

NEUTRAL CITATION NUMBER: [2023] EWFC 172 (B)

THE FAMILY COURT

SITTING AT OXFORD

HEARD ON 9TH OCTOBER 2023 TO 11TH OCTOBER 2023

JUDGMENT GIVEN ON 11TH OCTOBER 2023

BEFORE HER HONOUR JUDGE OWENS

F

And

M

And

A & B

(Acting through their Children's Guardian, Ruth Alexander)

Representation:

Th Applicant in person but not present

For the First Respondent: Ms Cox, Counsel

For the Second and Third Respondents, A and B,

acting through their Children's Guardian: Miss Whittam, Counsel

This judgment is being handed down in private on 11th October 2023. It consists of 26 pages and has been signed and dated by the judge. The Judge has given permission for the judgment (and any of the facts and matters contained in it) to be published on condition that in any report, no person other than the advocates or the solicitors instructing them (and other persons identified by name in the judgment itself) may be identified by name, current address or location [including school or work place]. In particular the anonymity of the children and the adult members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that these conditions are strictly complied with. Failure to do so will be a contempt of court. For the avoidance of doubt, the strict prohibition on publishing the names and current addresses of the parties and the child will continue to apply where that information has been obtained by using the contents of this judgment to discover information already in the public domain.

Introduction

1. This is a final hearing to determine the welfare aspects of this case, following on from a fact-finding hearing conducted in October 2022. I adopt my earlier judgment as part of this judgment since those findings form the factual context for deciding what is in the welfare interests of A and B, the two children concerned in this case.
2. The background to the proceedings is set out at some length in that earlier judgment so I will not repeat it here, but the outcome of the fact-finding exercise was that I found F had caused the children emotional harm as a result of his behaviour, and that this included having made various and repeated unfounded allegations about M and her care of the children to social workers, professionals and the Police. I found that F had done this in part to try and gain litigational advantage, and that he had subjected M to coercive and controlling behaviour. I also found that he had repeatedly tried to find evidence to support his unfounded allegations against M, had involved the children in this thereby causing them emotional harm, had not accepted the conclusions of professionals and had instead focused on his personal campaign to discredit M without any regard for the emotional impact of this on the children. I made no findings against M in respect of the allegations made by F about her conduct and care of the children.
3. F is now living outside of the UK and has been since early this year, though he has not provided his new address to the court. Very late at night on Sunday the 8th of October 2023, F emailed the court administration to indicate that he had not been able to catch his flight to the UK to attend this final hearing in person. He claimed that he had been unable to find his passport to enable him to travel, though he did subsequently produce proof that he had pre-booked a flight. He sought to participate in the hearing wholly remotely.

4. I heard representations from each of the advocates for the other parties and determined that F had pre-booked a flight so clearly had had an intention to travel at that point. He may well have lost his passport and not realised this until he had to check in shortly before his flight. He did inform the court of this, though it is clear that he did not do so immediately, several hours having elapsed from the point that he apparently realised he had lost his passport to the time that he sent the first email to the court. It is puzzling that he spent some of those hours emailing advocates and the court office about other matters without mentioning the issue with his passport and travel for the hearing. More concerningly, it appears that he simply assumed he could participate wholly remotely, including giving evidence. When I attempted to explain to him by email that there are potential diplomatic and legal barriers to his giving evidence from outside of the jurisdiction of England and Wales, he simply refused to accept this. He then failed to acknowledge a court order made by me on 9th October 2023 requiring him to take urgent steps to try to obtain emergency travel documents, to try to book alternative travel to enable him to participate in the hearing in person, and to update the court about this or to inform the court about when he might be able to attend in person. He was warned of the consequences of failure to comply and given leave to disclose the court order to the German authorities at the nearest consulate or embassy to assist him with explaining the urgency, but instead chose to dispute the validity of the court order, attempting to send suggestions to ‘correct’ the order. By 9am on 10th October 2023 he had not communicated further with the court after appearing to reject the last court order. He had not provided any information to indicate that he had made any attempt to try to organise being able to travel for the hearing or gave any indication as to when he may be able to attend in person.

