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IN THE FAMILY COURT SITTING AT OXFORD

Case no.: ZE17P00711

IN THE MATTER OF THE CHILDREN ACT 1989 AND IN THE MATTER OF A AND B

Date: 1st February 2019

Before: Her Honour Judge Vincent

Between :

F

Applicant father

and

M

Respondent mother

and

A AND B

(by their Rule 16.4 Children's Guardian, Ruth Palayiwa)

Third and Fourth Respondent children

Hearing dates: 3rd and 4th January 2019

JUDGMENT

The Applicant father in person, assisted by his McKenzie friend Graham Fletcher
Mr Kelly instructed by Dalsuns solicitors for the Respondent mother
Miss Emma Griffiths instructed by BH&O LLP solicitors for the children

Introduction

1. I am concerned with A, a boy, who is seven, and B, a girl, who is four.
2. The children's father is F who acts in person, ably assisted by his McKenzie friend, Mr Fletcher.
3. The children's mother is M, represented by Mr Kelly.
4. The children act through their guardian, Ruth Palayiwa, represented by Miss Griffiths.
5. This is the father's application, dated 19 April 2017, for a child arrangements order that the children live with him, and a prohibited steps order preventing the mother from removing the children from the jurisdiction.
6. The children's guardian has recently made an application for an order pursuant to s. 91(14) Children Act 1989 that the father should not make any further applications in respect of the children unless he has first obtained the Court's permission.
7. At the time the parents met the mother was experiencing marital difficulties. The father had also been married before, and has a son, T, from that relationship, who is now twenty-one and studying at university.
8. Father has a diagnosis of multiple sclerosis, although fortunately at the moment this is successfully controlled by medication.
9. Mother left the family home in [redacted] with the children on 22nd November 2016. Father had told the mother to leave and had assaulted her the day before in the presence of the children. This was one of the findings made by Deputy Circuit Judge Corrie following a fact-finding hearing in February 2018. His findings are set out in full as follows:

Findings in respect of the Applicant father

1. *The Applicant frequently drank red wine, port and whisky to excess, causing him to be aggressive.*
2. *On 26 December 2013, on T's Birthday (the Applicant's son), the Applicant again drank to excess, and despite knowing that it was late and the Respondent was in bed and asleep, and despite her obvious unwillingness and requests to stop, and her attempts to brush him off, he continued his unwanted advances, lay on top of her and briefly had sexual intercourse. The children were asleep and unaware.*
3.
 - a) *The Respondent was sleeping with the two children in a separate room to the Applicant. On numerous occasions in and after September 2016, he has forcibly dragged her out of the room in front of the children to another room, hurting her in the process and leaving at least A crying;*
 - b) *The Applicant has had adult conversations with A, telling him about the Respondent's past and previous marriage;*

c) When A wet the bed, the Applicant would become impatient, drag him out of bed and put him roughly on the floor, pulling the duvet off, and shouting and screaming at A and the Respondent.

- 4. On 22 November 2016 the Applicant shouted at the Respondent, punched her in the chest, slapped her face and threw her against the banister as she was packing her and the children's belongings because he had yet again told her to leave. This incident occurred in the presence and hearing of the children, when the Applicant wished to take back a hard drive containing family photographs and videos. Because of the assault, the Respondent surrendered it and later left with the children.*
- 5. The Applicant had put CCTV in the house. He recorded everything and would not allow the Respondent or the children to use the bathroom without leaving the door open. The Applicant threatened the Respondent by telling her that the cameras in the house rotated to film the inside of the bedroom and that he could produce copies of awkward moments. The Court is satisfied that the Applicant sent the text of 21 May 2017 to the above effect, using a different number ending ...527, and not his usual ...318 number, (see C30 in the bundle).*
- 6. The Applicant is very controlling of the Respondent. The Applicant, by telephone late at night, told her to go and check the car as it was unlocked. He at some stage between July and September 2017 had planted a tracking device onto her car which he used to track her every movement. He also created a Facebook page in which he detailed the full address of where she was staying. The Applicant has continued to date to make silent and verbal telephone calls, sometimes of [redacted] songs, to the Respondent, and to DD and CD, in whose house she lives.*

Findings in respect of the Respondent mother

- 1. The Respondent had hit the Applicant a few times during this period, and would sometimes be abusive in response to the Applicant's controlling behaviour and excessive alcohol consumption.*
- 2. The Respondent would keep the children in A's bedroom, in order to avoid the Applicant's behaviour as described. She discouraged them from interacting with the Applicant's son T, who identified with his father, and was often rude and disrespectful to the Respondent, sometimes using bad language.*
- 3. As under paragraph 2. On one occasion in frustration at his behaviour, the Respondent slapped T in the face. It was the Applicant who told the children that T was nothing to do with them. Before the parents' relationship disintegrated, T and the children got on well.*
- 4. During 2016 it was the Applicant not the Respondent who became impatient with A's potty training, which was a little slow. When he wet the bed, the Applicant would drag off the duvet and put A roughly on the floor while shouting at him and the Respondent, instead of dealing with the matter gently without waking him from a deep sleep.*

