

**IN THE FAMILY COURT AT WEST LONDON**

West London Family Court,  
Gloucester House, 4 Dukes Green Avenue  
Feltham, TW14 0LR

Date: 23/04/2021

**Before :**

**HIS HONOUR JUDGE WILLANS**

**Between :**

**ND**

**Applicant**

**- and -**

**KD**

**Respondent**

**Both parties appeared as Litigants in Person**

**Hearing dates: 25 March 2021**

**JUDGMENT**

**His Honour Judge Willans:**

1. On 25 March 2021 I heard a review in this longstanding litigation between the Applicant (ND) and the Respondent (KD) concerning their children, I (date of birth [.....]. and thus 14 years of age) and L (date of birth [.....] and thus 12 years of age).
2. I last dealt with the case on 28 February 2019 when, following a 2-day final hearing I handed down judgment. This judgment is reported in an anonymised form as ND v KD (Unsupervised Contact) EWFC B17<sup>1</sup>. The key issue in dispute related to whether ND's time with the children could move into an unsupervised setting<sup>2</sup>. In disagreement with both KD and the children's NYAS

<sup>1</sup> See Bailii website

<sup>2</sup> The existing arrangements having been set by Recorder Wood QC in an order dated 25 April 2015

case worker I judged contact could progress towards unsupervised contact and in an order dated 28 February 2019 I provided as follows:

The Respondent mother shall make the children available to spend time with the Applicant father as follows :

- i) AA will continue to be involved in the arrangements for contact and will supervise contact in the terms specified below
- ii) The current regime of 7 contacts per annum being one each half term; one in the Christmas holiday, one in the Easter holiday and twice in each summer holiday shall continue. Contact shall take place between 10am and 4pm.
- iii) The next two contacts (Easter and May 2019) shall include 4 hours of unsupervised time with 1 hours of supervision at each end of the contact.
- iv) Both the summer contacts in 2019 shall follow the same pattern but may be extended to two consecutive days to be determined by reference to AA. The supervised element will be as in May above on each day. The contact supervisor will provide Father with the dates for contact and in the event of any disagreement about dates the contact supervisor's decision shall be final.
- v) The same combination of supervised and unsupervised contact will apply in the October Half-Term and Christmas holidays 2019 save that the supervision will reduce to 30 minutes at each end of contact.
- vi) In February, Easter and May 2020 the contact shall further develop such that the two contacts can be joined by an overnight session. In relation to this and all future overnight staying contact
  - a) AA will remain as before providing supervision for 30 minutes at the start and at the end of contact.
  - b) This and all other contact is to remain in the London area.
  - c) The Father shall provide the contact supervisor 14 days in advance with the full address details where he and the children will be staying overnight, including whether any other person will be staying at that address.
  - d) The Father shall ensure that the children are able to make telephone or Skype calls to their Mother if they so wish, and shall facilitate them doing so.
- vii) In summer 2020 the sessions will increase to 2 overnights, that is to say both the summer holiday contacts will include two overnight stays, making a total of 3 days on each occasion. AA is to be involved as above at each end of each contact.
- viii) For October and Christmas 2020 and February 2021 there shall be 3 overnight stays per trip, not to include Christmas and Boxing Day. AA is to be involved at each end of each contact as above.
- ix) Skype shall continue as currently namely that the mother shall make the children available for Skype contact once every week on a Friday at 6pm for at least 15 minutes.
  - a) The mother may monitor the calls or arrange for another adult to monitor the call
  - b) the mother or supervising adult is to initiate the call
  - c) in the event the call does not take place on the appointed day the mother is to attempt a further call the following day at the same time
  - d) Whilst the calls should come to a natural end Mother may end the call if she deems it necessary
  - e) the mother is released from the obligation to facilitate weekly Skype contact during periods of up to 14 days when she is on holiday (abroad or otherwise ) with the children.
- x) There be such other contact as the parties may agree.

3. References to AA are to an independent contact supervisor contracted and paid for by ND. It can be seen the order involves a gradual progression under which AA's role is reduced and contact extended. It was anticipated that by the

time of this present hearing contact would have been established as including overnight sessions and with AA used for only a short period at both the start and end of contact.

4. When making the Order I listed this review and noted the following matters as requiring determination:

- i) Can supervision now be removed, if not now how should it continue?
- ii) Can contact now be increased to a position closer to a sharing of holidays?

In making that Order I refused KD's request for a s.91(14) Order but did continue both a non-molestation order and prohibited steps order from the previous proceedings<sup>3</sup>.

5. Both parties now represent themselves. The children are not represented. In line with my direction both parties have filed detailed position/documents<sup>4</sup>. I have carefully considered these documents and the brief oral submissions made to me at the hearing. Neither party sought a more extended hearing and each asked to resolve the dispute on the information provided to me. I consider I am placed to do so.

