St.Mary's
FAMILY LAW SPECIALISTS

Private Law Case Law Update

Lauren Davies

November 2026

A Children Act case concerning a parental dispute over the choice of secondary school for their ten-year-old son. Applying the welfare checklist under section 1(3) of the Children Act 1989, the court considered the child's educational, emotional and developmental needs, existing friendships, available SEND support and the financial implications of each option. The court ultimately determined that the child's welfare was best served by attending the local state school rather than the independent school.

CBM v MBS [2026] EWFC 265 (B)

Background

These proceedings concerned a ten-year-old boy following the separation of his parents. Children Act proceedings commenced following the father's, subsequently admitted, conduct after the end of the relationship. The father pleaded guilty to a criminal offence. A non-molestation order was provided.

The parents were able to reach an agreement regarding the child arrangements on 5 May 2026. The child was to live with the mother and spend time with the father on alternate weekends and for extended periods during school holidays. Such contact was to be supervised by the paternal grandparents.

The remaining dispute concerned which secondary school the child should attend from September 2027. The mother supported a small independent school, while the father proposed a local state secondary school. Both parents agreed that their son had additional educational needs, found change and transitions difficult, and would benefit from a practical and supportive learning environment. Both schools offered SEND provisions.

The issue was therefore not whether independent or state education was inherently preferable, but which school would best meet the child's individual needs and promote his welfare.

The legal framework

The judge approached the determination by reference to the welfare checklist as set out in Section 1 (3) of the Children Act 1989, considering each of the relevant statutory factors, namely:

> (3)In the circumstances mentioned in subsection (4), a court shall have regard in particular to—
>
> a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);
> b) his physical, emotional and educational needs;
> c) the likely effect on him of any change in his circumstances;
> d) his age, sex, background and any characteristics of his which the court considers relevant;

e) any harm which he has suffered or is at risk of suffering;
f) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;
g) the range of powers available to the court under this Act in the proceedings in question.

In considering this, the judge emphasised that the child's welfare was the court's paramount consideration and remained at the forefront of her mind throughout.

Analysis of the Welfare Checklist

a. The ascertainable wishes and feelings of the child

Although D had not expressed a strong preference for either school, the independent social worker recorded that he understood most of his friends would be attending the state school. D spoke animatedly about his friendships and stated that attending the same school as his best friend was important to him.

During visits to the schools, the mother reported that D had found the state school intimidating and confusing. She stated that he had remained close to her and expressed reluctance to attend. By contrast, she described him as having 'positively glowed' during his visit to the independent school, where he appeared excited and engaged with the staff and surroundings.

The judge treated the mother's account with caution, noting that it had not been tested in cross-examination. She recognised that the initial visit to a larger and busier school may, given D's needs, have been understandably overwhelming. While D's reaction highlighted areas where he might need additional support, it was not sufficient to rule out the state school.

The judge therefore considered his wishes and feelings alongside the wider welfare considerations, rather than treating them as determinative.

b. His physical, emotional and educational needs;

The judge described D as a bright, curious and imaginative individual who particularly enjoyed practical, hands-on learning. However, he was working below age-related expectations in most subjects and required additional support across much of the curriculum.

Although he did not have an Education, Health and Care Plan (EHCP), his primary school had identified neurodevelopmental difficulties affecting processing and retaining information, following instructions, organisation, attention, mathematical understanding, communication, social interaction and fine motor skills. He also experienced sensory sensitivities.

The judge considered that he would benefit from a predictable environment with clear routines, limited distractions, strong pastoral support and appropriate adult supervision and guidance. Given his difficulties with managing change, a carefully supported transition to secondary school was particularly important irrespective of which school he attended.

The judge also recognised the emotional impact of the parents' separation and the significant changes to D's family circumstances. Although both parents had sought to protect him from their dispute, the judge emphasised the importance of resolving the outstanding proceedings and shielding him from further parental conflict to promote his emotional stability and security.

c. The likely effect on him of any change in his circumstances;

Whilst the judge acknowledged that the transition from primary school to secondary school was inevitable, it was clear a consideration needed to be given to the impact this was likely to have on him.

D's current primary school had approximately 100 pupils, with class sizes of 16. The independent school was similarly small, with approximately 250 pupils and an intake of around 30 into Year 7. By contrast, the state school had approximately 900 pupils, with around 150 pupils entering Year 7 and class sizes of approximately 30. D would also need to adjust to different teachers and classrooms for individual subjects.

