ENGLAND AND WALES / JUDGMENT

TM v GL

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IN THE FAMILY COURT AT THE CENTRAL FAMILY COURT, SITTING AT THE

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IN THE FAMILY COURT AT THE CENTRAL FAMILY COURT, SITTING AT THE ROYAL COURTS OF JUSTICE
IN THE MATTER OF THE CHILDREN ACT 1989

BETWEEN:

TM
and
GL
Applicant father
Respondent mother
BEFORE: Recorder Venetia Jackson

JUDGMENT

This judgment was delivered in private in proceedings heard in private to which the provisions in section 12 of the Administration of Justice Act 1960 apply. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment and in any report of or commentary on the proceedings the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court. Introduction and background

1. I am concerned with the welfare of Faith, (not her real name) the only daughter of Mr TM (father) and Mrs GL (mother), who is currently aged 6. Before me today are a tangle of applications and issues to be resolved. The current proceedings were started on 12 February 2025 when father applied for a child arrangements order seeking to change the previous child arrangements order from January 2021 through an order for shared care of Faith. Since that application was issued the father issued an application in May 2025 to enforce the 2021 order and an application on 20 November 2025 for interim child arrangements. The

enforcement application was withdrawn and dismissed in August 2025 but costs as a result of that application remain for determination today.

2. In addition to the father's applications, mother has also applied in these proceedings for a variation of the Child Arrangements Order, a Prohibited Steps Order and a Specific Issue Order. Mother additionally seeks a section 91(14) on a mutual basis.

3. At a Dispute Resolution hearing on 22 August 2025, HHJ Harris directed that the final hearing be heard on submissions only. She additionally directed that the list of issues to be determined are:

a. Whether there should be any variation of the spend time arrangements

b. Whether there should be a joint lives with order

c. Whether a s91(14) order should be made

d. Whether any conditions should be attached to the child arrangements order specifically around location, risk management and information to be provided

e. How provisions relating to communication and the exercise of parental responsibility should be recorded in the order

f. Whether any procedure for varying arrangements should be specified in the order

g. Whether mother should be awarded her costs of the enforcement application

h. How Faith's passport should be held.

4. Father appears in person with assistance of his father as Mckenzie friend. Mother is represented by Ms Hylton of Counsel. I have heard submissions from both of them on the issues set out above, divided for ease of management into submissions on the child arrangements issues, submissions on s91(14) and submissions on mother's costs of the enforcement application.

5. I have read the contents of the bundle which includes application forms, previous orders and witness statements. I have also had the benefit of position statements from both the father and Ms Hylton and draft final orders from each of them.

6. At heart of this case is Faith. Her parents split up very shortly after she was born. She was then subject to child arrangement proceedings as a baby. These originally concluded in January 2021 when she was 14 months with a child arrangements order directing that Faith lives with her mother and providing a stepped set of contact arrangements that would build over time to a stable pattern of spending time with her father on alternate weekends and an alternate mid-week night prior to school starting and sharing 50% of holiday time.

7. This is the second set of proceedings to concern Faith in only 6 years of life. Faith has never been in a position where how she spends her time with each of her parents has been unregulated by court proceedings. It is clear that whilst it is essential for Faith's parents to work together to co-parent her successfully, this has not gone especially smoothly to date.

8. Father views the issues between him and mother as being largely issues of communication and trust. He considers that he has always had Faith's welfare at heart and mother has been unwilling to trust him on this. He expresses concern that mother does not consult him enough or respect his role as father in decisions such as schooling and nor is mother willing to allow him any latitude for needing to deal with events that have happened to him, such as experiencing a mental health episode, or experiencing an unexpected and temporary issue with his accommodation, which he states he resolved within around 5 months.

9. Mother in contrast views father as displaying inconsistency in his approach throughout the time they have been co-parenting Faith. She considers that she has done her best to facilitate father's requests and demands to maintain contact with Faith and to flex according to his wishes, but she finds this draining and is concerned about the harm done to Faith through inconsistency. Ms Hylton on behalf of mother points to various examples of changes and issues throughout the lifetime of the current child arrangements order, including various requests for changes to the arrangements to increase and decrease contact, and issues where father has not been contactable or has not communicated with mother important details such as where he is staying with Faith. This latter point has been a particular issue in recent months with father apparently not having a stable and fixed address.

10. Cafcass prepared a safeguarding letter in April 2025 and updated it in August 2025. There are no significant safeguarding issues identified by Cafcass and in particular nothing that Cafcass consider would prevent Faith from spending significant time with both her mother and father. Cafcass note however that it is important that Faith has stable and consistent arrangements and that there is an improvement in communications between the parents.

11. Both father and mother agree that stability and consistency is important for Faith. They come to todays hearing with somewhat different ideas of how that is to be achieved. The current position on contact

12. With arrangements under the 2021 order largely having broken down, HHJ Harris made an interim child arrangements order providing that Faith would continue to live with her mother and spend time with her father as agreed between the parents. The recitals to HHJ Harris' order set out Judge Harris's expectation that on father securing a tenancy in September 2025, it would be expected that contact would resume with alternate weekends in term time, building up to include a mid-week overnight as well, with shared holidays in October half term and Christmas.

13. I am told today that since October half term, this expected pattern has not been achieved. Faith has been having overnight contact for 1 weekend a month with a weekly video call the other weeks. This has largely been due to mother's concerns about father's living arrangements. Position of the parties

14. Today father seeks a return to the picture envisaged by the 2021 order with some additions. He requests a lives with order on the basis that he considers it important that the court recognises the legality of his position and his involvement in Faith's life. He otherwise seeks a close to 50/50 shared care arrangement with alternate weekends running Friday to Monday and an overnight stay on the weeks where he is not having a weekend visit. Holidays are to be equally split and provision made for alternating years to deal with Christmas and Easter and also the preparation for return to school. He further seeks specific provisions around communication arrangements and overseas holidays with each party needing to seek permission of the other and provide details to go abroad.