5. I had grave concerns about allowing him to participate remotely in the hearing, aside from the barriers to his giving evidence from outside of the jurisdiction. He appeared to accept in his position statement for this hearing that he disclosed a copy of the Guardian's Final Analysis and Recommendations to a teacher at the children's school in breach of the clear warning on the front of that report (D104), and potentially in breach of the provisions of section 97 Children Act 1989. The latter is potentially a criminal offence. Given this and the lack of respect for the authority of the court demonstrated in F's various written communications with the court, as well as with advocates (who are also officers of the court), I had no confidence that F would maintain the confidentiality of these proceedings if he were allowed to participate via videolink. I also had no confidence that F would make efforts to obtain emergency travel documents and attend if I delayed the hearing further. As a result, on 10th October 2023, having sought the views of the other parties, I decided to continue with the hearing as wholly in person from noon on that day and F was informed of this first thing on 10th October 2023 by a short court order. At 10.40am on 10th October 2023 (after the last order had been sent to him), he sent an email indicating that he was not asking to adjourn the hearing, that he opposed any adjournment or any amendment to the timetable for the final hearing, and that he expected a final order to be produced as planned either on 11th October 2023 or at the latest on 12th October 2023. He also said that he would not respond to any mail from the court where the name of the sender was not identified. And in a postscript told me that it was my duty to ask his attached questions of the Guardian on his behalf. He had already provided written questions for me to ask M on his behalf since there was a prohibition on his questioning her himself in light of the provisions of Practice Direction 3AA because of the findings made about his behaviour towards M. Later in the morning of 10th October 2023 he also produced what he claimed to be a sickness certificate in German.

This was not translated by a professional translator and even on F's purported translation of what it said seems to give no indication of what the health issue may be. In any event, since before this he had explicitly indicated that he was not seeking an adjournment of the hearing it is not clear what he intended by providing this document.

6. Having heard submissions on behalf of M and the Guardian, in which their advocates agreed that (although unorthodox) it would be fair to allow F's appropriate and relevant questions to be put to the Guardian and M by me, I used my flexible case management powers under the Family Procedure Rules to permit this. Many of the questions that F had drafted for both M and the Guardian sought to go back over the allegations which formed part of the fact-finding hearing or were not relevant to the welfare issues that I had determine, so I did not put those. I also did not put any questions that asked inappropriate questions of either party, such as F alleging a conspiracy against him on the part of the Guardian and the Local Authority. The Guardian confirmed in her oral evidence to me that she had no prior knowledge of this family before being allocated as Guardian in April 2022, she did not know the former social worker involved in the case, and that she was a properly qualified Guardian.
7. As a result of F failing to attend for the remainder of this hearing, I proceeded to consider the issues on the basis of the written evidence filed in the Bundle, brief oral evidence from M and the Guardian including the appropriate and relevant questions for them from F put by me, and on the basis of oral submissions from the advocates for M and the Guardian respectively.

Parties' positions

8. F originally applied in March 2021 for a variation of a child arrangements order made on 15th June 2020. It is apparent from his witness statement dated 1st September 2023 for this final welfare hearing that he does not accept the findings made against him by me and appeared in that statement to continue to try to revisit the allegations he made before, as well as making new allegations against M. He seemed to dispute the professional conclusions reached about him, including the most recent ones provided by the court appointed expert psychologist, Dr Bentley, and the Guardian. It appears from his evidence that he has now left the UK to live abroad but that he wants to keep a property here to enable contact to take place there. He does not accept that any contact should be supervised or supported and also wants the children to have extensive video contact with him, including after school to enable him to help them with their homework. He does not accept that his parental responsibility should be limited in any way. He has not addressed the applications for orders preventing him from making further applications or the extension and variation of the non-molestation order against him. He appears to object to the application to restrict the way in which he can exercise his parental responsibility but refers to the historic unfounded allegations against M in support of his objection.
9. M asks the court to make an order for the children to live with her and to spend supervised time with F once a month as recommended by the Guardian, to permit her to remove the children from the jurisdiction for up to 8 weeks each year for a holiday providing notice is given to F and there is no unauthorised absence from school. She has also applied for a section 91A/91(14) Children Act 1989 order to prohibit further applications by F at the conclusion of the proceedings. She has also applied for an order to restrict the way in which F can exercise parental responsibility for the children and asks the court to vary and extend the area and duration of the current non-molestation order.

10. The Guardian's recommendation is for there to be monthly supervised contact between F and the children, and for there to be no telephone or video contact or any cards or letters from F to the children. She supports the making of an order preventing F from making further applications for a period of 5 years, as well as there being some restrictions on the exercise of his parental responsibility. She also supports the variation and extension of the non-molestation order.

Evidential summary

11. Dr Bentley, who is the court appointed expert psychologist instructed to carry out a global assessment of the family, has provided several reports and responses to additional questions. Her first report was dated 10th December 2022 (D35-D77), she responded to additional questions about that on 26th January 2023 (D78-D81), filed an addendum report on 22nd April 2023 (D82-D87), and responded to further questions on 17th July 2023 (D88-D98) and again on 29th September 2023 (D99-D103). She is very clear that the children love both of their parents and need the arguments about arrangements for where they live and who they spend time with to stop. She concluded that F did not meet the threshold for any diagnosis of any clinical syndrome and did not have any personality disorder, though he did have certain relevant personality traits, namely compulsive, turbulent and histrionic (D36). It was her opinion that F's *"heightened emotional presentation is largely an overreaction to perceived or actual threat of loss, as well as feeling powerless and victimized, and that this perception is influenced by unresolved issues from his own childhood. There is the potential for a deterioration in his mental health in terms of longer-term adjustment and mood disorders, but with the right help now, his emotional distress, and the impact on him as well as his relationship with the [children], and which is most probably underpinning his past behaviour in relation to the mother, could be alleviated with skilful therapy"* (D37). Her recommendation was that F