5. *During the Applicant's telephone conversation with A on 15 February 2017 an unknown voice in the room at the house where the Respondent and the children were then living, said "Your daddy has thrown you out of the house". The Respondent is currently against any contact with the Applicant father, who has not seen the children since 22 November 2016, apart from a brief telephone conversation with A on his birthday on 24 April 2017.*
10. Father has not had any direct contact with either child since the mother and children left the family home. At that time A was four and a half, and B was two. The father spoke to A on the telephone very briefly in February and again in April 2017, but has had no indirect contact since then.
11. Father made his application for section 8 orders on 19th April 2017. The first hearing was not listed until 9th August 2017, because steps had to be taken to find the whereabouts of the mother so that she could be served with the application notice. At the first hearing, District Judge Wakem ordered a section 7 report.
12. It has taken some twenty months for the father's applications to reach a final hearing and as some criticism has been made of the case management and delays in this case, I have set out the chronology of the proceedings in detail.
13. On 15th June 2017 the father contacted A's school and requested that they make an immediate referral to social services in respect of A's emotional well-being. The person preparing the note recorded that the father was reassured that no concerns had been raised about A's physical or emotional welfare and that A was happy and settled. No referral was made at that time.
14. On 14th September 2017 the mother applied for a non-molestation order, which was granted. The trigger for this application was the mother's discovery of the tracking device on her car, the discovery that the father had created a Facebook account in her name, publishing her address, and continuous phone calls from the father to the mother and her friends and relatives.
15. On 29th September 2017 Miss Palayiwa filed her section 7 report and the matter was listed for a directions hearing on 4th October 2017, at which District Judge Matthews directed that the parties provide schedules of allegations against the other. It is right to note that Miss Palayiwa did at that stage recommend one session of supervised contact between the father and the children to form part of her assessment. She was aware that the non-molestation order had been obtained but felt that a one-off session of contact could be safely managed at that time. However, despite initially agreeing, the mother then opposed the observation of contact and ultimately this was not directed by the Court.
16. The mother filed her schedule of allegations, the father did not. On 17th October 2017, having considered the mother's schedule, District Judge Matthews joined the children as parties, appointed a guardian, re-allocated the case to a Circuit Judge and made directions to a fact-finding hearing, listed on 23rd and 24th November 2017. District Judge Matthews gave permission to appeal his decision not to allow the session of supervised contact, but the father did not pursue that. The parties were given two weeks to file their statements, and other evidence relied upon, and the father given a further week to file his schedule of allegations against the mother. A pre-trial review was listed on 9th November 2018.

17. Recorder Genn dealt with the pre-trial review. She recorded that due to *'various documents on both sides not being filed and served the matter is not ready for the fact find hearing.'* She made further directions and the fact-finding hearing was relisted for 15th and 16th February 2018. It is unfortunate, but not perhaps surprising that on 9th November, having allowed time for relevant evidence to be filed, the next time the hearing could be listed was nearly three months away, on 15th and 16th February 2018.
18. That hearing was effective. Deputy Circuit Judge Corrie on 15th and 16th February handed down his judgment on 22nd February 2018 and made the findings set out above. Judge Corrie was due to retire, so he listed the next hearing before a Circuit Judge on the first available date after 28 days. Of course it would have been better for the fact-finding hearing to be listed before a judge who could then deal with the welfare hearing, but it is highly unlikely that either of the Circuit Judges in Oxford would have had any availability for a two-day hearing within three or four months of November 2017, and when listing before a Recorder, the staff would not necessarily have known that Judge Corrie was to be sitting that week, or that he would not be available for a welfare hearing thereafter.
19. On 21st February 2018 a person describing themselves as a concerned neighbour, called the children's school reporting that they were not sitting in car seats when brought to school. The mother was advised to make sure the children were in car seats and it was decided to have a meeting with A to see how things were going for him. On 22nd February 2018 A is reported as having told his teacher a number of negative things about the time he was living with his father. There is no record of how this information was elicited from him, and no findings have been sought in respect of them. A's teacher then sent a letter which was intended to reach the Court, giving the opinion that following these 'disclosures' having been made she would be very concerned about A's and his sister's safety should contact be re-established. The author of that letter has not been called to give evidence. Quite properly, neither the mother's nor the guardian's counsel have sought to suggest that the Court should give weight to this letter, and I have not done so. The assessment of risk is based only on findings that have been made by the Court and analysis of the professional evidence of the guardian and of Professor Perkins.
20. The schedule of Judge Corrie's findings rehearsed above was not approved until 10th May 2018. I am not sure whether this was the reason that the next case management hearing was not listed until 29th June 2018. Whatever the reason, this was an unacceptable period of delay. The hearing should have been listed before me or another available Circuit Judge at or soon after the end of March 2018.
21. On 22nd February, DCJ Corrie directed the father to provide hair strand testing and there was no reason that direction should not have been complied with at that time.
22. On 17th April 2018 an anonymous referral was made to X children's services suggesting the children had been physically and emotionally abused by their mother for the last seven months. The caller rang the NSPCC and alleged that he or she had witnessed physical and verbal abuse to the children five or six times over the past seven months. The person recording details of the referral mistakenly identified Mr DD as the children's father and suggested that his wife, Ms CD, was his 'new partner'.
23. On 29th June 2018 the case came before me. It has been extremely helpful that there has been continuity of counsel ever since and that the father has been assisted by a McKenzie friend at every hearing. I directed a transcript of DCJ Corrie's judgment to be obtained. The father had

at that time refused to comply with the direction for hair strand testing, citing for the first time a religious objection, but as he had agreed to the direction in February, I gave him a further opportunity to comply. The father indicated his intention to appeal the fact-finding judgment given in February 2018, although he had not at that time made any steps towards lodging an application for permission to appeal.

