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This judgment is linked to two previous cases:

[A and B \(No. 1\)\(domestic abuse no contact to father\) \[2019\] EWFC B87 \(01 February 2019\) \(bailii.org\)](#) and [A and B \(No. 2\)\(SGO\)\(domestic abuse no direct contact to father\) \[2020\] EWFC B15 \(06 March 2020\) \(bailii.org\)](#)

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Neutral Citation Number: [2023] EWFC 192 (B)

IN THE FAMILY COURT AT OXFORD

IN THE MATTER OF THE CHILDREN ACT 1989 AND IN THE MATTER OF A (a boy) and B (a girl)

Date: 11 October 2023

Before: HHJ Vincent

Between:

A father

Applicant Father

and

CD AND DD

First and Second Respondents

and

A and B

(through their rule 16.4 children's guardian EMMA BROWN)

Third and Fourth Respondents

Stephen Bartlett-Jones instructed by Gill & Co. solicitors for the applicant father

The First Respondent represented herself at the hearing

Emma Griffiths instructed by BH&O LLP for the children

Hearing dates: 9 and 11 October 2023

JUDGMENT

Introduction

1. This is the third judgment I have written in respect of a brother and sister, A (twelve) and B (nine). My earlier judgments were handed down on 1 February 2019 and 6 March 2020 respectively.
2. The parents separated in November 2016, when A was five and B was two. They have not seen their father since then. Upon leaving the family home, the mother and the children initially stayed with members of her family, but after some weeks they moved to stay with her friends DD and his wife CD, who offered her and her children a permanent home.
3. In April 2017 the father applied for a child arrangements order that would provide for the children to live with, alternatively, spend time with him.
4. A fact-finding hearing took place in February 2018, at the conclusion of which Deputy Circuit Judge Corrie made findings that the father had perpetrated serious domestic abuse against the mother, including rape and physical abuse, to which the children were exposed, and physical abuse of A. DCJ Corrie found that the abuse had continued beyond the end of the relationship by the use of secret CCTV recordings in the house they had shared, installing a hidden tracking device in her car, publishing details of the mother's whereabouts on Facebook, sending harassing text messages, and making persistent 'silent' phone calls, to both the mother and to her friends CD and DD.
5. The father sought permission to appeal DCJ Corrie's findings. His application was heard on 1 November 2018 by Hayden J. Permission to appeal was refused.
6. The progress of the appeal delayed the welfare hearing. DCJ Corrie retired from sitting as a judge and so the proceedings were transferred to me for the hearing which took place on 3 and 4 January 2019. I sent a judgment out in draft on 17 January 2019 in which I refused the father's application for the children to live with him, or to have any form of direct contact with the children. The order provided for the children to live with their mother, and for the father to send birthday and Christmas cards to the children. I declined to make an order limiting the father's ability to apply to the Court in future pursuant to section 91(14) of the Children Act 1989. The father had expressed his intention to attend a domestic abuse perpetrators course.
7. Judgment was due to be formally handed down in early February, but on 29 January 2019 the mother attempted to take her own life. She was admitted to intensive care, but never recovered. She died on 6 February 2019.

8. The children remained living with [CD and DD]. I made prohibited steps orders preventing the father from removing the children from their care.
9. On 21 February 2019 the father renewed his application for a child arrangements order. He sought orders that the children should live with him. He remained adamant that he was a victim of a miscarriage of justice, and that all the allegations found proved against him had been made maliciously by the mother, in an attempt to alienate him from his children.
10. [CD and DD] were joined as parties to the application. They applied to become the children's special guardians. The local authority assessed them as well as a maternal aunt and uncle, and a paternal aunt and uncle, each seeking orders from the Court providing that the children would live with them for the long term.
11. As he said he would, the father had attended a Domestic Abuse Perpetrators Programme (DAPP). The report of the DAPP worker in July 2019 suggests that the father strongly maintained that the finding of rape was untrue, and did not accept the other findings. He is reported to have suggested that the cause of the relationship breakdown was the mother's erratic behaviour, that she was physically aggressive to him, and that she had made up the allegations against him in order to obtain legal aid. It was reported that he repeatedly suggested that she had been unfaithful within the marriage. The reporter concluded that he *'showed no insight or accountability in relation to any of his own behaviour being abusive'* in his past relationships, and that he had been controlling. In his witness statement the father disagreed with this report:

'I did not see my behaviour as controlling. She [the course facilitator] suggested it was controlling, especially the actions I had taken to locate [the mother] and the children. I said that I had called various schools in the areas where I thought she may be, from our previous conversations. This was simply because I did not know where our children were.' Later he repeated, *'I did not feel I was controlling, but simply keeping an eye on [the mother] and our children because I had concerns about her mental state.'*