should “engage with 8 sessions of therapy from a longitudinal CBT perspective (so schema focused, by a psychologist, probably would have to be privately funded) whilst contact continued to be supervised, and regular. I suggest that that the therapy then continues for a further 12 sessions without a break, but that the therapist provides a review after 8 sessions as to engagement and progress and whether there is a positive shift in attitude and behaviour such that progression to unsupervised contact for short periods (3-4 hours) once a week, might commence and that there was continued objective evaluation (eg, not by mother or father) of the father and [children]. After the total of 20 sessions, I recommend further evaluation to see if contact can progress further and whether more therapeutic input is warranted” (D42).

12. In her April 2023 addendum report at D80, she clarified that F would need to start his personal therapy first before undertaking any form of Domestic Abuse Perpetrator (DAPP) course, and that consideration should be given at the 8-week review of his therapy as to whether he was then in the right place to engage.
13. Her April 2023 addendum report was positive about the progress that F appeared to have made in terms of his therapist’s updates and her own observations of him (D86). She noted that he would benefit from some continued therapy for a while longer, perhaps 6-8 sessions, but did not see that this would preclude him from having unsupervised contact whilst he engaged with this (D86).
14. In her July 2023 response to further questions, she confirmed her earlier recommendation that both children would benefit from play therapy (D89), confirmed the importance of regular contact for the children with their father (D90), and noted that the report from F’s treating psychotherapist Dr Malden made no mention of targeting coercive control in the therapy undertaken with him. Dr Bentley noted that the psychotherapist appeared to have targeted F’s over-reaction to events and emotional dysregulation and not to have moved

on to the effect of those behaviours as coercive and controlling in respect of M (D94). She also noted that F appeared to be moving away from gathering evidence against M and moving on with his life, something that his therapist also appeared to have observed and that this *“would suggest that his preoccupation with gathering evidence against the mother was diminishing, and alongside this, so would his coercive behaviours. If there was evidence that he continued a relentless pursuit of the mother and trying to control her as a result of his behaviours, then this would suggest that what he said to the therapist and to myself was not correct”* (D94-D95). Her overall conclusion was that, if he does not satisfactorily complete the recommended work, *“his negativity will likely continue towards the mother and may also spill out in his behaviours towards the [children]. He needs to address his beliefs about the mother, and how this links to his behaviours, to reduce this risk”* (D97).

15. Dr Bentley produced a final addendum report in September 2023 (D99-D103) in response to further questions. Some of the questions put to her from F are bizarre in my experience, including asking Dr Bentley to confirm that the report she produced in December 2022 was in fact her report. She noted that F appeared to have withdrawn from accepting that he had overreacted in the past and that these overreactions may have caused harm to the children, commenting that *“this will raise questions about his ability to reflect on his own behaviour, especially given the findings in the judgment”* (D102). Overall, her opinion was that she was *“concerned about the suspicious nature of the questions, especially if the reports are my own, as I have added a declaration to them and signed them. I am concerned that his anxiety is again elevated and that he is again so fearful of threat, and being taken advantage of, or deceived in some way, and this is reflected in his questions. I do think he acts out of a position of fear and threat, but that in this his mental health also deteriorates and that this can verge on paranoia. I do think*

he is so fearful of being taken advantage of that he comes across as controlling” (D102).

No party has sought to call Dr Bentley to put questions to her during this hearing.

16. F’s treating psychotherapist, Dr Malden, was permitted to file both an initial and then an updating report setting out the treatment he has received. Dr Malden is not a court appointed expert in these proceedings and so she is not permitted to give expert evidence or opinion evidence. Her reports are at E1-E4 and at E5 and should have been factual reports of the therapy undertaken and apparent progress made, though it seems she has tried to go beyond this to give an opinion about the risk that F may pose to the children and hence whether there need to be any restrictions on his contact with them. I have not taken this opinion evidence into account because it is not admissible. Dr Malden was approved by the court appointed expert psychologist, Dr Bentley, as someone with the necessary skills and expertise to undertake the therapeutic work that Dr Bentley had identified F would need (D79). However, as noted earlier Dr Bentley did highlight a concern that the therapist did not address the issue of coercive control with F, and Dr Bentley also noted that a DAPP course would need to be provided as a result by a specialist provider other than Dr Malden, and it was not clear how F would achieve this having moved to live abroad.