24. On 12th July 2018 X County Council completed a report concluding the anonymous referral was made maliciously as the concerns raised had not been substantiated. The children were described as happy, content and safe and no role for social care identified. The case was closed.
25. On 18th July 2018 the guardian applied for expert psychological assessment of the father in order to inform the practice direction 12J assessment, and at a hearing on 25th July 2018 I gave permission for Professor Perkins to report.
26. The father subsequently applied for permission to appeal Judge Corrie's findings and order out of time – I am not sure of the date but believe it to be have been in September 2018. On 26th September 2018 Baker J listed the application for an oral hearing before Hayden J to be heard on 1st November 2018.
27. On 1st October 2018 Professor Perkins's report was completed. In summary he concluded:
 - The risk to the children and the mother of direct contact is high unless it is, at least initially, highly monitored and subsequently professionally reviewed. The Court has made findings of controlling, threatening and violent behaviour by the father, which he unshakingly denies, as well as consistently rejecting any professional help in relation to any of these behaviours. These issues were raised and discussed with him on several occasions in different ways during the assessment, but the father made no concession to needing or accepting any professional help;
 - Given (a) the findings of the father's physical violence towards the mother and the children, (b) his adamant denials of this or need for professional help, (c) his acknowledgement of his relationship with the mother as 'toxic', (d) the 'turbulent' and 'histrionic' aspects to his personality functioning, (e) his profile of 'impression management' and 'social desirability' responding on psychometric assessments, and (f) his good average intelligence and possible capacity for intense persistence, it is likely in my view that direct contact could quickly degenerate into past behaviour patterns unless strictly monitored, supervised and managed;
 - The risk to the children and mother via indirect contact would be easier to manage, monitor and review, and would provide a potentially safer basis for staged evaluation and, if unproblematic, a possible route for progression to supervised contact.

28. The review hearing listed on 2nd October 2018 was adjourned, awaiting the father's application for permission to appeal. On 1st November 2018 Hayden J refused the application. A transcript of his judgment has been provided to the parties and the Court. He concluded:

Throughout the judgment the judge works carefully throughout the allegations, sifting and analysing the broader canvass of material available to him, and ultimately coming to the conclusions that he did. More than once he reminded himself that there was fertile ground for false allegations in this obviously dysfunctional relationship. False allegations, he said, must be carefully scrutinised. But he came to the ultimate conclusion and in this respect, he has the

inestimable advantage over any appellate court of having watched, weighed and analysed the witnesses. Having evaluated the demeanour of the witness and the internal consistency of the complaint he came to the conclusion, despite the fact that there was no independent supporting evidence, that she was on this key aspect of the case both truthful and reliable. This is frequently the situation in allegations of this kind. ...

Having thus placed Judge Corrie's judgment in the framework of the law and evaluated it against those precepts, it is, in my judgment, impossible to establish a sound argument for contending that he went outside the ambit of his reasonable discretion in what was inevitably a discretionary exercise. Thus, I conclude that this appeal has no prospect of success and dismiss the application for permission.'

29. On 4th October 2018 the hair strand test results were served. The original direction from Judge Corrie sought results covering the nine months to February/March 2018. The results obtained in fact covered a later period, and a shorter period of time, from the beginning of March 2018 to the beginning of September 2018. The test results suggested that alcohol had not been consumed excessively in between those two dates. However, the expert noted that the participant refused to have his picture taken, which is the usual way of confirming the identity of the person providing the sample. Further, the hair sample was noted to be treated with yellow hair dye and the reporter recommended that alternative tests be carried out e.g. body hair or nails, as the presence of alcohol markers in hair that has been bleached or chemically treated could be significantly reduced, by up to 80% per chemical treatment, 'to the point of not being detectable'. The father denies that he has ever used hair dye and has no explanation for why the samples tested were found to have dye on them. In all the circumstances, I must be cautious as to the weight that I give to these results and in any event, they can in no way be regarded as undermining the findings of Judge Corrie in respect of the father's alcohol misuse during the relationship.
30. On 12th November 2018 Miss Palayiwa provided her section 7 report, in which she recommends there be no contact, direct or indirect, between the children and their father. On 15th November 2018 I listed this final hearing on 3rd and 4th January 2019.
31. I listed an additional pre-trial review on 12th December 2018 as I wished to deal with the question of the mother's participation and manner in which she could be cross-examined by the father, who is self-represented. In the event, the mother did not file a witness statement in the welfare hearing. I was concerned whether this may lead to difficulties in carrying out the analysis under PD12J, particularly in respect of being able to assess the potential impact upon her if any order for contact were made. However, it is also my duty to restrict evidence at the final hearing to what is proportionate and necessary, and the mother had already given evidence in the fact-finding hearing, during which time she was cross-examined by the father, a man who has been found to have acted in a controlling, harassing, violent and abusive way towards her. Given that evidence was obtained from Professor Perkins and the guardian to assist the Court with its assessment, in all the circumstances I did not consider that I should make any order compelling the mother to give evidence. I am mindful that I must only reach conclusions which are based on evidence before me, and that so far as the impact of any order upon the mother, I must not speculate or assume what the mother would have said had she given evidence at this stage of the proceeding. That case management decision was not appealed by any party.

32. The guardian's application for a section 91(14) order was made on 14th December 2018. The father's witness statement was filed on 17th December 2018 and a final addendum report filed and served by Miss Palayiwa on 20th December 2018.

The Law

33. In determining Father's application, **s.1(1) Children Act 1989** applies: the children's welfare must be the court's paramount consideration and the court's welfare assessment must be informed by an analysis of the factors in the welfare checklist under s.1(3).
34. Further, s.1(2A) provides a presumption in favour of both parents being involved in a child's life unless that is proved to be contrary to the child's welfare. That involvement need not be equal and may be direct or indirect (s.1(2B)).
35. Pursuant to **Practice Direction 12J of the Family Procedure Rules 2010**, the court must take into account a number of factors when considering whether to make a child arrangements order when domestic abuse has occurred. Paragraphs 35- 37 provide as follows:

35

When deciding the issue of child arrangements the court should ensure that any order for contact will not expose the child to an unmanageable risk of harm and will be in the best interests of the child.

36

In the light of any findings of fact or admissions or where domestic abuse is otherwise established, the court should apply the individual matters in the welfare checklist with reference to the domestic abuse which has occurred and any expert risk assessment obtained. In particular, the court should in every case consider any harm which the child and the parent with whom the child is living has suffered as a consequence of that domestic abuse, and any harm which the child and the parent with whom the child is living is at risk of suffering, if a child arrangements order is made. The court should make an order for contact only if it is satisfied that the physical and emotional safety of the child and the parent with whom the child is living can, as far as possible, be secured before during and after contact, and that the parent with whom the child is living will not be subjected to further domestic abuse by the other parent.

