



Neutral citation: [2024] EWFC 33 (B)

Case number RG21P00751

IN THE FAMILY COURT SITTING AT READING

Date: 17 February 2024

Before:

DISTRICT JUDGE SOPHIE HARRISON

Between:

FW

Applicant
Father

- and -

MJ

Respondent
Mother

Hearing date: 12 February 2024

Mr Thomas Pye (counsel) appeared for the Applicant Father
Ms Elisabeth Traugott (counsel) appeared for the Respondent Mother

Approved Judgment

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District Judge Harrison:

Introduction and background

1. This is my judgment at the conclusion of these long-running proceedings concerning a little girl, S, now aged 5. S lives in a household with her mother (M, the respondent in these proceedings), her older half-sister (D, aged 9), a younger baby half-sibling and her mother's partner. The applicant in these proceedings is S's father (F). Both S's parents have parental responsibility for her.
2. The parents have each been represented by counsel at this final hearing, listed with a time estimate of one day. M instructs her counsel as a litigant in person, on a direct access basis. F's counsel is instructed through solicitors and represented F at the fact-finding hearing (FFH) and dispute resolution appointment (DRA). To prepare for this hearing I have read detailed witness statements from each parent, as well as the other documents in the court bundle, which runs to 361 pages. I heard oral evidence from the Cafcass officer and section 7 reporter, Ms Jones, who was cross-examined by both barristers. Counsel for each parent made written and oral submissions.
3. I am very familiar with this case, having conducted a FFH on 14 and 15 December 2022 and the DRA on 19 June 2023. F made his application in June 2021, for S's time with him to progress from a contact centre.
4. The safeguarding letter from Cafcass dated 23 August 2021, with addendum dated 15 September 2021, informed the court that F has previous criminal convictions, including a guilty verdict on 25 February 2011 for the rape of a female aged 16 years or over (not M) on 9 March 2008. He served a prison sentence and remains subject to an indefinite sex offender notification requirement, a copy of which was shown to the court at the hearing. The safeguarding letter also informed the court that S has been known to her Local Authority, receiving Early Help support in 2021.
5. At the FFH, having heard evidence and submissions over the course of 1.5 days, I made the following findings:
 - Possession and use of steroids by the father
The mother found steroids in the father's kitchen before S was born and in the father's bag in her house on 19 April 2020; no findings are made as to the extent of the father's own use of those substances.
 - Use of cannabis by the father
The father smoked cannabis whilst the mother was pregnant with S; it is noted that the father holds down a job and has not failed the random drug tests to which he must submit in his present employment; the court understands why the father has not kept the slips of paper from those tests confirming he has passed them, as it did not occur to him that these would be significant; it is likely that any risk of future cannabis use whilst S is in the father's care can be adequately managed, for example by the father giving an undertaking; there is no evidence that the father's use of cannabis is problematic in his current professional or personal life.

- Coercive behaviour by the father
 - i. The mother and D, and S as a new baby, lived in an environment of coercive behaviour from the father with a pattern of acts of threats and intimidation used to harm and frighten the mother, and the mother was emotionally traumatised by frightening and aggressive behaviour from the father.
 - ii. On three occasions during the parents' relationship the father had sexual intercourse with the mother when she did not consent to this and the father should have known that she was not consenting on these occasions; on the first occasion the father acted as he wished without pausing to establish whether or not the mother consented; on the second occasion the mother was obviously upset, crying and froze but the father continued; on the third occasion the mother was crying and said 'stop' but the father continued; these incidents occurred during the course of what was otherwise a consenting sexual relationship between the parents.
 - iii. On one occasion after the ending of the parents' relationship, in August 2019, when the mother had agreed to the father coming into her house after he rang her in the middle of the night saying he had nowhere else to go and asked a favour from her to let him into her house to stay, the father entered the mother's bedroom during the night without the mother's permission and attempted to initiate sexual contact with her; the mother left her bedroom and sat on the sofa for the rest of the night to escape the unwanted contact.