17. Both parties have filed final written evidence in response to the fact-finding judgment (C1-C9 for the applicant, C21-C45 for the respondent). In addition, M has filed a statement/skeleton argument in support of her applications for a section 91 order and restrictions on F’s exercise of parental responsibility (C10-C20). She also made clear in her oral evidence to me in this hearing that she is seeking an order to permit her to apply for passport renewals for the children without having to obtain F’s consent. She said that this was because of the repeated delays by F in agreeing to such applications in the past. She intends to use any such order in support of an application to the Australian courts for

an order to permit her to renew the children's Australian passports without having to obtain the permission of F first.

18. F filed a response to these applications on 1st October 2023 (C46-C54). In both his final statement and in his response to the applications, F appears to be trying to adduce documents that pre-date the outcome of the fact-finding hearing, including character references. I have disregarded these because either they are irrelevant to the welfare determinations at this stage because they pre-date the findings I made in October 2022, or they are irrelevant and inadmissible opinion evidence from people who are not qualified to comment on any risk of harm that F may pose to the children at this point in time in light of the findings made about his behaviour. In any event, as I clarified with the Guardian in her evidence to me in this hearing, there is no dispute that F can meet the basic care needs of the children. The issue is the extent to which he continues to pose a risk of emotional harm to them considering the findings made about the harm he has caused them in the past.

19. The Local Authority completed and filed a section 37 report on 3rd May 2022 (D15-D34), having been directed to do so. The social worker concluded that there was no evidence of the children being at risk of significant harm in the care of their mother. The social worker was concerned about F's "*obsession with evidence gathering*" but did not think that he was a risk to the children (D32) and concluded that the threshold for bringing public law proceedings was not met. However, the social worker noted that F's allegations against M were "*based on factual inaccuracies, overgeneralization, fault finding and never on prioritizing the needs of the children. I am of the firm belief that these allegations will continue to be made by F as long as the children continue to reside with their mother and until such a time that F satisfies his own hypothesis which does not fit into the context of safeguarding his children*" (D33). This report and therefore the

conclusions of the social worker, pre-dates the outcome of the fact-finding and the social worker's conclusion that unsupervised contact for the children with F would be safe is thus without the benefit of knowing the extent of the emotional harm that I found F had caused the children.

20. CAFCASS completed a section 7 report dated 10th January 2020 (D1-D11), an addendum section 7 report dated 26th May 2020 (D12-D14), and the Guardian completed a final analysis and recommendations report dated 29th September 2023 (D104-D124). Obviously only the last report was produced in light of the outcome of the fact-finding hearing I conducted in October last year. The Guardian's professional opinion is that there is a marked contradiction between the view that Dr Malden has of F in her last report and F's ongoing behaviours and statements to the court, as well as his views in interview with the Guardian (D113). She noted with concern that, at times, in interview, F *"expressed misogynistic and paranoid views...F was, in my view, extremely confrontational during interview, raising significant allegations of corruption, conspiracy, misogynistic views and extremely repetitive of allegations in respect of the Local Authority, the 'ridiculous' findings of the court and even going into detail about M's sexual activities during their relationship. It appears that F has amplified his efforts to discredit M and widened this to other professionals involved in the case since the judgment was made. This is a very worrying indication that F has not addressed his behaviours or show (sic) any insight into this despite significant interventions which were put in place to try and promote positive outcomes for his time with his children and at significant extension to proceedings"* (D113-D114). It is her opinion that F is demonstrating a pattern of behaviour that mirrors what he did towards M over the past three years and has thus failed to demonstrate any insight or positive change. She notes that he has yet to complete the recommended DAPP course and remains at the pre-

contemplative stage of change so *“it is therefore unlikely that he would benefit for attending a DAPP to ameliorate the concerns in relation to the children being used to continue coercion and control of M in any supported/unsupervised contact going forward. It is my view that sadly, the only way to mitigate against this fully is to revert back to fully supervised contact to provide a level of surety and protection for the children and M, from further malicious allegations and potential unnecessary professional involvement with the family and provides adequate protection for mother and the children under Practice Direction 12J” (D116).*

Relevant legal considerations

21. The court must consider the welfare of the children, and this is the court’s paramount consideration. The court must apply the relevant aspects of the welfare checklist contained in section 1(3) of the Children Act 1989.
22. Practice Direction 12J is also relevant given my findings about coercive control on the part of F in this case. Children also have a statutory right to a relationship with both parents, however this right may be limited or prevented entirely if it is not safe for the children concerned.
23. In relation to the application for an order preventing F from making further applications about the children without leave of the court, sections 91A of the Children Act 1989 and section 91(14) are relevant. Section 91(14), which was the only legal power to make such orders prior to s91A being enacted, normally required a court to be satisfied that there was a history of making repeated and unreasonable applications before a court could make an order. However, section 91A allows a court to make an order without a history of repeated and unreasonable applications, where such an order is necessary to protect a parent and/or children for whom further applications could expose them to a risk of harm, in particular where proceedings could be a form of continuing domestic abuse.