37

In every case where a finding or admission of domestic abuse is made, or where domestic abuse is otherwise established, the court should consider the conduct of both parents towards each other and towards the child and the impact of the same. In particular, the court should consider

–
(a) the effect of the domestic abuse on the child and on the arrangements for where the child is living;

(b) the effect of the domestic abuse on the child and its effect on the child's relationship with the parents;

(c) whether the parent is motivated by a desire to promote the best interests of the child or is using the process to continue a form of domestic abuse against the other parent;

(d) the likely behaviour during contact of the parent against whom findings are made and its effect on the child; and

(e) the capacity of the parents to appreciate the effect of past domestic abuse and the potential for future domestic abuse.

36. Miss Griffiths helpfully referred me to the case of Re C (Direct Contact: Suspension) [2011] EWCA Civ 521, para 47, in which the Court of Appeal summarised the approach to parental contact as follows:

- Contact between parent and child is a fundamental element of family life and is almost always in the interests of the child.
- Contact between parent and child is to be terminated only in exceptional circumstances, where there are cogent reasons for doing so and when there is no alternative. Contact is to be terminated only if it will be detrimental to the child's welfare.
- There is a positive obligation on the State, and therefore on the judge, to take measures to maintain and to reconstitute the relationship between parent and child, in short, to maintain or restore contact. The judge has a positive duty to attempt to promote contact. The judge must grapple with all the available alternatives before abandoning hope of achieving some contact. He must be careful not to come to a premature decision, for contact is to be stopped only as a last resort and only once it has become clear that the child will not benefit from continuing the attempt.
- The court should take both a medium-term and long-term view and not accord excessive weight to what appear likely to be short-term or transient problems.
- The key question, which requires 'stricter scrutiny', is whether the judge has taken all necessary steps to facilitate contact as can reasonably be demanded in the circumstances of the particular case.
- All that said, at the end of the day the welfare of the child is paramount; 'the child's interest must have precedence over any other consideration.'

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

38. Again, I am grateful to Miss Griffiths for her summary of the law, which I have adopted. The court must balance the welfare of the child and the right of unrestricted access of the litigant to the court. The following are principles of general application (Re P (Section 91(14) Guidelines) (Residence and Religious Heritage) [1999] 2 FLR 573):

- a) The welfare of the child is paramount: s. 1 (1) applies.
- b) The power is discretionary and all relevant factors must be weighed in the balance.
- c) An important consideration is that to impose a restriction is a statutory intrusion into the right of a party to bring proceedings before the court and to be heard on matters affecting his child.
- d) It is generally a weapon of last resort in cases of repeated and unreasonable applications.
- e) A restriction may be imposed where the welfare of the child requires it, but where there is no past history of making unreasonable applications.

f) The degree of restriction should be proportionate to the harm it is intended to avoid. *The making of these orders should always be exceptional and careful consideration in every case should be given to the duration of the order to see that by unnecessary extension it did not prejudice rights of access to the court.* Per Thorpe LJ in Re C (Litigant in Person: s. 91(14) Order) [2009] 2 FLR 1461 at [9].

39. Where, as in this case, there is no history of repeated and/or unreasonable applications, the Court should apply a two-stage test. First, the court must be satisfied that the facts go beyond the commonly encountered need for a time to settle to a regime ordered by the court and the all too common situation where there is animosity between the adults in dispute; secondly, that there is a serious risk that, without the imposition of the restriction, the child or primary carers will be subject to unacceptable strain.

Evidence

Professor Perkins

40. I heard first from Professor Perkins, struggling somewhat with a cold, but nevertheless clear, thoughtful and patient in his responses to questions. He was cross-examined by the father for over two hours. Professor Perkins is a witness of substantial academic and clinical experience, including eighteen years advising the Family Courts.

41. He explained his methodology, the process of choosing the psychometric tests and made clear that this forms part of a whole assessment including reviewing all relevant documentation, and interview with the father, in this case taking place over some six hours over two days.

42. He acknowledged that the father had outlined positive aspects of his character and parenting experience, in particular that he has raised a twenty-one-year-old son - the father says very successfully - and that the father had reported that he was the primary carer for his younger children when they lived together. Professor Perkins acknowledged the negative result from the hair strand testing, but ultimately was very clear that none of this information changed his conclusions.

43. Professor Perkins explained the three-stage process he had adopted of (i) identifying risk, (ii) the behaviours causing it, and (iii) ways of ameliorating the risk, in particular through work with the identified perpetrator. In the circumstances of this case, the risk is identified as a risk of repetition of the father's behaviour towards the mother and the children, both during the relationship and following its breakdown.

44. While he was unable to come to any conclusions as to the reasons for the father's behaviour, Professor Perkins noted that the father tended to present himself, his past and present circumstances in a very positive light and he found him to be a person who struggled to be reflective, became perplexed when asked to think about any personal problems, and resistant to any negative view of himself. Professor Perkins concluded that the father was in this way perhaps hindered in giving any sort of insight into any negative experiences or character traits which might have led to an understanding of why he exhibited the behaviours identified by Judge Corrie.