6. Following the FFH, I asked an officer of Cafcass to prepare a report under the Children Act 1989, s 7, 'dealing with, but not limited to, the following:

- a. the timing and extent of progression of S's contact with the father - when and how this contact should move into the community and away from the contact centre;
- b. whether and when any contact between S and the father may take place at the father's home;
- c. how often and for how long S should see the father;
- d. recommendations in respect of arrangements for S including stepped arrangements with a view to a final order if possible;
- e. the wishes and feelings of S so far as they can be ascertained;
- f. the home conditions and suitability of the accommodation of the father (which may be assessed remotely, in the discretion of the reporting officer);
- g. any recommendations as to handover arrangements for S in respect of contact to ensure that the parents do not need to come into direct contact with one another;

h. having regard to the findings of fact made as set out in the recitals to this order:

- i. any harm suffered by S and the mother, with whom S is living, as a consequence of the domestic abuse found;
- ii. any harm which S and the mother, with whom S is living, is at risk of suffering if a contact order is made;
- iii. the report should address the matters set out in paragraphs 36 and 37 of PD 12J;

i. any courses available to the Father to assist him both in terms of his care of S as a rising school age child and in respect of managing his own anger and behaviour and any other risks identified by the assessing Cafcass Officer (bearing in mind the Domestic Abuse Perpetrator Course is no longer available in England);

j. any comments on the mother's application for a change of name for S, specifically adding the name XX to her existing names.'

7. At the outset of these proceedings, S had an established relationship with her father and was seeing him regularly at a supervised contact centre. By the time of the FFH and the direction for a s7 report, S had been spending unsupervised but supported time with her father twice a month at a supported contact centre for around 6 months.

8. At the DRA on 19 June 2023, the court and the parents considered the s7 report of Ms Jones. The court ordered a progression of interim contact arrangements away from the supported contact centre and into the community. Unsupervised contact in the community was ordered on the 2nd and 4th Saturday of each month for 7 hours each day, subject to F completing a parenting course, with handovers at a contact centre (or via a third party) to prevent the parents having to meet. This final hearing was listed to consider the following issues (set out in a recital to the order):

- a. the further progression, if any, of S's time with F, including at his home and how, if appropriate, contact should progress to S spending time with F overnight and whether a schedule for progression of contact should be specified in an order;
- b. the courses completed by F and whether they allow the court to order any progression of contact for S with F;
- c. exact arrangements for handover longer term; and
- d. whether any refinements are required for contact and arrangements for the same on special days and during holiday times.

9. M has been a litigant in person throughout these proceedings and has been unrepresented until this final hearing, when she instructs Ms Traugott on a direct access basis. The provisions to appoint a Qualified Legal Representative do not apply to this case, as it was issued before July 2022. In view of the nature and extent of the issues, the evidence I had already heard from the parties at the FFH and M's lack of

professional representation throughout the case, I directed at the DRA that this final hearing would hear the oral evidence of Ms Jones only and would consider the written evidence of the parents and their oral submissions.

This hearing

10. In the penultimate paragraph of her position statement filed after the end of the court day on the working day before this hearing, M's counsel indicated that she wished to challenge the court's case management directions as to the conduct of the final hearing and to cross examine the father. In discussion with me at the start of the hearing, in the presence of both parents, Ms Jones and Mr Pye, Ms Traugott stated that she wished to question the father on one topic only – his acceptance or lack of acceptance of the family court's findings of fact – and that this may not be necessary at all if the father confirmed he accepts the findings. Mr Pye confirmed, after a short break, that the father accepts the findings.
11. Ms Traugott renewed her application (for the father to give oral evidence and be cross-examined) at the start of the afternoon session, once Ms Jones had completed her evidence. Ms Traugott also sought for M to be able to give short oral evidence. Having heard submissions from both counsel, I delivered a brief ex tempore judgment, seeking to balance the respective Article 6 rights to a fair process for each of the parents, together with the factors in the overriding objective and the general principle that delay is likely to prejudice the welfare of the child. I declined to hear the parents' oral evidence and the case has therefore proceeded as set out in paragraph 16 of the DRA order of 16 June 2023.
12. An accredited representative of the press, Ms Martin, attended the final hearing, which was held in private. Applying FPR 2010 r 27.11, having invited short submissions from the parties, I permitted Ms Martin to remain in the court room, and reminded all those in court of the applicable reporting restrictions under the Administration of Justice Act 1960, s 12 and the Children Act 1989, s 97(2). Ms Martin sent an email to the court office at around midday, forwarded to me during the short adjournment, for permission to read the hearing bundle and indicating that she would seek for the reporting restrictions to be lifted. I confirmed, when the hearing resumed at 2pm, that a formal application would be required for access to documents and/or the lifting of reporting restrictions and that any such application, if made, should be referred by the court office to me and I would give directions for it to be considered on notice to the parties. The court must perform a proper balancing exercise of the relevant Article 10 and Article 8 rights before making these decisions.
13. Given this court's findings that M is a victim of domestic abuse, the court has a duty under FPR 2010 r 3A and PD 3AA to make appropriate participation directions. The parents were screened from each other in court and provided with separate waiting/conference areas. I endorsed breaks to be taken whenever requested.