15. Father opposes the request for a s91(14) order even on a mutual basis. He considers all his applications have been child focussed with sound welfare reasons behind them even if as a litigant in person he may not have appreciated all the nuances as to what is the appropriate application to make when. He considers that there should be no barrier to necessary applications for Faith's welfare and that the majority of issues that have arisen can be addressed through a sufficiently clear order that contains operative clauses that reduce the scope for disputes. Unsurprisingly he opposes the application for mother's costs of the enforcement application on the basis that the application was merited and the costs sought are unreasonable in scale anyway.

16. Mother in contrast with father expresses concerns with the consistency of father's approach to contact and the stability of his living arrangements. She seeks confirmation that Faith lives with her and a reduced order for contact with father conditional on father establishing appropriate secure living arrangements. Her proposals are for 1 weekend in every 4, Fridays to Sundays and for 3 nights in half terms, 5 nights Easter/Christmas and 1 week in summer. If father can't comply with the living conditions, then his contact should reduce to visiting only with no overnight stays. She is not necessarily opposed to contact increasing in due course but emphasises the importance of stability for Faith and father demonstrating that he can stick to an established pattern. Mother further seeks provision for her to make decisions for Faith if father does not respond to a consultation on the decision within 3 days of mother messaging him.

17. Mother's view is that a s91(14) is needed to protect Faith and mother from further applications for a period of 2 years and allow the new arrangements time to settle down. She notes that both sets of proceedings were started by father and these proceedings have been characterised by a number of ill-conceived applications being made during the course of the proceedings. She further points to father threatening to take mother back to court if she does not agree to variations to the 2021 order as grounds for needing the protection of a s91(14) order.

18. On costs of the enforcement application, mother points out that the application was by its nature in seeking to enforce recitals doomed to failure and that father had been given ample opportunity to withdraw it but insisted on proceeding and requiring mother to incur the costs of a detailed response to the application.

19. I will turn to deal with the various issues raised in this case in the order in which I heard submissions. Child Arrangements

20. The law in relation to the child arrangements aspect of this case is well established. Key to my considerations has been the welfare checklist as set out in Section 1 (3) of the Children Act 1989.

21. Faith's welfare is paramount. My decision must be made in the interests of her welfare and this has been at the forefront of my mind throughout this hearing. I have also have full regard to the principal on proportionality, though I will say at the outset that given where these parents have reached, it is clear to me that some regulation in the form of an order is desirable to give Faith the stability and continuity that Cafcass have identified that she desperately needs.

22. At this stage I should also add, that whilst not a subject child for these proceedings, since Faith was born, father has had another daughter with a different mother. Father is separated from this partner too. Faith has a strong bond with her half sister and sees her regularly with her father and mother and father are agreed that this is an important familial bond for Faith to maintain and this is a factor I need to bear in mind when considering Faith's welfare.

23. The issues in relation to child arrangements I have to determine are who Faith should live with, her mother or both her mother and father; what the spending time arrangements should be; and whether there should be any other provisions in the order around parental responsibility, variation of the arrangements or other conditions attached to them. Although the question of how Faith's passport should be held was listed as an issue for determination today, it is perhaps some small glimmer of hope that father and mother are basically agreed that mother should hold the passport and are happy that mother will hand the passport to father when he wants to travel with Faith.

24. I deal with the lives with issue first. The importance of the lives with order in addition to any dynamics it adds to a parental relationship is in the ability of a parent with whom a child lives to take them out of the jurisdiction for up to 30 days subject of course to any other court orders. It used to be the case that joint lives with orders were not made frequently. Whilst they are made more regularly than previously it remains the case that such an order must still be in Faith's welfare before it is made. Father urges me to make a shared lives with order on the basis that he considers it would recognise his position and he considers legal equality is important in building a communicative relationship with mother. Mother notes that the reality of Faith's life is she lives with her mother and that mother has never sought to dissuade the relationship with father.

25. In my judgment the most appropriate order is that Faith lives with her mother. This recognises the reality and in my view would be what Faith would say if asked. It is the position that I consider most accords with Faith's physical, emotional and educational needs. Whilst not downplaying father's role, capability and desire to be involved, the reality is that this is at present provided by mother. I have considered whether equality between the parents requires a joint lives with order - in my view it does not. I have seen the evidence submitted by both parties on the C79 application (since withdrawn and dismissed by HHJ Harris) and in my view the messages demonstrate that mother did consult father ahead of time of important decisions such as Faith's nursery and schooling (pages 282-291 of the bundle). She may not have provided details of a range of schools, but equally, father has parental responsibility and knowing that nursery and school were being considered, could have made his own proposals too.

26. Further, I have seen the various messages exchanged between the parents and exhibited by both of them to their witness statements. In my view these messages demonstrate communication, a willingness of mother to flex arrangements when father requests and an ability of father to for example seek medical input when needed for Faith. This is not the type of case where the balance that is drawn by a lives with order appears to be creating any real issues requiring an adjustment in order to preserve father's involvement and status for Faith's welfare. The rationale for seeking the order from father is more focussed on his own perceptions of what would work for him and how he perceives it would require an improvement in the relationship between him and mother, rather than how the order would contribute to Faith's welfare. I entirely agree that mother and father need to build a more co-operative relationship, but I do not agree that a joint lives with order is necessary for this or for Faith's welfare.

27. Turning to the spending time with arrangements, I note that as set out in the Cafcass letters, there is no significant safeguarding concern with Faith spending time with her father. The initial safeguarding letter which I am urged to consider by Ms Hylton does however point to the need for consistency in the operation of contact arrangements. Father does not dispute this but points to the importance of communication between the parties as highlighted in particular in the updating safeguarding letter (pages 206-207 of the bundle).