12. On 6 March 2020 at the conclusion of a further final hearing, I made special guardianship orders to [CD and DD]. I refused the father's application for the children to live with him, or for direct contact between him and the children. The final order provided that he may send the children cards for Christmas and their birthdays. The decision was reached having regard to all the evidence, which included an updated assessment from Professor Perkins, who had also prepared a report for the hearing in 2018. Professor Perkins detected a limited shift in acknowledgment, but still raised significant questions about the extent to which the father had developed a genuine ability to reflect on his own actions. Direct contact between the father and the children was still assessed as high risk. Professor Perkins wrote:

‘[the father’s untreated personality problems – including impression management and high expressed emotion – can get in the way of reflecting on himself and potentially pose risks to the children. Although he used the word reflection many times, there was limited (but some) evidence of this in the assessment. However, he has committed himself to 12 months dynamic psychotherapy through ELFT which, if it goes ahead, and if he engages with, could be very helpful in these regards.’

13. On 18 June 2021 the father applied again to the Court seeking a review of the current child arrangements order. He said that he had attended a further domestic abuse perpetrators course.
14. The first appointment was on 8 September 2021. It transpired that the father had not attended a domestic abuse perpetrators course, but a four-day course in anger management. The application was not pursued at that stage.
15. The father did enrol shortly after that with the Change Project Domestic Violence Perpetrators Programme and once that was completed, he re-applied to the Court on 20 October 2022 for his application to be restored.
16. The children were then joined to the proceedings and a children’s guardian, Emma Brown, was appointed. She applied on the children’s behalf for Professor Perkins to update his assessment of the father. Following receipt of his report, the parties filed statements, and the guardian filed her final analysis.
17. At the final hearing, I heard evidence from the applicant father and from the guardian. I heard submissions from Mr Bartlet-Jones on behalf of the father, who represented him at the final hearing in March 2020. I heard from Miss Griffiths on behalf of the guardian, and who represented the children in both sets of previous proceedings. [CD], the children’s special guardian, spoke for both herself and her husband.

Issues to determine at the final hearing

18. The applications to determine are:
 - (i) The father’s application for a child arrangements order to spend time with his children;
 - (ii) The children’s guardian’s application for the children’s surname to be changed from their father’s to their mother’s;
 - (iii) The children’s guardian’s application for an order pursuant to section 91(14) Children Act 1989 that would prevent the father from making any further application without first obtaining permission from the Court.

19. With respect to all three applications, A and B 's welfare is the Court's paramount consideration. In reaching a decision about what, if any, order is required to meet their welfare, the Court must have regard to all the circumstances, and in particular the factors set out in the welfare checklist at section 1(3) of the Children Act 1989.

Application for child arrangements order

20. There is a statutory presumption in favour of both parents being involved in a child's life unless that is proved to be contrary to the child's welfare. That involvement need not be equal, and may be direct or indirect (section 1(2B) Children Act 1989).
21. 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 (Family Procedure Rules 2010 Practice Direction 12J paragraph 35). Paragraphs 36 and 37 of the Practice Direction set out the particular factors to which the Court must have regard in those circumstances.
22. In my judgment of 1 February 2019 I went through each factor on the welfare checklist and I considered each of the matters listed at paragraphs 36 and 37. I reached the following conclusion:

- 85. Having regard to all the evidence, I am not satisfied that the father understands the impact of his behaviours upon the children and their mother. For the reasons given, I consider there to be a real risk that the abusive, manipulative, controlling behaviours previously exhibited towards the mother in the relationship and following it, would continue, should an order for the children to spend time with their father be made.*
- 86. I do not underestimate that an order that in effect prevents very young children from having a relationship with their father is draconian, but in all the circumstances of this case, having regard to the children's welfare as my paramount consideration, the welfare checklist and practice direction 12J, I am not persuaded that their welfare requires the making of an order that they either spend time with him, let alone move to live with him.*
- 87. To make such an order would in my judgment expose the children to an unacceptable and unmanageable risk of harm, which outweighs any risk to them of being deprived of a relationship with their father.*
- 88. On the evidence before the Court, I am not satisfied that the children's and their mother's physical and emotional safety can be secured before, during and after contact. I consider that both the children and their mother remain at risk of further domestic abuse by the father, even were contact to be supervised.*
- 89. I have had regard to all the evidence, in particular the assessment of Professor Perkins, and the guardian's three reports and her oral evidence. Her conclusions*

were well reasoned and supported by the evidence and there is no good reason to depart from her recommendations.

