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Case No.: ...OX15P00007

IN THE FAMILY COURT AT OXFORD IN THE MATTER OF THE CHILDREN ACT 1989 AND IN THE MATTER OF S AND T (CHILDREN)

Date: ...28th June 2017

Before : HHJ Vincent

Between :

Q

Applicant father

and

R

Respondent mother

and

S and T (through their guardian JO)

Second and Third Respondents

Nicola Martin (instructed by Reeds Solicitors) for the Applicant father
Julie Okine (instructed by Ansons solicitors) for the Respondent mother
Edward Kirkwood (instructed by Oxford Law Group) for the children's guardian

Hearing dates: 15th, 16th, 17th May, and 5th June 2017

JUDGMENT

Introduction and background

1. This is an intractable contact case, involving two boys now aged twelve and eight whose parents have been in proceedings for nearly five years. They have seen very little of their father during that time.

They say that they do not wish to see him, and they do not want to be asked any more about whether they want to see him.

2. I have been provided with a chronology which runs to 41 pages. I extract from that the following significant events.
3. The parents started living together in around 2000 or 2001.
4. S was born in November 2004.
5. In September 2007 the father violently assaulted the mother by punching her in the face, knocking teeth out and necessitating plastic surgery. He was subsequently convicted of ABH and given a suspended jail sentence. He had supervised contact with S for a time.
6. The parents reconciled thereafter and T was born in August 2008.
7. The parents separated in 2011. For a short time (according to the chronology) the mother was in a relationship, and the boys were seeing their father regularly. There were some issues around S's behaviour and a referral to PCAMHS was made in the second half of the year.
8. Real difficulties in respect of contact arose in or around August 2012. In September 2012 T's nursery made a referral to the local authority concerned that *'mum appears blinkered and appears focused on dad and not letting him see the children'*.
9. The father made an application to the Court on 26th October 2012.
10. At or around this time the mother sought assistance from Women's Aid. On 31st October 2012 she was assessed by them as 'high risk' from the father and a referral to MARAC was made a week later.
11. At the first hearing before me on 12th December 2012 the mother argued against contact but I ordered the children should have staying contact with their father on alternate weekends. On 29th January 2013 the father was due to collect the children from school for contact, but the mother had that day reported that she had overheard the children discuss which one of them the father hit hardest. Contact was suspended.

12. On 19th February 2013 I ordered the local authority to prepare a section 7 report. I ordered that contact between the boys and their father should be reinstated.

13. On 26th March 2013, RA's (social worker) interim report noted the children's allegations that their father had smacked them, found no evidence of violence from father towards mother since the assault of 2007 and recommended supervised contact to observe the father's relationship with the boys in a controlled environment.

14. On receipt of the interim report the mother raised concerns through the MARAC that the father would react badly to it and this led to the police being contacted who then attended T's pre-school Easter bonnet parade where the father was due to watch him. The father was escorted from the premises by the police, the police performed half hourly patrols around the children's school and home and the mother did not thereafter make her children available for contact with their father as had been ordered.

15. On 17th April 2013 I joined the children as parties and appointed a 16.4 guardian. I ordered contact to take place weekly, to be supervised.

16. The contact that followed was positive, the children running to their father to give him kisses and cuddles on the first occasion. In her report dated 26th June 2013 following the three month period of supervised contact, RA recorded that the father '*has demonstrated that ... he is able to meet the children's needs positively and effectively*'. She said his discipline of the children was '*wholly appropriate*', and she recommended a shared care arrangement with the children to spend alternate weeks with each parent.

17. The mother did not accept the recommendations and the case was transferred to HHJ Corrie for a contested hearing on 8th and 9th July 2013. He adjourned part-heard and pending the resumption of the hearing, ordered weekly contact between the boys and their father, as well as additional days at the paternal grandmother's home in [REDACTED] during the summer holidays.

18. There was a further hearing on 16th August 2013 as the mother had once again stopped contact, but HHJ Corrie ordered it to continue as previously ordered. Permission to appeal that order was refused.

19. Following contact on 31st August 2013 the mother alleged the father had shaved the boys' heads, the

guardian when informed asserted this was physical abuse, but HHJ Corrie later found they were 'perfectly nice haircuts.'

20. On 3rd September 2013 there was an incident at the father's house which later became the subject of a fact-finding judgment by His Honour Judge Corrie. The father said S 'kicked off' for no reason and was 'smashing up the house'. The father sought assistance from children's services. Two social workers attended at the father's house. T said the father had hurt S and 'strangled him'. S said no, he had not been hurt, he did not want to go home to his mother, and no marks or injuries were seen. When interviewed again the next day by the same social worker, JP, S continued to maintain nothing had happened, T said the father had hurt S by 'strangling' him.
21. S attended contact on 10th September 2013, but T refused to attend. According to the chronology S ran to his father and hugged him. However, during the next week, following a conversation between the mother and a social worker in which she reported that S was very distressed, the local authority then said it could no longer support current contact arrangements.
22. When spoken to in October 2013, both boys said clearly that they wanted to see their father.
23. At a hearing on 17th October 2013, HHJ Corrie ordered contact to start once again, to be supervised at Ward Andrews. He ordered Dr Morgan to carry out a psychological assessment of both mother and father.
24. Towards the end of October 2013 S was spoken to again by children's services and this time reported that his father had hurt him.
25. On 2nd November 2013 the children saw their father again and ran to greet him on arrival. This contact was observed by the children's guardian Simon Smith as well as the Ward Andrews worker and the notes record are very positive, the father giving attention and praise to each boy, the boys and their father being affectionate with one another, the father having brought fun games and activities, allowing the boys to choose what they wanted to do and joining in with them. The boys and their father were laughing and joking together and appeared entirely comfortable and relaxed. The boys are reported as seeming pleased at the prospect of seeing him at the next session.
26. On 6th November 2013 S had an ABE interview with the police and said his father had strangled him on

3rd September 2013.

27. The father was arrested on 13th November 2013 and his bail conditions prevented him having any contact with his children.
28. On 21st November 2013 T was interviewed and repeated that he saw his father 'strangling my brother'
29. On 12th December 2013 Dr Morgan reported that the mother was '*implacably opposed to father's contact*'. He notes that the mother reported having experienced domestic abuse over a prolonged period and to have suffered stress as a consequence. However, in his opinion, the effects of her abuse or her reported stress were not evidenced.
30. On 20th December 2013 mother's solicitors wrote to inform the father that she would be moving in the New Year '*on the advice of women's aid and the police*'. Since their separation the parties had lived within 800 yards of one another, the father remaining in the family home, the mother moving out with the boys to a rental property around the corner.
31. On 9th January 2014 the parties saw HHJ Corrie and a final hearing was listed.
32. The father's bail was cancelled at the end of January 2014. The children visited Ward Andrews on 15th March 2014 but S refused to get out of the car. Contact with T went well.
33. On 29th March 2014 both boys refused to get out of the mother's car and hid under a blanket.
34. On 7th April 2014 S told a story at school about the time he saw his father smash his mother's teeth out, and that he had been about seven at the time. In fact he was two in 2007, and had not been witness to the assault.[\[1\]](#)
35. In April 2014 the children's guardian submitted his report which recommended the children have indirect contact only with their father.