28. I have reviewed the messages annexed to both the mother's first witness statement and the Applicant's witness statement. The pattern presented by these messages are a number of instances where father has had various issues such as illness and difficulties with his car that have interfered with contact. These are not in and of themselves necessarily an issue. Illness and car trouble does occur and can cause difficulties to be worked around in a normal co-parenting relationship, though there does appear to have been a reasonable number of issues such as this. Of greater concern however are the regular requests for ongoing changes to the arrangements and the lack of clear communication in the past 12 months over where overnight contact would take place.

29. Considering the points in the welfare checklist, I have no doubt that Faith wants to see her father and enjoys spending time with him. It is not in issue that she should see her father. Whilst Faith has not been directly asked about this, I anticipate that Faith would also like to know when she is seeing her father and where she is going to see her father. Due to her parents splitting up, Faith is used to spending some weekends with her father and some with her mother. This is however a reasonable amount of change in daily routine for a young girl to cope with and I anticipate that if asked Faith would ideally like to know that when she sees her father, she sees him in a fixed place where she has her own space, subject of course to any family visits or holidays her father might take her on.

30. I consider that consistency both in frequency and location of where Faith spends her time is likely to promote her physical, emotional and educational needs, giving her stability to feel comfortable in her father's home and as she grows older, to deal with homework etc as needed.

31. It appears from the material in the bundle that the pattern of unsettled locations over the past year has also been problematic for Faith, resulting in stomach upsets which it is submitted are not present when she is with mother. Cafcass too have noted that inconsistency in frequency of contact is likely to be confusing to Faith, pointing to the end of 2024 when father halted all contact due to needing treatment for his mental health and then proposed a revised pattern, only to change his mind a month later.

32. Whilst there is no direct harm or safeguarding risk arising from Faith spending time with her father, I do note that inconsistency in contact patterns, sudden changes of timing and sudden location changes are all issues that could be upsetting for Faith and could lead to at the least emotional harm. The best way to guard against this is to provide Faith with a stable regime.

33. Weighing these factors up and noting the submissions made to me, father has submitted that mother's proposals for one weekend a month is insufficient for him to have a meaningful bond with Faith and for Faith to maintain a meaningful relationship with her half-sister. He proposes a pattern of contact to include alternate weekends and a mid-week overnight in the weeks where no weekend contact is taking place. Father seeks handovers at school on a Monday morning and broadly fully shared holidays. In addition he seeks an order for two calls a week, one to include Faith's sister and one just Faith and her father.

34. Mother's proposals come from concerns about the lack of clear accommodation for father especially over the past year and the past requests for changes to contact arrangements. It is submitted on her behalf that it is important to have a regime that father can maintain, and the one weekend a month should be feasible for this, with the residency condition being important for ensuring Faith's safety.

35. In my view, aside from the location issues which I will come to deal with, there is no suggestion that father's general care for Faith and his ability to care for Faith is in any way lacking in a way that would indicate a much more limited pattern of contact. In principle the

father's proposals are consistent with Faith's welfare interests subject to them being practically feasible. It is however these practicalities and how these operate in line with Faith's welfare that the father has failed to take into account. His proposals focus very much on what he would like to happen without considering the wider situation for Faith.

36. It is entirely understandable that mother has had considerable concerns about contact arrangements over the past year. Whilst it is also understandable that father needed to halt contact whilst seeking medical treatment, his proposals to resume contact which changed rapidly show a greater focus on his own desires and what suits him as opposed to consideration of what suits Faith. Similarly, it is understandable that issues can arise with accommodation at short notice especially when renting. However father did not communicate effectively with mother and instead sought to maintain overnight stays in his own interests without clear plans for accommodation for him and Faith. This led to regular changes of where weekends would be spent and with whom they would be spent and a general lack of clear communication from father in advance as to what plans were. At best this would have been unsettling for Faith and of course it hampered mother in exercising her parental responsibility to safeguard Faith.

37. Mother's proposals include conditions that overnight contact should only take place on father providing proof every month of his address and a tenancy agreement. Although I can understand the motivation behind this request based on the past 12 months, this is not conducive building a relationship between the parents. It is however important that father does have stable private accommodation. There are clear risks to Faith if this is not the case both in terms of the uncertainty for her and the risks in relation to regular encountering of strangers in respect of whom her parents have obligations to safeguard her. Faith currently has a stable home with her mother and this stability cannot be jeopardised for the sake of overnights with her father.

38. Provided father has stable accommodation which is private and has a separate bedroom for Faith (and her sister), overnight stays can take place. Father has provided a copy of his licence agreement for his present accommodation, and a letter from his landlady (pages 324-328 and 180 of the bundle). His licence is due to expire in May 2026. It is important that Faith and her mother have clarity about where she will be spending overnights after this time. Father should give 1 month notice of a change in his accommodation and confirm at the time the address of his new accommodation, the basis of his occupancy and provide photos before Faith stays in it. This will also give Faith reassurance as to the property she will be spending overnights in. Father has taken issue with mother's draft order requiring notice of a 12 month tenancy before overnights can take place, pointing out that the Renters Rights Act 2025 abolishes this type of tenancy. Father is correct that the assured shorthold tenancy will no longer exist, but he is incorrect to imply that stable accommodation is not something he can be required to provide. I have been referred to the guidance on the gov.uk website on the Renters Rights Act and it is evident from this that provided father obtains a tenancy he will benefit from additional protections including a 12 month protected period.

He will be able to choose to move, but if he does so, will need to move to a new tenancy to ensure stable accommodation. I note that licences are not affected by the Act and in my view father would need a minimum 6 month term for any licence to be considered stable accommodation.

39. It is of concern that father has taken Faith to eight different properties between April/May 2025 and November 2025. He has not indicated in his submissions today any recognition that this could be unsettling to Faith or to her mother and has instead focussed on the importance of Faith seeing him rather than the safety and security of her time with him. Whilst father has submitted that some of the accommodation has been with friends he has known and introduced Faith to before, mother does not necessarily know these people. I consider it is important to regulate this in the interests of Faith's welfare. Accordingly, excepting staying at booked holiday accommodation, or otherwise agreed with mother in advance, Faith must only stay overnight at her father's accommodation or with her paternal aunt or her paternal grandparents.

