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Neutral citation number: [2023] EWFC 20
Case No: SN22P00531

IN THE FAMILY COURT

Date: 11 February 2023

Before :

RECORDER REED

Between :

**Mr P
- and -
Ms T**

**Applicant
Respondent**

The **Applicant** appeared in person
Ms Manser for the **Respondent**

Hearing dates: 6 January 2023

JUDGMENT

Recorder REED :

1. This judgment concerns Daniel [not his real name], who is 11.
2. Daniel lives with his mother, Ms T at the home of his maternal grandparents. Ms T was represented at this hearing by Ms Manser. Mr P is Daniel's father and he appeared in person.
3. There are two live applications:

- i) The father's application to enforce a final child arrangements order dated 15 December 2020, issued 1 February 2022.
- ii) The mother's application to vary that same order, issued March 2022.

Summary of my conclusions

4. Due to the length of this judgment, I have decided to summarise my reasons and decisions for the benefit of the family.
5. I have broadly accepted the evidence and recommendations of the Cafcass officer. I have concluded the mother is child focused, and that she acted reasonably in suspending contact on the advice of social services. I have decided that the father poses risks to Daniel which he does not accept or understand. Those risks centre primarily around his open hostility to the mother and his minimising of the risks posed by Ms K, and in both cases he has prioritised his own needs over those of Daniel. I have concluded that the father cannot be trusted to be open and honest with professionals, the court or Daniel's mother. I have concluded his behaviour has been inappropriate and harmful to Daniel and his mother.
6. I have decided to make an order that Daniel will live with his mother and have monthly indirect contact with his father. I will continue the prohibited steps orders in slightly adjusted form. I have decided that I will prohibit Mr P from making further applications about Daniel until his 16th birthday, unless he has permission from a judge first.
7. I have thought very hard about whether there are other less restrictive orders I could make that would allow Daniel to see his father and still keep him safe, but I have decided that there are not. My orders do not mean that things can never change, but

my judgment explains that there would need to be some significant changes in circumstances before direct contact is likely to be appropriate or successful.

Factual background

8. Daniel was born in December 2011. Following his parents' separation, private law proceedings were commenced in 2019. These concluded in December 2020 with the making of a shared lives with order which provided for Daniel to live with his father on alternate weekends and an overnight in the week, and for a sharing of the holidays (for accuracy all elements of the order were by consent, save the question of whether the order should be expressed as a joint lives with order or no). During those proceedings both parties made allegations of domestic abuse, but it appears that the court and parties agreed that no fact-finding hearing was necessary. The recommendations that led to the order were made on the basis that Daniel had been exposed to domestic abuse between his parents one way or the other.
9. Contact continued broadly in line with the order of 15 December 2020 until October 2021, when the mother was contacted by social services to advise of safeguarding concerns arising from domestic incident between the father and his partner, Ms K. A single assessment was conducted. Social services recommended that a safety plan be put in place under which the child would have no contact with Ms K. The case was subsequently closed to children services on the strength of that safety plan.
10. Video contact had ceased in the summer of 2021 as a result of difficulties with the device on which calls took place. Telephone contact and direct continued.

11. The single assessment rehearses the information contained in police referrals, and this tells me there were three police callouts in respect of arguments between Ms K and the father in October 2021:
- i) 4 Oct 2021 when the police were called in relation to a verbal argument over money. Ms K was taken to the train station by officers.
 - ii) 6 October 2021 when the father called the police. Ms K was observed by the police to be intoxicated, and it was recorded she had drunk a bottle of vodka. The father complained she had punched him in the stomach, and it is recorded that he believed her to be an alcoholic. The police report records that the father wanted Ms K to remain at the property but officers ensured she left the address to return home. Daniel was present during the police visit, and a welfare check was conducted, but the records are less clear as to whether Daniel was at home during the incident itself or whether he witnessed it. In the days following, F reported that Daniel had in fact been at the park when the incident occurred and that it related to a friend not a partner.
 - iii) 20 October 2021 when the police received a further callout. Ms K was drunk and refusing to leave and the father reported that she had made an accusation of sexual assault which he denied. He reported that Ms K had assaulted him by straddling his chest and grabbing his throat and pressing on his adams apple. Ms K was arrested for common assault and taken to the station, where her breathalyser result showed over three times the drink drive limit. F described Ms K as his fiancé and denied she had an alcohol problem.
12. The mother was notified of the concerns arising from these issues (or at least the incident on 6 October) on 15 October 2021. She had been unaware of the incident

until this point. The school reported a change in Daniel's behaviour around this time, and when spoken to in light of the police referral, Daniel described hearing and seeing regular arguments between his father and Ms K. He is reported to have described being sent to his room or being left to his own devices whilst they argued, hearing slamming doors and sometimes covering his ears to block out the arguing. Social services were of the view that these experiences may well have revived some memories of arguments between his parents. The single assessment also records Daniel describing Ms K coming downstairs with empty bottles and his father telling him not to tell his mother.

13. The single assessment concluded at the end of November 2021, and it recommended that Daniel should have no contact with Ms K. It records that the father had not engaged with the assessment, saying 'I am not happy about a report because I am a very good dad and I have been to court already about my son. I don't need to be watched or judged. I have a chat with your manager and we have a plan now. I don't need to be assessment I am a good dad to my son' [sic].
14. The plan outlined in the assessment provided for Ms K to remain in her room when Daniel was present, and for the mother to provide toiletries and a snack bag to take to his father's home, following Daniel reporting he had been left hungry. The report explains that the father had refused to agree to a safety plan that involved excluding Ms K from the home entirely, but was prepared to agree to the plan that she would stay in her room when Daniel was present. However, said the report, he had declined meetings intended to explore Ms K's alcohol use. The report writer records 'I am not convinced your father will engage in the child in need planning in a meaningful way'.

The plan ensured that the school were aware of what was happening, and Daniel was referred for ELSA support and work with NSPCC.

15. In December 2021, when the father breached the safety plan by allowing Ms K contact with the child, the mother stopped all contact on advice from social services (I was told that telephone contact ceased at this time but note that the s7 report refers to a telephone calls in which the father is said to have told Daniel his mother would go to jail and is in trouble' which seem likely to relate to the period between January and April 2022). As I understood the evidence, the mother only became aware of the breach when the father complained in a text message that she had not bought Daniel a winter coat, so 'we' had had to take him out to buy one. The father accepts that he did allow Ms K contact with Daniel both on this occasion and others, following the closure of the case to social services.
16. Over Christmas 2021, following the cessation of contact, the father is said to have contacted the mother by text and voicemail message to an excessive level (97 messages). The police were involved and took the view this amounted to harassment.
17. On 25 January 2022 the father left the mother a voicemail demanding contact the following day, threatening to seek full custody or to bring the police and calling the mother a baby.
18. On 1 February 2022 the father applied to enforce. Shortly thereafter the mother applied to vary. The mother completed a fresh C1A referencing the historic domestic abuse and recent and ongoing harassment from the father.
19. Between the middle of February and the end of March 2022 the school recorded 7 incidents relating to the father's presence opposite or outside the school, either staring

so as to intimidate Daniel or waving or approaching the fence. The family home, where the father had been residing until recently is situated directly opposite the school and the father can see the entrance of the school and playground from his front garden. On 17 February the incident was said to involve the father standing in his garden starting at Daniel in the playground throughout the whole lunchbreak. At the end of March 2022 the school erected camouflage netting around the perimeter of the school to prevent these occurrences.