36. The children would not get out of the car for contact on 12th April or 26th April 2014 at Ward Andrews. Ward Andrews then cancelled the proposed contact on 5th May 2014.

37. Following a four day hearing, HHJ Corrie delivered judgment on 22nd May 2014 in which he found:

- (i) Father had at some point smacked both children but not so as to mark or injure them;
- (ii) On 3rd September 2013 the father did or said something of a physical or verbal nature, which caused the children to be frightened of their father and to be unwilling to see them;
- (iii) HHJ Corrie rejected a finding that the father had strangled S. He did note the father and grandmother's evidence that at one point the father had managed to calm S by sitting on a chair downstairs where T and his grandmother had been playing a game, and the father placed his arm across S, which did calm him down, but S's behaviour revived when the social worker attended;
- (iv) The children did not wish to see their father and this was their own view, the mother had not coached, brainwashed them or influenced them in their clear and consistent views;
- (v) Neither parent was an entirely satisfactory witness, *'each showed deficiencies and were sometimes not entirely frank and all too willing to criticise.'*
- (vi) The mother was prone to exaggeration and assumed and expressed the worst of the father. He did not find her essentially dishonest but noted there were discrepancies in her evidence. He found her to have been *'devious'* with the general practitioner by giving information which was not true. *Although 'prone to embellishment, and sometimes dishonesty, [she] is not naturally untruthful and has had real and justified concerns about the physical and emotional welfare of these two children, and her confidence as a parent has been undermined by constant criticism from the father';*
- (vii) He said it was 'perfectly plain' the father was not giving the whole truth about what had happened on 3rd September and that both the father and paternal grandmother had not been honest about what had happened;
- (viii) The father's propensity to violent words and language betrayed a lack of insight of the effect of his powerful and intimidating presence on women and children, but he is a loving father and the children would want to see him provided he is gentler;
- (ix) If the mother were living away from the father she would be more likely to relax and promote contact.

38. HHJ Corrie found that both parents had criticised the other in the presence and hearing of the children, whether by inference or otherwise. He said that both parents had chosen to submit their two vulnerable little boys to a *'toxic atmosphere'* in which each of them (to a greater extent the father) was *'spying on the other, and neither lost any opportunity of interpreting in the most malign way the activities of the other, even where, as was inevitable, there was nothing at all to complain about.'* HHJ Corrie went on to say, *'parental hostility and suspicion tends to breed distortion, misunderstanding, and in some instances outright dishonesty and that has proved to be so here.'*

39. The mother was given permission to move with the children to [REDACTED].
40. HHJ Corrie ordered indirect contact only - accepting the mother's position that if the boys were given some space then they might be willing to resume contact. He said in a recital that *'the Court expects direct contact to the father to be resumed within or soon after six months and the father would be justified in seeking to return the matter to court if that does not happen.'* The mother was to arrange a full day's contact with the boys and their paternal grandmother and aunt, which did take place on 26th May 2014. When the paternal grandmother came to collect the boys for a second day on 26th August 2014 they refused to attend and S shouted that he wished she was dead. A further attempt on 27th October 2014 failed, the children refusing to see their grandmother.
41. The father sent letters to the children but they either did not respond at all or their responses were rude and dismissive of the father.
42. The mother did not move away from the village at that time, although her evidence that was not challenged is that she was waiting for a house in [REDACTED] to come up. In October 2014 she reported the father to the police for driving past her home slowly, and for parking outside the children's school when she said there was an order in force preventing him from going to their school. After investigation the police concluded there was no evidence of harassment and given the parties still lived 800 yards away from each other *'it would be impossible in such a small village'* for them not to pass each other.
43. The father attended a 'managing strong emotions course'.
44. On 8th January 2015 the father applied to the Court to re-establish direct contact, the mother having refused his request to do so. At the first hearing District Judge Jenkins ordered Simon Smith, who had been the children's guardian in the first proceedings, to be appointed.
45. At the end of March 2015 the mother informed the father that she and the boys had recently moved to [REDACTED]. She says notice was given, but her impending move was not raised at the first hearing before District Judge Jenkins on 17th February 2015. The children's present guardian, JO of [REDACTED] Cafcass was appointed. She met with the children for the first time on 13th May 2015. She told the mother she considered the children's letters to their father were unacceptable and raised a concern about parental control.
46. In her report dated 17th August 2015 JO concluded that it would be emotionally harmful to force the

children to see their father and recommended the proceedings come to an end.

47. On 11th November 2015 Deputy District Judge Tansey ordered Dr Misch, a child and adolescent psychiatrist to be jointly instructed.
48. In his report dated 20th January 2016 Dr Misch agreed with Dr Morgan's assessment, that the mother was implacably opposed to contact. He noted that the children spoke in a '*matter of fact way*', and were not '*emotionally distressed*' when talking about their father. He noted that negatively biased views of a parent results in emotional harm to a child. He proposed to work with the parents to facilitate a dialogue so that they could collaboratively reintroduce contact between the children and their father. By this time the father had not seen them since 2nd November 2013.
49. The 21st March 2016 was the first day of a three day final hearing before HHJ Owens. The parties met with Dr Misch for lengthy discussions and agreed a contact plan which was to start with a lunch at Pizza Hut the next weekend and build up to overnight staying visits within six weeks.
50. On 22nd March 2016 the children visited HHJ Owens for the plan to be explained to them.
51. S could not be persuaded to come to lunch at Pizza Hut, but T did have a good lunch with his father, mother, paternal grandmother and the children's guardian, who commented that one would never have known that T had not seen his father for over two years. So far as T was concerned the contact was described as extremely positive.
52. The boys were with their father for four hours on 2nd April, for overnight contact on 4th to 5th April, and again on 9th to 10th April 2016. On Friday 22nd April the father collected the boys from their school. The father's account was that S was extremely reluctant to come, there was some drama, and eventually on the advice of the headmaster, he was lifted by his father across the main road and apparently bundled into the car. T was carried by another teacher. This account was not challenged on behalf of the mother in evidence. The father's evidence was that he was very uncomfortable about this but within five minutes they were all singing to music in the car and all was fine. There is a different account given by the mother who says S told her that a teacher banged the classroom door on his head, that a teacher scratched him causing bleeding, that he was pinned down to the floor by teaching staff and carried by two teachers to the car. On any view this was a very unfortunate event. The father reports the boys and he had a good weekend; there was an issue when S ran out of the house anticipating he was going to be told off by his father for shooting a nerf gun at his brother, but otherwise it went well. The video clips I viewed were taken over this weekend.