Analysis

24. No party disputes that the children clearly love each of their parents and want to spend time with their father. This has been a clear thread through all of the professional evidence in this case. It is also not disputed that the children have an emotional and psychological need to have a relationship with their father, and that this will also help to meet their identity needs considering their father's German heritage. M also accepts that the children need to spend some time with their father for these reasons. The question for the court is what is safe for the children in terms of spending time with their father, having regard to the provisions of Practice Direction 12J and considering my earlier findings that F had exposed the children to emotional harm and domestic abuse of M through his coercive and controlling behaviour.

25. Based on the evidence of Dr Bentley, it is clear that F needs to complete appropriately targeted therapy to address his issues, and separately to complete an appropriate DAPP course. The reports from Dr Malden, as his treating psychotherapist, paint a largely positive picture of his engagement and progress in terms of therapy. However, as Dr Bentley accepts in her last addendum report, given the evidence from F recently it seems quite possible that what F has said to both Dr Malden and to Dr Bentley is different to what he has said to other professionals and the court. His last questions of Dr Bentley are rightly flagged by her as concerning and indicative of the same worrying behaviours that he has exhibited before, and which resulted in him becoming controlling of M. Dr Bentley also noted that the therapy provided by Dr Malden from Dr Malden's reports has not fully addressed the recommended work, focusing instead upon '*Processing the effects of experienced false allegations and misrepresentations*' (D94). I find that F has not engaged with the recommended therapy in a way that was identified as necessary by Dr

Bentley and therefore still needs to do so to mitigate the risks posed to the children by him.

26. F does not dispute that he has not yet completed a DAPP course. The Guardian notes that this seems unlikely unless and until he accepts that he needs to undertake such a course. Her evidence to me was very clear that F will need to complete a properly accredited DAPP course or equivalent, and that will require him to undergo a preliminary assessment of suitability. If he cannot accept that he has done anything wrong and that he needs to undertake such a course, it is clear to me that he will fail any preliminary assessment and will not be accepted on any course. It is also clear from F's written evidence and numerous communications with the court for this hearing that he continues to make unfounded allegations about M's behaviour during the period that the fact-finding hearing considered. It follows from this that he simply does not accept that I did not find any of his allegations to be made out. It also seems apparent that he does not accept the findings made about his behaviour, the harm that he caused to the children and the need for him to make changes as a result.

27. The Guardian rightly notes that F seems to be repeating his pattern of previous behaviour in making numerous and repeated allegations about M and professionals involved in the case. I note that, despite being asked repeatedly to attempt to obtain emergency travel documents and organise travel to enable him to participate in this final hearing, he failed to accept the validity of the court order requiring him to take such steps and to update the court about his progress and, in fact, completely ignored what he was being asked to do to help the court decide if the hearing could continue. Instead, he chose to focus on his allegations about M, the Guardian, advocates and, it would appear, the court. As M clearly told me in her evidence, this was similar to the behaviour that he had exhibited towards her in the past.

28. I find that F has not addressed his issues which lead to him becoming dysregulated and overreacting (to use the terminology of Dr Bentley), despite the therapy that he has undertaken with Dr Malden. He has not done the recommended work to mitigate the impact of this behaviour upon M so remains at risk of subjecting her again to domestic abuse in the form of coercive and controlling behaviour. In turn, this will mean the children remain at risk from the consequences of this, directly and indirectly. Direct consequences for them would be F asking questions of them, weighing them, and attempting to involve them in medical and professional examination and investigation as he has done in the past. Indirect consequences for the children would be F subjecting M to further coercive control and this in turn adversely affecting her well-being, causing her to be fearful and to lose the sense of stability and security which she clearly told me has only been obtained by moving to a confidential address and having no contact with F.

29. In light of my findings, I am satisfied that F does pose a real risk of harm to M directly, and to the children both directly and indirectly which in turn means that it is not safe for the children to have unsupervised contact with him. I have been mindful of the fact that the children clearly desperately want to see their father and spend time with him, and that ordering supervised contact (which he will have to fund and organise through a contact centre in this jurisdiction) will be less likely to mean that they have the sort of regular and consistent contact which every professional and M agrees they need. This is because F appears to date to have been unable to commit to regular and consistent contact. There have been several periods of him not attending contact with the children during these proceedings, and most recently no contact with them since they returned from a family holiday with their mother at the end of the summer. Partly, as M fairly accepted in her evidence to me, this has not been helped by the fact that the contact centre F chooses to use becomes very booked up and F would need to book and pay for time there in

advance to ensure consistency. However, it is not clear in F's evidence why he hasn't done this to ensure the sort of consistency that would benefit both children, especially the younger one, as M told me. It is also not clear why he has rejected an alternative contact centre proposed by M. It simply seems as if F has chosen to prioritise his disputes and attempts to discredit M and professionals involved in his case over the needs of his children, I'm afraid.