40. In relation to time-frames, provided father maintains stable accommodation in London, weekend contact should take place on alternate weekends from Friday after school to Monday morning dropping back at school. I am aware that father is also engaged in family court proceedings in relation to Faith's younger sister who does not live in London and that contact arrangements for her may well impact on how father is able to manage the pick ups and drop offs for Faith. Father should consider this carefully.

41. If father does not have stable accommodation after May 2026 either in his current accommodation or with a new tenancy, then it is not in Faith's interests for the arrangements of 2025 to be repeated. In this situation, overnights will drop to one weekend in four at either paternal aunt or paternal grandparents from Friday to Sunday evening at 6pm, with visiting one weekend in four on Saturday and Sunday from 10am to 4pm. This will continue until father obtains stable accommodation again.

42. Provided father maintains stable accommodation in London until September 2026 term time arrangements can increase from September 2026 to include Wednesday night in the weeks where weekend contact is not taking place with father collecting from school and returning to school on Thursday morning.

43. In relation to holidays, again providing father maintains stable accommodation, the parents should share holiday time on a broadly 50/50 basis. In light of parental birthdays, mother should have October half term and Father May half term, with February half term split between the parents. For Christmas and Easter, father and mother should each have one week, with father to have the week including Easter Sunday in 2026 whilst mother has the other week, and mother to have the week including Christmas Day in 2026 with father having the following week. The parents respective weeks should be reversed in 2027, ie mother has Easter week and father has Christmas week and the pattern should continue to alternate in future years. For summer holidays each parent should have a two week block

and a one week block. The blocks are to be agreed by the parents by the start of June each year. Fathers day and mothers day should be spent with the respective parent.

44. If father does not have stable accommodation, father should have 3 days of visits in half terms to be agreed with mother in advance and at Christmas or Easter father can take Faith to visit paternal aunt/grandparents or go on holiday for up to 5 nights. At summer, father can take Faith on a summer holiday for up to 2 weeks in duration.

45. Father additionally seeks two video calls a week, one to include Faith's sister and one to be with just him. Mother's proposal is for one short video call a week. Where father has stable accommodation and spending time with arrangements develop as set out above, then in my view one video call a week will suffice, to be on a Wednesday at 6pm when it is a week with weekend contact or on a Saturday at 6pm if no weekend contact is taking place. If father does not have stable accommodation and the alternative arrangements are in place then there should be one video call on a Wednesday at 6pm on weeks where father will see Faith at the weekend, and two video calls on a Wednesday and Saturday at 6pm on other weeks.

46. The paragraphs above deal with questions of spending time and any relevant conditions to this. In addition to the spending time question both mother and father seek orders on how parental responsibility is to be exercised. Father seeks orders that both parties must be named as contacts with Faith's school, that both parties must share key documentation and that school and GP must not be changed without consent. Mother seeks an order that if father does not respond to consultation or request for a signature or similar within 3 days, she can proceed unilaterally.

47. In my view the request for these type of orders stems from the parents general difficulties around communication which often proceeds in the examples I have seen with each parent proceeding down their own line of thinking and not answering the other parent's questions or providing clarity in their communication. I consider that rather than making specific orders on the exercise of parental responsibility, these parents need to work on their communication and ability to co-parent. With that in mind, my view is that Faith's interests and welfare are best promoted if her mother and father undertake the Planning Together for Children course run by Cafcass and I make a specific direction to that effect.

48. I understand that both Faith's school and her GP have contact details for both parents. I will also record in the recitals to the order that parents should consult in good time for all important decisions as both parents have parental responsibility.

49. Father also requests that there should be a specific procedure laid down in the order for varying any child arrangements. He contends that this will help address issues of poor communication between himself and mother by providing clear workable and enforceable procedures.

50. In my view such provisions are more liable to create further satellite litigation especially between parents such as these who are struggling to communicate effectively with each other. Providing a specified procedure for varying simply opens up arguments that the procedure has not been complied with. This is not in Faith's interests as it delays further decisions being taken for her and as a result increases risks of harm occurring. The Planning Together for Children course should provide father and mother with tools to help reach agreement for Faith. Processes such as mediation and ultimately court resolution already exist where needed. The order that will be made as a result of this judgment is already more detailed than is often the case for child arrangements orders, partly with a view to minimising the opportunity for conflict between mother and father. Ultimately mother and father are Faith's parents and need to learn to work together in her interests. I consider that the usual provision that the parties may agree further or other arrangements is sufficient and gives the necessary flexibility to manage a complex family situation where Faith has a half-sister on her father's side to maintain contact with as well as her mother's family.

51. I will however include in the recitals to the order that the court considers that stability in arrangements is important for Faith and that any variation the parents agree must firstly be focussed on Faith's needs, should be recorded in writing for clarity, and excepting minor adjustments for example to deal with holidays, should not result in frequent changes to the pattern of contact set out in the order. I would view frequent as being more than one change to the contact pattern in any 12 month period. I will also include a recital that the parties are encouraged to mediate any disputes if they cannot reach agreement.