### **The Issues under consideration**

6. I have noted the matters identified for review. Having heard the parties I note the following:

- i) KD asked for the NMO/PSO to continue, ND did not object to the same on the basis that there had been no suggested breaches and he intended to continue to conduct himself properly.
- ii) Both parties were open to contact developing towards a closer sharing of the school holidays. But matters were not as simple as that as their views on this issue entwined with the other issues, on which they were not agreed. I was asked to consider whether I should make a permissive order without the rigid structure of a more formalised order. It was accepted that such contact should be unsupervised.
- iii) The parties do not agree as to a continuing role for AA (or equivalent). ND argued the time had now come for the supervisor to be removed.

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<sup>3</sup> NMO from 23/4/13 and PSO from 25/4/15

<sup>4</sup> ND has filed a 10-page position document and a 41-page bundle of documents including AA's notes of contact since the last order; KD has filed a 58-page position note and a 3-page statement of issues.

KD disagreed and said it was central to her case that the supervisor should remain (albeit acting in a somewhat different capacity). If the supervisor was not in place then the contact should be more formalised and limited to the maximum now accepted by the children.

- iv) Were I to continue the supervisor then an issue arises as to funding. Whereas KD argues ND should be solely responsible for funding, ND argues, that if this is ordered, then the costs should be shared equally.
- v) Finally, there is disagreement as to the facilitation of future contact. KD argues ND should be wholly responsible for any travelling involved to see the children. In contrast ND argues that when, and if, contact takes place outside of a certain distance from London then each of the parents should be responsible for half the travelling. Both parties accept the time when the children can travel alone is approaching and should be the case within about two years (by the time of L's 14<sup>th</sup> birthday).
- vi) There are some other points raised in the position documents which can be usefully dealt with in this judgment, but they were not of such a nature as to require detailed submissions.

### **Brief Background**

#### ***The Proceedings 2012-15***

7. I refer to §15-6 of my previous judgment and the procedural history of the case before the Recorder. On 13 September 2012 she held a fact-finding hearing and on 10 February 2014 and then 23 April 2015 provided two welfare judgments. The latter arose on review of the case. I refer to §18 of my 2019 judgment. I remind myself of the findings made by the Recorder to include serious violence (kicking and throttling) and that at least one of the incidents had a considerable impact on I. Allegations made by the father were rejected and the Recorder contrasted her finding KD as being *credible* and *reliable* against that of ND who she considered to not be a credible witness.
8. The Recorder formed the view both parents were committed to their children and loved them however ND had continued to pursue allegations and whilst this was not geared towards intimidating KD it did have the impact of causing KD extreme stress. The Recorder noted ND's communication style and cautioned him to moderate his communications. She felt a failure to accept responsibility and to transfer blame to others was a personality trait of the fathers.

9. The Recorder did not consider ND a physical risk to the children although she was concerned as to what might happen were the parents brought into close proximity. Rather she felt the risk was of emotional harm to the children with ND acting in an intemperate manner during contact. However, she felt this risk would be moderated were professionals present and concluded the contact should be supervised to manage the identified risks and to support KD in her role as primary carer by ensuring contact is safe and thus reducing her anxiety.
10. The Recorder noted contact notes pointed to contact being '*extremely positive*' and '*glowing*' but was concerned about ND's attitudes in the background to contact. Her concerns continued through her involvement and she noted in the second welfare judgment that ND continued to communicate without appropriate moderation and in the knowledge of the distress this would cause.
11. Ultimately, and whilst recognising the credit to KD for supporting contact and to ND for making contact as positive as it could be, she decided the benefits of unsupervised contact were outweighed by the risk's attendant upon the same. She applied a 3-year section 91(14) bar in part to give KD respite from proceedings.

#### ***The proceedings 2019***

12. I provide a detailed analysis at §27-51 of my judgment, I will not repeat it. At §52-61 I set out my conclusions which I summarise as follows:
  - i) I felt the risk of uncontained behaviour on the part of ND was limited. I did not consider it likely he would use unsupervised contact to air his previous views and allegation which had been rejected by the Court, notwithstanding my view that he was not reconciled to these findings. In my assessment he understood what this would likely mean for time with his children and he would not be willing to take this risk.
  - ii) I recognised to an extent the children might sense the antagonism felt by ND to KD, but I judged this would not be so significant as to rule out unsupervised contact. The children were aware of his feelings without the same impacting on contact.
  - iii) I considered the children's wishes but concluded the fears that held were unlikely to materialise and that it was contrary to their welfare to allow the fear to be retained when it could be, and would likely be, readily confounded by contact to their welfare advantage.

- iv) I considered this step required the continuing role of AA and saw her as an 'emotional cushion'. This also assisted KD in removing the need to negotiate directly with ND, a concern which I recognised as being justified.
- v) Balancing these countervailing factors I made the gradual order set out above. I recognised the children were maturing and that importantly with growing maturity came a heightened capacity for self-protection. This increased the ability for the children to (and likelihood of) inform KD were ND to misconduct himself. But as importantly, it informed ND as to their likely response in such circumstance, which I considered would act to moderate his behaviour.