20. The safeguarding letter indicated that the father had 4 convictions for 14 offences between 1989 and 1995, said not to be relevant due to the length of time since they were committed (however, the Cafcass report tells me these included offences for fraud, common assault, theft and a public order offence). The letter recommended that there should be a s7 report and that there should be no unsupervised contact pending further assessment.
21. On 21 April 2022 the father left a voicemail addressed to Daniel in which he said ‘your mum’s broken the court order again, mate, which is not a very good idea considering what’s happening next Friday’. The father accepts that this message was intended for the mother’s benefit not Daniel, and that the reference to ‘next Friday’ must have been a reference to the forthcoming hearing (albeit that this hearing was in fact on the Thursday).
22. The matter was first before the court on Thursday 28 April 2022, when the magistrates suspended the existing order and provided for supervised contact at a contact centre. The order records the father’s position that he had separated from Ms K on 28 December 2021 and that he therefore agreed to a Prohibited Steps Order preventing Daniel from coming into contact with her. It also recorded the mother’s

doubt that the relationship was really over. The court accepted the father's undertaking not to visit the school without prior agreement, and not to go within a 10 metre radius of the school or engage the child in conversation in the event he saw the child on the school premises, although he was permitted to wave to him.

23. On or around 5 July 2022 a further incident was reported by a number of members of school staff, whereby the father was said to be standing outside the gate watching Daniel and his mother at drop off, leaving Daniel shaken and worried. This may have been the day on which the father moved out of the family home.
24. Around this time the father sent a card to Daniel referring to him missing a whole year together 'because of what someone has done'.
25. On 21 July 2022 Ms Mills filed a s7 report in which she noted that, whilst Daniel had previously had a strong bond with his father, he was now fearful of him and strongly resistant to spending time with him. Daniel wrote a letter to me saying:

"I would not like to see my dad because he made me watch an 18 game I had night mares for weeks . He didn't give me enough food, when I was hungry he gave me sweets .And I got scared .I couldn't get a lot of sleep. I don't like him . he swared at me he said im stupid .

Elly asked if I would like to see Dad at a centre but when I went to the centre he just sat on the chair and he didn't really play with me and just talked to other people. Talking on the phone he kept talking about Ukraine and Mummy. He said Mummy was a 'SHITBAG' which I didn't like.

I do not want Dad to write me a letter.

I want to be with just Mummy but I don't want to upset Dad but I want to be with Mum.

I don't think I would want to see Dad in the future because he scares me and I know if he hears I want to live with Mum he will be very angry and shout. I would be very scared.

If the court ordered I had to see Dad I would be really worried and start crying.”

26. The report considered that in light of the safeguarding concerns raised about Daniel experiences in his father's care that there were a number of legitimate reasons for Daniel's reluctance to see his father, in particular that the father speaks badly of his mother which makes him scared and worried, and that the father had prioritised his relationship over Daniel's need for protection. She quite properly recorded and considered the father's concerns about the mother's care, and alcohol use, but concluded there was no evidence to support those criticisms.
27. The report details the efforts that the Cafcass officer went to in order to check out what advice Mr P had received at the time of the single assessment from childrens' services. She records that the social worker confirmed that “they were very clear with Mr P that the view of Children's Services was that he should not be allowing Daniel to have contact with [Ms K], he said at the time they very much doubted Mr P would stick to the agreement or take on board the recommendations or concerns and he did not engage with the social worker to explore the concerns.” Also recorded is the fact that the father was attempting to blame the social workers and the mother for the cessation of contact.

28. The report notes the father staring at Daniel at school on two consecutive days in early July, on one occasion Daniel being reported to arrive at school ‘shaking, pale and ...scared’. Ms Mills opinion was that Mr P does not appreciate the impact of his behaviour on Daniel’s emotional wellbeing.
29. In analysing the options Ms Mills considered but discounted
- i) A simple enforcement of the 2020 order by a resumption of those arrangements. That would be against Daniel’s wishes and would be likely to make him feel scared, and would put him at risk of harm from domestic abuse and fear when Ms K had been drinking, and continued exposure to negative comments about his mother.
 - ii) supervised contact at a contact centre, concluding that it was not a workable option given Mr P’s approach to date.
30. The report recommends an order providing for Daniel to live with his mother and to spend time with his father via monthly letters or cards (appropriately worded). The report suggested a video message or picture of Daniel’s pets, which he had reported missing. It recommended a continuation of the protective orders relating to the school. Ms Mills advises that for the arrangements to progress “Mr P would need to be able to demonstrate to Daniel that he is able to protect him from [Ms K] and not make negative comments about Ms T.”
31. On 19 August 2022 at a hearing before Recorder Cranfield it was recorded that the father had told the court his health had significantly deteriorated and he was on a waiting list for heart and lung transplants (as a result of a medical condition). The father was recorded as confirming that he would attend supervised contact. The

undertaking relating to the school was tightened and converted to a prohibited steps order. The father was directed to produce medical evidence confirming the deterioration in his health.

32. Notwithstanding the recital to the August order, no supervised contact has taken place as a result of the father declining to engage in it. Daniel has therefore not seen his father since December 2021. No satisfactory medical evidence has been filed.
33. In his statement dated September 2022 the father stated that “i have a terminal illness i have [a medical condition] my condition can change anytime [Ms T] is aware of this as she was a lung specialist in the hospital my condition has got worse through not me seeing my son on recent test your lung function test has gone from 103% - to 78% if my lung test drop another 10% i will need to go on lung and heart transfer list this is all so effecting my mental health now i just been told i may have skin cancer which i have a letter for proof”. The information about transplants was inconsistent with the recital made in August. The letter exhibited was a confirmation of referral to a ‘suspected cancer clinic’ (dermatology), dated in August 2022.
34. The matter was listed for final hearing at the end of November 2022, but regrettably was adjourned at short notice due to judicial unavailability. This hearing in January was the relisted final hearing. It was conducted by MS teams, which functioned well throughout.

Issues

35. The father does not accept that his contact should be supervised and seeks a reinstatement of the December 2020 order, or something close to it. In addition, he confirmed at this hearing that he seeks an enforcement order in order to punish the

mother, in order to discourage further breaches. The father suggested that he had been unfairly denied an opportunity to be assessed, and although he did not seek the continuation of proceedings to allow for that he did indicate that he felt the court should not make the sort of order recommended by the Cafcass officer without further assessment.

36. The mother broadly falls in line with the Cafcass recommendations for monthly indirect contact, but objects to the proposal that videos should be sent.
37. As a result of the need to take the oral evidence slowly to accommodate the direction for questions to be asked directly, and because of the need to deal with the evidence with some care given the gravity of the recommendations, it was not possible to deliver judgment on the day of the hearing within the allocated time estimate.