52. On the final issue under the child arrangements heading of Faith's passport, as set out above, the parties are generally agreed that mother will hold the passport. There are no objections provided to father taking Faith on holidays abroad. To avoid further disputes between the parents about overseas holiday arrangements, I do consider it necessary to make provisions in the final order on this. The provisions I shall make are that father may take Faith overseas and must provide mother with 14 days notice of travel plans, including flight or other transport details and accommodation details. Mother must hand over Faith's passport no later than 7 days in advance of travel. Father must return Faith's passport to mother's safekeeping on return from any overseas trip. For the avoidance of doubt, similar provisions are not required in respect of mother due to the lives with order which entitles mother to take Faith overseas for periods of no more than one month in duration, subject to the spends time with arrangements in the order. If mother wishes to take Faith overseas for a period of time that would interfere with father's time with Faith, mother will need to discuss this with father in advance and agree arrangements with him. Section 91(14)

53. I turn now to the application for a section 91(14) order.

54. Section 91(14) of the Children Act 1989 provides: ‘On disposing of any application for an order under this Act, the court may (whether or not it makes any other order in response to the application) order that no application for an order under this Act of any specified kind may be made with respect to the child concerned by any person named in the order without leave of the court.’

55. The provision has been updated the insertion of section 91A, which provides that the circumstances in which a section 91(14) order may be made include where the Court considers that either the child concerned, or another individual, is at risk of suffering harm (which I note means ill-treatment or the impairment of health or development).

56. I have had regard to the provisions at Practice Direction 12Q and I have also had regard to the observations of King LJ in Re A (A Child) [2021] EWCA Civ 1749, updating the considerations to be applied to section 91(14) orders, as set out by Butler-Sloss LJ in Re P [1999] 2 FLR 573. I have been referred to Re T (A Child) (Suspension of Contact: Section 91(14)) [2015] EWCA Civ 719.

57. Although not binding on me, I adopt, with gratitude, the excellent summary of the current position in law, as outlined by Her Honour Judge Vincent in A & B (No 3)

[2023] EWFC 192, at paragraph 72 of her judgment which states: “Drawing the statute, procedural rules, and case law together, the approach to an application for a section 91(14) order can be summarised as follows:

a. If findings of domestic abuse are made, even if the victim did not apply for this relief, the court is now bound to consider whether or not to make a s.91(14) order.

b. While such an order is ‘the exception and not the rule’, it does not follow that the case or its circumstances must somehow be adjudged to be ‘exceptional’ before such an order could be made.

c. The court should bear in mind that such orders represent a protective filter - not a bar on applications - and that there is considerable scope for their use in appropriate cases.

d. Whether the court makes an order is a matter for the court’s discretion. There are many and varied circumstances in which it may be appropriate to make such an order. These may include cases in which there have been multiple applications, but that is not a necessary prerequisite. They may also include cases in which the court considers that an application would put the child concerned, or another individual, at risk of harm (without the need to find the ‘risk’ to be ‘serious’ or the likely ‘harm’ to be ‘significant’ or ‘serious’).

e. Subject to any inconsistency with the above, the Re P guidelines continue to apply.

f. If the court decides to make an order, it must consider:

(i) its duration, as to which, any term imposed should be proportionate to the harm the court is seeking to avoid, and in relation to which decision the court must explain its reasons; (ii) whether the order should apply to all or only certain types of application under the CA 1989; (iii) whether service of any subsequent application for leave should be prohibited pending initial judicial determination of that application.

g. In all of this, the welfare of the child is paramount. That said, any interference with a parent's otherwise unfettered right of access to the court, including the duration of any such prohibition pending permission, must be proportionate to the harm the court is seeking to avoid".

58. There have been no findings of domestic abuse in this case that would require me to consider making a s91(14) order. However findings of domestic abuse are not essential before such an order can be made. Nor is it necessary to find exceptional circumstances. As King LJ observed in Re A, these orders are protective and may be used to guard against "lawfare". Equally though great care is needed in making such orders and it must be demonstrated that there is a risk of harm and that the welfare of the child requires the order to be made.

59. Ms Hylton for mother points to Faith having been subject to two sets of proceedings in a short lifespan. Reference is additionally made to the schedule to mother's first witness statement at pages 141-145 of the bundle which is stated to chronicle father's 'litigation conduct'. This schedule starts with the first CAO application by father which mother asserts was unjustified as she was facilitating contact. Mediation was attempted in 2023 and it is recorded that father indicated he would issue proceedings as it looked like they were unable to agree. In July 2024 it is stated that father threatened enforcement proceedings and sent a series of messages relating to this because of a disagreement about collection time. The schedule then continues with a number of statements regarding father's conduct in the current set of proceedings, including that father has threatened to report mother's solicitors to the Solicitors Regulatory Authority, the history of the enforcement application and referring to a couple of instances where father has initially agreed to a resolution only to resile from it once an order is prepared.

60. The bundle does not contain all the emails and correspondence referred to in the schedule to mother's first statement. The issues relating to agreement of the undertaking and one of the threats to report mother's previous solicitors to the SRA are however included with mother's response to the enforcement application. Having read this correspondence, the view I form of it is that whilst father is clearly very intelligent and able to conduct his own litigation, he has also at times misinterpreted and unduly escalated issues causing further correspondence and undoubtedly further stress on both parties in the litigation.

61. The mere fact that a parent feels they have to issue proceedings to get child arrangements issues resolved is not in and of itself sufficient to justify a s91(14) order. Whilst mother may feel both sets of proceedings in relation to Faith have been unjustified, father's point of view

must also be considered. Mother believes father to threaten litigation regularly to coerce her to agree to points, but she has not pointed to extensive threats in the intervening period between 2021 and 2025 to litigate every issue. This leads me to the view that this is not an obvious case for a s91(14) order.

62. Considering in particular Faith's welfare within this, I anticipate she would like her parents to agree about arrangements for her. As she gets older she will be becoming more aware of parental disagreement and of the involvement of the courts and other professionals. It is clearly best for Faith if this does not form a major part of her life. Equally though the family court exists for a reason and it is a serious matter to place any filter on a parent's access to the court.

63. I have been troubled by father's conduct in the current proceedings. It is not acceptable that litigants in person conduct themselves in such a way that the judge handling the case refuses any further correspondence with them. The persistence in issuing multiple applications and insisting on their progression even after clear steers from the judge that father should be seriously considering withdrawal is also concerning given father's clear intelligence and the ability he displayed in representing himself in this final hearing. These factors show a potential tendency to engage in "law-fare" of the type that was concerning to King LJ in Re A.