90. *Throughout these long proceedings the Court has strived to consider ways in which the children's relationship with their father may safely be promoted, has held a fact-finding, obtained expert evidence and considered options for interim contact at every stage. The father has throughout the proceedings remained immovable on the question of the need for him to undergo any kind of work, therapeutic or otherwise, which might start him on the road to re-establishing contact with his children. It is right to acknowledge that in his final submissions he said that if Professor Perkins suggested a course he would go on it, but Professor Perkins' evidence was that he had explored the question of various therapies with the father, even those which may not require an acceptance of findings, and he found the father to be wholly resistant to it and not accepting of any need for self-reflection. In the circumstances, the Court has in my judgment taken all necessary steps to facilitate contact as can reasonably be demanded in the circumstances of the particular case, and there is nothing more that could reasonably be done.*

23. I said that it was the father's responsibility to acknowledge his past behaviour and recognise that he needed help to ensure that any time he spent with his children was safe for them.
24. In the judgment of 6 March 2020, I considered whether or not the father had made any progress in this respect.
25. Professor Perkins' updated assessment had indicated some limited shift in acknowledgment, but still raised significant questions about the extent to which the father had developed a genuine ability to reflect on his own actions. While Professor Perkins had noted some 'concessions' in respect of the findings made by the Court, I concluded that they fell *'a good way short of being an acknowledgment that [the father] holds any responsibility for his part in a relationship that he himself described as toxic.'*
26. I concluded that the risks to the children of having any form of direct contact with their father remained high, and there were no measures that could be put in place that could realistically monitor or manage that risk. I set out my conclusions as follows (paragraph 126):

'Although the mother's death has of course changed the picture, having regard to all the evidence I have read and heard at this hearing, in my judgment the children remain at risk from the father. In particular, the risk is that he may seek to undermine and destabilise their placement with the special guardians, and that if he has contact with the children he will find it challenging to manage his feelings and emotions about his situation, is intent on developing his relationship with them and,

having had no treatment to address this, is likely to be unable to either control what he says to them, so as to protect them from emotional harm. ...

... [P]art of the risk to the mother and the children that existed before was a risk that their settled home with [CD] and [DD] would be destabilised and undermined by the father's actions. The father has persisted in his allegations against [DD] and the mother, and has persisted in his allegations that [CD] and [DD] have influenced the children against him. He has in the past installed a tracker on the mother's car. He does now admit sending harassing text messages and having installed CCTV surveillance, but continues to deny any controlling behaviour. Findings were made about him making anonymous calls to [CD] and [DD]. Those calls continued until May 2019. The father contacted social services and made allegations about mother's care of the children while in the home of [DD] and [CD]. The father's character is that he pushes and persists. He knows where the children go to school and has persuaded A's school to respond to his requests for information every fortnight. He said that he has made the same arrangement with B's school. In my judgment, the risk to the children if contact were allowed to progress without evidence of an acknowledgment from the father of these behaviours and a fundamental change, then the risk squarely remains that he may take steps to try and influence the children to see things from his perspective or otherwise take steps that would have the result of interfering with, undermining or destabilising their placement with their special guardians.'

27. I found that the children's overwhelming need at that time was for stability, and to be supported to settle in their permanent home with their special guardians. I found that any potential benefit of contact with their father was outweighed by the significant risks to their welfare of it taking place.
28. Three and a half years have passed, and the father has renewed his application.
29. It is to his credit that he has participated in another DAPP programme, and arguable that credit is also due for him persevering with it even when the course providers concluded at the halfway stage that he had not made sufficient progress to continue. At that point, their report notes:
 - He presented as passionate about completing the programme and getting his children out of the care system;
 - It was difficult for him to stay focused during sessions. A lot of his conversation was directed towards the legal proceedings, and he repeated that he found it difficult to understand why he was on the course as he did not feel he was a perpetrator, rather a victim of the Court proceedings;

- he was using the ‘time-out’ strategy inappropriately, and instead of affording a break at high levels of stress, there was a concern that he was using it as a means of manipulation and exerting control;
 - He was not able to identify his past abusive behaviour, take full responsibility for his actions or specify what he was responsible for. He had not been able to identify what needed to change and how he proposed to change it;
30. The father was suspended from the course. Upon being reassessed with a view to readmitting him, his understanding and attitude had been found to have regressed. It was noted that he continued to blame other factors for his abusive behaviour, and to use minimisation and denial. He was unable to describe what he was accountable for. He continued to state that he was not a risk to his children. He was able to provide facts on domestic abuse and its impact, but was, *‘unable to draw any correlation between these and his own abusive behaviour.’* He was noted to continue *‘to rebut the concerns raised about him and to refute the fact finding hearing’*. His empathy and insights were found to have regressed and he had not evidenced any internal motivation to change his abusive behaviour. He recognised that he could work on improving his communication, empathy and remorse, but he was not able to identify and acknowledge his abusive behaviour, which would be the first step to implementing change.
31. Despite all this, the course offered the father some one-to-one sessions, which he engaged with well. He was then invited to resume the group sessions, and to continue with one to one sessions alongside.
32. At the end of the course, the facilitators reported some progress in some areas, an ability to reflect. There was thought to be some progress with empathy, remorse and some insight. The father is reported to have acknowledged for the first time that his behaviour had been abusive, that he had been dismissive of his wife and her feelings, that he had hit his wife and been aggressive, that he had harassed her post-separation, and he accepted that this had been *‘relentless’*. The father is said to have spoken of how he used to blame the courts rather than himself, but it was his responsibility as it was his abusive behaviour that had impacted his wife and children.
33. However, the project noted that this progress had only been made within the one-to-one sessions at the latter stages of the course, when there was not enough time for changes to be made. It was noted there was still significant work to do, particularly in respect of the father’s emotional regulation and his understanding how his behaviour had been abusive. He was said not to have fully understood about the nature of harassment. He was advised to continue some form of one-to-one work, and to take part in a parenting programme.
34. I am not aware that he has done either.