Law

38. I must conduct the hearing in such a way as to protect the parties Article 6 rights to a fair trial.
39. Ms Manser was right to invite me to give myself a ‘Lucas Direction’. In *R v Lucas* [1981] QB 720 the court issued guidance to the effect that witnesses lie for many reasons, and the fact that a witness may have been untruthful about one thing does not necessarily mean that they should be considered untruthful about all matters. I should be cautious in drawing such conclusions. Recent authority reminds me that I must be careful to ensure that I go further than merely rehearsing the terms of a ‘Lucas direction’ without embedding that guidance in my analysis of the particular facts of the case:

“When assessing the forensic significance of a lie or lies told by a witness, a judge must do more than merely cite the case of *Lucas*. He or she must consider the probative weight to be attached to the lies in the context of the totality of the evidence, bearing in mind the *Lucas* principle”

(*Re CK (A Child: Fact-Finding)* [2022] EWCA Civ 952).

40. I must base my decision on the evidence and findings properly made and based on that evidence, and not merely on speculation. The burden of proving an assertion is upon the party making that assertion, and the standard of proof is the civil standard. In this case I remind myself that no findings have been sought or made to date in respect of the parties’ allegations of domestic abuse against one another.
41. Any order I make must consider and respect the parties Article 8 ECHR rights. Insofar as I restrict the Article 8 right to private and family life of any of parties my order must represent a proper balance between the competing rights and needs of those parties, and must represent no more than a necessary and proportionate interference with those rights. The welfare of the child is my paramount concern. I must have regard to all the circumstances, in particular the factors set out in the welfare checklist.
42. Here, where I am asked to heavily restrict contact to the point where only indirect contact takes place, I must analyse all options available to me and evaluate the respective pros and cons and risks, and consider what steps might be reasonably taken to mitigate or manage those risks in order to maintain or reinstate the relationship between the child and his father. An order for indirect contact only represents a significant interference with the right to family life which a child shares with his

parent, but my decision must be in the child's overall welfare now and in the longer term.

43. There are many authorities that one could cite in support of the proposition that the curtailment or cessation of contact is a very serious step to take. One useful example is *Re J-M (A Child)* [2015] 1 FLR 838, CA, where the Court of Appeal confirmed that:

- i) the welfare of the child is paramount;
- ii) it is almost always in the interests of a child whose parents are separated that he or she should have contact with the parent with whom he or she is not living;
- iii) there is a positive obligation on the state and therefore on the judge to take measures to promote contact, grappling with all available options and taking all necessary steps that can reasonably be demanded, before abandoning hope of achieving contact;
- iv) excessive weight should not be accorded to short-term problems and the court should take a medium and long-term view; and
- v) contact should be terminated only in exceptional circumstances where there are cogent reasons for doing so, as a last resort, when there is no alternative, and only if contact will be detrimental to the child's welfare.

44. By s1(2) Children Act 1989 ('CA 1989') delay is generally to be contrary to the interest of children.

45. By s1(2A) CA 1989 it is to be presumed that involvement of both parents is in the welfare interests of the child unless there is some evidence before the court in the particular proceedings to suggest that ‘involvement’ of that parent in the child’s life would put the child at risk of suffering harm whatever the form of the involvement. Where it does apply that presumption can be displaced. Involvement means involvement of some kind, either direct or indirect, but not any particular division of a child’s time. Here nobody suggests there should be no involvement, but they do suggest that there should be heavily constrained involvement.
46. As part of my welfare and ECHR evaluation I must consider the impact of any domestically abusive behaviour. By s3 Domestic Abuse Act 2021 a child who is exposed to domestic abuse of a parent is a victim of that domestic abuse. By s31(9) Children Act 1989 harm includes impairment suffered from seeing or hearing the ill-treatment of another, and as such exposure to domestic abuse amounts to harm for the purposes of the welfare checklist.
47. Pursuant to s11J CA 1989 the court may make an enforcement order in respect of a child arrangements order, where it has been proved beyond reasonable doubt that the order has been breached. There is a defence of ‘reasonable excuse’. If a breach is proven the court must consider what penalty should be imposed.
48. Practice Direction 12J requires me to specifically the issue of domestic abuse, the impact of it upon the child and their carer. Practice Direction 12Q requires me to consider domestic abuse and other factors in the context of my powers to make an order pursuant to s91(14) and s91A Children Act 1989. In light of the amendments to s91 via s91A Children Act 1989 implemented in May 2022, and the guidance in PD12Q, the court should be much more ready to make such orders than has

previously been the case, though any restriction on the parties' right to return to court should be no more than is necessary and proportionate. I remind myself that a s91(14) order is not a complete bar on access to the court, it is simply an additional filter, which enables the court to manage future applications in order to prevent abuse of process or harm to other parties.

Participation directions

49. Both parties have complained of domestic abuse, and I must therefore treat them as vulnerable. In addition, the father does have some degree of reported ill health (and there is no dispute that he suffers from [a serious medical condition]). I therefore canvassed whether either party needed any special arrangements or adjustments for the hearing, at the outset.
50. By order made in November the court had required the father to submit his questions of the mother on paper to be asked by the judge. In the event those questions were submitted to me by email on the day of the hearing and I asked almost all of the father's questions, lightly rephrased for clarity. I permitted the father to ask supplemental 'follow up' questions through me.
51. The mother did not seek any additional participation direction, and was able with the assistance of counsel to obscure the father's face on her screen whilst giving evidence to avoid distraction.
52. The father did not seek any participation directions arising from his medical needs, reporting that in fact his condition had improved since August (and in any event that he had never been ill enough to be actually on the transplant waiting list, and the Recorder had misunderstood him).

Evidence read and heard

53. I have read the full bundle of 142 pages, and in particular the parties statements, the single assessment, the s7 report, and an email from TAMHS. In addition, I have had sight of a copy of the s7 report from the previous proceedings. I have also received various loose items as the hearing has progressed, including some Facebook printouts which appear to show the father and Ms K engaging in ‘swingers’ groups or seeking out sexual activity on Facebook, but which the father says are malicious and nothing to do with him, and some text messages sent by the father to the mother. As set out below, a number of discrete items were filed with my permission following the conclusion of the hearing.
54. I have heard oral evidence from the head teacher of Daniel’s school, from the Cafcass Officer, Ms Mills, and from each parent.

Evaluation of evidence

55. I deal with the witness evidence in sequence in this judgment for convenience, but I make clear that I have evaluated each piece of evidence in the light of all the evidence in the round, having heard the case in full.
56. **The head teacher** had produced a statement dealing only with the incident in early July. She attended with the school CPOMs records in front of her and volunteered further detail about the records relating to the father outside or near the school, and confirmed that the school had received a recent safeguarding notification from the police via MASH relating to a verbal argument between the father and Ms K and an apparent assault by her on him leading to her arrest.