64. I have also taken into account that a s91(14) order does not have to be structured in a blanket fashion but can be tailored to the exact harm of concern. In this case the harm that is of greatest concern to me is that Faith finds herself the subject of court proceedings very quickly before the arrangements I am putting in place have had any opportunity to settle down and work. It would be highly undesirable for either mother or father to be back in court seeking further child arrangements or enforcement proceedings in the immediate future without very good cause for this to happen. Equally though, in my view neither party should find their access to court subject to a filter where an urgent issue needs to be determined.

65. On balance I consider that both parties should be subject to a s91(14) order for a period of 12 months only, to cover solely applications for lives with, spends time with orders and applications for enforcement. This will give Faith respite from litigation and will allow both parties space and time to make the new arrangements work in Faith's interests. It will hopefully give Faith back a stable pattern of contact with her father, both in terms of time and location which will promote her ongoing development.

66. Although I am only making an order of 12 months duration, neither party should view this as a countdown to when proceedings can resume. It is invariably better if parties are able to agree issues than if they require a court to decide everything. Mediation is to be encouraged and both parties should be aware that if they return to the court promptly on expiry of the s91(14) order, the court is likely to take this into account when considering whether further s91(14) orders should be made and their duration. Costs

67. The final issue before me is whether mother should be awarded her costs in respect of the enforcement application made by father. Costs are sought by mother on the basis that father's conduct in the enforcement proceedings was unreasonable, both in making the application and pursuing it. The unreasonableness relied on consists of the following elements:

a. The Father's enforcement application was made despite the cross variation proceedings already being underway. His application was punitive and ought not to have been made. F's own witness statement: "From 2021 until November 2024 the timetable in the 2021 Order was largely observed: Faith enjoyed alternate-weekend stays (Fri – Mon), alternate Thursday overnights and shared half-terms / holidays – about 110-120 nights p.a";

b. There is no dispute that because of F's own written requests and cancellations, the child arrangements were "paused2" by consent between October 2024 and 27 December 2024, and then again between at least 2 – 27 January 2025;

c. F is now seeking to use his enforcement application as leverage to secure more time with Faith and put pressure on the Mother

d. Regarding Father's alleged breach 4 "36 overnights missed," the Father's enforcement application was made 16 weeks after his proposed and agreed variation in November 2024, 6 weeks after the Cafcass Safeguarding Letter dated 16 April 2025 - which did not recommend in person contact between the Father and Faith, and instead recommended "In the interim regular facetime calls should be undertaken between Faith and [Father]." The Father's application was misconceived;

e. The Father was unreasonable in his failure to accept the opportunity afforded by the court on 11 August 2025, for him to withdraw his enforcement application – before Mother had to file a response; g.

f. Having refused to withdraw his enforcement application, and in the knowledge that the Father was seeking a quasi-penal sanction against the Mother (who works full time, and who with her husband solely provides for Faith's needs, the Father having deliberately failed to pay child maintenance – misleading the CMS3), the Mother was forced to prepare a detailed response to the Father's evidence. This was court ordered. The response document has come at a very significant financial cost per the N260. It was obvious and pointed out to the Father by the court on 11 August, by Mother's solicitor on 18 August, and by the court again on 22 August, that the Father was impermissibly seeking to enforce recitals to a court order. His refusal to capitulate, his decision to file further /different evidence, and his attempt to reinstate his C2 after it was dismissed on 22 August 2025 reveal Father's dogged determination to unreasonably pursue an enforcement despite the court having no jurisdiction. The Father has ignored invitations to seek independent legal advice. There is a palpably negative emotional impact upon the Mother of having had the enforcement application looming over her, where it is clear that the Father is determined to disproportionately go back 4 years to 2021 to seek to unpick and punish the Mother's

parenting; h.

i. Continuing his approach to unreasonable litigation, on 13 August 2025, without permission or notice, without agreement, and after the Mother had replied to his original schedule, the Father filed a different version his original schedule of breaches and exhibits, served late.

68. Based on the above, Ms Hylton submits that this is one of the exceptional cases where costs should be awarded and she seeks costs on an indemnity basis. The total costs bill as per the N260 is nearly £29,000, though mother's case is that specific percentages of this should be awarded as set out in the costs warning letter, consisting in summary of 80% of costs for responding to the allegations and 50% of the costs of the hearing on 22 August.

69. Unsurprisingly, father has a very different view of matters arguing that his application was not misconceived and it was only withdrawn at the court's request to allow focus on a forward looking welfare order. Further and in any event he argues that costs should not be awarded on the indemnity basis which would require conduct well beyond the norms of contested private law litigation. He also argues that the costs claimed by mother have been incorrectly calculated and even on her own apportionment should total no more than £20,796. I think this is more a function of father carrying out the calculations and presenting them as I do not understand mother's case to be that the N260 represents her costs after the relevant percentage deductions have been made.

70. Under FPR 28.1 I may make such order as to costs as I think just. However, as set out in FPR 28.2, the general rule that an unsuccessful party pays the costs of the successful party does not apply in family proceedings. Aside from that, the rules in CPR Part 44.2 apply. In particular, CPR 44.2(4) requires me to have regard to all the circumstances including the conduct of the parties, whether a party has succeeded on part of its case and whether there has been any admissible offer to settle.

71. CPR 44.2(5) sets out that the conduct of the parties includes (d and e not being relevant for this case):

a. Conduct before as well as during the proceedings

b. Whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue

c. The manner in which a party has pursued or defended its case or a particular allegation or issue...