35. At this final hearing, the overwhelming evidence is that the father remains squarely and fixedly in the same place that he has been occupying for many years now. I reach this conclusion having regard to all the evidence, but in particular from Professor Perkins' further update, from the guardian's record of her conversations with the father, and from the father's statement and the oral evidence he gave to the Court. The father presented strikingly as he was described in the mid-way report of the course. That is consistent with how he presented at previous court hearings, most recently in March 2020, when I found that he still presented a high level of risk to his children.
36. The father says that he accepts the findings that were made by the Court, but he accepts only in general terms that findings were made. In his witness statement, to Professor Perkins and in his oral evidence, he continued to put forward alternative versions of past events that re-frame his actions as accidents, misunderstandings, steps taken in self-defence, or otherwise excuse him from any blame. It is clear that he does not accept the findings of the Court in any meaningful way, and has not been able to accept any responsibility for his past actions.
37. On a superficial level, he spoke of being a changed man, using many of the words and phrases from the Change Project report. He spoke of '*empathising more*', being '*more tactful with listening*', having '*grown over the years*', and been '*given insight*'. However, underlying all this, his narrative remained as it has consistently been over the years in which he has been involved in Court proceedings. He was not able to convey in any way a sense that he had insight or understanding of why the children have been affected by their experiences of him as a parent. His only explanation for the children saying that they did not wish to see him was that they were '*being raised in an alienating environment*'.
38. He was not able to think about what the children might have meant when they said they wanted to have 'a normal life'. He repeated only his own vision of a normal life, namely one in which all children are able to have relationships with their fathers and members of the extended paternal family.
39. He has continued to be reluctant to acknowledge the loving and close relationship the children have with their special guardians. He hinted that the special guardians would not have the same feelings for B and A as they did for their own birth son, not recognising that the children are loved and cared for within a close and loving family unit from where they derive security, happiness and have all their needs met.
40. Professor Perkins is clear in his further updated assessment that, '*there continue to be sufficient concerns about contact with the children, leaving aside their own, central, views and professional advice on this, to make it only slightly less risky and challenging than when I completed my 2020 assessment.*'

41. The father suggests that he should be given further opportunity to undertake the dynamic psychotherapy proposed by Professor Perkins, and meanwhile some work should be done with the children to create a more positive view of him in their minds, with a view to laying the groundwork for re-establishing contact. Indeed, the father says that there is no reason that contact could not happen within the safe confines of a contact centre now.
42. Professor Perkins recommended this therapy back in 2020. The father said he would do it, but he did not. At the end of the DAPP course in August 2022 further one-to-one work was proposed, but the father chose not to pursue that. I have no confidence that the father would now undergo this therapy, or if he did, that he would be doing so with the genuine intention of developing the necessary insight and understanding that would lay the groundwork for him to effect the changes that would be needed in order for consideration to be given to a change to the current order.
43. In any event, the father is not operating in a vacuum. The children themselves have had a further three years of stability in their home with their special guardians. They have become more confident in articulating their wishes and feelings, and have made it very clear that they have no wish to see their father, and indeed that they would be upset and distressed if made to see him.
44. The evidence is their stated wishes and feelings are genuinely held and stem from their own experiences of their father, both when they lived with their father and mother in one household, and in the years following when their mother continued to be harassed by their father, was fearful of him finding where she lived, and suffered as a consequence.
45. Both A and B have been upset and worried since they knew their father had made an application to the Court. B said she was worried her father might try to take her away from her home.
46. There is no evidence to suggest that [CD] and [DD] have said or done anything in an attempt to poison the children against their father. Nonetheless, the children's mother was a dear and close friend to them both and they feel her loss every day. The father was also found to have made silent calls to the children's carers, has continued to insinuate that [DD] had been in a relationship with the children's mother and suggested that they were 'alienating' the children from him. He has repeatedly been assessed as presenting a high level of risk to his children and as someone who threatens the very stability of their placement.
47. In all the circumstances, it is not reasonable to suggest that [CD] or [DD] should have been working harder to actively promote the father to the children.