57. The head teacher confirmed clearly that the sole reason that the fencing had been erected was to protect Daniel from intimidation or being made to feel uncomfortable as a result of his father's presence opposite or next to the school. She outlined to me that whilst there were 7 logs on the CPOMS system of reports from staff of concern about the father either approaching the fence or staring / waving from over the road, she was confident that this had happened more often than that. It was clear from her evidence that a number of members of staff had formed the view that this was inappropriate and that it made Daniel uncomfortable. Somewhat surprisingly, given the obvious level of concern that Mr P's behaviour had caused to staff over a period of time, the head teacher had not attempted to speak to the father at any point before going to the unusual lengths of erecting a fence. It appears that this was because staff were apprehensive of approaching Mr P having observed confrontations between the parents at the school in the past. The head teacher told me she did not want to put herself 'in the firing line', and it was apparent from her evidence that she had not been in direct communication with the father at all, whether at his instigation or hers. Until asked by professionals about the involvement of the police, Daniel had lived with his worries without sharing them fully with his mother or with anyone at school.
58. I have no reason to doubt, however that the CPOMs logs on 7 separate occasions were independent records of genuine concern on the part of various staff members about the father's presence outside the school and the impact it was having on Daniel, whatever the father's intention or appreciation of this may have been.
59. **The Cafcass officer, Ms Mills**, produced a detailed report in which she set out recommendations for indirect contact only.

60. Ms Mills gave fluent and coherent evidence, which demonstrated a depth of analysis. It was readily apparent that she had thought seriously about her recommendation, and that she had thought through alternative less draconian arrangements before making a recommendation for indirect contact only.
61. Ms Mills enquiries of the professionals who had been involved at the time of the Single Assessment enabled me to have greater confidence that the father had been clearly appraised of the safeguarding concerns about his partner, the importance of ensuring that Daniel did not come into contact with her and the rationale behind the safety plan.
62. Ms Mills articulated clearly why she was so concerned about an occasion when Daniel reported being hungry at his father's and asking for food but being presented with a tray of sweets. She considered that even one incident of being left hungry by a parent could be impactful on a child, and could impact upon their trust in that parent. I agree that a child whose experience is that a parent is not able or willing to prioritise meeting their basic needs may lose faith in that parent, though whether a single incident of being left hungry for a short period, against otherwise prompt and adequate responses would have a profound or lasting impact I rather doubt. However, the sweets incident described by Daniel sits in a broader context of a child who describes being left to his own devices regularly whilst the adults argued and fought.
63. Ms Mills expressed a high level of concern about the father's lack of insight, and lack of acceptance of the risks posed by Ms K. She also expressed concern about the lack of honesty by the father in connection with his breach of the safety agreement, even though he had been clearly told the views of childrens' services, indicating that this lack of honesty and acknowledgment made it very difficult to suggest safe

arrangements. Ms Mills used the term ‘disguised compliance’, indicating that to her it meant that the father would say he was going to do something and then would do something different.

64. Asked about whether there was any alternative to her recommendations, Ms Mills persuasively articulated her concern that if Daniel were to feel his wishes and feelings had not been heeded and he was made to go to contact, he was likely not only not to feel safe, given his clear articulation of his experiences to date, but in addition there was a risk he would lose trust in authority and his mother, with an adverse impact on that relationship that Mr P might well capitalise upon as Daniel pushed back against his mother’s authority as a teenager. She did not think there was any way of managing the risk in view of the father’s attitude and history of disguised compliance.
65. Ms Mills thought that were Daniel to get any sense that his mother was to be punished, this would potentially be ‘catastrophic’ for him. She told me that children who have suffered trauma are able to talk and share when they feel safe. She told me Daniel was beginning to do that and was still doing so. She thought that granting Mr P direct contact had potential to jeopardise that and this would be ‘very damaging’. Ms Mills thought that the way Mr P had sought to undermine Daniel’s mother was harmful, and she noted the tone of his evidence and the language he used about her. He described the mother as ‘evil’ to Ms Mills, although he has since denied saying this.
66. In the course of her evidence Ms Mills revised her recommendations slightly to step back from recommending video messages about the pets, to suggest photographs only (accepting the suggestion from counsel for the mother that the father might slip in communications intended to distress the mother who would have to vet them). She

also accepted that mediation was not currently realistic and that her suggestion of the father seeking further assessment in future by the local authority might in fact be difficult to trigger and he might instead need to seek assessment from an ISW. Asked if she meant an ISW within future proceedings, Ms Mills told me she would be really concerned about the impact of any future proceedings on the mother, and by extension Daniel. I was left a little unclear how in practice Mr P was expected to access reassessment in the event that he wished to evidence change with a view to rebuilding direct contact.

67. Ms Mills remained polite but firm in dealing with questions from the father suggesting that she had failed to carry out sufficient enquiries, and she addressed the father directly and respectfully in response, taking time to explain to him what she had done and why, and how she had reached her conclusions. It was evident from the exchange that these were explanations that Ms Mills was repeating to Mr P rather than delivering for the first time.
68. Having heard Ms Mills oral evidence and that of the father, I am quite satisfied that Ms Mills has carried out extensive and appropriate enquiries and has based her recommendations upon the evidence she has gathered, including that from other relevant agencies.
69. The mother's written evidence comprised her application and C1A, two statements, one dealing with the father's evidence and the other responding to the Cafcass report. In the course of those documents she set out the events leading up to the applications and during them.
70. The mother was a straightforward witness. She articulated the importance of Mr P as Daniel's father fluently and authentically, but was emphatic that she had been placed

in an impossible situation where she had to prioritise Daniel's safety because of his father's behaviour, and that she had done so on advice.

71. The mother told me that throughout the period when the 2020 order was in effect the father's communication was very difficult to manage, that Daniel would often be returned late, hungry and would take several days to return to himself.
72. Asked about the potential for future proceedings, the mother told me that taking into account both financial and children proceedings she had been to court nine times, which she had found very challenging. She had sought support from Splitz which she had found helpful. It was difficult every time she comes to court.
73. She became very distressed at this point in her evidence, but I detected no hostility towards the father, only sadness and distress at the way in which he had and continued to behave. She calmly responded to the question put on behalf of the father about her turning Daniel against him, explaining that Daniel had found his experiences at his father's really difficult to manage and had formed his own views.
74. I formed the view that the mother was entirely child focused but rather worn down by the father and that her trust had been broken.
75. Asked about arrangements for secondary school, the mother gave an entirely straightforward explanation of her actions to date, namely that she applied just before the deadline for secondary transfer to the school they were in the catchment area for, having hoped that they might have moved into their own accommodation by the time of the application deadline but finding that was not possible when the sale of the FMH fell through. She did not object to the father having information in the form of school reports or by attending parents evenings, and was clear she had never stood in the way

of this, and that she had never been asked by the father to provide information. She could not understand why the father had not sought it out or made arrangements to attend himself and did not object to him doing so in future. The father, through his questions, sought to criticise the mother for not notifying him of the plans for secondary school, but quite apart from the fact it did not appear he had asked for them, this information was made available to him many months ago via the TAMHS report in the bundle. Either the father had not bothered to read the report, or he had sought to criticise the mother for the sake of it.

76. **The father's** written evidence was in email form, but did contain a statement of truth. Their focus was on criticism of the mother, and of Ms Mills and other professionals for lies, inaccuracy and a failure to investigate fairly and fully. The statements set out the father's belief that Daniel had a strong relationship with him before contact stopped and that Daniel was not frightened of him as suggested, but that this was a product of the mother's manipulation. The father's statement contains multiple asserts that he has proof or has proved that a particular piece of information is 'lies', but that 'proof' is not provided. In view of his lack of legal representation I allowed a degree of latitude to the father to produce some of the items of evidence he referred to during his oral evidence.