#### **Update**

- 13. The parties agree as to the process of development of contact since the last order. In her statement KD provides a helpful schedule comparing the actual contact against that expected. It should be noted the second year of the order was surrounded by the developing Covid-19 Pandemic. It is a credit to the parties that notwithstanding this issue the contact has largely continued with the regularity expected. Sadly, the Court has experienced parents utilising Covid-19 as an excuse to suspend contact in its entirety. This has not been the case for these children.
- 14. The first year of the Order (up to and including Feb 2020) proceeded entirely as planned. In doing so the contact (a) became unsupervised save for the first and last hour of contact (reduced to first and last 30 minutes in October 2019); (b) was extended to two consecutive days (Summer 2019), and; (c) included an overnight session.
- 15. I have considered the 7 contact notes provided by AA covering the above sessions. I remind myself she is a highly experienced professional with many years practice as a Children's Guardian. Moreover she is the agreed independent supervisor agreed by the parties and, subject to my views below, the suggested intermediary proposed for the future.
- 16. The notes for this period are entirely positive. The children are very happy to meet their father (affectionate meetings with the children jumping up to hug him) and his conduct towards them appropriate and child focused. There was a natural engagement between ND and the children and communications were free flowing. The children express clear enjoyment at the end of contact when speaking to AA. The transition to both reduced supervisory role and increase in contact progressed without issue. The step to overnight contact on the last

session was also successful with the children giving the contact '10 out of 10' (I) and '9.5 out of 10' (L) and '*only because the weather was cold*'. The summary analysis of this contact (which could be taken to apply to all the sessions) was:

*'The overnight stay was a big success with absolutely no concerns. The interaction between the children and their father was as always very warm and positive and they all enjoyed their time together'.*

17. At this point Covid-19 intervened. For understandable reasons the contact simply could not proceed at Easter and Whitsun 2020 but all sessions since have proceeded albeit not exactly in line with the Order. Indeed an additional session took place in June 2020, I assume to make up for the missed sessions. I remind myself the Easter/May sessions (and hence the rearranged session in June) was to be 1 overnight as per February 2020. The summer sessions (two) were to be two overnights and October/Christmas and February 2021, three overnights. For all AA was to be present for 30 minutes at the start and end of contact. Although not explicit in the order, in my judgment I had decided against contact being outside London as this would complicate the process of development.
18. Compared to the order the following took place. I has continued to attend contact but has not stayed for a second overnight. L has continued to attend contact but has stayed for two but not three overnights. Notwithstanding the above in February 2021 L (but not I) spent the two nights with ND in S[.....]. I note there were occasions when AA could not be present either at the start or end of contact. This did not materially impact on contact and the children took themselves to meet with their father.
19. During the July 2020 session KD contacted AA and asked her to speak to I to '*see if she was OK*' as it was reported she had cried that morning and not wanted to go. AA duly spoke to I who said she had been tired in the morning; was fine now and sounded upbeat. AA was then surprised to receive a call from KD in which it was reported I had called KD and '*was upset that [AA] had been told that she had not wanted to go to contact*'.
20. The August 2020 contact note is the first with any real hint of issues. Ultimately it was agreed I would not stay the second night and that L would return home early after the second night. KD is noted as commenting that the Covid-19 situation might be on their minds. AA was asked to speak to I in advance of the contact. She made it clear that Covid was an issue and she preferred being at home. It was about '*being away from mum, not being with dad*'. Such issues as there were did not affect contact which was positive and rated as '10 out of

10' and '9 ¾ out of 10' by the children. At that point AA considered whether Covid might be having an effect and hoped things would become more natural with the return to school. The October contact has parallels to the preceding contact in that I only wanted to stay for 1 night and L for 2. This was agreed and the contact itself was positive.

21. The next contact at Christmas 2020 was substantially affected by the Covid lockdown and three proposed hotels cancelled. Ultimately contact took place but with I for the day and with L for an overnight. The contact report was positive but limited in the circumstances. At some point the conversation turned to the next contact and what might happen if restrictions continued to apply. It seems ND raised the possibility of contact at his home in S[...]. L seems to have expressed willingness to consider this option alongside a London option. AA raised this with I who was also open to this possibility and there was some debate as to whether one night only would work given the journey distance. She is reported as volunteering that 3 or 4 nights would be OK. Later KD contacted AA and said L had felt pressurised over travelling to S[....]. AA tried to reassure KD that she had placed no pressure on L and saw no evidence of ND doing so.
22. The last contact was February 2021. Again planned hotels were cancelled due to Covid. As a solution ND suggested contact at his home in S[....]. As it was, I saw her father on the first and last days of a 4-day period but did not travel to S[....] or have an overnight session. L spent the four days with his father and travelled to S[....] for two nights. The reports back from contact were positive and I expressed an openness to future contact in S[....]. Both scored the contact a high score.
23. I conclude my overview by noting the additional documents provided by AA. On 16 July 2020 AA was asked to meet with the children by KD to establish their wishes and feelings. I was 'cool' about more overnight stays; was happy to visit S[....] and stay there for a few nights and also see her grandparents. She was less keen on the indirect video calls which were also structured into the order. L was equally happy (and with the skype calls) and became animated about the notion of visiting S[....], commenting that he was looking forward to going there and seeing his grandparents. L said it was better when I was also present as it was '*more like a family thing*'.
24. In her overview for this hearing (I directed such be provided) AA summarises the contact as above. She notes the impact Covid has had on the arrangements in that it has affected practical arrangements and had some emotional impact on the children. ND was noted to have been resourceful as to the difficult