48. A has refused to read the cards his father has sent him. [CD] told me that the cards are being sent to the children's school as well as to her, and that their contents have not been helpful. She said the headteacher had felt it was not appropriate to share the contents of one card with A. On one occasion the father sent the children a photograph of him together with their mother which they found very distressing. On another occasion [CD] said the father wrote his name all over the card repeatedly, she said it seemed like it was all about him and not for A. [CD] told me that there is nothing positive for the children in the cards they are receiving.
49. I have had regard to all the circumstances, the welfare checklist factors and the additional factors in Practice Direction 12J. There is no evidence that the circumstances have changed such that the conclusions I reached in 2020 should now be reconsidered or the previous orders revisited.
50. The father's application for a variation of the existing child arrangements order is refused.

Change of name

51. Miss Griffiths has helpfully summarised the applicable law, and I draw heavily on her position statement. A and B are subject to special guardianship orders. Under section 14C(3) Children Act 1989, no person may cause them to be known by a new surname without the written consent of every person who has parental responsibility, or without the leave of the Court.
52. A court should not make an order to change a child's surname unless there is some evidence that it would lead to an improvement in their welfare. The fact of registration of a name is significant but not determinative: *Dawson v Wearmouth* [1999] 1 FLR 1167, HL.
53. In *Re W, Re A, Re B (Change of Name)* [1999] 2 FLR 932, at [9] Lady Justice Butler-Sloss gave guidance as the court's approach to an application for a change of name. The factors relevant to this case are set out below:

(e) On any application, the welfare of the child is paramount and the judge must have regard to the s 1(3) criteria.

(f) Among the factors to which the court should have regard is the registered surname of the child and the reasons for the registration, for instance recognition of the biological link with the child's father. Registration is always a relevant and an important consideration but it is not in itself decisive. The weight to be given to it by the court will depend upon the other relevant factors or valid countervailing reasons which may tip the balance the other way.

(g) The relevant considerations should include factors which may arise in the future as well as the present situation.

(h) Reasons given for changing or seeking to change a child's name based on the fact that the child's name is or is not the same as the parent making the application do not generally carry much weight;

(i) The reasons for an earlier unilateral decision to change a child's name may be relevant.

(j) Any changes of circumstances of the child since the original registration may be relevant.

(k) In the case of a child whose parents were married to each other, the fact of the marriage is important and I would suggest that there would have to be strong reasons to change the name from the father's surname if the child was so registered.

(l) Where the child's parents were not married to each other, the mother has control over registration. Consequently, on an application to change the surname of the child, the degree of commitment of the father to the child, the quality of contact, if it occurs, between father and child, the existence or absence of parental responsibility are all relevant factors to take into account.

54. It was stressed that these *'are only guidelines which do not purport to be exhaustive. Each case has to be decided on its own facts with the welfare of the child the paramount consideration and all the relevant factors weighed in the balance by the court at the time of the hearing.'*

55. A has expressed a clear and unequivocal wish to change his surname. B has expressed the same wish, but it is acknowledged that she is perhaps taking her brother's lead.

56. The children's wish is in part a desire to have their mother's name, to honour her, and acknowledge their relationship to her.

57. But it is also because they no longer wish to carry their father's name. [CD] told me that since she has known him A has not wished to use the name [*father's surname*] and that he has chosen to be called A [*surname redacted*]. She said she has had quite a few situations where she had to say A [*father's surname*] on official paperwork, and A *'had a fight'* with her, protesting in the strongest terms that he did not want the name.

58. The children's wishes and feelings have been consistent, clear and unequivocal and should be afforded weight. The guardian is concerned about the impact upon the children of not listening to them. They have found it distressing and difficult to be

asked about their wishes and feelings. If those wishes are then ignored, what was the point of making them go through the process of meeting with her and having to revisit difficult feelings? Would they feel that their opinions mattered at all? How might that impact their ability in the future to express themselves and say what they feel they need? Not just about seeing their father, but in other areas of their lives.

59. The idea of the children having a surname that reflected both their paternal and maternal names was mooted. The guardian did not object to this. The father did object, saying that if the children were given both names that would give them a choice. He said they would be bound to choose the mother's name. [CD] acknowledged that was likely to be the case.
60. The father wishes the children to retain his name so as to retain their connection to him and to the wider paternal family, to record the fact of his marriage to their mother and their identity as his children. It is arguable that retaining their father's name would help the children to know and develop a sense of pride in their family heritage and could connect them to members of their extended family on their father's side.
61. However, ultimately the father's application is driven by his wish for the children to retain their connection to him. His application is all or nothing – he wants the children to have his name and not even to have their mother's name included with it to reflect both sides of their family. The father has not acknowledged the children's quite understandable desire to take their mother's surname. He was only able to interpret A's wish to live a normal life as a wish to be more connected to his father and the paternal side of the family.
62. The children have not had a relationship with their father for seven years and the relationship that they have is fraught with difficulty. A has been found to have been the victim of repeated episodes of physical abuse, both children have been found to have suffered emotional abuse at the hand of their father. The father is not going to play an active role in their lives for the foreseeable future. In the circumstances it is understandable that given a choice, the children would choose not to use his surname.
63. They do not need to retain their father's surname in order to retain the ability to make enquiries about the paternal side of the family or to reconnect to it in the future.
64. I have had regard to all the circumstances, to the welfare checklist factors, and in particular the children's strongly expressed wishes. I am satisfied that the children's welfare needs require a change of name. The father's surname marks the fact of his biological connection to them and of his marriage to their mother. I find in all the circumstances there are strong reasons to remove their father's surname and to replace it with their mother's surname.