The positions of the parties at this final hearing

14. F seeks a progression in his time with S, to overnight contact at his home from June 2024 on alternate weekends, together with additional contact in school holidays and on special days. He proposes handovers at a midway point between his home in Kent and M's home in Berkshire, facilitated by his partner or M's partner. At the very least, he seeks an immediate progression of the community contact, to include additional days for special events etc.
15. M seeks for S's contact with F to be significantly restricted or (preferably) stopped. Although S has had supervised, supported or community contact with F throughout the course of these proceedings, having taken advice M asks the court to conclude that contact cannot be safe for S until F successfully completes a RESPECT-accredited Domestic Abuse Perpetrator Programme (DAPP). M's primary position is that there should be an order for no contact until F completes the course. In the alternative, M submits that there should be only professionally supervised contact once each month, given the court's findings and F's conviction.

The law

16. S's welfare is paramount and I will consider in detail below the factors in the welfare checklist at s 1(3) of the Children Act 1989, before conducting a holistic evaluation of the options for S.
17. Section 1(2A) of the Children Act requires the court to presume, unless the contrary is shown, that involvement of each parent in S's life will further her welfare. In considering this presumption, which is rebuttable, the court must consider the risk of harm to the child under s 1(6).
18. The rights of the parent and the child to respect for their private and family life (Article 8 rights) are engaged. Where these rights are in conflict, the rights of the child will prevail. The court must not make an order unless that is better for the child than making no order. Any order must be proportionate.
19. I must have regard to the general principle that delay in resolving issues about S's upbringing is likely to prejudice her welfare.
20. Practice Direction 12J is fully engaged, given the court's findings of fact. In particular, I have reminded myself of paragraphs 35 – 37, which I will consider in more detail below. I must ensure that any order for contact does not expose the child to an unmanageable risk of harm. S must be regarded as a victim in her own right of domestic abuse, in accordance with paragraph 3 of PD12J and s 3 of the Domestic Abuse Act 2021.
21. Ms Traugott referred me to other judicial decisions, including to the detailed reasoning in a recent non-binding decision of a circuit judge. I remind myself that 'cases like this turn almost entirely on their own facts, and the approach of other judges in other cases is of limited assistance', to quote from Lieven J in the recent

decision in *Griffiths v Kniveton and another* [2024] EWHC 199 (Fam). I have re-read that decision.

The evidence of the Cafcass officer

22. Ms Jones prepared a written report, as directed by the court, in April 2023. She met with S and, separately, observed a positive contact session between S and her father. She commissioned a short report from S's nursery and spoke with each parent. Ms Jones was mindful of the serious nature of the court's findings and was concerned that the father expressly did not accept these findings. She noted S's attachment to her father and the positive nature of the contact she observed and also read about in contact notes. Ms Jones recommended that contact could progress out of the supported contact centre and into the community. She made some recommendations for F to complete work on managing anger and abusive behaviour and to develop his parenting knowledge. She could not advise on any particular stepped progression to overnight stays, but recommended that consideration of overnight contact could happen if the community contact took place with no difficulties for at least a year.
23. In her oral evidence, Ms Jones updated her recommendations. She explained to me, at the start of her evidence (and before she was cross-examined by the advocates), that a DAPP has been at the forefront of her mind as she tried to see a pathway for S. At the time of her written report, she could not source any DAPP to recommend for F, but she is now aware that Cranstoun in Reading (and some other providers in the London area) offer a DAPP, but only to parents who have been out of the family court system for at least a 12-month period and do not intend to issue an application. A parent can then self-refer and self-fund a private DAPP referral, if assessed to be suitable, which requires some acknowledgement of past abusive behaviour.
24. I pause here to note that Cafcass referrals to DAPP programmes ceased in June 2022 and that no successor programme for Cafcass referrals has currently replaced the DAPP. Whilst some courses for perpetrators have continued to run in parts of the country, sometimes on a self-funded basis, provision since mid-2022 has been limited and patchy. I take judicial notice, having researched the issue in a number of cases over the last 18 months, with the assistance on occasions of legal representatives, Cafcass and social workers, that I have not been able to find any DAPP provision in the Berkshire area. Ms Jones' update about Cranstoun is therefore significant.
25. Ms Jones continues to recommend that daytime contact in the community (and not in F's home) is the final order in these proceedings. Her recommendation for F to self-refer to a DAPP in 12 months' time would form a basis for any progression in the future, once F has successfully completed the demanding course. Such a progression would need to be discussed between the parents once the course had been completed, perhaps in mediation (if suitable), or F could issue a new court application at that stage, in the absence of agreement.
26. Ms Jones does not consider that contact can progress for S to her father's home or overnight, whilst there is an unaddressed risk of domestic abuse. Contact in the daytime in a public place, in her view, adequately mitigates this risk. Ms Jones was concerned that ending contact now between S and F would of itself cause S harm,