53. The boys were returned to their mother's care on Sunday 24th April 2016. She reports that S complained of a sore foot on Sunday night and then again on the Monday morning, and he said that it had got hurt at school at the handover on Friday. After referral to doctors a chipped bone was diagnosed. A referral was made to social services who commenced a section 47 investigation and advised that contact between the boys and their father should be suspended.
54. Against this background and at a hearing before HHJ Owens on 5th May 2016 the father agreed that the interim child arrangements order should be suspended.
55. The section 47 report dated 10th May 2016 found no evidence of injuries sustained to either child while in the father's care but noted the children were distressed about contact. A referral was made to the Child in Need team.
56. The final hearing was listed before Deputy Circuit Judge Cushing, but not until 10th August 2016. The court heard evidence from Dr Misch and the children's guardian and then adjourned part heard in order for attempts to be made to re-establish contact. It was envisaged that [REDACTED] MBC should provide a section 7 report directed to considering whether and how contact should be reintroduced, what preliminary work was necessary and what advice and assistance could be provided to re-establish and sustain direct contact.
57. At a review hearing in front of Judge Cushing in November 2016 the section 7 report of MA was available, which recommended no further direct contact between the boys and their father. Judge Cushing directed that the remainder of the hearing should be listed before her in January or February 2017. Unfortunately that did not happen and the case was then listed before me for the continuation of the part-heard hearing from the previous August, not until 15th May 2017 with a time estimate of three days.
58. In discussion with the parties it was clear that while I had the benefit of transcripts from the hearing in August 2016, this final hearing some nine months later was a fresh start and there was no question of my continuing part-heard what another judge had started.

Parties' positions

59. All three parties were ably represented by counsel. The father was represented by Nicola Martin, the mother by Julie Okine and the children through their guardian were represented by Edward Kirkwood. I am grateful to them all for their assistance in this exceptionally difficult case.

60. Save for a meeting between him and T at Ward Andrews in March 2014, the father did not see the children between 3rd November 2013 and the reintroduction of contact in accordance with Dr Misch's plan at the end of March 2016. Having seen them for the handful of times during April 2016, he has not seen either of them or had any contact at all with them since he returned them to their mother's care on 24th April.
61. The children's mother is clear that there should be no order for contact. She considers the children's wishes and feelings should be acknowledged and respected. She is very concerned for the harm she considers will be caused them if they are forced against their will to attend contact with their father. She denies that she has influenced the children against their father and says their position is their own, based on their own experiences of him.
62. The children's father desperately wishes to re-establish contact with his sons. Despite a few teething problems here and there, understandable he says given the long breaks in contact that there have been, he says that when he has had contact with the boys they have had a lovely time together, and that is evident when any professional has observed it. He asserts that the mother is fundamentally opposed to the idea of contact and that for many years she has acted in a deliberate and manipulative way in order to frustrate any contact that has happened. He suggests that she should be ordered not just to make the children available for contact, but to facilitate and encourage contact between them and their father. He says she should be compelled to do so by there being a threat of sanction for non-compliance. It is his clear position that the emotional harm the children will suffer as a consequence of being separated from him for the rest of their childhoods, and of being separated on the basis of false beliefs about their father, outweighs the potential harm to them of being told they must have contact with him now. He is confident that if contact were once again re-established, it would be to the boys' benefit.
63. The guardian does consider that the mother has influenced the children in a number of different ways to hold a false belief system about their father, and that she is incapable of promoting any kind of relationship between them. The guardian regards the mother as falling seriously short in terms of her ability to exercise the responsibilities and duties of a parent. However, the guardian is of the view that, even if based on a false belief system, the boys' views are genuinely held, and should be listened to and given weight. On this basis the guardian considers that the proceedings should be brought to an end and orders for indirect contact only be made.

The law

64. There is a depressingly large body of authorities concerning 'intractable contact', and this case bears many of the hallmarks of the reported cases. The label 'intractable contact' in my opinion focuses on the adult dispute, and encapsulates the weary despair with which such cases are often viewed by lawyers, judges, experts and other professionals involved. However, what is at the heart of these cases are children who have suffered and will continue to suffer significant emotional harm. The Court is asked to decide between options all of which result in the emotional welfare of the children being inevitably and permanently compromised. The children will suffer emotional harm as a consequence of their separation from one parent, but if they are alienated from that parent the consequences of forcing them to see him or

her against their wishes will also cause emotional harm.

65. When deciding what (if any) order to make under section 8 of the Children Act 1989 the children's welfare is at all times the Court's paramount consideration, determined by reference to the matters listed at section 1(3) of the Act. Section 1(3)(a) concerns 'the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding).
66. The Court must have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child (section 1(2)) and the Court must not make any order unless it considers that doing so would be better for the child than making no order (section 1(5)).
67. In the case of Re A (intractable contact) [2013] EWCA civ 1104 McFarlane LJ stressed that '*the extent to which 'wishes and feelings' may be a, or even the, determinative factor will vary with the facts of each case.*' He cites Baroness Hale in Re D (a child) [2006] UKHL 51, at paragraph 57:

"As any parent who has ever asked a child what he wants for tea knows, there is a large difference between taking account of a child's views and doing what he wants. Especially in Hague Convention cases, the relevance of the child's views to the issues in the case may be limited. But there is now a growing understanding of the importance of listening to the children involved in children's cases. It is the child, more than anyone else, who will have to live with what the court decides. Those who do listen to children understand that they often have a point of view which is quite distinct from that of the person looking after them. They are quite capable of being moral actors in their own right. Just as the adults may have to do what the court decides whether they like it or not, so may the child. But that is no more a reason for failing to hear what the child has to say than it is for refusing to hear the parent's views."

68. McFarlane LJ goes on to say:

'Where, as in the present case, there is an intractable contact dispute, the authorities indicate that the court should be very reluctant to allow the implacable hostility of one parent to deter it from making a contact order where the child's welfare otherwise requires it (Re J (a minor)(contact) [1994] 1 FLR 729). In such a case contact should only be refused where the court is satisfied that there is a serious risk of harm if contact were to be ordered (Re D (contact: reasons for refusal) [1997] 2 FLR 48). It is however to be noted that in each of the two cases to which I have just made reference the Court of Appeal upheld a 'no contact' outcome, with the consequence that these oft quoted statements are in fact obiter. Further, in Re J, where contact was refused in order to avoid placing the child in a situation of stress as a result of the mother's implacable hostility to contact, Balcombe LJ rightly acknowledged that affording paramount consideration to the child's welfare may, in some cases, produce an outcome which is seen as 'an injustice' from the perspective of the excluded parent:

"... the father may feel that he is suffering injustice. I am afraid to say that I think he is suffering an injustice, but this is yet another example where the welfare of the child requires the court to

inflict injustice upon a parent with whom the child is not resident.”

69. In the circumstances of that particular case McFarlane LJ went on to hold that the father's and the child's Article 8 rights to have an effective relationship with one another had been violated by the proceedings as a whole:

.. this is an unimpeachable father, who has been prevented from having effective contact with a daughter who has enjoyed seeing him, in circumstances where the child's mother and primary carer has been held to be implacably opposed to that contact. In ECHR terms, there can be no dispute that the issues in this case engaged the Art 8 right to family life of M and each of her parents. No facts have been established to support a finding that, in terms of Art 8(2), it was 'necessary' or proportionate to refuse contact in order to protect the 'health' or 'the rights and freedoms' of others. HHJ Goldsack was right to express a profound feeling of failure on the part of the Family Justice system. Other than matters relating to the mother, her physical health, her mental health and/or personality, there has been no valid reason to limit or curtail the relationship between M and her father, yet the court process has concluded, after more than ten years, with an order denying the father any direct contact with his daughter.'

