence of a viewpoint as to alienation. My assessment is that the mother's rejection of the plan (having accepted it previously) in tandem with P's views about seeing her father has shifted the analysis as to alienation in a marked manner. For her part the mother continues to advocate for a conventional approach within a therapeutic relationship. I was struck that PBR in essence agreed that the alternative route forward would be a plan similar to that advocated by the mother and that this would, with a change of narrative (which was part of the planning prior to reunification plan) have prospects of success of about 60%.

37. This has led me to pause and reflect upon the manner in which the previous approach [non-reunification plan] so quickly became one incorporating that plan. It seems to me a series of features have markedly changed the approach in this case and, but for which, one would likely be on the path towards April 2021 as originally anticipated and without the suggestion of transfer now before me. I consider it worthwhile to pause and consider these features.

38. It is quite clear the first feature is the refusal of P to see her father in early October; the manner in which she expressed her wishes and her inability to 'evidence' why she held those views. The case laid before me suggests this marked a change from regularly seeing her father to not wishing to see him at all. The sense was that P had suddenly taken a new position and one needed to act as she as on the path of E and M. But in this regard, I accept the contentions raised by the mother that in fact this was not in fact a dramatic change in attitude on P's part but rather the end point of a lengthy period of opposition. It was clear at the time of the NYAS report in April 2020 that P's relationship with her father was at a point of fracture. In examination this did not seem to be readily accepted and the repeated response was that P 'was seeing her father'. I am puzzled by the unwillingness to accept there was a significant underlying difficulty which predated and continued throughout the period of therapy. I say so because both the interim and addendum report produced by PBR highlight this feature. Moreover, in the September report PBR appears to note continuing opposition on the part of P towards her father not withstanding contact has continued[36]: *'P did not want to see her Dad right now'*. From an objective perspective the fact regular contact in line with the order was maintained throughout this period must to some extent reflect positively on the mother. Her evidence is that P was increasingly resistant throughout this period, but she kept

[36] *D53 §12.5*

contact going to the point where it was no longer possible. I am sure this trajectory could be included within an alienation narrative, but it could be equally said to challenge the same.

39. I have seen no analysis considering whether the manner/force with which she expressed herself might have been in part a function of her underlying special needs. I make this point as P does not appear to have followed through entirely on these views. I note she has re-engaged with her father through video contact and my understanding is that these have been positive sessions.

40. In my assessment there is a danger that this perceived dramatic change in direction on the part of P has caused the therapist to rapidly recalibrate the nature of the work required without reflecting whether this was quite the significant change of direction she perceived it to be.

41. The second feature is the oscillating position of the mother. It must have been frustrating for all to experience the mother first apparently agreeing and then refusing the plan only to proceed through these changeable views a second time. My concern is that this has significantly fed into the diagnosis of alienation and the therapists conclusion that the mother has not been genuine in her engagement. My concern is that there is an alternative explanation. With the greatest respect to the therapist many parents would struggle with the notion of the reunification plan. Many parents might reconsider whether this was best for their children given its likely impact upon them. Putting to one side the alienation argument the position of the mother is in my assessment entirely reasonable and understandable. In many ways it would be unusual for a parent to not have real concerns as to a plan which would require their children to move to live with the other parent whilst only having supervised contact and in circumstances where the child was oppositional to the other parent. Yet I think the mother's changing views have led to an assessment that she is in some way been 'game playing' and is not genuine and that this approach is evidence of an alienating attitude.

42. In my assessment there is a real danger that this case and this therapeutic plan has inappropriately latched onto these two features and in doing so overemphasised the relevance of both (and particularly so when read together). I am concerned that this potential misreading may have significantly contributed to the shift in paradigm to that of an alienation model. But once again I find myself applying a healthy dose of caution in that I have had only a limited opportunity to investigate the case and on a fuller analysis these points may have greater significance than they appear to me to have at this time.