given their established attachment and positive relationship. She viewed contact in a centre as somewhat artificial for S, who needs the normality of the community contact that seems to be working well for her.

27. Having read F's recent statement, Ms Jones noted that his acceptance of past fault and his expression of remorse is couched in fairly general terms, but she also sees it as the positive beginnings of a shift in his attitude, although she notes he is still in the early weeks of his therapy. In addition to the DAPP and continuing with therapy, Ms Jones recommends F completes a course for parenting children with additional needs, whilst commending F for completing the Triple P course.
28. The ending of the court proceedings will enable the clock to start ticking for F's DAPP self-referral and will also, in Ms Jones' view, allow time for trust to begin to build between the parents, without the spotlight of court involvement.
29. I found Ms Jones to be a cogent, child-focussed and sensible witness. Having listened carefully to her evidence, I disagree with the submission made by Ms Traugott on behalf of M that Ms Jones had a mindset to 'promote contact at all costs'. I also disagree with Ms Traugott's submissions that Ms Jones has produced an inadequate report, devoid of nuance, or that her recommendations do not give weight to the findings of abuse. In my judgement, Ms Jones was properly alive to both the serious findings against F, and also S's positive relationship with and attachment to her father. Ms Jones has not, in my judgement, provided a speculative or uncertain recommendation to the court (also Ms Traugott's submission). It is Ms Jones' clear recommendation that the final order of the court should be for community contact, with any further decision-making to be left until after successful completion of a DAPP.

The welfare checklist

30. Ms Jones spoke with S at her nursery, with the support of a keyworker, on 11 April 2023. S had a clear understanding of her family's composition and spoke warmly of her father. In the contact session Ms Jones observed on 8 April 2023, S ran straight to F when she first entered the room and 'appeared very comfortable and calm in her dad's company'. F was observed to be patient and child-focussed (p 355). The reports in the bundle of S's supervised contact with her father between April 2021 and March 2022 (pp 327-349) are very positive and show a warm relationship between father and daughter. In his written statement to the court, F provides a description, supported by photographs, of the fun he and S have together in their days in the community.
31. In her written statement, at paragraphs 14-20, (pp 255-256) M includes concerns that S can be quiet or emotionally dysregulated after contact, and sometimes beforehand, but M also acknowledges that S would want to see her father in a safe way and goes happily from the handover point.
32. The reports from S's nursery (p 361) and school (p 317) show her to be a happy, friendly and active little girl. It is clear she is very well cared for by her mother, who

is meeting her physical and educational needs and is well-attuned to S's emotional needs. M has some concerns about S's speech (she has been referred by her school to a speech and language therapist). S shows some characteristics suggestive of autism (including difficulties in changes to routine) but there are also contra-indications, given S's sociable nature and ability to engage in interactive and imaginative play. S has been referred to CAMHS for an autism assessment (for which there is a long waiting list) and to occupational therapy as she has some sensory issues (Dingley Child Development Centre letter dated 11 December 2023, p 266). S therefore has her own particular enhanced needs, but it is important to note that she is thriving in her mother's care and engaging well with her education.