70. These two sets of proceedings have been ongoing now for four and a half, not ten years, and the mother's case is certainly not that this father is 'unimpeachable'; she says the children's fear and opposition to contact with their father is rational and based on their own experiences of him. It has not been argued before me that the father's or the children's human rights have been violated by the proceedings. However, plainly in circumstances where the Court is asked to make an order effectively severing direct contact between the children and their father for the rest of their childhoods, I must have regard to their Article 8, and Article 6, rights, and I must only make an order interfering with those rights if '*justified by an overriding requirement pertaining to the child's best interests*'. The test is one of necessity (Re B [2013] UKSC 33 at paragraph 215).

71. I have been referred to another judgment of McFarlane LJ's, also called A:- A (A Child) [2015] EWCA Civ 910:

'51. So the judge was faced with the stark choice that I have described, and the third point I make is that in the end there really was no ground for choosing any other way forward than the judge chose in this case. This was a boy who was shortly to be 12 years old. He was adamantly and consistently saying "no" to any form of contact, even indirect contact, with his father. The reasons that he was saying "no" may well be subtle and sophisticated, emotionally entangled with his relationship with his mother and the mind-set that he had developed about his father in the period during which he has not been seeing him, but "no" was his approach, and to contemplate moving a 12 year old child from that position to having contact was a formidable obstacle in the way of the Father's application.

52. That this should be the outcome of this case is, in my view, a tragedy. It is certainly a tragedy for the Father, but, more importantly, it is a tragedy for this young man, who had a warm, easy and close relationship with his father when he was much younger before their separation took place. Some family situations are simply not amenable to the blunt instrument of a judge sitting in a law court making an order. By the time this case came before Judge Atkins, given the options that were available to him and were to be considered by him, this was one such case, and for the reasons I have described, despite the understanding I have as to the tragic element in what has transpired here, in my view his appeal on the issue of contact and residence can only fail at this stage.'

72. I have had these cases in mind as I have considered the present situation, but ultimately must remind myself that each case turns on its own particular facts and it is through consideration of all the circumstances of the particular case, having regard to the factors on the welfare checklist that I must reach my conclusions.

Evidence

Video evidence

73. I was shown just under ten minutes' worth of clips from the last weekend that the children spent with their father in April 2016. The boys are seen shooting an air rifle at a target, supported and guided by their father. T clammers over hay bales, both of them play with a remote-control car, driving it over ramps. S is an impressive skateboarder and there are a few minutes of him showing his skills at the skateboard park on his skateboard and then on a stunt scooter. T is seen playing on the zip-wire. In all the clips the children are seen to be relaxed, interacting naturally with their father and while aware that he is filming them, there is no element of performance for the camera. My response to these clips was essentially similar to that of the guardian's when she described the meeting between T and his father at Pizza Hut – you could not possibly guess from these clips that there was anything out of the ordinary at all about the relationship between father and sons, one would assume these were children who had spent regular time with him all their lives. I would describe the boys in these clips as comfortable, relaxed and natural. There is no indication that S has suffered any injury to his foot.

MA, social worker

74. I regret to say that I did not find MA's evidence at all helpful. His section 7 report dated 24th October 2016 is based on incorrect information. The mother told MA that 'the child' had been hurt by his father before and was therefore '*very afraid of his father*', that he '*sustained injury when he got restrained in school to be put in his father's car*' (this attributed to school staff not the father, but I am unclear on what basis he makes this finding) and that the child had told his mother he had been strangled by his father at some stage in the past but his father was '*let off due to lack of evidence*'. MA records further information received from the GP, '*the children were removed from their father as he had been physically and emotionally abusive to them and their mother over the years (to the extent that the mother required plastic surgery to her face after one particular beating). S, the eldest, was frequently witness to the physical violence that his mother was subjected to as well as being the object of verbal and physical violence himself.*'
75. This account is wrong. The assault in 2007 was not one of a series of beatings, there is no evidence of any other physical assault upon the mother. There is no evidence that S witnessed that or any other physical violence. HHJ Corrie's findings in respect of any verbal or physical violence allegedly inflicted upon the children in the past are that there had been smacking although no findings of when or when, and the children's allegations themselves were that S said he thought he had been smacked once but a long time ago and not very hard. HHJ Corrie found that 'something' had occurred on 3rd September to make the children frightened but was unable to say whether it was verbal or physical. That is very different from MA's report. The source of all MA's information is not clear although it was a finding of HHJ Corrie's that the mother had been devious in the reports she made to the general practitioner in the past.

76. In his oral evidence MA refused to contemplate the possibility that the boys would suffer harm as a consequence of not seeing their father. He said that he had made his own assessment having spoken to the children and getting a very clear understanding of their wishes and feelings.
77. He did not regard it as his role to take any steps towards facilitating contact. Although he met once with Q he did not take steps to include him at Child in Need meetings, telling Q he was not allowed to attend the school where the first meeting was scheduled. MA was frank that he did not read the bundle sent to him, which included HHJ Corrie's judgment, previous local authority reports, and expert reports from Dr Misch and Dr Morgan.
78. I agree with Dr Misch's assessment that the report is blatantly biased against the father.
79. I do not disregard MA's accounts of the meetings that he and his colleague had with S and T and his notes of what they said to him. However, his analysis is in my view flawed because it is based on a view of the father which is factually incorrect and not supported by the overwhelming weight of evidence in the case.
80. It is of concern to me that in her witness statement the mother describes MA's report as '*very accurate and a clear reflection on the circumstances*'. Plainly it is not.

The father

80. Q gave a good account of himself as a witness. He answered questions calmly and in a straightforward way. He struck me as direct and quite blunt, someone who would say of himself 'what you see is what you get'. This seems to be consistent with the impressions of Dr Morgan and Dr Misch. On occasion he was fighting back tears. I interpreted this as a genuine expression of grief for the loss of his boys, certainly not a demonstration of emotion for mine or anyone else's benefit. He was not critical of the mother's care of the boys. It is clear however that he does blame her for alienating his children against him and he considers that if she were ordered to bring them to contact with him and ordered to encourage them to see their father in a more positive light, then she could make that happen. If left to her own discretion, he has no hope that she would promote contact. He said several times that all he was asking was to see his children every other weekend and in the holidays.
81. HHJ Corrie, Dr Morgan and Dr Misch have all described the father as essentially practical not emotional and not possessing much insight into the impact of his powerful presence on others. I would agree and he does appear to see things in very black and white terms. Dr Morgan found him to be an imposing presence and said that while the father reported his regret for assaulting the mother there was no evidence that he understood there could have been any effects other than the physical ones. I was very concerned to read an email written by the father to the (adult) daughter of his former partner following a relatively recent break-up. It was in my view inappropriate for the father to involve her in his dispute with her mother, and demonstrated no insight into her emotional well-being. With regard to his own children however the letters he is said to have written them were described as child-focused and wholly appropriate.
82. The father's frustration was evident (although he never lost control of his emotions) - not just towards the mother, but with the Courts, social services, the guardian and other professionals. There was however no

hint of aggression and frankly not much fight. The overwhelming sense I got from the father was that he was exhausted and wearied by having been a participant in this process for many years to no avail, and that he was grieving for the loss of his boys, both of whom I am in no doubt that he loves very much. He appeared bewildered that he still cannot see them in circumstances where when they have ever spent time together it is a positive experience for all so far as he is concerned.