30. Contact had progressed to supported contact at the point that it ceased when the children went on holiday this summer. That progression was largely due to the very positive reports of Dr Malden about the apparent progress being made by F in therapy, and the overall positive reports of how contact had been for the children when F had attended. However, as noted by the Guardian in her final evidence, the behaviour, views and comments displayed by F around this final hearing are deeply concerning. They call into question whether he would be able to restrain himself from saying or doing anything inappropriate when he was with the children if he remains focused on pursuing unfounded allegations against M. Combined with my finding that he remains at risk of perpetrating domestic abuse in the form of coercive and controlling behaviour, I am satisfied that the only safe way for contact to take place between the children and F is for it to revert to being supervised as recommended by the Guardian. I am aware that F appears to have told the Guardian that he will withdraw from the children's lives if supervised contact is ordered. I would urge F to think about what this would mean for the children – they clearly love him and want to spend time with him. When supervised contact face to face does take place it is clear that the children enjoy it immensely. F walking away from them rather than participating in supervised contact would be evidence of F not putting the needs and interests of the children first. It would also be, as the Guardian told me, a real tragedy for these children if F did walk away from them. I

really do hope that F decides to engage with supervised contact for the children's sake, just as I hope he can continue to engage properly in necessary therapy and complete an appropriate DAPP course to mitigate the risk that he continues to pose to the children. As the Guardian pointed out to me through the submissions made by Ms Whittam in closing, it is likely that F will need to attend not just a properly accredited DAPP course or equivalent but that this may require him to participate face to face in that course.

31. Both M and the Guardian gave very credible and compelling evidence about the children needing to have consistency and certainty about the time that they spend with F. M told me that this means F needs to book and pay for supervised sessions at a contact centre well in advance, and that the children need to know when this expected to take place so that she and they can plan their weekend activities accordingly. The Guardian also told me that the children really struggle with F not turning up for contact as expected and, given that he is now living abroad and has not seen them since they went on holiday in the summer, it would be better for the children to set a minimum frequency of once a month to try to protect the children from disappointment if F doesn't attend more frequent contact.

32. In light of my findings above, I will therefore order that the children will live with M but spend time with F. The time that the children spend with F will be supervised at an appropriate contact centre in this jurisdiction and will be for periods of up to 3 hours in the morning once a month on the first Saturday of the month. F will need to book and pay for the supervised sessions at the contact centre at least a month in advance, and if the contact centre is closed for a public holiday or some other reason, then it will need to take place on the second Saturday of the month. If the contact centre that F prefers to use becomes permanently unavailable, then supervised contact will have to be booked and paid for by F at an alternative contact centre identified and selected by M.

33. I have also considered indirect contact since this has been part of previous arrangements to date and F was asking for several hours of video contact with the children each week. Based on the evidence of the Guardian about the wishes and feelings of the children, from which it is clear that the children have not been enjoying this recently, and also from M about how difficult the children found video contact to be over the summer, I am satisfied that video contact is not in the children's welfare interests. There is the added complication that M does not feel able to facilitate any video contact, which is entirely understandable given the risk that this would expose her to further coercive control from F in light of my findings. F has suggested that the school could accommodate video contact but the most up to date information from the school casts doubt on the appropriateness of this. On 29th September 2023 in an email the school told the Guardian that they would not feel qualified to 'screen' letters and cards sent by F to the children, however they did offer to facilitate video calls between the children and F in German. As the Guardian told me in her oral evidence, it is difficult to see how they could feel that they can supervise video calls but cannot screen letters and cards. The Guardian also had valid concerns about how effective the supervision provided by the school would be, especially since they are not fully aware of the risks that F would pose to the children. From the wording of the email, it also seems as if the offer from the school was not in fact to supervise the calls but merely to 'facilitate' them. In addition, M told me in her evidence about the potential difficulties for the children in travelling home at the end of the school day if they were to remain at school for video contact with F. At the moment the children catch the school bus home and are picked up by M. This arrangement allows her to continue to work (necessary in financial terms for her and the children) and I note also allows the children to start to learn about using public transport and to develop their autonomy in a child focused manner. It would not be practicable for the children to stay

at school for video contact with F at the end of the school day without M having to leave work early to collect them from school. It seems likely to me that both children would be tired and less willing to engage in video contact at the end of a school day too. On top of the negative view of video contact which they told the Guardian about, this seems to be setting both the children and F up to fail in video contact. There is nobody else suitable to supervise video contact identified by any party, and it seems clear on the evidence before me that whoever would supervise needs to be aware of the complexity and insidious nature of coercive control in this case. The combination of all these factors has led me to conclude that video contact is not practicable nor in the best interests of the children at this point.