77. The impression I formed of the father was in line with the views of professionals to date. His explanations for inconsistencies between his current position and previous recorded position on multiple points was unconvincing, and would have required me to accept that a large number of different professionals had all misreported his words or other facts either intentionally or through carelessness. I formed the clear view from his evidence that he had little respect for the views of others, including the court.

78. Asked why he had failed to comply with the direction to produce medical evidence the father gave a number of explanations (including that he didn't know there was a direction, he would have had to go to see his consultant, he didn't need to because the mother already knew he had [a medical condition], and he didn't need to because he wasn't on a waiting list anyway), but ultimately his position seemed to boil down to the fact that he didn't feel the direction was important or necessary because he was confident of the matters the court was enquiring about. The father did not refer at all to his assertion in September that he was suffering from skin cancer.
79. Asked about his breach of the safety plan the father's explanations ranged across:
- i) Not appreciating the plan was still in place because the case had been closed
 - ii) Not being willing to say 'no' to Daniel when he asked to be taken out to buy a Christmas card
 - iii) The plan being unnecessary because Ms K didn't pose a risk
 - iv) He was present throughout which meant there was no problem
 - v) He had already breached the agreement earlier when Ms K had begun to come down from her room to eat dinner because Daniel was querying why she was always in her room
80. Considering that the father maintained that his relationship with Ms K was over and had been over since December 2021, it was surprising to hear how much energy the father expended in his evidence in minimising the concerning incidents between them. He denied that she was an alcoholic, drawing a distinction between an alcoholic and a dependant (though he later went on to give detail about her treatment for alcohol

dependence during the course of their relationship which strongly suggested that she was probably considered by medical professionals to have a significant issue with alcohol), and despite the police recording him on 6 October 2021 saying in terms that she was an alcoholic, he denied that she had longstanding problems with alcohol notwithstanding the information from her local authority that states there have been multiple referrals back to 2018 involving concerns for her children relating to her alcohol use. He spent a great deal of time making the point that Daniel was not present during the 6 October incident because he was at school, without appreciating that his version of events involved him allowing his partner to become drunk in his home shortly before Daniel was due to return home from school, and Daniel being brought back from school (or the park) by him to be greeted by the police. Whilst Mr P states that Daniel did not see the incident itself, or even see Ms K, it is clear from Daniel's comments after the event that he had some idea why the police were there, and that he had already been exposed to regular arguments that he found upsetting and frightening. Although the records of 20 October 2021 do not note Daniel's presence in the home, that was a Wednesday and thus a contact night. It is possible that he was present during this incident also. If Daniel was not exposed to these incidents it seems to me that he easily could have been, a point that seemed to entirely escape the father.

81. The father accepted that he had called the police on 2 January this year, but maintained that he is not in a relationship with Ms K. Instead, he says, she attended unannounced from [her home city], having been driven down by a friend, to collect the remainder of her belongings. She arrived when he got home from work at about 2.30pm and he smelt alcohol on her breath but let her in. Within an hour he had called the police. The father told me that, notwithstanding the four occasions on which he has had to call the police because of her drunken and abusive behaviour, he remains

friends with her. The father expressed no upset or frustration or anger at Ms K for having turned up on his doorstep on 2 January and created a situation which caused him obvious difficulties in pursuit of his contact with Daniel. In fact he maintained that the relationship had ended in December 2021 and that it had done so because of the fact that it had caused contact to break down, rather than because of any abusive behaviour.

82. The father's attitude towards Ms K's alcohol use was surprising. When asked about the daytime drinking in the home that his son was scheduled to return to from school, Mr P told me 'adults can drink what they like in their own home when children aren't present'. When asked about Ms K's behaviour towards him and its appropriateness, he told me that it was quite normal for adults who have had a drink to become swearsy or argumentative.
83. I do not think the father appreciates or accepts at all that it is harmful for a child to be exposed to drunken arguments and shouting, or to be present in the aftermath of incidents of domestic abuse. Even if Daniel did not witness the physical abuse from Ms K to his father his broader exposure to the abusive behaviour between them is quite apparent. Even if he did not witness that incident directly, that is only by good fortune rather than as a result of any protective capacity on the part of Mr P.
84. I am afraid that (even ignoring the Facebook posts produced by the mother's team, which it is impossible to verify) it is clear to me that the father has not been frank with the court about his relationship with Ms K. Whatever the precise nature of the relationship with Ms K, it is clear a relationship of sorts persists, that Ms K attends his home, and that when she does there is volatility and behaviour which is quite unsuitable for Daniel to be in the presence of. The father did not deny that she had

been physically abusive to him and had made serious allegations against him (whether true or not). It is absolutely clear to me that he does not accept she is a risk or that there is any good reason why she should not be present when he spends time with Daniel.

85. Given that Mr P and Ms K remain ‘friends’, and given that Mr P clearly does not accept the valid reasons why all the professionals and Daniel’s mother consider that she should have no contact with Daniel, and given the history of Mr P prioritising that relationship over Daniel, I am afraid that I think that there remains every likelihood that Daniel would be brought into contact with her in future were contact to simply resume. That is so regardless of what the precise nature of the relationship is, but I have concluded that it is more likely than not that Mr P does remain in a relationship with Ms K that is more than simple friendship, albeit that it may be somewhat on-off in its nature.

86. I have done so because, taking the father’s evidence in the round, it is clear to me that he has a cavalier attitude towards the truth and has been demonstrably and knowingly inaccurate or misleading on a number of fronts. This includes his frank and obvious disguised compliance in respect of the agreed safety plan, which in my view he plainly understood that he was expected to adhere to, but chose to ignore because he disagreed with its necessity. It is quite plain from his responses that Mr P had taken a view that he knew best, and had acted in accordance with that, knowing that the mother and social services were unaware of his decision and actions, and knowing that they did not or would not agree to Ms K being in contact with Daniel. I use the phrase ‘disguised compliance’ rather than dishonesty because it seems to me having heard the father’s explanation of his actions that the key feature of his approach was a

total disregard for the views or wishes of others, and a corresponding disregard for the need to be frank with them. He did not tell anyone (intentionally) that he had decided to abandon the safety plan because the views of others were not important to him. The same attitude and approach was apparent from the somewhat circular discussion I had with him about the non-production of medical evidence, and I think that this is an entrenched way of operating.

87. The father was insistent that the information from [Ms K's local] social services was wrong, the social worker completing the single assessment had lied, that the police logs were inaccurate, that the court order from 18 August inaccurately recorded his position. He insisted that he had not refused to engage in the single assessment, suggesting instead that he had been effectively denied any assessment and that he had been offered a single appointment that he could not make and then suggested two alternative dates that the social worker could not accommodate. I am afraid that is simply not borne out when one looks at the very specific recorded quotes of his words to the social worker, which amount to a direct refusal to engage, and are entirely in keeping with the father's general approach that he does not need to prove what he already knows in himself to be true. The same approach was evident in the father's responses to the direction to file medical evidence.
88. It is clear to me looking at the pattern of responses – to me, to the police and professionals, to Cafcass etc over time, that a further facet of father's approach, is that he habitually provides information or gives the answer which is most convenient to him at the time, even if that is inconsistent with a previous answer (for example his differing views as to Ms K's alcoholism, his assertion to professionals that the incident on 6 October involved a friend not his partner, even though he now seems to

accept that she was the person involved and that they were in a relationship at the time).