The mother argued that the independent school would provide a more familiar and manageable environment, with smaller classes and greater adult attention. When the issue of his friends attending the state school was raised the mother submitted her belief that he would be capable of forming new friendships.

The state school offered the advantage of D attending alongside approximately half of his current class, including his best friend. Although different teaching groups might limit the time D spent with existing friends during the school day, they would be able to travel to and from school together. In addition, the state school was approximately 15 minutes from D's home and closer to his father and paternal grandparents. The independent school, despite offering additional after-school activities and a later bus service, involved a journey of approximately 30 minutes.

Therefore, although the independent school might offer a more comfortable initial transition, the judge recognised the longer-term benefits of the state school, particularly in maintaining existing friendships and supporting relationships within D's wider community.

d. His age, sex, background and any characteristics of his which the court considers relevant

The judge identified no additional factors requiring separate consideration beyond those already addressed in the welfare analysis.

e. Any harm which he has suffered or is at risk of suffering

The judge recognised that both parents were committed to supporting D's education and acknowledged the advantages and disadvantages of each proposed school. Neither parent suggested that D would be at risk of harm if he attended their less preferred option.

However, the judge identified potential emotional harm arising from the mother's proposal to fund the independent school fees entirely herself. The fees were just under £20,000 per annum, expected to rise to £23,194 by Year 11, with additional costs for uniform, transport and school trips. Although the mother intended to meet these costs through her income and savings, they would represent a significant proportion of her net income and potentially require compromises in her future housing arrangements.

The judge was concerned that the financial burden, being borne solely by the mother, could become a continuing source of tension or resentment between the parents. She also considered the possibility that D might eventually become aware of the financial sacrifices involved and feel

that his education had contributed to parental disagreement. The judge considered there to be a greater risk of emotional harm arising from this arrangement.

The judge also considered the long-term stability of the independent school, noting that its relatively small size made its future less predictable, particularly in light of financial pressures affecting the independent school sector. Although there was no specific evidence that the school was at risk of closure, this remained a potential concern.

Finally, whilst acknowledging the independent school's excellent SEND provision, the judge noted that its smaller department was likely to have fewer specialist staff than the state school, which could offer a larger team and greater continuity of support.

f. How capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;

The judge acknowledged that both parents loved their son and had worked to meet his needs. She commended the mother for recognising the importance of maintaining D's relationship with his father, notwithstanding the father's previous behaviour and resulting criminal sanction. The father was also recognised for taking responsibility for his actions and demonstrating a commitment to change.

The paternal grandparents had played an important role in D's life and were expected to continue doing so. The judge considered that attending a school closer to the family would be beneficial.

g. The range of powers available to the court under this Act in the proceedings in question.

The judge clearly highlighted the range of powers available to the court, including the ability to make no order at all. In this case, an order was deemed necessary to resolve the dispute.

Outcome

Having considered the evidence, submissions and welfare checklist, the judge determined that D's welfare was best served by attending the state secondary school.

Although the independent school offered a smaller and more nurturing environment, the judge was not satisfied that D's additional needs required this level of support throughout his secondary education. Both schools could meet his needs through mainstream SEND support, and the judge was satisfied that he could adapt to the larger state school with appropriate assistance.

In reaching this decision, the judge was particularly influenced by five factors:

1. The opportunity to maintain existing friendships, including attending alongside his best friend, which would provide reassurance during the transition;
2. The state school's proximity to both parents and the paternal grandparents, supporting family relationships and friendships outside school;
3. The risk that the financial burden of independent school fees could create ongoing parental tension and emotional harm;
4. The greater long-term stability offered by the state school; and
5. The potential for more extensive SEND provision, specialist support and educational opportunities at the larger state school.

The judge accepted that the independent school might provide an easier initial transition but emphasised the importance of considering the child's welfare throughout his secondary education. Ultimately, the state school was considered better placed to meet his long-term needs.

Conclusion

This decision highlights the importance of applying the welfare checklist holistically when resolving educational disputes. A child's wishes and any immediate advantages must be balanced against their wider welfare needs, with particular consideration given to their long-term educational needs and emotional wellbeing. Financial implications, existing friendships, wider family support and the ability of each school to meet the child's individual needs, including SEND requirements, are all relevant factors.

Ultimately, the decision reinforces that the child's welfare and individual circumstances, rather than parental preference or the perceived merits of a particular school, must determine the outcome.



Lauren Davies

E: lauren.davies@stmarysfamily.co.uk

T: 0115 950 3503