45. The tests that Professor Perkins carried out produced results which confirmed that in terms of impression management, the father presented in an unrealistically socially desirable way, consistently seeking to paint himself in a good light. Further, he found that the father presented with character traits of wanting things to go his way, and finding it difficult to accept if they did not. These findings, as well as his conclusions at interview, were consistent, in Professor Perkins' view, with Judge Corrie's findings in respect of the father's behaviour – that he was a man who found it difficult to accept it when things did not accord to his view or situations were not how he wanted them to be, and this could lead to distress or anger and conflict, and a risk of that spilling into a loss of self-control. Further, Professor Perkins concluded that this presentation was consistent with the father's difficulty in accepting any of Judge Corrie's findings.
46. So far as the third element of the assessment is concerned, Professor Perkins was at pains to describe the lengths that he had gone to explore options for therapy with the father. The father was adamant that he would not contemplate any therapy or course which required him to acknowledge the Court's findings or to accept any responsibility in respect of them. Professor Perkins explored with him the idea of some more generalised work, starting with a referral to a counsellor, whereby he might begin to talk about himself in a reflective way and thereby perhaps be directed to more specific work which might enable him ultimately to be able to reassure professionals and the mother that it was safe for him to spend time with his children. Professor Perkins concluded however, that despite significant discussions around this, the father was resistant. In the circumstances, he concluded that there was no reasonable prospect of the father engaging successfully in therapy so that the risks he presented could be ameliorated. It is right to note that the father did in closing submissions suggest that he would attend any course he was directed to, if it would serve to achieve the end of spending time with his children. He did maintain throughout however that he would not engage in any work which required him to accept any one of the Court's findings in respect of his behaviour.
47. As a whole I found Professor Perkins' evidence to be very persuasive, and although the father suggested that the Professor had made some significant concessions under cross-examination, I did not find that to be the case. Professor Perkins' conclusions were well-reasoned, supported by the evidence that he obtained in interview and the findings of the tests he carried out, and consistent with the weight of the evidence in the case, and in many respects, the father's own presentation during the proceedings.

The father

48. There is no doubt that this father loves his children very much and desperately wishes to re-establish his relationship with them. He asserts that he is a victim of the Court process and of the mother's successful attempts to alienate the children from him. He regards the Court as wrong to proceed on the basis of Judge Corrie's findings, and to have ignored what he says is clear evidence of parental alienation in this case.
49. Despite his misgivings about the family Court he was polite and fully involved himself in the Court process. He listened to questions put to him and gave full answers. He had thoroughly prepared for his cross-examination of the witnesses and, assisted at times by his McKenzie friend, asked questions with courtesy, patiently waiting for the answer to come before putting the next question. At times he expressed some frustration, and some emotion, but he never once lost control of his temper nor of his emotions.

50. When I met him in June 2018, and at every hearing since, I have explained and reminded him that the Court's approach to welfare will be based on the conclusions of the fact-finding judge (confirmed on appeal) but he persistently describes those findings as allegations, and does not accept any of them.
51. Consistently with Professor Perkins' observations, he presented as finding it difficult to acknowledge any perspective which took those findings into account, and sought again and again to rehearse points and arguments which might seek to undermine them. I appreciate of course that the father feels that he is the victim of a miscarriage of justice, and in the circumstances it is difficult to get past the findings. I also appreciate that he did not have the benefit of legal advice or representation, which may have led him to pursue a different strategy, but again and again both in the questions he chose to put, and in the responses he gave in his own evidence, he returned to complaints about the mother, and about the Court process, in particular the fact-findings, but also about previous case management decisions. All actions of the mother he interpreted as designed to sabotage his relationship with the children, and to hurt him, for example her application for a non-molestation order or her subsequent objection to his having contact with the children supervised by Cafcass at the outset of proceedings. He did not accept that the mother's actions could have been motivated by a response to his behaviour towards her over the previous months, culminating in her discovery of the tracking device on her car. He maintains the mother has made false allegations against him in order to persuade the Court and professionals that he is dangerous.
52. I acknowledge that with legal representation the father may have pursued a different strategy, also, that there can be a counter-effect caused by a judge making allowances to a self-represented party. At the final hearing the father cross-examined Professor Perkins and the guardian for over two hours each, and was permitted by me to give lengthy answers and explanations when giving his own evidence. The barristers for the other parties spent much less time with the witnesses – no more than fifteen minutes each. The effect is that the father's complaints were reiterated again and again throughout the hearing, so that he dominated the proceedings, they became all about him, and the repetition of his complaints. I tried to assist by asking a number of questions in order to focus his attention back upon the children and their welfare interests, but he appeared to find this difficult. For example, I asked him to describe to me in practical terms how he envisaged the children might be re-introduced to him, and their contact with him built up, but he seemed unable to consider practical steps, or potential issues for the children, but returned immediately to a complaint about the mother, and the situation in which he found himself.
53. The father continues to assert that the mother has adopted a course of conduct which has led to the children being alienated from him. Of course the children's relationship with him will have been profoundly affected as a result of his not having seen him for over two years. Their mother does not consider it in their best interests to have a relationship with their father and in the circumstances, they could be described as currently 'alienated' from him in the sense that they have no relationship with him, and on any view, preparatory work would be needed in order to re-establish the relationship. However, the father uses the phrase 'parental alienation' to describe a process by which he says the mother has sought to paint a false picture of the father to the children and to the Court, only for the purpose of destroying their relationship with him. There is no evidence of this. The mother's position is adopted in the light of the treatment she alleged she and the children received at the hand of the father, all of her allegations were found to be true. The issue of parental alienation was raised at the fact-finding hearing before Judge Corrie and he made no findings in that respect.

54. The father asserted a number of times that the children were suffering abuse at the hands of their mother, but has no evidence to support his claims. There has been a recent social services investigation which found no concerns. He sought to rely upon the receiving social worker's mistaken understanding that Mr DD was the children's father – obtained via the NSPCC from an anonymous caller – as evidence that the children must have been encouraged by the mother to regard Mr DD as their father. There is no basis for arriving at such a conclusion, and following investigation the reporting social worker was clear as to the true picture; Mr DD and his wife are both friends of the mother and have provided support to her. A is recorded by his teacher on one occasion to have referred to Mr DD as dad but in further discussion was clear that he was not his dad. The guardian also explored this with A and concluded firmly that A knows who his father is, that he knows Mr DD is not his father and that there is no evidence of anyone seeking to encourage him to think or say otherwise. Nonetheless, the father is not accepting of any of this evidence, nor the conclusions of the social work investigation in 2018.
55. This is an issue that has been raised again and again by him, and dealt with, and yet he continued to raise it at the hearing before me as an indication that the children had suffered emotional abuse at the hands of their mother. The father also raised this during the appeal before Mr Justice Hayden as a current concern.