*Change of circumstance*

43. This factor is central to the application. What will be the impact of a move to the father's care? On one side it is said to be the only route to re-establish a relationship with the father. That the current state of affairs amounts to child abuse and requires the plan to cure the issue and to prevent entrenchment. The therapist tells me the plan is viable although the components of this viable plan are complex and do not necessarily hold, as discussed above. The aim and hope are that freed from the mother's home environment and supported by therapy the girls will each find the space and emotional permission to recover their relationship with their father.

44. But there is a likely price to be paid on any account. It is acknowledged the process may cause suffering to the children and it is most unclear as to whether they will resist the move and if so, what additional harm this may cause. I did not understand the suggestion to be of them being physically forced to move but wonder whether short of this the plan will progress. I did not understand PBR to be recommending the use of a forced move. Her plan was based on the children being given permission to move and assisted through a therapeutic not forced process. In her evidence she candidly observed that the alternative would be a period in state care. Even were the children to be forced it is unclear to me whether the father would be able to retain them or whether they would return to their mother. It is unclear to me whether the necessary therapeutic support (see PBR) would be accepted by the children and if not, what impact this would have on the placement. The evidence is of the father needing to work on his own style of parenting when confronted by the girl's opposition. I am concerned how this would play out if the plan did not progress positively.

45. I have commented above as to my doubts as to whether the children's therapeutic relationship will survive a forced move in circumstances in which the girls have been given little warning of what has been planned. PBR seemed to see the solution as being the introduction of a further specialist into the relationship. I seriously wonder whether sufficient thought has been given to the willingness of the children to accept a further professional. I remind myself E is not accepting of PBR.

46. I have to say my experience of transfers of this sort are that they do not typically arise in circumstances such as those before me; on an interim basis following a limited hearing and without any factual matrix. The absence of the same runs the risk of robbing the process of any comprehensible foundation. There is a danger the gap will simply be filled by the alienation narrative now favoured by PBR. At this time the existing foundation for the plan is PBR's recent change in analysis and assessment of what is required. I respect her professional analysis, but it is just that at this stage. I have made clear this was not a full trial of the issues and was never envisaged to be a full trial. I necessarily proceed cognizant of the fact I only have a partial understanding of the case. Whilst I

permitted greater examination than intended at outset it should not be felt this came close to a full examination of either party's case.

47. I am left with a worrying lack of confidence as to the actual route that would be required to enable the order to be actioned let alone the prospects of success of the same or the impact of the process on the children themselves.

*Risk of harm*

48. It is clear both the therapist and caseworker have concerns as to the harm the children are suffering in not having a relationship with their father. The therapist has proposed, and the caseworker welcomed the plan as a way of cutting through the impasse in the case. This risk is now viewed through the prism of alienation although I understood the therapist to suggest that she would be suggesting such a plan in any case where the child did not wish to see a parent and could not give a good reason – a position which I understood her to suggest amounted to child abuse.

49. In the sections above I recognise the harm that derives from an obstructed parental relationship, but I also note the potential for harm arising out of the plan itself. There must be a real concern that if the relationship is being obstructed then leaving matters as they are will only worsen the position. There must be a real concern that a failed attempt at a forced transfer will leave the children embittered and fatally opposed to their father. If they are not alienated, then the plan may cut across their legitimate wishes and feelings. If this is the case, then force will not likely repair the relationship. For the Court the need is to consider the position with a cautious eye recognising the potential harm that may arise in either case. The Court must be brave to take the right decision but must not lose sight of the potential for harmful unintended consequences.

*Parental capacity*

50. I cannot overlook the previous judgments which, in placing the children with both parents recognised their inherent capacity to meet their needs. However, matters have deteriorated and neither mother or father have shown the ability to ensure a child in their care sees the other parent. In my assessment one should not lose sight of the fact that it was M who first took the unilateral decision not to see the other parent, that this arose in the father's house, and the father has been unable to ensure M sees his mother. In this case the therapist takes a different stance with M, but it is in my judgment a significant piece of the factual matrix laid before me.

51. Today I am focused on the mother who cannot ensure E and P see their father. Equally in her care the girls are not attending school as they should. This raises a real question as to her capacity to parent the children. The therapist identifies

very different parenting styles within each household with the mother's being more permissive and the father's more disciplinarian. My sense is that each departs unhealthily from a sensible middle ground.