circumstances and KD was frank as to the potential impact this was indirectly having on contact. AA considered with the parents their views as to future progress. KD was reported to agree to the sharing of holidays and for ND to be more naturally involved in the children's lives (attending activities and the like) with flexible indirect contact between children and father (through SMS and other social messaging). KD questioned whether AA would be willing to remain involved. The answer was that she would be willing to do so but only for a further two years; not being directly involved in handovers and not continuing to write reports. AA says this would be at minimal cost and describes the perceived role as a 'broker' of contact. In concluding her overview AA drew attention to the age of the children and the increasingly limit on forcing them to do what they do not want to do. She felt the order now needs to be permissive rather than rigid/structured and with the children having input.

### **Legal Principles**

25. I continue to apply the welfare checklist. The children's welfare (individually assessed) is my paramount consideration.
26. I have heard no evidence in this case, and I am not asked to, nor can I make findings. I determine the issues on the submissions. I consider this enable a fair disposition of the remaining issues. The parties are litigants in person and their submissions are in reality their evidence (albeit not given on affirmation). Neither sought the opportunity to examine the other.
27. I do not have expert evidence in this case nor the recommendations of an appointed reporter. I do though have valuable information from AA, and I consider this to be highly material information. AA is an experienced professional and has worked over a considerable period with this family. It is apparent from the views of each adult that they have confidence in her whilst retaining the right to differ in their opinions from those expressed by AA.
28. I also do not lose sight of the proven domestic abuse in this case. I am obliged to keep in mind Practice Direction 12J [Family Proceedings Rules 2010]. I am particularly drawn to paragraphs 35-38 which relate the approach to be taken when considering contact arrangements after domestic abuse has been established. These read 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.
- 38 Where any domestic abuse has occurred but the court, having considered any expert risk assessment and having applied the welfare checklist, nonetheless considers that direct contact is safe and beneficial for the child, the court should consider what, if any, directions or conditions are required to enable the order to be carried into effect and in particular should consider –
  - (a) whether or not contact should be supervised, and if so, where and by whom;
  - (b) whether to impose any conditions to be complied with by the party in whose favour the order for contact has been made and if so, the nature of those conditions, for example by way of seeking intervention (subject to any necessary consent);
  - (c) whether such contact should be for a specified period or should contain provisions which are to have effect for a specified period; and
  - (d) whether it will be necessary, in the child's best interests, to review the operation of the order; if so the court should set a date for the review consistent with the timetable for the child, and must give directions to ensure that at the review the court has full information about the operation of the order. Where a risk assessment has concluded that a parent poses a risk to a child or to the other parent, contact via a supported contact centre, or contact supervised by a parent or relative, is not appropriate.
29. It is in the light of these principles that I approach the case and the remaining issues.

## **Welfare Assessment**

### *Children's wishes and feelings*

30. I am in no doubt the children enjoy time with their father and wish for it to continue. In my last judgment I noted the fears and worries the children had as to contact and the impact this was having upon them. I consider contact since that date has confounded these fears to the real benefit of the children.

The reports from AA are consistent and show the children exhibiting genuine warmth and positive emotion when with their father. They rate the contact highly and this is in the context of a very difficult period surrounded by Covid 19. Whilst I note the occasions of contradiction when KD has reported the children to be more reticent, I consider AA is right in observing this is reflective of divided loyalties rather than any negative attitude to their father or contact. Even on such occasion the child has subsequently attended and demonstrated a positive experience. Beyond this I note the positive feelings expressed to visit the father in S[....] and to meet wider family. The picture is in my judgment clear and positive.

31. However, one must have regard to the developing age of the children and the impact this has on contact wishes and feelings. This argument in no way seeks to challenge the principle of contact itself. But, and particularly in the case of I regard must be had to her developing autonomy and independence. As with all children of her age her parents will need to increasingly understand that they now share her time with her peer group and that she may not wish to spend time with either of them at times when they wish her to. This should not be viewed as a challenge to their relationship. I accept this is a difficult point for the father who is moulding a relationship around holiday periods and on limited occasions and I appreciate the likely hurt and disappointment if I is not wanting/willing to attend. It is likely it is these very holiday periods when I will have alternative distractions and opportunities, and this has to be simply accepted to a degree.
32. L is growing but I sense is still on the side of the fence where he fits in with his parents' wishes rather than they with his. But this will change and both parents will need, if they don't already, to recognise this and the father will need to work contact around this being imaginative in his approach and flexible. He has shown this capacity over the course of the last period. But what he must seek to avoid is interpreting obstructions as being of the mother's making. It will be difficult for both of these parents to put the past in the past, but the reality is that the children's decision making now is most likely to be reflective of their own wishes and feelings.