The guardian

56. The guardian has prepared three reports in this case and has had regard to the professional assessment of Professor Perkins.
57. Her recommendations were unchanged following over two hours of cross-examination from the father.
58. She was asked about whether contact could be safely managed in a contact centre. Her view was, relying upon Professor Perkins' assessment, that any contact would have to be much more closely supervised, by two supervisors. While Cafcass could in theory fund a series of supervised contact sessions, in the circumstances of this case, where she could see no plan for the progression of contact out of a supervised setting, a plan for indefinite supervised contact was not workable, nor in the children's interest. She repeated that she was not suggesting that the children should have no relationship with their father, but her view was that it was for him to take responsibility for his actions, and demonstrate that he was capable of change, before she would make such a recommendation.
59. Given Professor Perkins' very gloomy prognosis about this, it does seem to me that the guardian was perhaps being a bit hopeful that the situation might change in the future. The father was right in my view to ask the guardian to consider the consequences of an order that prevented him from having any contact with his children, and had no plan for the introduction of contact while they were children. The father pressed her to consider the potential negatives to the children of being deprived of a relationship with their father for the rest of their childhoods. She said that she was not advocating that, but saying it was for the father to make the necessary changes in his outlook and behaviour. However, given the professional assessment about that, in my view she should perhaps have considered in more depth the potential difficulties for the children if they were to have no relationship with their father. She did agree in cross-examination that there was a risk of emotional harm; of them feeling abandoned by him, unloved, and potentially unlovable. Having acknowledged that, she

remained however of the view that the risk of harm to the children of seeing their father outweighed the risk of harm to them of being deprived of a relationship with him, either in the short term or the longer term.

60. Even though Professor Perkins had suggested that indirect contact might be safe, the guardian's view is that in the circumstances of this case, risks remain to the children, because of the father's history of manipulative behaviours such as setting up a Facebook account in the mother's name, or controlling behaviours, such as putting a tracker on her car, as well as the history of harassing behaviours. Because the Professor does not consider there is a good prognosis for change in the father's behaviours which he identifies as being driven by personality traits which are difficult to shift, and the father's clear position that there is no need for any intervention, the guardian does not recommend any indirect contact.

Welfare checklists

61. I now consider each of the welfare checklist factors in turn.

(a) the ascertainable wishes and feelings of the child concerned (considered in the light of their age and understanding);

62. Most recently A has said to the guardian that he would not like to see his father, but he has not seen him for over two years and at his age, I would not regard his views as determinative. He is far too young to have the burden of such a momentous decision placed on his shoulders. B is too young to express any view and it is doubtful that she would hold any clear memory of the time she was living with her father at this time. It could I think be presumed that they would wish to have a relationship with their father, provided that they felt safe in his care.

(b) their physical, emotional and educational needs;

63. The children are still of an age where they need an adult to manage all aspects of their daily lives, to provide for all their needs, to keep them safe, to support them in their physical, educational and emotional development.

(c) the likely effect on them of any change in their circumstances; and (e) any harm which they have suffered or are at risk of suffering;

64. I will consider factors (c) and (e) together, which combined, direct me to paragraph 36 of Practice Direction 12J which says the Court must consider '*any harm which the child and the parent with whom the child is living has suffered as a consequence of that domestic abuse, and any harm which the child and the parent with whom the child is living is at risk of suffering, if a child arrangements order is made.*'

65. I do not have any evidence from the mother about the potential impact upon her or the children of re-establishing contact with their father, but there is evidence that they are at risk of harm should contact be re-established.

66. Professor Perkins identifies that they would be at risk of harm from the father because if he does not successfully obtain help to gain insight and understanding of his behaviour, there is little prospect of change, and he is likely to repeat previous patterns, thus putting the children at risk of harm.
67. Judge Corrie found that the father had directly caused harm to A by shouting and screaming at him, dragging him from his bed, pulling him roughly across the floor. He found that both children were witnesses to physical assaults upon the mother by the father, and that on numerous occasions he had dragged the mother out of the room in which she was sleeping with the children, hurting her in the process, and leaving at least A crying. Judge Corrie found that the children witnessed the father shouting at the mother, punching her in the chest, slapping her in the face and throwing her against the banister because he did not wish her to take a hard drive containing family photographs and videos as she was leaving with the children having been told by him to leave. Judge Corrie found that the children witnessed the father shouting at their mother, punching her in the chest, slapping her in the face and throwing her against the banister because he did not wish her to take a hard drive containing family photographs and videos as she was leaving the family home with the children.
68. The father does not accept the findings of the Court but has acknowledged that the relationship was ‘toxic’. He suggests that as the relationship has come to an end there is no continuing risk, but the evidence is that even after the end of the relationship, he sought to manipulate, control and emotionally abuse the mother by his actions. There is no evidence that he has insight or understanding as to the triggers of anger, or when frustration or anger can spill over into a loss of control, and in the circumstances, unless closely supervised, the children continue to be at risk of his anger including physical violence.
69. The children had a number of house moves following the parents’ separation, and there is evidence to suggest that the father’s actions in tracking her, going to places where she was going, and making contact with her members of her adopted and birth families were instrumental in those moves. Given past patterns of behaviour, the risk remains that the father would use information he might obtain about the mother and the children as a result of having contact with them in order to undermine or destabilise the place in which they were living or going to school. In my judgment the children must therefore be regarded as at risk of further destabilising moves in the event that they renewed contact with their father and he was able to obtain information about their lives.
70. The father’s proposal for the change in the children’s circumstances is not just that they should spend time with him, but that they should come to live with him. This proposal does not acknowledge current circumstances. He suggests the children could attend the local [redacted] faith school, and points out that he has a large house that could accommodate them, but gives no consideration to the emotional impact upon them of leaving their mother, with whom they have always lived, and moving to live with their father, with whom they have no current relationship. He has no practical proposals as to how they would spend time with their mother and how he would protect the children from any risk of their being exposed to the parents’ toxic relationship.