89. In my view these are habitual patterns of behaviour rather than isolated lies for a specific reason. I'm afraid therefore that when it comes to the reliability of the father's evidence about the status of his relationship with Ms K and his approach more generally to her involvement, I cannot rely upon it at all either as evidence of the past, the current situation or the father's approach in future.
90. Mr P's attitude towards the mother was also very concerning. He accepted that the message 'for' Daniel on 21 April was in reality meant for her. He accepted that the reference to next week was a reference to the hearing that was coming up. It is clear to me that the message was intended to upset, threaten and intimidate the mother by insinuating that she would be punished for breaching the order. Whilst Mr P insisted that the 'someone' referred to in the card he had written for Daniel was nobody in particular he did (rather curiously) accept that Daniel, had he read it, would probably have understood that to be a reference to his mother. Either these messages are intended for Daniel which is entirely inappropriate and emotionally harmful, or they are intended to be seen by the mother, and are intended as a form of bullying. These are two examples of the communications from the father which I have, and the overarching tone is of curt demands and constant reminders of the consequences of non-compliance. Taken with the father's confirmation at the outset of the hearing that he wanted both reinstatement of the previous contact AND punishment of the mother (the better to ensure compliance in future), I have reached the conclusion that Mr P has used the existence of the 2020 order to bully and harass Ms T, with a clear ongoing impact upon her. He clearly sees the mother and professionals as responsible

for the cessation of contact and (as he sees it for poisoning Daniel's mind) and is not able at this time to reflect on the consequences of his own actions in refusing to engage in assessment, in refusing to agree to Ms K being out of the home during contact, in breaching the agreement that she would have no contact and in declining to take up supervised contact. In keeping with the impression I formed of Mr P as somewhat egocentric, I formed the clear view that he either does not see or does not care about the impact of his behaviour on others. That includes both Ms T and Daniel.

91. I do not think that Mr P sees himself as a victim of domestic abuse. I agree with the Cafcass officer that it would be helpful for Mr P to learn more about domestic abuse and its impact upon children and that the Freedom Programme would be a good place to start. I am doubtful that he will see it necessary to engage.

Findings of fact

92. The father refused to engage in the assessment offered to him by social services.
93. The father knew about the expectations around Ms K's involvement with Daniel and the worries professionals had about her, but he chose to ignore the plan because he thought he knew better.
94. Given that I have not heard from Ms K and I have found the father to be generally unreliable, I do not make specific findings about alleged incidents of violence between Ms K and the father. However, I am able to rely upon the contemporaneous police records, which make clear that Ms K and the father have on a number of occasions been involved in arguments in the father's home which have involved a combination of consumption of alcohol by Ms K, verbal abuse and physical violence (or complaints of the same) and the involvement of the police. I do find Daniel was

exposed to this volatility on a regular basis and it was harmful to him. Any protective parent ought to have appreciated, this but the father did not and does not (all the more striking since the father was apparently able to see the risk associated with alcohol use when reviving historic complaints of alcohol misuse by the mother). I bear in mind that this lack of insight may be because he is still coming to terms with being a victim of domestic abuse, but nonetheless that will not make Daniel any safer in his care.

95. The father has maintained a relationship of sorts with Ms K in that she is a presence in his life, continues to attend his home.
96. I do not make any finding about the failure to feed Daniel. Those matters were not explored with the father and I do not think it is necessary to my analysis to determine the issue.
97. The father's communication with the mother since December 2020 has been at times harassing and abusive. If seen or heard by Daniel (as there was an obvious risk might happen) that communication would be emotionally harmful to Daniel.
98. I am satisfied from the evidence I have heard that the father's own actions around the school have frightened and upset Daniel to the extent that the school felt it necessary to take the very unusual step of erecting a fence to protect him from being stared at. I do not accept the father's evidence that he only approached the fence on a handful of occasions to return a ball or to respond to Daniel. The school evidence makes clear that the father's behaviour in the vicinity of the school was far more frequent than he acknowledged in evidence, and I think his assertion in evidence that he was entitled to stand in his front garden supports my conclusion that he would regularly do so knowing this was in full sight of Daniel, having been told this was unsettling for him. Whatever his intention, the father lacks insight into the impact of that behaviour, as

his continuation of the behaviour once he was aware it was upsetting Daniel demonstrates.

99. Daniel has been exposed to harmful negative talk about his mother which has upset him and which was emotionally harmful. The father continues to hold very negative views about the mother and to unfairly blame her for the state of his relationship with Daniel. He is likely in future to attempt to communicate that to Daniel, or to inadvertently expose him to those views, and to communicate his views to the mother if permitted.
100. Having heard the evidence of both parents and considered the evidence of Ms Mills I am very clear that Daniel's wishes and feelings are genuinely held and his own views borne of his experiences. They are not a product of malign influence or negativity by the mother. I note that Daniel's accounts and views were all given to professionals at their instigation rather than brought to them by the mother.
101. I record for the sake of completeness, that I heard some evidence from the parties about messages the father says he sent to Daniel on the designated telephone for telephone contact, which the mother said she had not received. Although I have seen screenshots of those messages and the mother has at my request following the hearing checked the receiving mobile number corresponds with the designated telephone, I accept the mother's evidence that she did not receive all those messages. There may be a number of explanations for that, but having considered all the evidence in the round I have concluded that nothing turns on it and I make no finding.
102. I also permitted the father an opportunity following the conclusion of the hearing to submit the police calling card with the crime reference number on it that the father told me he had in his possession, by way of evidence to confirm that he had made a

complaint to the police about the malicious posting of material containing his and Ms K's name and image on Facebook swingers and sex groups. He did not do so. I doubt that the father was being truthful with me about having made a complaint and consider this is likely to be a further example of the father's willingness to make an assertion in the heat of the moment in the hope that it will simply be accepted. However, whether or not that is the case I do not think I can make, nor need to make any finding about whether the Facebook posts are authentic. There are a number of possible explanations for their existence, one of which is that MS K and his partner are or were posting such material and another is that someone has done so maliciously without their agreement, and yet another is that Ms K posted the material without the father's agreement. That material was submitted late and as evidence in support of the proposition that the relationship subsists, and for the avoidance of doubt I have reached that conclusion independently of this material and have not relied upon it.