#### *Needs*

33. I will not detail the needs these children have which they share with all children. In summary they will benefit emotionally from a safe and nurturing relationship with both parents. By reference to their age they demand flexible and sensible parenting which can adjust to the challenges of adolescence

whilst maintaining a focus on the big picture and on what really matters. This is a challenge for all parents and is not peculiar to this case.

34. In the case of I the father needs to be sensitive to her developing sexual maturity and issues of personal hygiene around periods. I have absolutely no reason to suggest the father is not capable of dealing with the same in a sensitive and caring fashion but given the dislocation of their relationship it may well be that I is less comfortable dealing with such issues with him. Many children will struggle to engage with their parents on such subjects and it is likely to be the case that I will be somewhat distant from her father in this regard. A consequence may be that this impacts on I's wish to be away from home if she feels she may be trapped in a situation which she finds uncomfortable because she has to turn to her father for practical support. I would have thought there are practical workarounds in this regard. An obvious point would be to seek to avoid planning contact in a week in which I is likely to be menstruating or in the week prior if she tends to suffer cramps in the lead up to her period. These are matters which I trust will be known to the mother and on which she can offer practical input for the benefit of I.
35. But there is every likelihood L will follow a similar trajectory in future years and there is little that can be done other than to be resourceful and flexible and find a pattern that best works for the children. Plainly the more attractive the contact the more likely it is that it will happen. This must be a matter for the father.
36. However there is nothing in the foregoing paragraphs to challenge the concept of contact itself. I do though agree that the contact is likely to become unworkable if an overly prescriptive or rigid approach is applied. It requires a strong permissive element so that the children can fully subscribe to the contact. In reaching my conclusions I can find nothing in the contemporary evidence to suggest the children remain fearful of the father or of what might happen at contact.

*Personal characteristics*

37. I have touched upon material characteristics above. I repeat the importance of having respect for the children's ages. I also have regard to the fact that the children have experienced very different relationships with their mother and father due to the issues in the case. As a result it would be natural for them to have a stronger attachment to their mother and in the covid times they may have additional anxiety which causes them to wish to be at home. One trusts that with the passage of time this will alleviate.

*Change in circumstances*

38. The fundamental question in this case is as to the development of contact to a point of sharing the children's holidays and the removal of supervision. I make the latter point as in reality I understood KD's argument for AA's continued involvement to relate to the 'broker' role noted in AA's final report rather than as a supervisor of contact. In principle the parties agree the same and (subject to the points above) I can see no reason why such a development would not be consistent with the welfare interests of the children.
39. A more troubling point relates to the 'change' that would arise if AA was removed from the equation. KD submitted that were this the case then she would not be able to engage with ND (whether directly or indirectly) and so the contact would need to be held fixed at the maximum level currently accepted by the children. In essence this was to say there could be no future progressive change in circumstances without AA. When considering this point I am therefore required to consider whether the abandonment of AA may have the unwanted consequence of stifling the development of contact or causing it to take a retrograde step.
40. Plainly, it cannot be right for KD to seek to dictate to the Court the acceptable parameters of contact. I appreciate her case is that AA is needed as a result of the historic domestic abuse and that ND has to accept this continued need is a result of his actions. But I also have in mind that even were I to disagree with KD I pragmatically would have to bear in mind the potential for contact to break down in circumstances where the children are more aligned to their mother. It would be a real concern to have reached this stage after so much time only to see the progress lost.
41. The reality is that I need to think about the likely consequences of any change made by this Order (and whether positive or not), reflecting always on what this will likely mean for the children and their welfare.

*Safety*

42. This issue has run through the proceedings. I consider the risks in this case are no longer at a level where they should impact on the shaping of the order. In reality through their submissions (sharing holidays) the parents accept the same. In her submissions and whilst she raises objection to certain proposals, KD does not suggest ND is actually a risk, rather that she remains so emotionally scarred by the past that she cannot cope with the proposed changes. I do not ignore this argument and will return to it. I bear in mind that

under this order the non-molestation and prohibited steps orders will continue and will in doing so give an emotional comfort (whether they are actually required). I bear in mind there is no allegation of breach.