71. Professor Perkins suggested that closely supervised contact could be safe. However, risks remain:

- (i) There is a specific risk here based on previous behaviour that the father would seek to influence the children in a way that harmed their emotional welfare, even if contact were supervised. He has been found to have had adult discussions with A, telling him about the mother's previous relationships in a negative way, and causing harm to a previously happy relationship between the children, the mother and his older son T, by telling them that they had nothing to do with him. Even with close supervision, this sort of behaviour can be difficult to monitor and manage;
- (ii) A finding has been made that the father raped the mother. She has alleged that B was conceived by that rape. No specific finding has been made in that respect, but there is a risk that she will find it very difficult in the circumstances to reassure the children that contact is safe. Where the father is unable to give her any reassurance that he has taken responsibility for his actions and is determined to change his behaviours, the mother is likely to be unable to give the children the reassurance they would need;
- (iii) Supervised contact is usually ordered with a view to progressing to children being able to spend time with a parent without supervision. In this case, there is no plan for how contact might be progressed. Given the current risks in respect of unsupervised contact, if such an order were made it would be for supervised contact indefinitely. There is no proposal from the father before the Court as to how that would be funded, where it would take place, who would carry out the supervising, who would be taking notes and monitoring the contact, who would be carrying out the preparatory and post-contact briefings. There is no third-party family member or friend who might be available to facilitate the contact, nor any other proposal. In the circumstances, an order made would essentially be asking the mother and father to make arrangements themselves for indefinite supervised contact. The father does not agree that any form of supervision is required. A difference of opinion is bound to ensue, and I accept the evidence of Professor Perkins that there is a real risk that the father would find that conflict difficult to manage, and therefore his behaviour difficult to control. The mother and children would be at a risk of harm as a result.

72. The guardian's view is that the same risks apply with regard to indirect contact, and I accept that to be the case.

73. There are risks of harm to the children if no order were made requiring the mother to make the children available to spend time with their father. If the father's situation remains as at present, blaming only the mother and taking no responsibility for his own actions, then there is a real risk that the children would not see their father for the rest of their childhoods. They are at risk of harm as a result. They will not have a relationship with their father nor with the wider paternal family and as well as losing the opportunity to know them, this will impact on their understanding of their own selves and identities. They will be limited in their understanding of their own make up and where they come from because they will have no information from the paternal side of the family. They may feel abandoned by their father and they may blame themselves, thinking that he did not want to see them. As older children, they may seek to

reconnect with their father in an unplanned way and this could be confusing for them and could expose them to risk of harm.

(d) their age, sex, background and any characteristics of theirs which the court considers relevant;

74. I have not identified any additional relevant characteristics to consider under this heading.

(f) how capable each of their parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting their needs;

75. Despite the father's suggestion that the children have been suffering emotional abuse in the hands of their mother, and suggestions by him and an anonymous caller to professional services that the children might have suffered emotional and physical harm in their mother's care, there is no evidence to suggest this is the case. The mother has been investigated by social services and the reports about her found to have been made maliciously. The evidence is that the children are well settled in her care, are doing very well at school, and thriving in their home with the mother's friends and their child, despite the lack of space for all. There is no evidence to suggest that the mother has made any attempt to alienate the children from their father. The allegations that she made against the father were proved at Court and the findings upheld on appeal. They were not made maliciously, they were found to be true.

76. While a finding was made against the mother by Judge Corrie, the context is clear, and there is no suggestion that this mother poses any risk of harm to her own children.

77. The father repeatedly claimed that he was the children's primary carer when they lived together. There is a dispute of fact about this. The mother's evidence at the fact-finding hearing, consistent with the evidence she gave in the non-molestation order proceedings, was that she had gone back to work for a period of time at the father's request, but that he continued to rely on her a great deal, and frequently brought the children to her at her work to change their nappies. I did not hear evidence from either of them so as to resolve this dispute. It would seem that at differing times, each of them took care of the children. However, regardless of the father's basic parenting abilities, he has had adverse findings made against him that he created a hostile environment in the home, such that the mother and children confined themselves to a bedroom together, that the children were exposed to the toxic environment between the parents and the father's physical and emotional abuse of the mother.

78. The father has no insight into the impact that living in this environment would have had upon the children. He has sought to manipulate others and to act in an intrusive, harassing and controlling way towards the mother. Professor Perkins identifies him as an individual who struggles if others do not conform to his way of doing things. In all the circumstances, there are serious questions about his ability to see the potential impact upon the children's emotional

welfare were he to resume care of them, either full time or spending more limited periods of time with them.

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

79. I remind myself that whatever orders are being sought the court can make a whole range of Section 8 Children Act Orders or indeed no order at all if it considers that to be appropriate.