33. In the limited time they are together - just 14 hours each month - S's needs are well met by her father. There is no suggestion that he cannot care safely for her physical needs and all observations of contact show F responding warmly to S.
34. S is used to seeing her father on a regular basis, albeit for fairly short periods and in either a contact centre or community setting. Her parents separated in 2019, when she was just a few weeks old. For almost 2 years after the separation, until January 2021, S's parents managed the contact arrangements outside the court process, with contact being either informally supervised by M herself, or unsupervised. S's time with her father ceased for about 3 months in early 2021, but then resumed at a contact centre (the dates are set out in the bundle at p 8). S has seen her father on a regular basis in the community since the contact arrangements moved out of the centre in June 2023.
35. M informs the court that S needs consistency and routine (p 258 para 29), although it is M's position that the short-term disruption to S of a cessation or curtailment of contact is outweighed by other welfare considerations. It is F's view that S has adapted well to the gradual evolution of contact so far and will continue to do so (p 275 para 16(c)).
36. S has suffered harm from her exposure to the domestic abuse perpetrated by her father when she was a tiny baby and living in a household with him. It is the finding of the court that S as a new baby lived in an environment of coercive behaviour from the father. Section 3 of the Domestic Abuse Act 2021 requires the court to treat S as a victim of the abuse in her own right. S will also have been impacted by the symptoms of post traumatic stress disorder suffered by her main carer, for which M has sought treatment (NHS therapist's letter p 268). M's actions in separating from F when S was very young have protected S, and we all hope that the harmful impact on her will be very limited. However, I cannot agree with F's suggestion at paragraph 16(e) of his statement (p 276) that S has not really been harmed because the court's findings of fact 'do not relate directly to my parenting or care of S'. I fully accept that F loves and cares for S and would never want to harm her, but domestic abuse is a gross and obvious failure of parenting, exposing all members of the household to harm.
37. Going forward, the court must ensure that contact arrangements will not expose S to an unmanageable risk of harm and will be in her best interests. The court must make an order for contact only if satisfied that S and her mother's physical and emotional safety will be secured.

38. The contact notes and observations provide a wealth of evidence that F has met S's physical and emotional needs and ensured her safety since her parents separated. F's behaviour during contact is attuned to S's needs, loving, patient and child focussed. The only suggestion otherwise is found in M's statement at paragraph 18 (p 256), where M reports S saying she is 'scared of daddy shouting at her' but this seems to have been an isolated report that S did not repeat and I note S goes happily with F from the contact handover centre.
39. F has been committed to these proceedings and patient in complying with the limitations and obligations imposed on him. He has worked within this slow court process to seek gradual increases in his time with S. He has completed a Triple P parenting course, a stress management online course and a Freedom course for perpetrators of domestic abuse and has accessed counselling. He has communicated with M constructively through the handover book and apologised for the one occasion when he sent a video of S directly to M. I accept that he is genuinely motivated by a desire to see his daughter and promote her best interests.
40. F has taken steps to improve his parenting capacity, including the Freedom course. In my judgement he cannot be criticised for not having yet started a RESPECT-accredited DAPP course. Until Ms Jones gave her evidence on Monday, I was not aware that Cranstoun are now offering such a course in this area and I note that currently F could not access that course, as this case remains before the family court.
41. F's capacity to appreciate the effect of past domestic abuse and the potential for future abuse is a significant issue for the court to consider. In his conversation with Ms Jones in April 2023 F 'did not accept any of the findings and continued to tell [Ms Jones] they are not true' (para 19 p 355). Ms Jones commented 'if [F] does not accept his behaviour is domestic abuse, then there is a high risk he will continue to be abusive' (para 20 p 355). F's statement dated 2 February 2024 informs the court of his response to the Freedom course, his growing realisation of the consequences for others of his past behaviour and his regret. Through his counsel, F informed the court at the final hearing that he now accepts the court's findings and is willing to do a DAPP.
42. Ms Traugott asks me to assess F's recent statements as 'too little, too late'. She points out the rather generic and vague quality of the acceptance and apology in paragraph 12 of F's statement (p 273) and notes that full acceptance of the court's findings was confirmed only through counsel on the day of the final hearing.
43. When Ms Jones was asked for her updated views on F's capacity to accept his past behaviour, she told me that she does see the beginnings of a shift, which is hopeful. Some acceptance, not necessarily complete acceptance, is required for access to a DAPP. She views F's counselling as positive, although it is early days, and it is also positive, in her opinion, that he has accessed other courses. Ms Jones accepted that anger and stress management course are no substitute for a DAPP, but nonetheless she does see some progress in F's acceptance of his past behaviour and its impact. In my judgement, Ms Jones is right to see some positive progress. I do not agree with Ms Traugott's submission that the court should operate from a position that F has still shown no acceptance of the findings of abuse.