The mother

83. The mother is of course entitled to her own feelings and perspective of her relationship with the father, and she is not required herself to get on well with the father. However, she has in my judgment failed her children by allowing and encouraging them to build up in their minds the idea that their father is a dangerous man and that they are not safe with him.
84. I would accept that she genuinely believes that he does pose a threat to her children, and from what she told me in evidence, it would appear to be at the core of her sense of herself as a protective mother to her children that she listens to their fears and acknowledges them. I asked her directly if she felt able to reassure her children that they would be safe with their father and she said that she could not. She said that she saw it has her role to listen to them and if they said they were scared of their father or that he had strangled them then she believed it. She does not accept HHJ Corrie's findings in 2014 that this did not happen. Dr Misch was clear in August 2016 and again in his evidence before me that there was no question in his mind of the father strangling or being physically violent to his children. He acknowledged S may have developed that perception, but said perception and memory were different, and in this type of case where there is 'so much rehearsal by parents' it was difficult to say what was learnt or what remembered. However, despite the Court's findings, the mother has continued to report to professionals - most recently to MA - that the father strangled S and she described to me conversations she had with the children where they expressed fears of their father based on S's having been strangled, and she was accepting of that, she did nothing to put them right. In doing so she reinforces in them an idea that the father is dangerous and to be feared. She has roundly rejected the assessment of RA in 2013 following three months of observed contact that the father does not pose a risk. HHJ Corrie's conclusion was that contact should be resumed. Both Dr Morgan and Dr Misch were clear that the boys would be safe with their father, but she will not accept it.
85. In cross-examination it was put to her that when S said he had witnessed his father knocking his mother's teeth out and he was about seven at the time, this cannot have been true. It was put that S must have picked this up from elsewhere because he was only two and the evidence was (and findings made by HHJ Corrie) that he had not witnessed the assault. In his evidence to the Court in August 2016 Dr Misch's view was this was rehearsed:

'I think an issue of domestic abuse that occurred so many years ago would not be a live factor in children unless it had been rehearsed in some way. I see lots of children who have backgrounds of sometimes chronic domestic abuse, but they are not coming to me and saying they are frightened of their parents because of that historical event, so it is actually very unusual. Clinically we would start to think what is going on here? It makes me think that this is something that has been rehearsed.'

86. The mother's response was that S was nearly three at the time, he had a good memory of it and since then every time an ambulance had gone past she and S had shared the memory of them travelling together in

an ambulance to hospital after the assault. This was in my judgment evidence of her creating and reinforcing a memory in her child from a very young age that was founded on fear. Her actions have not been to reassure but to build a picture in her son's mind that his father is violent and dangerous. This assault was horrendous, no doubt terrifying and no doubt a valid reason for the mother to feel profoundly mistrustful of the father. I do not doubt it has had lifelong effects. I would accept also the evidence of Dr Morgan that the father, who is a practical, not emotional man, was unable to acknowledge the emotional not just the physical impact of the incident. However, it was ten years ago, the mother lived with the father for another three years afterwards. It should not have disqualified this father from having a relationship with his children nor them from having a relationship with him. The mother plainly feels that it should.

87. The mother denies that she is the one who has ever stopped contact and says that she has always complied with orders. She maintains that it is nothing to do with her that a pattern seems to occur that shortly after contact is re-started some kind of incident happens which brings it to a halt. She was adamant that it is the children's own experiences that have led to them wishing contact to stop.

88. I have considered very carefully at all the evidence in the case. In my judgement it is the mother who has been unwilling at every stage for contact to take place. When it has happened, she has looked for difficulties and at the sign of any difficulty her response has been to renew allegations against the father, recounting her version of the history and to suggest that contact should stop. She has said on a number of occasions that if the children were given time and space they would come round, but on every occasion when she has been given any sort of discretion, contact has either not taken place at all or ground very swiftly to a halt. The indirect contact that took place for the six months after HHJ Corrie's judgment was a disaster, the children either not replying at all or writing wholly inappropriate responses to their father. More recently the mother has simply said the children refuse to read the letters sent. She even failed to persuade the children to accept Christmas presents from their father to the value of £50 which she had been asked to go and buy with them. Contact in 2014 between the boys and their paternal family ground to a halt because she would not work with the paternal grandmother.

89. She has in my judgment corralled professionals to her cause. She may well feel that the end result of preventing her children from seeing their father justifies the need to draw professionals' attention to matters that would lead them to that conclusion, most recently to MA. She has been seen to do the same to her general practitioner and she told Dr Morgan the father had two previous restraining orders and a conviction for GBH but this was not true. She said the cessation of contact after S's foot injury was nothing to do with her, but she had seen him skateboarding on Sunday when she picked him up, his father, she had not evidently noticed anything wrong with him then. Yet when he had a sore foot on Monday morning she appears to have been very ready to assume a sinister explanation to do with their father. She had every opportunity to take the heat out of the situation, but she did not. Once that investigation had concluded that the father was not at fault she had the opportunity to work with him to restart Dr Misch's programme of reconciliation but she did nothing. The father has not now seen his children for over a year and it is during this period of time that their views have become so much more entrenched.

90. I agree with the analysis of the children's guardian and Dr Misch that the mother has acted so as to prevent the children from having a relationship with their father. The chronology is significant – complaints are made by her at times when contact becomes an issue. She went to Women's Aid within a

week of the first application being issued, she made a baseless complaint of harassment to the police in October 2014 at a time when the father was, in line with HHJ Corrie's instruction, asking for contact to be reinstated. Having been granted permission to move away from the father she did not do so, but once he had renewed his application to the Court she did so and enjoined the assistance of Birmingham Women's Aid.

91. Her handwritten contact notes following contacts in April 2016 emphasise the boys' strong feelings about not wanting to go to contact. She is critical of the father's handling of S having run out of the house having shot at his brother with a nerf gun and understandably being worried he might be told off. The mother interprets this as an example of S wanting to run away from his father and not wanting to be at contact. She is critical of subsequent phone calls, notes although S was '*not crying*', '*he did not sound at ease*' to her. She criticises the father for not doing the homework properly. She notes that T was bought a remote control car but immediately records that T told her he was '*sick of it*'. She grants that the father bought clothes but writes down that S told her he does not like them. She says she smelled alcohol on the breath of father's friend and notes S was taken to a pub. She says S did not like the logo on his father's t-shirt. She says the boys said they enjoyed the skate-park and the ramps were cool but in the next sentence writes the boys said when they were on video or camera they were told to smile for the camera. The mother's interpretation of this is sinister but who doesn't ask their children to smile when taking a photo? S later told MA that if he appeared happy in the videos he was pretending. The mother in her evidence took the same line. She does not appear to be prepared to accept that there might have been a single minute when contact was going well.
92. There is no hint that she at any time tried to encourage them, to explore in a positive way their experiences – 'wow, the skate park sounds cool', 'nice trainers/skate board/remote control car!', 'did you hit T with the nerf gun? I would have told you off for that! But it was ok after wasn't it?'
93. The mother would say she is only faithfully reporting what the boys had said and she must do so in order to be their voice and their protector. However, the impression I get from these notes is one of evidence-gathering, of the boys having been quizzed by her about their experiences in contact, and the mother being unable to see anything but negative in them. She stresses the boys sought comfort in her, that they cried, were distraught, and expressed their fears and said they did not want to go.
94. The tenor of these notes is consistent with the mother's witness evidence, reports to professionals and her oral evidence to the court. Her attitude to the father is one of unremitting negativity. It is not just that she has concerns about safety, she appears to see no benefit at all to the boys in spending time with their father. She made this clear as far back as when she was interviewed by Dr Morgan in December 2013, that she saw no benefit to the boys in having contact with their father, and this has been her consistent position since the outset of proceedings.
95. She has been found in the past to exaggerate to professionals and in my judgment she continues to do so. She had previously reported wrongly that two other women had restraining orders out against the father when this was not true. She has consistently described the boys being very emotional and tearful with her about contact but this has not been witnessed by any other professional. Dr Misch, Dr Morgan, the guardian and others have noted the children's apparent lack of distress when talking about their father. The mother maintained in her witness statement and in her oral evidence that the children had been traumatised by being brought to Court to visit HHJ Owens. She said in her evidence that she had