34. For similar reasons, indirect letters and cards from F to the children is also not practicable or in the best interests of the children, though I do note that in her oral evidence to me M seem to be open to exploring whether this could be monitored through the contact centre. However, this would mean that one of the parents would have to pay for this, probably F given that he will have to fund the direct supervised contact at the contact centre. I will therefore order that there shall be no other contact between the children and F apart from the supervised contact once a month set out above, unless agreed by M in writing.

35. In terms of the other orders that I am asked to consider, I am satisfied that there remains a significant risk of F continuing to try to gather evidence to support his allegations against M, and that this may again involve the children directly and indirectly. It is therefore necessary and proportionate to restrict the way in which he can exercise his parental responsibility for the children as a means of preventing this and protecting them. It is also necessary and proportionate to protect M from further coercive and controlling behaviour from F. I will therefore order that M may make all health decisions in respect of the children without F's consent save for those which are actually or potentially life

altering. For the avoidance of doubt, this would enable M to unilaterally make decisions relating to the children's physical, dental, orthodontic or mental health and would also include things such as routine and required vaccinations, emergency medical treatment and play therapy. To protect the confidentiality of M's address and therefore to protect her from further domestic abuse from F, she is also permitted to instruct health, education and all other professionals involved with the children to withhold the children's address and contact details from F. M is also permitted to make decisions about the children's education without F's consent, though she will need to inform him of any decision to change schools in the future. M will also have first choice of attending any school events and I will make a prohibited steps order preventing F from having any contact with the children apart from as set out in the child arrangements order above and also preventing him from removing the children from the mother or the care and control of any person to whom she has entrusted the children. This also means that F will not be permitted to attend any school events unless M has confirmed in writing that she is not attending the same event and agrees to him attending. This is also subject to the non-molestation order provisions that I will cover in a moment.

36. M is also permitted to make all decisions about the children's possessions and use of electronic devices whilst the children are in her care, and she may remove or return any devices provided to them by F.
- M is permitted to renew the children's British and Australian passports without the consent of F, and she will also hold those passports. She may also remove the children from the jurisdiction for up to 8 weeks each year for a holiday without the consent of F, providing that the children are not missing school (or the school has consented in writing in advance to any missed time) and that the dates of the travel are provided to F 4 weeks in advance of any holiday to last longer than 1 month. Missed contacts should be made

up wherever possible and with the agreement of M, with F to arrange and pay for the supervision of those once he has been notified of the travel dates. M is not required to notify F of any trips taken out of the jurisdiction that last less than one month and which do not require the rearrangement of supervised contact. M is given permission to disclose a copy of this order and the judgments of the court dated 18th October 2022 and 11th October 2023 to the children's school, GP practice, other health professionals (including play therapists), the police, the Local Authority, border control officials in this country or abroad, the Australian Court and/or passport authority or any other professional.

37. Communication between M and F for the purposes of the orders above shall be strictly limited to matters relating to the children and shall take place through the 'Our Family Wizard' app since the evidence before me is that this has largely been working.

38. I will also make an order under section 91A of the Children Act 1989 prohibiting F from making any applications under the Children Act 1989 without leave of the court. That order will be for a period of 5 years, ie until 10th October 2028. The reason for this is that I am satisfied there is a significant risk of F trying to make further applications and in so doing exposing M and the children yet again to domestic abuse in the form of coercive and controlling behaviour. The children need there to be an end to proceedings too, as the evidence of Dr Bentley and the Guardian makes clear. This is the second set of proceedings in respect of these children and the current proceedings have taken in excess of 71 weeks because of the need to conduct a fact-finding exercise in respect of F's unfounded allegations and M's proven allegations. There has then been considerable time and effort devoted to trying to allow F to demonstrate that he has accepted the findings against him, engaged with the necessary therapy and domestic abuse prevention work and that he has thus reduced the risk of subjecting M and children again to similar abuse. Very unfortunately, as I have found earlier, he has not done what was required

and the risk posed by him remains therefore significant and necessitates this order preventing him from putting the children and M through further proceedings. The period of 5 years will be sufficient to ensure that both children are protected up to the point that the youngest will be due to start secondary school, something that the Guardian's evidence was clear that the children need. Given my extensive involvement in these current proceedings, I will reserve any future applications for leave to apply to me if available. Any application for leave to apply from F will need to address what he has done about accepting the findings, engaging in necessary therapy and completion of an appropriate DAPP course, though.