Section 91(14)

65. Once again I am grateful to Miss Griffiths for her helpful summary of the applicable law, which is substantially reproduced below. Section 91(14) of the Children Act 1989 provides:

‘On disposing of any application for an order under this Act, the court may (whether or not it makes any other order in response to the application) order that no application for an order under this Act of any specified kind may be made with respect to the child concerned by any person named in the order without leave of the court.’

66. Since the final hearing in March 2020, section 91A of the Children Act 1989 has been inserted by means of section 67 of the Domestic Abuse Act 2021. Section 91A provides:

a. This section makes further provision about orders under section 91(14) (referred to in this section as ‘section 91(14) orders’).

b. The circumstances in which the court may make a section 91(14) order include, among others, where the court is satisfied that the making of an application for an order under this Act of a specified kind by any person who is to be named in the section 91(14) order would put –

i. the child concerned, or

ii. another individual (‘the relevant individual’), at risk of harm.

c. In the case of a child or other individual who has reached the age of eighteen, the reference in subsection (2) to ‘harm’ is to be read as a reference to ill-treatment or the impairment of physical or mental health.

d. Where a person who is named in a section 91(14) order applies for leave to make an application of a specified kind, the court must, in determining whether to grant leave, consider whether there has been a material change of circumstances since the order was made.

67. PD12J, para 37A.1 of the Family Procedure Rules 2010 provides that *‘in every case where a finding or admission of domestic abuse is made, or where domestic abuse is otherwise established, the court should consider whether an order under section 91(14) of the Children Act 1989 would be appropriate, even if an application for such an order has not been made.’*

68. PD12Q was inserted into the Rules to accompany s. 91A. Section 2 sets out a number of ‘key principles’ to consider when deciding whether or not to make an order under section 91(14). Miss Griffiths has drawn my attention in particular to paragraph 2.2:

‘The court has a discretion to determine the circumstances in which an order would be appropriate. These circumstances may be many and varied. They include circumstances where an application would put the child concerned, or another individual, at risk of harm (as provided in section 91A), such as psychological or emotional harm. The welfare of the child is paramount.’

69. The leading case in relation to s. 91 (14) has long been the judgment of Butler-Sloss LJ in *Re P (Section 91(14)) (Guidelines) (Residence and Religious Heritage) sub nom: In Re P (A Minor) (Residence Order: Child’s Welfare)* [1999] 2 FLR 573.

70. However, those Guidelines must now be read in the context of s. 91A and the court is referred to the observations of King LJ in *Re A (A Child) (Supervised Contact)* [2022] 1 FLR 1019, where the Court of Appeal considered the impact on *Re P* of s. 91A, albeit not yet in force. The salient observations of King LJ at [33]-[42] can be distilled as followed:

- a. *There has hitherto been a understandable but misplaced reluctance for judges to make s. 91 (14) orders;*
- b. *Although an order made under s 91(14) limits a party’s ability to make an application to the court, the court’s jurisdiction to make such an order is not limited to those cases where a party has made excessive applications, although that will frequently be the case. It may be that there is one substantive live application but that a person’s conduct overall is such that an order made under s 91(14) is merited. This situation is anticipated by Guideline (6) of Re P: ‘In suitable circumstances (and on clear evidence), a court may impose the leave restriction in cases where the welfare of the child requires it, although there is no past history of making unreasonable applications’.*
- c. *Further, the guidelines do not say that a s 91(14) order should only be made in exceptional circumstances, rather Guideline (4) says such an order should be the ‘exception and not the rule’. That is of course right, there is no place in our child focused family justice system for any sort of ‘two strikes and you are out’ approach, but it seems to me that in the changed landscape described in para [30] above there is considerable scope for the greater use of this protective filter in the interests of children. Those interests are served by the making of an order under s 91(14) in an appropriate case not only to protect an individual child from the effects of endless unproductive applications and/or a campaign of harassment by the absent parent, but tangentially also to benefit all those other children whose cases are delayed as court lists are clogged up by the sort of applications made in this case, applications which should never have come before a judge.*

- d. *The guidelines in Re P should now be applied with the above matters in a mind and in my judgment the prolific use of social media and emails in the modern world may well mean that orders made under s 91(14) need to be used more often in those cases where the litigation in question is causing either directly or indirectly, real harm.*