72. The leading case remains R v R [1997] 2 FLR 95. Whilst the general practice is not to make costs orders in private family proceedings, as set out in the judgments of the Court of Appeal in R v R, one of the cases where a costs order may be appropriate is where a party behaves unreasonably in the litigation. I have also had regard to Re T (a child) (order for costs) [2005] EWCA Civ 311 and the recent case of E (Children: Costs) [2025] EWCA Civ 183 and the authorities cited in that case. From the various authorities, it is abundantly clear that it is

exceptional to award costs in private law proceedings, but equally that the court retains a discretion to do so and that this includes cases where a party has behaved reprehensibly or unreasonably in proceedings.

73. Looking at the circumstances of this case, Ms Hylton confines the application for costs to solely the costs of the mother in dealing with the father's application for enforcement brought part way through his application for a variation of the child arrangements order. She says that the father's conduct was unreasonable in this instance because it was punitive, being brought in the course of proceedings to vary the child arrangements, it was misconceived in seeking to enforce recitals, it had no reasonable prospect of success on father's own allegations, and father unreasonably persisted with it despite the court openly giving him an opportunity to withdraw the application. Costs are sought on the indemnity basis primarily because father did not withdraw the application when invited to do so, which Ms Hylton argues makes his conduct more unreasonable.

74. This being my first involvement with this case, I asked Ms Hylton whether father had received any express comment about the enforceability of recitals from the court previously. Ms Hylton confirmed that this was not expressly stated by the court on 11 August in inviting father to withdraw the application but that it was raised in mother's warning letter of 18 August setting out that mother would seek her costs in defending the application and was repeated by the court at the hearing on 22 August.

75. In considering this matter and the conduct of the parties, I have taken into account that father is a litigant in person and cannot be expected to have the full appreciation of procedure and law that mother's solicitors and counsel have. That said, father is a sophisticated and highly able litigant in person who has ably represented himself today putting in a detailed position statement with reference to relevant case law. He has also corresponded with mother's solicitors on detailed points of the family procedure rules showing a clear facility with educating himself on the family court and proceedings in it (see pages 197 and 198 of the bundle).

76. I consider there is an inherent internal inconsistency with applying to enforce an order whilst at the same time there is a live application from father to formally vary the order, especially where the allegations of breach relate to circumstances since the application to vary was issued. Father's application to vary shows that he does not actually want the 2021 Order to remain as the current arrangements in any event, so seeking to enforce these arrangements is disingenuous at best, even taking into account father's representation of himself. When father made his application to enforce, he was aware that the variation application was in the court system and he would have been aware either that a hearing date had been fixed for 27 May or that he would receive a hearing date imminently at which point he could ask the court to provide for interim child arrangements. In making an application to enforce, father was attempting to both force mother's response and the court timetable in determining his contact with Faith. This is despite an initial safeguarding letter from Cafcass recommending only indirect video contact pending further enquiries on father's health.

77. I have also considered the substance of the enforcement application, reviewing the application and accompanying material alongside the other material in the bundle. Father says in his witness statement that the application was not improper because his time with Faith had ben reduced and then stopped by mother. Having read the materials in his application, it is apparent to me from the various emails/my family wizard messages between mother and father that have been included either with applications or as exhibits to witness statements that since 2021 there has been a marked pattern of father requesting adjustments or changes to contact arrangements to facilitate his life. These have generally been agreed by mother until end 2024 when father proposed a radically revised schedule of contact, only to resile from this proposal barely 2 months later. Father has then sought to revert to the 2021 order and demand compliance with this even though the parties have previously agreed different arrangements. Further he has sought to demand compliance with matters that are only recitals in the 2021 Order. This pattern of agreeing alterations which he has requested of mother, including the cessation of contact at the end of 2024, is very different to the picture he tries to present of the mother as simply stopping contact. It is (taking it at its most generous) a stretched picture of reality that he presents in the enforcement application and as mother herself points out in her response, the question of reasonable excuse for the only operative provision of the order stated to have been breached would have been a very significant issue for father to overcome.

78. Parents are expected to work together for the interests of their children and are generally encouraged by the family court to agree workable solutions for them and their circumstances, including agreeing adjustments to child arrangements where feasible. I do not consider it necessarily unreasonable if arrangements break down completely for one parent to seek to enforce against the other parent even where the original order has been adjusted by agreement. However, taking father's conduct as a whole, this was not simply a case of seeking to enforce an order that was operating as intended and then stopped operating for some reason. As outlined above, mother and father were agreeing adjustments prior to the applications that make up this case. Father was already taking steps to address issues that had arisen taking account of Faith's age and development through his C100 application issued in February 2025. Issuing an enforcement application to enforce an order father doesn't think is appropriate anyway with the apparent goal of forcing faster consideration of issues is not reasonable behaviour in the circumstances. This is even more the case when the enforcement application presents a limited picture of events omitting the significant element of previously agreed variations from the background.

79. I have then considered how the enforcement application was progressed and the conduct of the parties in this process. The enforcement application is first discussed at the hearing on 11 August 2025. By the time this hearing is reached, father has already had an opportunity to request interim child arrangements be put in place on 27 May. He was further able to request the court consider this at the hearing on 11 August. In circumstances where he is seeking a long term variation to arrangements and Cafcass is carrying out safeguarding assessments this would have been the appropriate course of action, especially as the alleged

breaches of the 2021 order that he was seeking to enforce were all circumstances from after the issuing of his C100 in February 2025 (bundle page 215).

80. It is clear from the face of the order of 11 August that father was given the opportunity to withdraw the enforcement application and treat it as a variation application, but that father made a positive election to pursue enforcement and an order mother undertake unpaid work. This decision of father's given mother's primary role as carer for Faith, is one I find troubling and appears more driven by father's desire to obtain the level of contact and care for Faith that he considers he should have, at the speed that suits him, rather than considerations of Faith's welfare and interests.