103. Finally, Mr P insisted that he had sent the names and dates of birth of Ms K's children to the Cafcass officer in order to enable her to run checks on the family (which he says would have shown them as not known to social services, contrary to the safeguarding information contained in the single assessment which suggest a history of concern arising from alcohol use by Ms K since 2018). In response to the father's questioning on this Ms Mills response took the form of a polite reminder that she had asked him for this information but had not received it. I gave Mr P a short window to provide this evidence and he has produced a short series of text messages with Ms Mills in which the topic is discussed. Only part of the exchange is provided, but the messages provided establish only that the surname was given (with a query over the spelling) and that subsequently Ms Mills responded asking again for full names correctly spelt, and dates of birth. The last message provided indicates that Mr P 'will

check'. There is no evidence that he did so or that he provided the response to Cafcass. I accept the evidence of the Cafcass officer that it was never provided. I accept the evidence in the written materials as to the background of concerns and can find no basis upon which to conclude it is anything other than an accurate record of the concerns held by social services about the risks they perceived to Ms K's children arising from her alcohol use. This is another example of the father's tendency to assert that inconvenient information provided by professionals is wrong, and to then fail to provide evidence when asked to back up his contention.

Analysis

104. I will consider the checklist. Firstly, Daniel is 11. He is a child of reasonably good health notwithstanding his diagnosis of [a medical condition] and some early delay due to prematurity. He is said to be youngish for his age, and somewhat emotionally vulnerable but is generally doing well. I agree with the Cafcass officer that he needs stability and calm at school.

105. I accept the evidence of the Cafcass officer about the importance of respecting Daniel's wishes and feelings, and about the potential adverse impact of not doing so at this time, though in itself this cannot be determinative. I think that given what Daniel has now told adults about his experiences and how it made him feel, it would send a very confusing signal to Daniel were the court to simply revert to the 2020 arrangements without there being any change in his experiences. The mother was clear with me that if Daniel were to ask for contact with his father she would do her best to support that but she struggled to see how she would manage the safeguarding issues and felt she would need to seek professional advice about that. Should that time come I agree that Daniel's wishes should also be given some considerable weight, and

the situation would need to be reappraised, with a clear focus on his safety (both physical and emotional).

106. As regards a change of circumstances, the reality is that ‘no contact’ has now sadly become the established position. That is in part an inevitable consequence of the slow pace of these proceedings, but it is also a consequence of the father’s election not to engage in supervised contact (even when prompted at the August hearing). From the evidence I have heard Daniel appears to be benefitting from the calm and stability that he has been afforded over the last year, and I would have significant concerns about expecting Daniel to resume contact given the combination of his current wishes and his father’s current attitude.
107. I have dealt with harm above. Daniel has probably been exposed to some form of domestic abuse during his parents’ relationship, albeit the details are not agreed or proved. He has certainly been exposed vicariously to the harassment of his mother since 2020, whose energies will have been diverted by the father’s threats and communications, and he has certainly been exposed to arguments and domestic abuse in his father’s home, which may well bring reminders of his parents’ relationship. He has experienced harm as a result of hearing his mother run down by his father. He has experienced his father’s care since 2020 as at times unattentive, rather than being at the centre of things. Additionally, Daniel has been harmed by his father’s choice not to see him since an order was made permitting that in April 2022. I am afraid that is a clear example of the father’s inability to see or prioritise Daniel’s needs over his own needs and feelings.
108. All the evidence I have suggests the mother is a more than capable parent. I commend her for her balance and her commitment to doing the right thing for Daniel. The father

clearly has many positive qualities. He has previously had a good relationship with Daniel, who enjoyed spending time with him. But as I have found his parenting capacity is impaired by his blind spots about Ms K, and about his mother, and by what I have described as his egocentric outlook.

109. I have a range of powers. It is essential that a child arrangements order is made which is clear and specific. It is essential that prohibitive orders are crafted to meet the particular needs of this case. I do not think that enforcement orders would assist the father or Daniel in this case, and for reasons I set out below I do not think that application can succeed in any event. I also have a power to consider an order under s91(14), which I deal with below. Moreover, I could, if appropriate, make a non-molestation order of my own motion to protect Daniel and / or his mother.
110. On one view it may seem very unusual to be considering moving from a substantive shared 'lives with' order to indirect contact only, when the precipitating concern was an incident of domestic abuse upon the parent whose contact is to be restricted. It is certainly a serious step, and although the order I am asked to make does not completely stop all contact, it does mean that, unless something changes, there will be no face to face contact. However, the issues in this case as it now appears a year down the line, revolve primarily around the father's lack of insight, his failure to protect his son, his disguised compliance, his failure to prioritise Daniel's needs over his own, and what in my view is a poor prognosis for change. Added to that is the fact that the child has not seen his father for a year and is clearly expressing fear and reluctance about contact.
111. I have considered not only the possibility of the wholesale reinstatement of the old order, but also whether there might be some intermediate position that allowed for a

reintroduction or a reinstatement of some face to face contact. I have reached the conclusion that the father's attitude precludes any such course of action. I think that without supervision the father will say inappropriate, hurtful and harmful things to Daniel, or will expose him to harm of the sort that he was exposed to before. I think that there is no realistic way of safeguarding against that without supervision because the father cannot be trusted to stick to his word. Even if that is wrong, Daniel could clearly not be placed in a situation where he was suddenly expected to resume 'business as usual' and I would be concerned about his ability to voice worries in future if things were not going well, given that he may feel he was not listened to the first time around.

112. I am afraid that I agree with the Cafcass officer that making an order for supervised contact is entirely pointless. Had he been willing to acknowledge some failures of judgment and to give a commitment to attend supervised contact this might have been a serious option. However, the father did not at any point during the hearing indicate that he would now take up supervised contact or accept supervision (he did suggest that he had found out in October the contact centre proposed had closed down, but I do not take that as evidence of any real effort on his part to engage in supervised contact). He certainly did not accept the need for supervision. He did not ask for it as a fallback position. His statement makes clear he is fundamentally opposed to it. In any event, it is contrary to Daniel's wishes and I do not think that now is the right time. More to the point, I do not think that supervised contact is a sustainable solution for a child of secondary school age. There is no obvious exit plan.
113. I have thought about whether Daniel's views are likely to be transient and potentially susceptible to change in the future. In my judgment Daniel would potentially change

his view about contact with his father only if he were able to be reassured that his father could consistently place Daniel's needs over his own. There is an element of chicken and egg here, but I think it would be damaging for contact to be reinstated only for the father's behaviour to be repeated. I think that the father must first make and evidence change to the satisfaction of the adults supporting Daniel before he should be expected to place his trust back in his father.

114. Notwithstanding the lack of medical evidence, I have considered the potential for the father's health to deteriorate given that [the father's medical condition] is a life limiting condition (as I understand it). Mr P describes his condition as a 'terminal illness'. However, I have concluded that it would not be right to allow that to materially influence my decision today. I have expressed concern that Mr P may have a tendency to make an assertion that he thinks will be helpful to him, without much regard for its accuracy, only to deny having said it when it becomes clear it cannot be backed up. It seems to me that if Mr P had really been diagnosed with skin cancer he would have been well able to produce evidence of that fact (if not in September certainly by January). I am drawn to conclude that the father's abandonment of this assertion was because it was not true and the father realised he had been called out. I am worried that transplant recital and Mr P's more recent assertion of improved health is a further example of Mr P's tendency to inaccuracy, and to backtrack when called out. I am therefore not able to rely on what I was told by Mr P about his health or his prognosis. I can take judicial notice of the fact that [the father's medical condition] is a serious condition which can deteriorate and require organ transplants and which may ultimately cause death. I have no idea however how likely that is in this case, or what any timescales might be, and Mr P's evidence on this issue was in very vague, speculative terms in any event. At present there is no evidence that the

father's health is a factor that should impact on the child arrangements order I make. It seems to me that in the event that Mr P's health does deteriorate significantly, the mother would most likely be sympathetic to that (if she was satisfied it was genuine). If I were wrong about that, the father could apply back to the court, and the court would reappraise the situation. I am quite satisfied that the father could, if he wished, produce a letter from his consultant to explain any serious decline in health to Ms T or the court.