44. M's emotional safety is a factor for the court to weigh. M has suffered traumatic abuse, for which she has sought therapeutic help. These protracted proceedings have undoubtedly been difficult. Ongoing contact arrangements require her to be in communication with F, even if this can be limited to a handover book and handovers via a third party. As S's primary carer, M's emotional well-being is important to S's welfare.
45. M has raised the issue of the difficulty of explaining to S her family situation as she grows up. In particular, in M's submission, it will be hard to explain to S why she is seeing her father, given the abuse the family suffered and her father's conviction. I note that, whatever the outcome for S, she will need some explanations and the practical reality is that it will be largely down to M to offer those explanations as S grows up. Whether S is seeing F regularly but not overnight, or not seeing him at all, or regularly staying with him, S will have questions about her family and will need to understand her 'life story'. Ms Jones will write S a 'closing letter' and helpfully gave us some examples of the sorts of explanations that children can be given when their family life has been affected by domestic abuse.

My analysis of the options in the light of the welfare checklist factors

46. M proposes that the court should make an order that S should not see her father again until after he has completed a DAPP. In the alternative, very much as a secondary position, M submits that contact should revert to short sessions of supervised visits once each month.
47. M's proposal would be 'safe' for S in that it would offer the best prospect for ensuring that S could not be exposed to any further abusive behaviour from her father. It would also enable M to step away from the regular need to think about F and communicate with him, and this may help M as she focusses on her own recovery from trauma. Contact time would only be reintroduced when (and if) any risks from future domestic abuse have been significantly reduced by F's completion of a DAPP. F would not be able to start the DAPP for at least a year and the course would probably take at least 6 months. M's proposal therefore imposes a period of no or limited contact, and respite from M's point of view, for at least 18 months. It would enable F to focus on increasing his capacity to be a safe parent for S in the future.
48. However, M's proposal also comes with disadvantages. S has an established and loving relationship with her father. She has a significant and sustained attachment to a father who offers her unconditional love, patient attention and fun. In Ms Jones' view, to stop or significantly reduce this relationship would of itself be harmful to S. It would be confusing for her to be expected to pick up the relationship again in 18 months' time and may cause her to lose some trust in the adults who care for her. It would be a significant and challenging change in her routine and her relationships. Ms Jones also told the court that the contact centre is an artificial environment for S and that contact time should be spent in as natural a family environment as possible. In Ms Jones' assessment, the current community-based arrangements protect S from the risk of exposure to domestic abuse, which is much more likely to take place

behind closed doors than in a community setting. I agree with Ms Jones on these points.

49. F proposes that his time with S can increase to overnight stays in his home from June 2024, as by then S will have enjoyed safe and beneficial community contact for a year. In line with Ms Jones' written report, he proposes the one-year point as the time for reconsideration of how arrangements can progress. In the alternative, as his secondary position, F proposes that the community contact should be increased.
50. F's proposals for a staged progression to overnight stays at his home in Kent would enable S to build on her relationship with him and to experience family life in his home and increased time with him. It could lead to relaxed family time together, without the need to be always busy doing activities in the community.
51. However, Ms Jones was clear that she could not recommend this progression at this time. Although there have been no reports of domestic abuse in the father's longstanding relationship with his current partner, the serious findings of the court have not yet been addressed by the successful completion of a DAPP. Ms Jones has updated her recommendation, given that a DAPP will be available to F in 12 months' time. Unless and until the father has completed the DAPP, there is a risk, that has not been fully mitigated or assessed, that S will be exposed in her father's household to domestic abuse. The impact of overnight stays on M's mental tranquillity must also be considered, given that she is S's primary carer. M is clear in her statement that she would be fearful and anxious should S be in the care of her father overnight (para 52 p 262).
52. Ms Jones' recommendation provides a third possible way forward for the court: the continuation of the current community-based contact as a final order in these proceedings, with any progression to be considered afresh by the parents once the DAPP has been completed.
53. The advantage of this course is that it represents a continuation of an arrangement that seems to be working for S, in that she is safe in the community with her father and able to enjoy her relationship with him. It is part of S's routine and has been managed by her parents for some time. Their exchanges in the handover book show both parents cooperating in a child-focussed and mature way to make the arrangements work for S.
54. The disadvantages of a continuation of the status quo, at least for now, depend on one's point of view. M says it exposes S to a risk of harm as yet unmitigated. F says it does not allow for the progression of a safe and beneficial relationship.
55. I have already said that I consider Ms Jones to be a helpful and sensible witness. I am satisfied that she has the experience and expertise to assist the court. M, through her counsel, has raised with the court the possible need for an expert risk assessment before contact can progress beyond professional supervision, as outlined in the Cafcass safeguarding letter dated 23 August 2021. No party has ever made any application for an expert assessment to be completed by a psychologist or any other expert. Whilst the court can make directions of its own accord, it would be unusual for the court to order an expert risk assessment without it being sought by any party,