witnessed S being brought down the stairs to her distraught and in tears following the visit. In fact the note of the children's guardian's solicitor was that when HHJ Owens went into the Court room to meet with the boys they were hiding behind a screen, were in good spirits and while they had said they didn't want to see their dad they did not seem upset and were fine while they were waiting with the guardian for their mum and grandmother to collect them. When this note was put to the mother she accepted that she had not been waiting for them, that she had not therefore seen them come down the stairs, nor were they crying when she arrived. However, she maintained that it was obvious they had been crying and said that once they left the building both showed to her they were distraught. She later described the contact arranged as 'barbaric'. In my judgment her account was demonstrably unreliable and she has created a false memory of the event.

96. While her case has been that the children should not be made to see their father because they are frightened of him and justifiably so, the professionals who have assessed her have concluded that she is not primarily motivated by anxiety. Dr Morgan did not identify her as suffering from anxiety. Dr Misch said in evidence to me that he '*did not think her reluctance for contact is a consequence of her anxiety I think it is a consequence of her dislike of their father.*' I accept the expert analysis and my experience of the mother's evidence chimed with his that her view of the father is one of extreme negativity. If she were worried about potential risk to the children she would ask for supervised contact, for the risk to be properly assessed, and she would be looking for ways in which she and the boys might be reassured. However, even though a body of professional opinion has provided this reassurance she will not accept it. She does not recognise any benefit at all to her children of having a relationship with their father and genuinely believes they are better off without them.
97. In a telling exchange between her and me, I remarked how I noticed the striking resemblance of both boys to their father and I asked whether she was concerned that as they became adolescents and grew into his shape, his physique, his mannerisms, they may struggle with the notion that they were formed of a man who they regarded as dangerous and bad. She replied with a shrug that they did not look like him at all. I was shocked that her desire to obliterate the father from her children's lives extended to her denying their identities in this way.

Dr Misch

98. Dr Misch did not have the benefit of seeing the other witnesses give evidence but his analysis chimed with my impressions of the witnesses.
99. He said MA's report was '*blatantly biased*' against the father and unhelpful.
100. He said that since his initial involvement he had shifted somewhat in regarding the mother as having made choices to prevent her children having a relationship with their father. He said that in his view she had repeatedly sabotaged contact. He considered that the mother's extremely negative views of the father were picked up by her children.
101. Dr Misch said that he acknowledged the father's adverse criminal history and that he had in the past difficulty with emotional regulation and a propensity to become angry and to be aggressive. However, in Dr Misch's view the father had successfully learned to manage that. Dr Misch considers the father has shown commitment and genuine love for his children. Dr Misch is clear that the children

would benefit enormously from contact with their father, who he described as a big, strong, caring man, able to physically reassure and contain them, to take an interest and organise the activities they enjoyed such as go-karting, skateboarding, riding and shooting.

102. I was very impressed with Dr Misch as a witness and found him to be insightful and informative. He has evidently spent time building up a thorough knowledge of all the evidence and I was satisfied that his opinion was formed on a fair and balanced appraisal of all that he had read, and his own expert assessments. His views were consistent with the weight of the evidence. He is a specialist of very significant professional expertise and experience and I pay close attention to his opinion.

JO

103. JO has plainly worried a very great deal about this case and reached her conclusions after a great deal of careful consideration.

104. In my judgment she has weighed all the evidence and carried out a full and proper analysis based on her knowledge of the children and all the circumstances of the case. She acknowledges the very significant harm she considers they are now suffering and will continue to suffer as a consequence of being separated from their father, and having had instilled into them a false belief system as to the reasons for that separation. However, in her judgement she considers they would suffer more harm as a result of being forced to have contact with their father when they have consistently and clearly expressed a wish not to do so, and the inability of the mother to promote any form of contact thereby making the continued need for intervention of professionals and the Court a near certainty. She considers these proceedings should come to an end.

Analysis and conclusions

105. I turn first to the welfare checklist.

(a) The ascertainable wishes and feelings of the children (in the light of their age and understanding)

106. The children have consistently said for some time now that they do not want to see their father.
107. When speaking with MA the first time S said that his father used to hurt him and that his grandmother used to shout at him and that he wanted to go far away from him.
108. When S saw MA for a second time about six weeks later his answers had become more extreme, S said his father was 'horrible and nasty', that he used to hit both children a lot, that he hit other people, and his mother and that he had strangled him. S said that he was always frightened to be punished and hit around his father and he did not feel comfortable with him. At the third meeting this time with LK, S said he didn't want his father to be his dad, that he wanted never to see him ever again and he made plain that he did not want to be asked any more about it. He said on a number of occasions that he did not understand why the Courts were ordering him to have contact when he did not want to.
109. The first time T saw MA he said simply he did not want to see his father but did not give any more reasons. MA found T to be ambivalent about contact both times he saw him, but by the time T had been

seen for a third time by MA's colleague LK, he was clear and adamant that he did not want to have any contact with his father.

(b) Their physical, emotional and educational needs

110. At twelve and eight the boys' needs are different but both are still of an age where they need adults to be responsible to ensure they are fed, clothed, kept warm, supported to get to school and do homework, have a social life with friends, and behave well. They are beginning to develop a stronger sense of themselves, their likes and dislikes their talents and interests, and starting on a pathway to greater independence.

111. S has additional needs over and above those of a twelve year old his age. There have been questions over his educational and behavioural development since he was very young. Dr Misch described him as '*neuro-developmentally compromised*'. School has always been a struggle for him and now just coming to the end of his first year at secondary school it is clear that those struggles have continued. He is being assessed at school for a personal health care and education plan. His teachers are concerned about his behaviour, he has difficulty concentrating, has been playing up, walking out of lessons. It is hoped that through the assessment process there will be greater understanding of the reasons behind these behaviours and he can be appropriately supported.

112. The parents have been in conflict since the boys were very small and there can be no question that they will have been adversely affected as a result.

(c) The likely effect of any change in their circumstances

113. If an order is made compelling the mother to make the children available for contact, the guardian's major concern is the effect upon the children of their clear wishes and feelings not being heeded. She is concerned they will be angry and resentful if orders are made forcing the children to see their father and that they are likely to suffer emotional harm as a consequence.