71. Further guidance as to the ‘modern’ approach to the *Re P* factors can be found in the decision of Knowles J, post-implementation of s. 91 A in *A Local Authority v F and Others* [2022] EWFC 127 at paragraph 56:

‘S.91A(2) provides that an order may be appropriate if the child is at risk of harm, harm being defined in accordance with section 31(9) of the Children Act 1989 to mean “the ill-treatment or the impairment of health or development including, for example, impairment suffered from seeing or hearing the ill-treatment of another”. The risk that harm may arise to a child under the age of 18 unless the making of applications is restrained is not qualified by words such as “serious” or “significant” and neither is the degree of harm that a child may experience. I observe that, insofar as the risk that harm may arise to a child is concerned, section 91A(2) sits a little uneasily alongside guideline 7 of the Re P guidelines which states that there must be a “serious risk [my emphasis] that, without the imposition of the restriction, the child or primary carers will be subject to unacceptable strain”. Correctly applied to a child’s circumstances, section 91A(2) gives a court greater latitude to make section 91(14) orders than the Re P guidelines do. Thus, in coming to my decision in this case, I have applied the new statutory approach to harm set out in s.91A(2) rather than guideline 7 of the Re P guidelines and, in so doing, I have adopted the ordinary civil standard of proof. That course is consistent with the modern approach of the Court of Appeal in Re A as outlined above.’

72. Drawing the statute, procedural rules and case law together, the approach to an application for a section 91(14) order can be summarised as follows¹:

- a. If findings of domestic abuse are made, even if the victim did not apply for this relief, the court is now bound to consider whether or not to make a s.91(14) order.
- b. While such an order is *‘the exception and not the rule’*, it does not follow that the case or its circumstances must somehow be adjudged to be *‘exceptional’* before such an order could be made.
- c. The court should bear in mind that such orders represent a protective filter – not a bar on applications – and that there is considerable scope for their use in appropriate cases.

¹ With credit to William Tyler KC who rehearsed the same authorities selected by Miss Griffiths, and then provided this summary to me in another case concerning an application for orders pursuant to section 91(14) Children Act 1989.

- d. Whether the court makes an order is a matter for the court's discretion. There are many and varied circumstances in which it may be appropriate to make such an order. These may include cases in which there have been multiple applications (*'repeated and unreasonable'*), but that is not a necessary prerequisite. They may also include cases in which the court considers that an application would put the child concerned, or another individual, at risk of harm (without the need to find the *'risk'* to be *'serious'* or the likely *'harm'* to be *'significant'* or *'serious'*).
 - e. Subject to any inconsistency with the above, the *Re P* guidelines continue to apply.
 - f. If the court decides to make an order, it must consider:
 - i. its duration, as to which, any term imposed should be proportionate to the harm the court is seeking to avoid, and in relation to which decision the court must explain its reasons;
 - ii. whether the order should apply to all or only certain types of application under the CA 1989;
 - iii. whether service of any subsequent application for leave should be prohibited pending initial judicial determination of that application.
 - g. In all of this, the welfare of the child is paramount. That said, any interference with a parent's otherwise unfettered right of access to the court, including the duration of any such prohibition pending permission, must be proportionate to the harm the court is seeking to avoid.
73. There is clear evidence from the guardian and [CD] that these proceedings have caused the children anxiety and distress. The guardian told me that A had told her he felt worried after he received the letter from her telling him that his father had applied to the Court again. A was unsettled and found it difficult to concentrate at school. B said she felt frightened that her father would be trying to come and get her. Both children talked about not wanting to be involved in Court proceedings anymore. The guardian said they associate Court proceedings with the death of their mother. [CD] also reported that the children were very worried before the guardian's visit and had become anxious about further court involvement and the prospect of any changes to current arrangements.
74. The children have both written letters to me in which they say in unequivocal terms that they neither want to see their father nor hear anything about him. A says he want the case to finish and he just wants to live a normal life. In the circumstances of this case, I consider it is very important that the children know that their wishes

and feelings have been heard, understood, and heeded. They should know that their feelings and opinions are valued and given due consideration by those who are charged with securing their welfare.