not least because it would be the parties who would have to fund the report and cooperate fully with the intrusive and time-consuming assessment process, the detailed parameters and purpose of which would have to be set out in a letter of instruction to be drafted by the parties and approved by the judge. The court commissioned Cafcass to prepare an assessment after the FFH and the Cafcass officer provides advice to the court as an expert social worker. In Ms Jones' view it would be unusual to commission an expert assessment in a case where the substantive issue is domestic abuse, and I agree. A perpetrator course, as Ms Jones now recommends here, and which both parties agree is required, is, in my judgement, the way to assess and manage the further risks going forwards, Cafcass having assisted the court to assess the risks to date.

56. I am concerned that the mother's proposal to stop or significantly curtail contact will cause disruption and upset to S and will deprive her of a regular and loving presence in her life, for an indefinite period that will certainly feel very long to a 5-year-old. I do not consider this is necessary or proportionate, given that community contact has been taking place uneventfully now for 7 months and it has been over 18 months since contact moved out of the somewhat artificial and limiting environment of the supervised sessions. In my judgement, the current arrangements do not expose S to any unmanageable risk of harm.
57. I agree with Ms Jones that the risks within the father's household cannot be fully assessed and are not mitigated until F has gone further with his journey of accepting his past behaviour and working out how to prevent history repeating itself. Now that a potential option for a DAPP has been identified, this is the route the father should follow. Unless and until he has engaged with a DAPP there is a potentially unmanageable risk of harm should contact take place in his home or overnight.
58. I have considered the father's secondary submission, that contact should at least be increased within the community. It is difficult to see, in practical and child-focussed terms, how this could happen. S, at age 5, already spends 7 hours in the community with her father, and so the day cannot reasonably be extended. In terms of frequency, she sees her father already on two weekends each month and there must be time for S to have uninterrupted weekend time with her mother and other family members. F, through Mr Pye, has suggested some additional days around special events, and this may be appropriate, but it will be better for the parents to agree this rather than for the court to impose any rigid rules for how festive days should be spent. However, I note that a pattern of the 2nd and 4th weekends has persisted, from the days when the supported centre – only open on these dates - was used. To support and promote S's regular relationship with her father, to avoid long gaps between contact days in 5-week months, but to ensure uninterrupted alternate weekends with her mother, contact should move to alternate Saturdays, rather than only on 2 weekends per month. In 2024 there are 4 months containing 5 Saturdays and so this modest change will increase S's time with her father by a few weekends each year.
59. In short, I agree with Ms Jones. In my judgement, the best arrangements for S at present will be for the current community contact to continue. This reflects the need for her to continue to enjoy a loving relationship with her father, a key attachment

figure in her life, in a natural and safe environment. Once these proceedings are over, F will be able to access the DAPP in due course. After that, arrangements for introducing contact in F's home and overnight can be reviewed. If the parents cannot agree a progression, it will open to either of them at that stage to seek decisions from the court.