43. I appreciate KD points to the manner in which ND expresses himself in his document as a signal of limited ongoing insight on his part. I have some sympathy for her position. ND does continue to view KD as being obstructive of contact and on those occasions on which she sought AA to further investigate the children's 'concerns' he does appear to question her motives. This remains an unfortunate signal of the level of distrust. But I consider there is a danger in overstating this point. As much as there is something in the point made by KD, sight should not be lost of the fact that the perceived difficulties did not fit with AA's assessment and there must remain room for viewing ND's expressed views as being partly shaped by a sense that KD is unwilling to allow matters to fully develop as they should. An objective bystander would likely tell ND that he should moderate the manner in which he sets out his view of KD. But the same bystander having read the contact reports might suggest KD's take on the issues around contact sits uncomfortably with the reality of contact.

#### *Parental capability*

44. I consider there is nothing in the evidence to call into question the capability of either parent (with continued focus) to make progressive contact work. Whether this requires ongoing support is a matter which I will resolve below. However, there is no reason in principle why both of these children should not have the opportunity to spend up to half their holidays with each parent (whether in fact they choose to do so at all times).

### **Discussion**

45. I do not lose sight of the real progress that has been made in this case. The children are now seeing their father unsupervised and on an overnight basis and very much enjoying the experience. This is itself a fundamental step and is the foundations for a continuing lifelong relationship. The father is now once again part of their life and so long as this progress is carefully protected will remain so.
46. In this context what I am now considering for these teenage (near teenage) children is the decoration to the cake rather than the cake itself. The important thing is that the cake is not dropped as we attempt to improve its decoration.

Both parents have a strong interest in ensuring this is the case. I consider it would now be very damaging for the children were the contact in principle to be endangered. It is on this basis that I approach the issues.

47. I have no hesitation in supporting the notion of sharing holidays in principle or indeed of the father and children holidaying together outside the jurisdiction. This is not a case in which one has to carefully take steps with a holiday trip only happening after a sustained period of extended local contact. In principle I can see no reason why (subject to their agreement) the children would not be ready for a short holiday with the father in the near future. I consider there are no risk or other reasons for delaying such a step.
48. However I think it is somewhat artificial to structure a rigid sharing of holidays given at this time the children have not fully adjusted to the periods previously set. It will benefit no-one to order dates for a shared holiday period if there are grounds for believing it may/will not happen because the children may not wish to come for the full period. This will simply create frustration and antagonism between the adults. The better course and one which reflects the facts of the case is as to a more permissive regime which outlines the broad agreement and sets out understood parameters as to what might be expected to avoid future disagreement. It will then be for the parents to manage the system within those parameters ever conscious of the children's wishes. I simply cannot see a real benefit to a structured order on the facts of the case.
49. In my judgment components of the permissive structure are:
  - i) A principled acceptance that holidays can be shared equally
  - ii) That such periods may include overseas travel so long as forenotice is given of the planned trips
  - iii) That the parents are expected to co-operate in this regard
  - iv) That the parties will recognise that I (or indeed L) may not always wish to attend together or to attend all the contact together and that regard will need to be had to their expressed wishes
  - v) That in principle the aim is for the contact to involve both children
  - vi) That the existing contact is viewed as a likely floor to contact and that over time the plan is to progress contact beyond this period for each contact period (but not to allow it to fall below this level)

- vii) That whilst sharing of holidays may extend to 50% of the holidays it is not intended to be overly prescriptive and for instance in the case of a 2-week holiday an agreed period of 5 days would meet the aim set out above.
50. I accept that with flexibility one introduces the risk of non-compliance. However I have balanced the competing risks and it seems to me this is the better approach to achieve (a) ongoing, and (b) developing contact. If I felt a prescriptive approach would better work, then I would order it. I do not. I have set these chief components out in the attached order.
51. I certainly do not consider it will benefit the children to now crystallise the contact at the maximum level currently agreed. To do so would be to remove the very flexibility required. It would send the wrong message to the children and would nothing to improve the party's attitudes to each other.
- A continuing role for AA*
52. It is clear the proposed role for AA advocated by KD is materially different to that under the previous orders. AA was commissioned to assist this family as a supervisor and to enable safeguarding of the children. She has served the family well and I am in no doubt we are partly where we are in this case due to her positive involvement. However it is not suggested she should continue to actively supervise the contact, although I did at one point perceive KD might be suggesting this continuation at a very low level. In any event her own position makes it clear she would not be willing to supervise or provide reports. Rather the suggested role is for AA to act as a 'broker' of arrangements – a form of go-between for the parents to save them having to engage directly.
53. In the normal course of events the Court would hope/expect the parents to be able to enter a form of dialogue to move matters forward whether directly or by a designated social messaging mechanism or a written contact book. In this case KD frankly states that she will not be able to directly engage with ND and that in the absence of AA there will be problems. Further this state of affairs directly flows from the conduct of ND and the impact of the same upon her. As such ND is responsible for the issue and needs to bear responsibility for the costs that flow from resolving it. In contrast ND points to the lengthy historical use of AA (now some 5 ½ years supervising) and contends that further reliance upon her simply cannot be justified in circumstances in which there is no ongoing safeguarding role for her. If however the Court disagreed that she is required, then the costs should be shared by the parents.