81. It is further apparent from the mother's costs letter (bundle 146-148) and the two orders of 11 August and 22 August 2025 that as a result of father's decision to pursue enforcement, the parties ended up with an additional hearing before the enforcement application could be finally disposed of with the sensible solution of the application being withdrawn. Father has tried to cast that withdrawal in the light of a welfare focussed decision on his part. He says in his witness statement that he withdrew it to avoid duplication and focus on the welfare decision. This very much demonstrates that he must have been aware at the time of issuing that it was duplicating his existing proceedings. It necessarily follows that mother would incur additional time and expense in responding to this application especially given father's determination to pursue an order for unpaid work.

82. The additional work incurred in responding to the application consists primarily of an extra hearing on 22 August 2025 at which interim contact was finally discussed, and of course mother's preparation for that hearing which required a full response to the father's alleged breaches. Noting that father has been representing himself throughout these proceedings, I do consider that some of the work involved could have been avoided had the question of breach of recitals been aired at the 11 August hearing. This would have significantly narrowed the issues for any ongoing enforcement proceedings (setting to one side the question as to the reasonableness of pursuing such proceedings in any event). Whilst it is apparent from the Order of 11 August that the merits of pursuing enforcement as well as variation were canvassed with father, I am told that there is nothing to indicate that father was explicitly informed that breaches of recitals or agreements could not be pursued until the served. response document and costs warning were letter

83. The reality is though that if he was truly welfare focussed, he would not have launched enforcement proceedings part way through variation proceedings apparently simply because things were not progressing quickly enough for him. This is in my view unreasonable behaviour on the part of father. It is made more unreasonable through the clear grounds to automatically dismiss most of the alleged breaches as not being breaches of any enforceable part of the order. Whilst father may not have known this at the point of issue, he is intelligent and capable. Certainly by the time of the 11 August hearing and the strong indication from the court about the application, it is to be expected he would have given some consideration to the proceeding. appropriateness of

84. In my judgment father's actions in pursuing the enforcement application after 11 August 2025 do cross the threshold of being sufficiently unreasonable to merit a costs award. Litigants in person are expected to listen to the court in the same way that legally represented parties do. Persisting with an application for enforcement despite court indications that it should be treated as a variation application, and furthermore persisting with an application for a punitive order without focus on the welfare unreasonable conduct. child of the is

85. I have considered whether costs should be awarded on the indemnity basis as Ms Hylton contends, noting that this too is only appropriate where conduct is unreasonable. It does not necessarily follow from my determination that costs should be awarded on grounds of unreasonable conduct that costs should also be awarded on the indemnity basis. There needs to be features that take the case "out of the norm" for an award on the indemnity basis. The mere fact that an application is speculative or weak is insufficient. Where, as here, it is the conduct of the party that is relied on, this must be unreasonable to a high degree.

86. In my judgment making an application for enforcement of an order that father was already applying to vary and persisting with that application is conduct out of the norm and conduct that is unreasonable to a high degree. I take into account that even after the hearing on 22 August, father was suggesting that the withdrawal of his application for enforcement was conditional and that the application could be reinstated. Further, that his engagement with HHJ Harris regarding the order of 22 August reached such a degree that she specifically informed the parties that she would accept no more direct correspondence from the father. I consider that the proper basis for assessing costs is therefore the indemnity basis noting that on this basis CPR 44.3 provides that costs that have been unreasonably incurred or are unreasonable in amount are not to be allowed, but that unlike the standard basis of assessment, the only other constraint is that any doubt I have as to the reasonableness of costs is to be resolved in favour of mother.

87. I have had the benefit of a detailed N260 and both parties have been able to make submissions on costs to me at the end of the hearing. It is only the costs of the enforcement application that I am awarding and on this basis I consider given the other issues dealt with in the hearing of 22 August, it is right to attribute only 50% of the costs of that hearing and preparation for it (including preparation of bundles and instructions to counsel) to the enforcement application. I also consider more could have been done to narrow the issues and ensure father was aware of the difficulties of his application ahead of mother being required to file and serve her response to the allegations made. With that in mind, I agree that the percentage apportionment in the costs warning letter should be applied, namely the costs of preparation should be awarded at 80% of what is claimed. I have reviewed the fees claimed in the N260 and do not find the levels of work carried out or the hourly rates to be unreasonable. I therefore summarily assess costs at £16,234.60 + VAT for a total of £19,481.52 Summary

88. In summary, I make the following orders:

a. Faith to live with mother

b. Conditional on father retaining stable accommodation in London with separate bedroom for Faith and no other lodgers, father may have overnights for alternate weekends Friday to Monday drop off at school. From September 2026 this may increase to a Wednesday overnight. Holidays to be shared between parents as set out at paragraph 43. Stable accommodation for these purposes means father having a tenancy agreement or a licence for at least 6 months duration. If father does not retain stable accommodation, visiting one weekend in four and overnights at paternal aunt/grandparents one weekend in four, with holidays confined to 3 days of visits in half terms and the option to take Faith away on holiday for 5 days at Christmas and Easter and two weeks in summer as set out paragraphs 41 and 44. c.

d. Where father has stable accommodation, one video call a week on Wednesdays where weekend contact is taking place and Saturdays otherwise, and where father does not have stable accommodation, one video call a week when he sees Faith that week and two video calls on a Wednesday and Saturday on other weeks.

e. Mother to hold Faith's passport, father may take Faith overseas and must give 14 days notice to mother of travel plans. Mother must release passport 7 days before travel and father must return passport on return from travel.

f. Both parents to complete the Planning Together for Children Course and a copy of this order to be disclosed to Cafcass for this purpose.

g. Parties may agree variations to child arrangements as necessary

h. A s91(14) order in respect of both parents for a duration of 12 months covering solely lives with, spends time with and enforcement orders

i. Father to pay mother's costs of the enforcement application on the indemnity basis, summarily assessed at £19,481.52 inclusive of VAT

89. No orders are made in respect of procedures to exercise parental responsibility or how the parents are to agree variations to the order. I draw the parties attentions though to paragraphs 48 and 51 of this judgment and the matters that will be recorded in the recitals to the order.

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