75. As well as telling me about her concerns about the impact of proceedings upon the children, [CD] described something of the strain and stress that the repeated applications have brought to her and her husband. The children's mother was a dear and close friend to them both. Over three years after her sudden death, her loss is still evidently felt keenly by them both. [CD] told me that it still feels very fresh, like yesterday, and is still very painful to her. She said that the repeated Court proceedings were difficult for her, and while she did her best to protect the children, that did have an impact on the whole family. Similarly, if the children were distressed and upset, that had an impact on her, and her husband.
76. In these proceedings [the father] has sought to relitigate the same issues that he did in 2020 and in 2018-2019. Once again, he says that he intends to pursue the therapy recommended to him by Professor Perkins, but I have not detected any sense that he intends to do this because he genuinely identifies a need for work. Rather, as with the domestic abuse course, it would appear that he regards it as a further test that he is required to pass by the Court, and if he only completes a certain number of sessions he may return to Court and be granted the order he seeks. He continues to ask other people to work with the children on his behalf – to portray him in a positive light to the children, to explore their past with him, to make them available for supervised contact. He has not shown any sign in these proceedings that he is able to understand the impact of his past actions on the children, or the continuing negative impact that repeated applications to Court are having on them and their carers.
77. There is a significant risk that without a filter imposed upon him, he will continue to make repeated applications to the Court, without there having been any material change of circumstances.
78. I am satisfied, in the particular circumstances of this case, that without a restriction on further applications by the father, the children and their carers will be placed under unacceptable strain.
79. In my judgment the interference with the father's right of access to the court is a proportionate response to the harm the children and their carers would otherwise suffer.
80. I have to consider the duration of any order. A is twelve. B is nine.
81. In my judgment the restriction should be in place for A until he reaches the age of sixteen. His views have been clear and consistent, and are justified on the basis of his experiences of his father. He needs and deserves to know that he can have the normal life he asks for, not being the subject of repeated applications to the Court for the remainder of his childhood. A has been the subject of Court proceedings for about a third of his life so far.
82. That does not prevent the father making any application, but it does impose a filter to

ensure that he does not make repeated applications to relitigate without a judge first considering whether or not permission should be given to do so.

83. I impose a section 91(14) order preventing the father from making an application for orders under the Children Act in respect of A until [*A's sixteenth birthday*], without first obtaining the permission of the Court.
84. I consider that the restriction for B should also last until her sixteenth birthday. I appreciate that represents a longer period of time. While there were no findings of physical abuse directed towards B, she is no less affected than her brother as a result of the abuse that was directed towards him and to her mother, and of spending her early years in a domestically abusive household and subject to the emotional abuse of the stalking and harassment of her mother and carers that followed. In addition, there are difficult issues to confront around identity as it was previously alleged that B was conceived as a result of the father raping the mother.
85. A is very protective of B. It would cause harm to both children if it were the case that after A's sixteenth birthday, the father gained an unlimited right to apply to the Court in respect of B. The restoration of his right to make an application to the Court should be assessed in all the circumstances that pertain at the time, with particular focus on the father and progress he has made. It should not in my judgment arise simply because one or the other child has reached a particular age or stage of schooling.
86. I impose a section 91(14) order preventing the father from making an application for orders under the Children Act in respect of B until [*B's sixteenth birthday*], without first obtaining the permission of the Court.
87. I have discussed with [CD] whether I should direct that any application for permission to apply to the Court should be served upon her and her husband. On the one hand, it would give them an opportunity to see the application that was being made, and to make representations to the Court on the question of whether or not permission should be given. On the other hand, it would bring stress, anxiety and uncertainty which would affect her and the children. On balance, [CD] would prefer not to be notified of any future applications before a decision has been made, and says she trusts the Court to make a decision about whether to give permission, without hearing from her or her husband at that stage.
88. I will do as she requests, and direct that any future applications made by the father should not be served upon the Respondents. Ideally any applications would be referred to me. If a decision is made that permission is granted, then the application will be served on the respondents, and consideration will be given to whether a guardian should be appointed.
89. If permission is refused, then an order will be sent out giving brief reasons for the refusal, and at that time, a copy of the application and the order will be served upon the special guardians so that they are not excluded entirely from the Court process.

90. At the very end of the hearing a question was raised about whether or not I should make orders about the father's access to the children's school reports.
91. The prohibited steps orders I made in March 2020 remain in force. The father is prohibited from removing the children from the care of the special guardians or any person to whom they have entrusted their care, which includes their schools, and he is prohibited from contacting the children's schools, save to arrange for him to receive the children's school reports. As he still has parental responsibility for the children, he would on the face of it be entitled to receive them. He says he has not received any reports and he does not know where A now goes to school. A has moved to secondary school since the last hearing.
92. There is no application before the Court to extinguish or otherwise limit the father's exercise of his parental responsibility. Similarly no application was made seeking disclosure of information about where the children went to school or to have reports about it. The parties have not had the opportunity to consider this, consult with teachers or make informed submissions to the Court.
93. In the circumstances, I cannot reasonably make an order requiring the special guardians to disclose school reports or other information. It would not be appropriate for me to make an order either requiring a headteacher, who is not a party to the proceedings, to provide [the father] with school reports, or preventing them from doing so. It must be a decision for each head teacher in the particular circumstances to exercise their own discretion in this respect, having regard to relevant law, rules and guidance.
94. I shall write letters to the children explaining my decisions and the reasons for them.

HHJ Joanna Vincent
11 October 2023
Family Court, Oxford