114. Given the history of this case with contact being ordered, a few sessions taking place then an 'event' occurring or the children refusing to attend leading very quickly to it being suspended, the guardian considers that any order for contact made now is very likely to repeat the same cycle. In her view the children would then continue to be caught up in the parental dispute and the overall effect upon their well-being would be overwhelming negative.

115. Dr Misch concurs with this view, and I agree with their assessment.

116. If no order is made compelling the children to see their father there is in my judgement no reasonable prospect that their mother will take any steps either to adjust the demonised version of him that she and the children hold, nor to promote direct or indirect contact with him or any members of the wider family. This means that at age twelve and eight their relationships with him are likely to be permanently severed. The consequences for them and for him throughout their whole lives are potentially devastating.

(d) Age, sex background and any characteristics which the court considers relevant.

117. There is nothing to add to what I have said above.

(e) Any harm which they have suffered or are at risk of suffering.

118. Having considered all the evidence in the case I am satisfied to the standard of a balance of probabilities that these children are not at risk of physical harm from their father. I have taken into account HHJ Corrie's findings. I have had regard to the risk assessments of the experts and the assessment of RA carried out after three months of observed contact. I have had regard to the evidence of each of the parents and in my judgement the father was the more reliable witness, the mother prone to exaggeration and to interpretations and explanations of events which found fault with the father as a default response.

119. So far as emotional harm is concerned, Dr Misch said the children's view of their father was not based on reality, and they had developed a false belief system which was prejudicial to them. Their innate and natural tendency to attach to both parents was compromised and their attachment to their father disrupted. The consequences of this will in Dr Misch's view have affected the boys' future abilities to form secure attachments and he predicted that it would impinge on their mental health. His concern about S is that he may find it difficult to manage his behaviours and could develop more aggressive behaviours. T he described as more 'internalising' and more at risk of depression.

120. Dr Misch also predicted, based on his own experiences and anecdotal evidence, that there was a risk to the children's relationship with their mother. He said a large proportion of children who had been denied contact with a parent started to question their experiences in adolescence, often took steps to find the parent from whom they had been denied contact as well as other family members. As part of this exploration and questioning they would be, in Dr Misch's view *'likely to feel the mother had not acted in their best interests'* and this could well compromise their relationship with her.

121. This was put to the mother but she was unmoved, I do not consider she believes for a minute that any harm has or will come to the children or their relationship with her as a result of being deprived of a relationship with their father.

122. I profoundly disagree. In my judgment the boys will have suffered and continue to be at risk of significant harm in the ways described by Dr Misch.

123. I remain concerned that they will suffer from the loss of their father and extended paternal family and that it is not just that they will miss out on the opportunity to spend time with him, to do activities together and develop shared interests, but they miss out on the chance to experience his love and his pride and interest in them. They are at some point likely to feel grief at the loss of having a father in their life, either as an abstract concept or grief for their actual father, possibly a mixture of the two. As Dr Misch suggests, and I put to the mother, they are likely to experience difficulties, particularly in adolescence, as they explore their own identities and feel concern that they are biologically connected to a man they regard as frightening and dangerous and incapable of controlling his emotions. They may identify strong emotions within themselves and be frightened that they are constitutionally incapable of controlling them, as they perceive their father to be.

124. Of course it is possible that these boys grow up without knowing anything more of their father and, as other children without fathers can do, become well-balanced, successful and confident individuals, in happy relationships, determined for their own children to have a different experience of parenthood than they have had. However, on the basis of the professional evidence I have read and heard, I would accept Dr Misch's analysis that it is more likely that in this case we are looking at a 'ticking time bomb', and that they will suffer as a consequence of being deprived of their father in their lives.
125. The counter-balance to that view is to consider the risk of emotional harm to the children if made to see their father against their wishes. I do accept the view of the guardian and Dr Misch that the children's views, clearly and consistently expressed over a period of time, is that they do not wish to see their father. It is clear from MA's recent experience that the more the children were asked, the more entrenched and vigorous they became in their refusals and in S's case, the more frustrated and angry at continuing to be asked. I am profoundly concerned about the effect on the boys' emotional well-being if told once again that their views have been overridden by the Court and they are once again to resume contact. It does not help that they have a clear understanding that their mother would get into trouble if she did not take them to contact.
126. They are in my judgment likely to feel that they are children whose wishes and feelings are insignificant and unimportant to the adults around them and as a consequence they may well find it hard to trust in authority figures in the future. They may direct anger towards their mother and teachers for what they regard as a failure to protect them.
127. The mother told me that she regarded it as a real risk that S would try to take his own life if forced to see his father. She said if so it would not be her fault. There is no professional evidence to support the view that S is at such risk, and I do not accept the mother's assessment that S running away from his father during contact was the cry for help she implies, rather than him trying to avoid being told off. However, S and T are both of an age where they can run away from their father. S has been seen to be immature in his behaviours and T is only eight. I would be very concerned about their respective abilities to look after themselves if left to their own devices. It was the concern of teachers at the very troubled handover that either boy might run into the road if not controlled and that is the sort of concern that I have.

(f) Capacity of the parents to meet the boys' needs

128. The mother is a loving and caring parent to her boys and by all accounts she meets all their daily needs, supports them in their education, organises extra-curricular activities for them and has a very close bond with them both. It is no mean feat to be the on-duty parent round the clock, every day of the year, on your own. She is plainly devoted to her boys. It is in her ability to meet their emotional needs that I have found she has fallen very short in the ways described. The actions she has taken ostensibly to protect them from the father have in my judgement been misguided and harmful. In her resolute determination to separate them from their father in my view she has put her own wishes before her children's emotional needs and welfare.
129. The father is plainly capable of meeting the boys every day needs and in particular his strengths as a parent are that he can offer them a fun 'Boys' own' adventurous existence, fishing, shooting, riding, skate-boarding. He loves them, he can support them, he can do activities with them that they love. He

doesn't seek validation in their love for him, he just wants them to spend time with him to know him and his family, to do activities with them, to buy them things that they like. It is apparent that they do enjoy his company and can be relaxed and comfortable with him. Dr Misch also identified a positive in his large physical presence which he suggested would offer containment to both boys, but in particular S.

130. Emotionally the father is compromised in how he can meet the children's needs. In part I would suggest this is to do with his own personality and the way that he sees things in very black and white terms; he does seem to respond to incidents where the boys have been difficult to manage as simply issues of their bad behaviour rather than exploring whether the boys might be trying to express feelings they cannot put into words. He is said to have described them as 'feral', and 'out of control'. He does not appear to have the ready vocabulary or natural ability to provide emotional reassurance.

131. Added to this that he would continue to be dealing with a situation where the boys genuinely believe that they are at risk of harm from him (more so S, but T is clearly influenced) and they receive no reassurance from their mother, but are actively encouraged in that belief, in my view the father has a near impossible task at this time in being able to reassure the boys that they would be safe in his care.

(g) the range of powers available to the court.

132. I would wish to see these children's relationship with their father rekindled and allowed to flourish.

133. However I do not believe that their mother is capable of promoting this relationship, indeed she is intent on it coming to an end and while that situation pertains the children are exposed to risk of harm every time they see their father. There will be dramas about whether they go or not. They are at risk of being quizzed by her afterwards, their experiences reflected upon with a negative spin, they will not be left alone by her to form their own independent views. They will be acutely aware that their mother is not supportive of contact but is complying because she is made to. Given that the past is a good indicator of the future, there is a virtual certainty that contact if started will be stopped after a short time because the mother will find a problem which will be escalated. The boys are likely to be interviewed again by a variety of professionals, and the cycle will go on and on.