52. The schooling issue is a discrete point but plainly one of importance. It is a feature of the case that each parent claims to be supported by the school in their position. The mother seeks to support E in moving to a different school and points to support from the school in such regard. The father seeks to maintain E at the school with the reasonable concern that if the issue is not with the school then the problem will just follow E wherever she goes. He says he has support from the school in this regard. Meanwhile E is stuck in the middle and not at school. I am told E has messaged her father about this issue without meaningful response. The father appears to suggest E needs to engage with him properly on the issue before he can agree to a change of school. I frankly do not see this happening and in the standoff nothing will likely change. My concern is, as I pointed out to the caseworker, that whilst we fiddle over the issue the child's schooling effectively burns. Whether a route of therapy or fact finding is taken over the following months the issue of E's schooling is left unresolved. Therapy may continue with E on the perimeter and out of school while we hope for her to engage so that the parents can negotiate with her together. Or we may have a fact finding to resolve the factual matrix with E out of school. Neither process resolves the urgent schooling question. It needs a decision now and frankly the parents should be willing to accept that the route that gets her back into school is the better one whether it is the route they would prefer for her. E's educational needs cannot wait.

***Conclusions***

53. I do not intend to order the immediate transfer of the children to the care of the father as sought by the application. I have reached this decision having regard to my analysis set out above and summarise as follows:

i) I consider such an order is premature in circumstances where there is no established factual matrix. Whilst acknowledging the views of PBR in particular I note she was not appointed by the Court as an expert in this respect and I consider there remain real uncertainties as to the underlying dynamic operating in this case.

ii) I consider the plan so far as it concerns E is misconceived. It is striking that it amounts to an abrupt change in approach with regards to E. I am concerned no attempt has been made to ascertain her views and I doubt very much that the plan could be successfully affected in her regard in the way envisaged by PBR. On balance I consider it would at this time be more harmful than beneficial. Separately it would likely undermine the plan insofar as it refers to P.

iii) However, I do not endorse the plan with regard to P. I am equally concerned as to the fact the planning has been entirely kept from P and particularly so as she is part of the therapeutic process. In my assessment a closer scrutiny is required as to why her relationship with her father had fractured than was anticipated by this hearing. Pending that it is unwise to reach settled conclusions as to alienation as cause. I do not consider she will co-operate with the plan and I judge in the circumstances before me it would be wrong at this time to be contemplating a forced move.

iv) My assessment is that matters remain unclear and pending a proper opportunity to evaluate the full circumstances it would be unwise to jump into effecting a significant and experimental change of residence.

v) This should not though be thought to be a determination of the alienation debate. It should be clear I have reached no settled conclusions. My analysis has proceeded in the light of uncertainty and the welfare of the children given that uncertainty. A time may come when that uncertainty is replaced with confidence one way or the other. Neither parent should assume the Court has closed its mind to these potentials or to the remedies that may be required on such finding.

vi) As to schooling it seems clear to me the focus must be on getting E back into school. On the evidence the clearest and speediest mechanism for achieving this is a change of schooling at this time. To take any other approach is to delay E's return to school with long lasting implications for her. I would hope the parents can now find a way to enter a dialogue around the change of school now that this has been determined in principle.

vii) It must be for the parents to now digest this interim decision and consider what the future holds for the proceedings. Can they and do they want to resume therapy? Or is that route now so tarnished as to be without real value? Is the Court required to now manage the case towards a fact-finding exercise and the resolution of a factual matrix for the family going forward? I leave the parties to consider this judgment and to set out their proposals as to the way forward at the handing down hearing. It would be of great assistance if they could not only summarise the way forward, but if it incorporates a Court based timetable set out the likely dates that should apply to that timetable.

54. I believe I initially signalled a likely handing down on 17 December 2020. Unfortunately other commitments now make this impossible. Instead I will hand down the judgment at a hearing to be listed at 3pm on 18 December 2020. I

would welcome any request for clarification or corrections in advance of the hand down. This judgment can be shared with the parents prior to hand down.

His Honour Judge Willans