Children Act 1989, s 91(14)

60. Under s 91(14) the court may make an order that no further application of a specified kind can be made by a named person for a (usually) specified period without first obtaining the permission of the court (a 'permission hurdle'). The court may make such an order of its own motion, without formal application, but the process must be procedurally fair, giving adequate opportunity to the parties to consider the matter and make submissions. Under s91(A) the circumstances where the court may make such an order include where the making of a further application may cause the child or another person a risk of harm.
61. I have no formal application for a permission hurdle, but M raised the issue at paragraph 56 of her statement dated 22 January 2024 and it was explored with Ms Jones as she gave her evidence and addressed in the submissions of counsel. I am satisfied that there has been sufficient notice for the court to consider the point on its merits.
62. Ms Jones saw some merit in the making of a s 91(14) order, given her recommendation that there is an end to litigation for at least 18 months, to allow F to source and complete a DAPP. The advantages to a period without litigation can be summarised as follows:
 - (i) it would allow the parents a period of respite after these lengthy proceedings, which have been costly both emotionally and financially;
 - (ii) it would ensure that the father has every opportunity and incentive to complete the DAPP;
 - (iii) it would allow the parents to build trust, away from the spotlight of court proceedings.
63. The father, through his counsel, did not raise strenuous opposition to an order requiring permission before any further application for a child arrangements order, given that F agrees to attend the DAPP and understands the need to be out of the court arena for at least 12 months before he can be eligible to apply. However, Mr Pye pointed out the need for a proportionate approach.
64. This is not a case where the father has made repeated or misconceived applications. I have found him to be properly motivated in these proceedings by a desire to spend time with his daughter rather than by any desire to harass or harm M. This is F's only application to the court and his time with S has increased during the course of the case. It is in no way F's fault that the case has taken so long to come to a conclusion.

His litigation conduct has been fully compliant with court orders. To his credit, F accepts that a period without court proceedings is now required.

65. In my judgement, the advantages of a period without litigation are common ground between the parties and it is neither necessary nor proportionate to impose any permission hurdle. A recital in my order will be sufficient to record the agreed position at the end of these proceedings, that litigation will cease for a period necessary to allow F to access and complete a DAPP. In the event that F issues a new application before completing a DAPP, the court could be referred to the recital and to this written judgment and could use its wide case management powers to control the proceedings, including by way of a summary dismissal of a premature application.

Practical arrangements for handover

66. Since contact moved out of a centre and into the community in June 2023, the parents have used a contact centre to effect handovers and have paid for this service. I gather the centre charges around £50 for the handover service. It is important that the mother and father do not come into direct contact: that is Ms Jones's recommendation (para 23 p 356) and it is accepted by both parents. However, funding a contact centre will obviously be a significant drain on resources if it continues for months and years to come and it is not, in my judgement, a long-term solution.
67. F suggests that a handover could take place midway between the parents' respective homes in Berkshire and Kent, with either of their partners involved in the practical walking of S from one car to another. Given that the order the court is making does not currently include time for S in her father's home, there will be no need for S to travel any distance, and so the handover should take place reasonably locally to where she lives. M says her partner does not wish to conduct handovers, but F's partner (L) is willing to do so and it appears that M has no difficulty with L or her presence at contact.
68. I will therefore order that the handover takes place at a location nominated by M near to her home with ample parking. L, or another agreed third party, will assist to ensure the parents do not have to come into contact. In the unlikely event that L is not available and no other third party can be agreed, a contact centre could be used, but I hope this will be unnecessary, given that both parents have shown themselves able to be constructive and child focussed.
69. Communication will continue to be via the handover book, which has worked well for these parents, unless and until they agree an alternative method, such as a parenting app. In an emergency, a more immediate form of communication will, exceptionally be justified.

Conclusion

70. Throughout this long and difficult process, S's mother has provided her with excellent care, kept her safe and put S's needs first. S is fortunate to have the benefit of a

relationship with her father, who loves her very much, and this relationship will help S understand her own unique identity as she grows up. I commend M for her decision-making throughout these proceedings which, in my judgement, has achieved a safe and beneficial outcome for S.

71. The order I will make as the final order in these proceedings is as follows:
- i. an order for S to continue to live with her mother (already agreed and recorded as a final order);
 - ii. an order for S to spend time with her father on alternate weekends in the community on a Saturday between 10am and 5pm;
 - iii. a recital that F is expected to access and complete a DAPP (or its successor) before making an application to increase the time S spends with him.
72. This judgment is handed down by email on 22 February 2024 at 10 am.

District Judge Sophie Harrison

17.02.24