134. I do not consider the father has the capacity to overcome the obstacles to his relationship with the children that this presents. In addition, because of his own personality, I do not have confidence that he will be able to meet these boys' particular need for reassurance that they can be safe with him.

135. The boys' wishes and feelings are in my judgement based on a false belief system fostered and encouraged by their mother. If she thought he was dangerous she might have advocated supervised contact for the rest of their childhoods, she could have asked for risk assessments, but she did not, her starting position was no contact. She does not care for the views of those who have assessed the father as posing no risk. Above and beyond the anxiety she says she has that the children may be harmed (which Dr Misch does not regard as her primary motivation), what she says is that the children do not want to see their father and there is no benefit to them of doing so. I profoundly disagree and in my judgment she causes significant emotional harm to her children as a result. In addition I consider she is risking her own relationship with them in the future as identified by Dr Misch, but she was wholly unmoved when that suggestion was put to her, I don't think she believes that for a single minute.

136. What options are available to the Court? In some intractable cases there is an option to remove the children from the alienating parent and into foster care. From there they can receive the appropriate support to understand and process their belief systems about themselves, their families and their identity. They are then reintroduced to the parent from whom they have been alienated. They have contact with the parent who has perpetrated emotional abuse by causing them to be alienated from the other parent. This contact is supervised so that the risk of further emotional abuse is contained. Therapy is done all round.
137. I am not proposing such an order in this case because:
- (a) None of the parties is asking me to. Neither Dr Misch nor the guardian advocates such a course;
 - (b) There would need to be the support of the local authority via an application for a public law order, and resources directed to this end. But the local authority through MA does not recognise that these boys are suffering or at risk of emotional harm as a consequence of their mother's actions. MA has signed up her to her narrative as the boys' protector;
 - (c) I am realistic about the availability and effectiveness of such resources. Dr Misch is an expert with particular expertise in this field but acknowledged that there are no formal studies about the emotional harm experienced by children in these cases and therefore little about how professionals should be responding. My own (limited) experience of specialist centres who provide therapy in 'parental alienation' cases has been that it has been extremely expensive, of little practical effect and on some occasions caused more harm than good.
138. The father is not asking the Court to order a change of residence to the boys. He recognises that this is not what they want at the moment.
139. Orders which threaten a change of residence in default of a parent producing children for contact can and do work in some circumstances. In the particular circumstances of this case I do not consider such an order to be appropriate. It would be contrary to the wishes of the boys, it would mean a move would be unplanned and could be sudden. There is unlikely to be agreement about the circumstances in which the trigger for a change of residence were met and the virtual certainty of further damaging litigation in the shape of enforcement proceedings.
140. Should I make an order compelling the mother and compelling the children to see their father for regular direct contact against their wishes?
141. Instinctively I do not want to accept that the Court has reached the end of the road with children who are eight and twelve. I am satisfied they are not at risk of harm from their father, but consider it would be to their very great benefit to spend time with him. In my judgement they will suffer significant emotional harm if they do not. I am also concerned that S is much more vociferous than his brother T, and that T, who is seen to have much less problematic interactions with his father, and was far more ambivalent than his brother about contact, is being dragged along with S.
142. After very careful consideration I have come to the conclusion with a very heavy heart that I

should not force the boys to have contact against their wishes. My reasons are as follows:

- (a) I have to have regard to the views of the very experienced children's guardian and Dr Misch, both of whom advise me against this course of action. Both have come to their final recommendations after very careful consideration. Their opinions were based on sound evidence and their own robust professional assessments and I have no good reason to depart from their views;
- (b) I am satisfied there is a real and significant risk of emotional harm to the boys in the ways described above if they are forced to see their father when they have consistently said they do not want to see him;
- (c) There is a real and significant risk in this case that this is what I characterise as a 'running into the road case' by which I mean because the children have expressed such strong views that they do not wish to be with their father they might put themselves in harm's way if made to see him against their wishes;
- (d) I have had regard to case law and while each case ultimately turns on its own facts, in light of the clear indication given by MacFarlane LJ in A v A cited above, I do not consider it is open to me to take a different approach than that endorsed by him, where the wishes and feelings of the children are so clear.

143. I have considered carefully the total interference with the Article 8 rights of the children and their father that such a course represents. Given the views consistently expressed by the children, the expert evidence that more harm will be caused to them by failing to heed those wishes than by forcing them to contact, and the risks to their physical and emotional well-being I have identified as a consequence of forcing them to contact, I have concluded that such interference is necessary to protect the welfare of the children.

144. I have regard to the no-order principle and wonder if there is any point in ordering indirect contact where it has failed so manifestly before and I have no confidence in the mother's ability to promote it.

145. Nonetheless, it would in my judgement be appropriate for there to be an order for indirect contact. It would on my findings be to the boys' benefit to have contact with their father, to get to know him, to have the opportunity to be reassured that he is not a bad or violent man, and for a stepping stone to re-establishing direct contact to remain in place. They are not at risk of harm from indirect contact.

146. As they get older, they will have access to phones, email and social media accounts through which they will be able to contact their father independently of their mother and it is right in my view that the Court is seen to endorse those potential channels of communication rather than leave an order that makes no provision for any sort of contact.

147. The father may wish to set up a 'pocket-money account' for the boys and to continue to write to them perhaps six times a year as well as on birthdays and at Christmas and Easter when he could send presents to them. I would suggest that the order made provision for the paternal grandmother or other family members to be able to contact the boys as well on birthdays and at Christmas.

148. I appreciate that these suggestions are meagre and visit a grave injustice on both the father and the boys. I appreciate he may feel the mother who has been found to be at fault nonetheless has her way. I have however come to my conclusions after anxious and careful consideration and in the particular circumstances of the case I regret to say that this is the limited extent to which I am able to grant the father's application, having regard at all times to the welfare of the boys as my paramount consideration.

149. I have drafted a letter to the boys explaining my decision.

Joanna Vincent

Her Honour Judge Vincent

5th June 2017

Post script

This written judgment was handed down to the parties on 5th June 2017. Unfortunately Miss Martin was unavailable to attend the hearing due to sudden illness in the family and I therefore gave her some time in order to have an opportunity to meet with her client and consider the judgment. I gave the parties until 28th June to submit a draft order and let me know if they sought a further hearing for me to consider any applications.

The parties thereafter submitted a short list of proposed corrections and a draft order, which was mostly agreed. It was agreed by all that it would be disproportionate for the parties to attend a further hearing in order to resolve issues of drafting and so I considered the parties' suggestions in their absence and sent this final version of the judgment and the order to them on 29th June 2017.

[1] HHJ Corrie judgment paragraph 7, *'the child, S, was not actually present, because the assault took place, the father says, and I am content to accept, out of his line of vision, but he is bound to have heard it. On the father's version, the assault too place in the bathroom, and before perpetrating it he took S outside, which shows a degree of pre-meditation, which strikes an unhappy chord.'*