80. I must also have regard to the questions at paragraph 37 of Practice Direction 12J:

- (a) *the effect of the domestic abuse on the child and on the arrangements for where the child is living;*
- (b) *the effect of the domestic abuse on the child and its effect on the child's relationship with the parents;*
- (c) *whether the parent is motivated by a desire to promote the best interests of the child or is using the process to continue a form of domestic abuse against the other parent;*
- (d) *the likely behaviour during contact of the parent against whom findings are made and its effect on the child; and*
- (e) *the capacity of the parents to appreciate the effect of past domestic abuse and the potential for future domestic abuse.*

81. The children were very young when they lived in the household with both parents and may not hold many memories of the father's abusive behaviour, but are highly likely nonetheless to have been affected by it at a crucial stage in their development. It is the guardian's view that A does hold memories of this time and that his recollections accord with the findings made by the Court.

82. The mother's evidence submitted at previous hearings does not appear to have been challenged that upon leaving the family home, she went to stay with family members but had to leave because the father made phone calls to them, influencing them against her, thus creating instability and insecurity for the children.

83. The children's relationship with their father has been fractured by the events during the marriage about which findings have been made, and by their subsequent separation.

84. I am satisfied that the father does genuinely wish to re-establish a relationship with his children and considers that their living with him or spending time with him is in their best interests. I do not consider that he is bringing his application for the purpose of continuing a form of abuse against the mother, although I accept she has found the process as a whole to be very difficult.

85. Having regard to all the evidence, I am not satisfied that the father understands the impact of his behaviours upon the children and their mother. For the reasons given, I consider there to be a real risk that the abusive, manipulative, controlling behaviours previously exhibited towards the mother in the relationship and following it, would continue, should an order for the children to spend time with their father be made.

86. I do not underestimate that an order that in effect prevents very young children from having a relationship with their father is draconian, but in all the circumstances of this case, having regard to the children's welfare as my paramount consideration, the welfare checklist and

practice direction 12J, I am not persuaded that their welfare requires the making of an order that they either spend time with him, let alone move to live with him.

87. To make such an order would in my judgment expose the children to an unacceptable and unmanageable risk of harm, which outweighs any risk to them of being deprived of a relationship with their father.
88. On the evidence before the Court, I am not satisfied that the children's and their mother's physical and emotional safety can be secured before, during and after contact. I consider that both the children and their mother remain at risk of further domestic abuse by the father, even were contact to be supervised.
89. I have had regard to all the evidence, in particular the assessment of Professor Perkins, and the guardian's three reports and her oral evidence. Her conclusions were well reasoned and supported by the evidence and there is no good reason to depart from her recommendations.
90. Throughout these long proceedings the Court has strived to consider ways in which the children's relationship with their father may safely be promoted, has held a fact-finding, obtained expert evidence and considered options for interim contact at every stage. The father has throughout the proceedings remained immovable on the question of the need for him to undergo any kind of work, therapeutic or otherwise, which might start him on the road to re-establishing contact with his children. It is right to acknowledge that in his final submissions he said that if Professor Perkins suggested a course he would go on it, but Professor Perkins' evidence was that he had explored the question of various therapies with the father, even those which may not require an acceptance of findings, and he found the father to be wholly resistant to it and not accepting of any need for self-reflection. In the circumstances, the Court has in my judgment taken all necessary steps to facilitate contact as can reasonably be demanded in the circumstances of the particular case, and there is nothing more that could reasonably be done.
91. For all these reasons, the father's application for a child arrangements order is refused. I shall make a child arrangements order that confirms the children are to continue living with their mother. I would propose to make it clear on the order that the father is not permitted to remove them from the care of their mother nor any person to whom she has entrusted their care, without her permission or the permission of the Court. I would propose giving permission for the order to be disclosed to the children's schools, nurseries and relevant health professionals if required.
92. The responsibility now lies with Father to acknowledge his past behaviour and recognise that he needs help to ensure that any time he spends with his children is safe.

Prohibited steps order

93. The father asks me to make an order preventing the mother removing the children from the jurisdiction.
94. The mother and the children are British nationals, who have all lived their whole lives in this country. The mother's birth family and adoptive family live in this country. There is no evidence that the mother has ever expressed an intention or made any steps towards seeking to relocate to another country with the children. To prevent her from taking them abroad (subject to the usual restrictions of a child arrangements order) is in my judgment an unreasonable

interference with hers and the children's freedom of movement. The father's application for a prohibited steps order is dismissed. The father shall be ordered to deliver up to the mother the children's passports forthwith.

Section 91(14) order

95. The proceedings have taken over twenty months to be resolved, and have taken their toll on both parties, and no doubt the children. The children do not need to be actively aware of proceedings to be affected by the pressures of litigation, because any anxiety or stress felt by their mother is likely to impact upon her ability to care for them. After a difficult few years, there is a strong argument for saying that the children and the parents should have respite from further litigation.
96. The order sought would not prevent the father from making an application altogether, but puts a condition on it that he would need to obtain the Court's permission before the application were issued. In effect that would mean that he would need to provide evidence of a change in his circumstances.
97. However, the father has not made repeat applications to the Court, this is his first. The application sought is an interference with his right of access to justice, and should not be made lightly.
98. The children are young still but the window of opportunity to make applications relating to them is relatively limited. Sometimes making an order providing that applications cannot be made without permission for a certain period of time has the effect of increasing, not reducing stress; the restricted applicant almost regards it as an invitation to make an application the moment the restriction is lifted, the date of expiry hangs over the other party.
99. Even if an application were made within a reasonably short period of time, the Court continues to have wide-ranging case management powers and could list an early hearing to discover whether there had been a change of circumstances that justified re-opening the issues of this application, before ordering any further professional investigations or reports, and the continuation of an application.
100. In all the circumstances, I am not satisfied that it is appropriate to impose the section 91(14) restriction at this stage of proceedings and I dismiss the guardian's application, although I understand the reasons that it was brought.
101. I hope that the parties will be able to prepare a draft order reflecting the judgment.

Joanna Vincent

HHJ Vincent
Family Court Oxford

Draft sent to parties by email: 17th January 2019
Judgment handed down: 1st February 2019