115. Having analysed all available options (not just those advanced by the parties or by Cafcass) I have therefore concluded that the recommendations made by Ms Mills (as adjusted in oral evidence) reflect the arrangements which best meet Daniel's overarching welfare needs, and that even though they represent a significant interference in the private and family life as between Daniel and his father that interference is sadly both necessary and proportionate.
116. To be compelled to make such orders is a source of sadness. It is important to emphasise that this situation does not as a result of any failure on the part of Daniel's mother or of professionals, all of whom have acknowledged the importance of Daniel maintaining a relationship with his father, if that can be safely achieved. Rather, the father finds his contact so severely curtailed as a result of his own self-sabotage. The father's choices, sadly, are to his own and to Daniel's mutual disadvantage.

The child arrangements order

117. I discharge previous child arrangements orders. In their place I will order that the child will live with his mother. There shall be monthly indirect contact by means of card or letter (and on the first occasion a still photograph of the cats on the condition that the photograph does not include any text or image of the father), which shall be

sent to an address nominated by the mother. The indirect contact shall be provided to Daniel (or not) at the mother's discretion: she is well placed to judge its appropriateness. I recognise the risk that the father will use this contact as a vehicle for further harassment or denigration of the mother, which would be both upsetting to her to read and harmful for Daniel to see. If its contents are inappropriate, she is at liberty to exercise her judgment as a parent and to withhold it from Daniel. This means that if the father sends material in which he makes oblique digs at the mother the child will likely not see that material. Given my findings, the father is on notice that if he repeatedly sends material that is designed to upset or harass the mother under cover of the indirect contact to Daniel he can expect her to decline to pass on that contact and potentially to make an application for a non-molestation order or to suspend that indirect contact. In the event of any such application the mother will be at liberty to provide a copy of this judgment to the court dealing with it. I will direct that in the event of an application to vary the contact any application should append the indirect contact materials which are said to be problematic. In this way, if appropriate, the court may be able to deal expeditiously with such application.

118. I will make a prohibited steps order providing that the father must not attend, enter or attempt to enter any school which he knows or suspects Daniel to be attending save with prior appointment which should be confirmed in writing or email before attendance. Nor must he loiter in the vicinity of such school, specifically within 100 metres of its perimeter. The mother may provide a copy of my order to the school.
119. There is no disagreement that the father should and may be kept up to date with Daniel's educational development. I will order that the mother must keep the father

appraised of the school which Daniel is attending, and it will be for Mr P to contact the school, in order to ensure he is sent copies of school reports and the like.

120. In view of my order as regards contact, on one view the prohibited steps order regarding Ms K is redundant. However, in the hope that the father will take this judgment to heart and strive to meaningfully demonstrate a change in his behaviour, and in the expectation that the mother will – if appropriate – facilitate contact in line with Daniel’s wishes, feelings and needs without the need for an order, I consider it is important that the prohibited steps order remains in place in order to safeguard any such contact and to signal to the father the importance of adhering to the requirement not to allow Ms K contact with his son – unless it is agreed in writing by the mother, which I am confident she will not agree unless she has been satisfied that it is appropriate, whether as a result of further assessment or otherwise. I will therefore make an order prohibiting the father from bringing Daniel into contact with Ms K except with the express written agreement of the mother. This should not be taken as an invitation to the father to harass the mother into agreeing contact, and if such harassment does occur no doubt the appropriate application will be made.

Enforcement application

121. Self-evidently there was a breach of the order from December until the date of the application on 1 February 2022 in the sense that contact didn’t happen (The father appears not to have complained about the earlier cessation of video contact and nor was it referenced in his application).
122. However, it is equally clear that the mother acted on the advice of social services, which I have found to be appropriate advice, and as such it seems to me the mother had a reasonable excuse for the breaches of the order. The court effectively endorsed

her actions on 28 April when it suspended the order and imposed a supervised contact regime. It follows that no enforcement order can be made and I dismiss the application.

s91(14) Children Act 1989

123. Given the findings I have made above, I have considered whether or not I should make an order prohibiting further applications without leave for a period of time. I have decided that I should do so, because I am satisfied (as s91A requires), based upon the evidence I have heard and the way in which these proceedings have impacted upon them, that the making of further applications for s8 orders would put the child and his mother at risk of harm. A further application would inevitably involve further stress and anxiety for the mother, as a result of court hearings, worry about her son and the father's hostility to and criticism of her. It would potentially involve Daniel to a degree, whether by him being expected to speak to a Cafcass officer or because he would pick up upon his mother's anxiety. I am concerned that further application could be used by Mr P as a vehicle through which to harass and denigrate the mother.

124. Moreover, it seems to me that before any application for direct contact could succeed there would need to be substantial evidence of some change in the father's outlook (and possibly of Daniel's views), and very probably a need for some form of further assessment of that change within proceedings (whether through a s7 report or some other means). If the father produces some solid prima facie evidence of a shift in approach then the court will no doubt consider giving an application permission to proceed. If he does not, then I think it unlikely to be appropriate for the mother to be troubled by such an application.

125. As I have indicated above, in the event of a serious decline in the father's health that justifies a reappraisal of the situation, the father will be able, supported no doubt by medical evidence, to apply for permission to bring an application.
126. I will therefore direct that the father is prohibited pursuant to s91(14) CA 1989 from making any further application for a s8 'child arrangements order' until Daniel's 16th birthday without the permission of the court, and that any such application for permission should be referred in the first instance to either myself or a full time Judge on the papers for consideration prior to service.

Ancillary matters

127. I record that I have considered whether I should now make a non-molestation order of my own motion. I have concluded that I need not do so at this time, but as indicated above, if the by-product of my order is unwanted and inappropriate behaviour on the part of the father any judge dealing with an application for a non-molestation order will no doubt have regard to the context and background set out in this judgment, alongside the prevailing circumstances at the time.
128. As this judgment is in written form I have considered whether I should publish an anonymised version of it. I will invite brief submissions from the parties at the hand down hearing as to whether my judgment should be published and, if so, the extent of any anonymisation necessary.

Postscript

129. The parents have both agreed to the publication of this judgment on the basis that all family members will be anonymised and the school / headteacher will not be named. I have therefore decided that it is appropriate to publish my judgment in accordance

with the open justice principle, and on the basis that I am satisfied that, in light of that anonymisation, any interference with the Article 8 is minimal, and no more than is necessary and proportionate.

Recorder Lucy Reed

20 January 2023

(handed down 16 February 2023)