54. In answering this question I make it clear that I have heard no detailed submissions as to what the cost of such support would be (although AA refers to it as being minimal) or as to the detailed financial position of the parties. This is controversial territory as it is clear KD is frustrated that ND has failed to provide 'appropriate' financial support for the children. However, KD runs her own business and it was no part of her case to suggest that sharing the costs would place her in financial difficulties. ND notes the very substantial costs he has incurred to date on supervision (c. £15,000) and it is his case that he is unemployed and poorly placed to continue meeting full costs. Further he highlights recent occasions on which he argues the parents were obliged to communicate directly and did so successfully.
55. I consider there are many points of merit in the arguments made by ND. AA's role has in many regards come to an end and there is no lingering role for her as a safeguarding supervisor. I accept there is some evidence of an ability to communicate without support. More generally I accept the argument as to the unusual length of external support but recognise this was Court sanctioned as necessary. However, I am most interested to see this contact relationship continue and grow and I determine this issue through the welfare checklist prism with a wish to ensure that no unintended consequences of decision making undoes the good work to date. I have reached the conclusion that AA's role may improve matters and may progress contact where it would otherwise wither. Her role is of questionable necessity but is a price worth paying for successful contact. But in line with AA's position this should continue for no more than 2 years (unless otherwise agreed between the parents). By then L will be 14 and I will be 16.

*Contact facilitation*

56. Who should bear the responsibility for getting the children to contact (and back again)? It is agreed contact will on occasions be in the London area or close to London (say within the M25 or so). It is accepted that on these occasions ND will be travelling to London and will be responsible for collecting and returning the children. He does this by dropping them close to their home but not coming to the home himself. So far so good.
57. It is also agreed in principle that at this age I could travel by train to her father and that it is likely by his 14<sup>th</sup> birthday L would be able to do the same. KD does not think L is sufficiently mature at this point and I heard no argument to the contrary. ND agrees that he will fund train costs when this can commence. As such the real dispute between the parents is largely over the next 2 years or so. Even for this period one is likely only contemplating a limited number of

occasions when this issue will be engaged. Many (indeed likely the majority) of contacts will include a London element and so it will likely be the minority that take the children out of London entirely.

58. The real issue is what should happen when and if a contact takes place in S[...]? KD says the father should drive both down to London to collect the children and return them at the end of contact. ND says the mother should share the responsibility undertaking one leg of the travel.
59. It is clear this is a lengthy round trip with each leg being somewhere between 4-5 hours. This means ND should undertake up to 20 hours travelling for each relevant contact or that each parent should share 10 hours each.
60. Again this is not a matter of costs – I heard no real argument on this although KD maintained the point of the lack of financial support and there was a sense that this made it fairer for ND to be responsible. There will be a cost to be borne. I consider it is not a matter of practicality. Subject to available transport the Court would ordinarily defer to some form of sharing of responsibility between parents. This would be different if one party did not drive or there was some other relevant factor. In this regard KD argued that she works full time, and this would be too much for her to undertake after a working week. I did not find that argument persuasive. Given the limited number of contacts (see above) this responsibility is somewhat onerous but on only the most limited basis. It might be different if there were contact every, or every other weekend.
61. The real issue deserving of consideration was the argument that the history of domestic violence explained the objection to travelling. KD contended the history of DV continues at an emotional level for her and should not be understated and that she could not emotionally consider travelling into ND's territory or engaging in a handover with him. Moreover she would be emotionally fearful not knowing if he might appear at any point. ND has pointed to there being no reason for travel not to be shared and indeed I understand would argue for an earlier reliance on train travel (thus removing the need for the parents to travel across the country).
62. I have considered this point with care. I have noted and considered the following matters:
  - i) I accept PD12J obliges me to have regard to the impact on both children and parent of the arrangements and I am sensitive to the potential impact on KD notwithstanding the passage of time. I do not ignore the potential for emotional scars to remain and the reality of this case is

that the contact planning has in fact kept the parents apart. There has been little if any lowering of the walls between them and so for KD a sense of apprehension and worry may realistically continue. A concern for me again is as to whether there is a possible unintended consequence were I to order sharing that either a) KD's response would be negative with an impact on contact, or; b) that the children sense her disquiet again with impact on contact. I do not want to set this contact up to fail.