39. The non-molestation order variation and extension is also necessary and proportionate, I find, given the clear evidence of F still exhibiting the sort of extremely concerning, abusive and emotionally harmful behaviours that he has subjected M and the children to in the past. The address that M and the children will be living at does need to remain confidential but to prevent him from going to the area around that address to try to find them, an exclusion zone that covers that address and a wider area is therefore also necessary and proportionate. I have had regard to the Guidance issued by the President of the Family Division in July 2023 which made it clear that any order excluding someone from a geographical area should specify a named road or named roads or a clearly defined area and should avoid the use of expressions such as '100 metres from the applicant's home'. The use of maps, which can become detached, should likewise be avoided unless they are embedded into the body of the order. In this case, this has posed some difficulty for the court since part of the area in question includes public rights of way which are not always clearly indicated on the ground. However, it is possible to identify the roads bordering the area concerned, the common land and river involved, as well as the public rights of way and an area of land adjoining those rights of way to within 100m. The order

will therefore be made in the terms that are set out in the draft order and will last for the same period as the section 91A order, ie until 4pm on 10th October 2028. I was asked by Ms Cox for M to consider extending the part of the non-molestation order that prevents contact between F and M until the children are 18. However, I do not find that this is proportionate, so the non-molestation order is solely for a period of 5 years from today. If there is a need to extend the order later, M can make an application at that point.

40. F has not disclosed his address to the court, and I will direct that he must do so for the purposes of service of the orders I have made. Since he is outside of the jurisdiction, it will not be possible for me to direct that the court bailiffs effect service of any orders upon him, so personal service (likely to be required to ensure that the non-molestation order in particular is enforceable) will be a matter for the mother's instructing solicitors to organise.

41. Finally, there is the issue of F having disclosed the Guardian's Final Analysis and Recommendations to the school teacher (it seems to be accepted that it has not been disseminated more widely) in breach of the provisions of section 97 of the Children Act 1989. The issue of potential contempt has been raised by the other parties and is also something that F raised in relation to different aspects of the case in his statement dated 8th September 2023. Contempt, unless it takes place in the face of the court, is subject to the strict procedural requirements of Part 37 and Practice Direction 37A of the Family Procedure Rules. F has failed to comply with these in any way in relation to his allegations of contempt against the professionals involved in the case. In addition, the professionals involved in this case have behaved entirely appropriately and within the bounds of their professional duties as officers of the court, including the advocates. Whilst there may have been minor typographical errors on court orders at times, this is sadly often an inevitable consequence of hard-pressed professional advocates and judges

drafting under pressure. Such errors do not invalidate the orders concerned, no matter how much F would like them to. It is, I am afraid, yet another indication that F seeks to control others when he feels under threat and loses focus on the welfare of the children, instead becoming fixated on minor and often irrelevant details. The court will not be amending any historic orders at this point. In terms of his inappropriate disclosure of the Guardian's report, which was not permitted since the teacher concerned is not a party to the proceedings, if F had any concerns that the information in that report was not correct, he should have raised that with the Guardian and with the court in this hearing, not by giving the report to the teacher concerned. The report was written before the Guardian had received the clarifying email from the teacher about what the school was offering to facilitate in terms of indirect contact, something that the Guardian clarified in her position statement prior to the start of this hearing. However, even if this breach of confidentiality by F could be considered to be a contempt in the face of the court (which I am not clear about since it took place outside of the hearing), I have the legal and practical difficulty that he is not in the jurisdiction and I would therefore have no way to impose a suitable sanction for any breach if proved. Breach of confidentiality in these proceedings is a potential summary only criminal offence under section 97 of the Children Act 1989; I think the better course of action would therefore be for me to direct that the court office refer the matter to the police to investigate. To facilitate the police investigation, I will permit disclosure of this judgment to Thames Valley Police, as well as copies of the Guardian's report (suitably redacted with regard to the identity of the children and the mother and any sensitive personal information about them that the Guardian considers should be withheld) as well as the statement from F dated 8th September 2023 in which he appears to accept that he disclosed the report to the teacher concerned.

Conclusions

42. I noted at the end of my fact-finding judgment last year that the saddest part of this case is that at its heart are two children who clearly love both of their parents. It is also abundantly clear to me that they need proceedings to end and for F to accept that he has done things that have caused them and M harm, for F to do the work that was recommended by Dr Bentley, and to stop viewing M in wholly negative terms. He also needs to stop trying to find evidence of wrongdoing on M's part, and to stop blaming everyone else when he is the one who has clung to false beliefs and tried to find evidence to support them. Despite F's claims, no professional has acted inappropriately in this case; in fact, he has been treated with considerable courtesy and patience by the Guardian and advocates despite many of his communications with them being accusatory, laden with unfounded conspiracy theories and, at times, lacking courtesy and respect. I am left with the impression that what I and the professionals in the case have witnessed in his behaviour and inappropriate communications is only a fraction of what he exposed M to during their relationship, and that F still has a long way to go before he will have even begun to tackle his issues and thus to reduce the risk that he poses.

A handwritten signature in black ink, appearing to read 'A. Dew'.

11th October 2023