- ii) However, in considering all the submissions (and being familiar with the case and having read the updating information) I found it difficult to ignore the real potential that satellite issues around finances were not also in operation. Whilst it is difficult to briefly summarise this within the judgment there is to me a clear impression that KD feels ND should do the travelling so that he bears some responsibility given he is not providing financial support. I consider this is also part of KD's reasoning and it balances against the legitimate point noted above. It is not for me to adjudicate on financial matters but if ND has been assessed as unable to provide financial support (as suggested by KD) then I consider I should not readily depart from that conclusion without good evidence<sup>5</sup>. I have not received good evidence and so I am entitled to at least consider that non-sharing may unduly impact on ND, thus impacting potentially on the quality of contact.
- iii) I was also not so impressed by the submissions as to KD's physical inability to endure the journey whilst at the same time running her business. I accept this is a lengthy journey, but it is only occasional in nature and is one carried out by many other active parents. On balance I felt this was an excuse to buttress the reasons as to why she should not be involved in the travelling. Whilst I appreciate KD draws a distinction against ND in that he does not work, it is not lost on me that placing the responsibility on ND alone means he has double the responsibility and more importantly is therefore likely to be more tired when transporting their children.
- iv) There are also counter arguments to be had even on accepting the argument as to emotional impact:

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<sup>5</sup> Following judgment KD clarified there had been no financial assessment within the last two years. I accept this point albeit it does not impact on my analysis

- a) First, the current arrangements mean that ND will on all occasions come into close proximity with KD's home in London. He will be in the proximity and there is no reason to believe he will not be in the area for a period both before and after handover. Viewed in this way it is somewhat counter intuitive to point to the worry about his close presence were KD to have to travel.
- b) Second, there are it seems to me many possible solutions that would permit sharing whilst not requiring the parties to come into contact and certainly no closer than would be the case in London. Examples include:
  - i) KD could bring the children by train if she wished (with ND funding the children's trip) and they could meet their father at the local terminus L [...] with KD catching the next train back. There is no reason for this to be an overly draining journey.
  - ii) KD could drive the children to [L...] and put them on the train to S [...] with them completing this journey or getting off on route to be met by their father. There would be no need for the parents to be in the same town.
  - iii) KD could bring the children to L [...] and they could meet their father at an agreed point. Again there would be no need for the parents to come any closer than they do in London.

It seems none of these (or other possibilities) have been considered. I consider that indicates blank rather than reasoned opposition to sharing.

63. I have on balance reached the conclusion that there are in principle no reasons why KD should not be expected to bear some responsibility for the sharing of contact facilitation. However, I remain wary (as with AA) that compelling KD to undertake this role will simply lead to the contact not happening. In the light of the limited occasions on which this should be relevant and in the light of the fact that ND has had the opportunity to break his journey by staying in London I have reached the conclusion that for the next two years the responsibility for travelling should remain with ND. However, after this point travelling should be shared between the parents. It may be of course that at about that time the children can travel independently thus resolving the issue.

64. I have reflected on the issue concerning AA at the same time. It will be seen I have in principle doubted the need for AA and indeed accepted the principle of travel sharing. On both accounts I have maintained the status quo to make contact work despite my reservations. This is because for me the key issue is neither AA nor travel sharing but rather ensuring these two children maintain a relationship with both parents. I consider if ND is continuing to be solely responsible for travel then KD should meet any costs associated with the use of AA. This appears to me to be as fair an outcome as I can identify and particularly as the costs of AA are identified as likely to be minimal in quantum.

*Other matters*

65. I have made clear that I see no reason why contact should not include the opportunity for holiday trips. In the order I have set out the expectation as to provision of information if such is to happen. This is a standard provision and is not related to the facts of this case.
66. It must be the case that the plan for contact is known in advance and that that KD should know in broad terms where it is to take place. I can see no reason why ND should not simply provide details as to where the children will be staying. But this is not intended to be prescriptive. Were the children to be with ND for a week and to be staying at his home, then I would not expect him to have to inform KD were he to plan a short night away in the locality with the children. This is not a case with risk of abduction. ND should be permitted some flexibility in his arrangements. He will undoubtedly consult the children on his plans whilst they are with him. Given their ages this is how it should be.
67. I consider indirect contact must now be a more flexible matter to be organised between father and children. A consequence of this is that ND will not be restricted from contacting the children. He should utilise this right in an appropriate manner knowing that if he is over insistent it is likely to be counterproductive. There will be no restriction on the children contacting him. But I do not intend to direct times and dates for indirect contact. I gauge the children would rebel against this in any event.
68. As to the NMO and PSO, these are essentially agreed to continue by consent although as I explained at the hearing I intend to continue each until L obtains the age of 16 whereupon they shall be discharged. I note there is no suggestion of breach of either and in the consideration of the issues above I have borne in mind that there is this additional form of protection to safeguard the arrangements.

69. I consider this resolves the issues placed before me.
70. I have drafted an order which is sent with this judgment to the parties. I intend to hand this judgment down and make this Order at a short hearing at 10am on Friday 30 April 2021. So far as the parties are concerned:
  - i) If either party seeks clarification of any points in the judgment/order or wishes to point to an error in the judgment requiring factual correction, then they should email my clerk (and copy to the other party) such points by 10am on Wednesday 28 April 2021. I will then seek to address these points.
  - ii) The parties are welcome to attend the handing down of the hearing (which will be conducted remotely). But they are not required to do so. My intention is to simply formally hand down the judgment. My time estimate for the hearing is 10 minutes. Again if the parties wish to attend could they inform my clerk so that an invite can be sent.

His Honour Judge Willans