



Neutral Citation Number: [2022] EWHC 295 (Fam)

Case Nos: FD20P00716/7

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
AND IN THE FAMILY COURT AT THE ROYAL COURTS OF JUSTICE
IN THE MATTER OF THE CHILDREN ACT 1989
AND THE HUMAN RIGHTS ACT 1998

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15 February 2022

Before:

MS JUSTICE RUSSELL DBE

Between:

MZ	<u>Applicant</u>
and	
FZ	<u>1st Respondent</u>
and	
X & Y	<u>2nd & 3rd</u>
(By their Guardian)	<u>Respondents</u>
and	
The Secretary of State for Justice	<u>Interested</u>
	<u>Party</u>

Caoilfhionn Gallagher QC and Christopher Barnes (instructed by ITN Solicitors) **for the Applicant**

Mark Jarman (instructed by Cafcass Legal) **for the 2nd and 3rd Respondents**

Carine Patry and Alex Laing (instructed by Government Legal Department) **for the Interested Party.**

Hearing dates: 24th & 25th May 2021

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

MS JUSTICE RUSSELL DBE

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

The Honourable Ms Justice Russell DBE:

Introduction

1. This case concerns two children now aged 13 and 9 at the time of the final hearing in 2021. In this judgment they are called X & Y to preserve their anonymity: the children's genders will not be identified for the same reason. They are represented as 2nd & 3rd respondents through their Children's Guardian (the guardian). Their father (also FZ in this judgment) is the 1st respondent; he has not attended any of the hearings including the substantive hearing in May 2021 although he has contacted the Court by email and by the same means has been in contact with the parties' solicitors. The primary application brought by the children's mother (the applicant or MZ) under the Children Act (CA) 1989 is for protective relief and for the extensive curtailment of the 1st respondent's exercise of his parental responsibility (in the form of prohibited steps orders and specific issue order pursuant to the Children Act 1989 and additional injunctive relief). The application has been granted and was to intents and purposes unopposed and unchallenged by the 1st respondent, FZ.
2. The applicant has made a secondary application pursuant to the Human Rights Act (HRA) 1998 for a declaration of incompatibility under the European Convention on Human Rights (ECHR or the Convention) 1951 in respect of the 1st respondent's parental responsibility the exercise of which cannot be extinguished under current English and Welsh law as the applicant and 1st respondent were married when the children were born.
3. This judgment will first deal with the primary application under the CA 1989 because it provides the factual and legal basis of the secondary Human Rights application. As the case was uncontested in respect of the injunctive and protective relief sought the Court made protective orders shortly after the hearing in May 2021 which have been in force for some time; the respondent father has not breached or attempted to breach the orders and the family remain unmolested, but as he has been unaware of their whereabouts it is not possible to conclude, given his previous behaviour (see below), that he would not have resumed his harassment and abuse on his release from custody. Strictly speaking and in fact there have been no further breaches or attempted breaches since 2018, but by then the children and their mother had moved and their location was not known to FZ. The orders made by this Court are far-reaching and comprehensive, the Court could do little more to provide protection under the law as it currently stands. Their welfare is, to that extent, well and thoroughly protected.
4. Nonetheless it is of concern to this Court, as a family court, that the children and MZ remain emotionally damaged and in the case of MZ and X (the elder child) will not be afforded the emotional relief that they so clearly want and need by virtue of the Court proceedings and this judgment: no judgment can expunge the past or cure and ameliorate its deeper-seated psychological effects on parties to proceedings. It troubles the Court that any emphasis on the Human Rights Act 1998 applications risks overlooking the long-term emotional well-being of the children, and of the applicant herself. These children should be able to come to terms and reach some understanding of their past experiences including their father's role and behaviour in that past which allows them not to demonise him to the extent that he and it continues to be a

predominant defining element of their lives, affecting their long-term emotional resilience and ability to deal with adult relationships in an assertive and healthy way. Should the conclusions of this Court not bring the matter of the HRA 1998 application to a close the children's welfare is likely to be detrimentally affected by continuing proceedings but, unfortunately, in law that cannot be a consideration in reaching any conclusion in respect of that application.

5. No-one could fail to have sympathy for MZ and the children for the huge distress, fear and disruption to their lives that has been caused to them by the actions and behaviour of FZ. The Court was and is concerned for their safety and well-being both now and in the long term. Most unfortunately these, as all legal proceedings are not designed to provide, nor are they capable of providing, substantial emotional succour and relief. The Court does not question the harmful effects that FZ's past behaviour has had on MZ and the children but cannot by its judgment provide counsel or support to MZ and the children in coming to terms emotionally with what has happened in the past that they want; such support must be provided by professionals with the expertise to do so. The limitations of litigation in providing closure or emotional relief are not the subject of this case but remain of concern to the Court.

Primary application pursuant to the Children Act 1989.

6. Background and history. The history of the case which led the applicant to apply for wide-ranging orders to protect herself and the children from the 1st respondent is alluded to but not set out in full in the documents filed on her behalf by her counsel which have concentrated largely on the application pursuant to the HRA 1998. As the 1st respondent did not appear at or attend any hearing (they were all heard remotely) it is incumbent on the Court when it considers the respondent's schedule of findings based upon the applicant's statements, the guardian's analysis, and the documents filed on her behalf, to have in mind the fact that it is unchallenged evidence and as it must be considered with some care. Court orders may only be made based on the evidence before the Court and it is all the more pertinent to set out the history and the complaints made by the applicant in respect of domestic abuse and its effects on her and the children. I have taken the history set out here in large part from the background as set out by Mr Mark Jarman in the helpful document which he prepared for the Court on behalf of the children who he represents.
7. The 1st respondent: FZ. The 1st respondent who has documented mental health problems (see below) has failed to engage in the proceedings despite strenuous efforts to serve him and then to provide for his engagement in the proceedings, including arrangements for him to inspect court documents securely. The arrangements were to be facilitated by Cafcass Legal (who represented the children) and HMCTS. The most substantive response from him was received on 12th March 2021 by an email which read "*I still love my [children] no matter what and I still want them to be able to visit me in [abroad] even for short holidays if they want to*". At various times, as can be seen in the papers filed, FZ has indicated an intention to move to Europe.
8. MZ, the applicant, who is a UK citizen and national, and FZ, who is a national of the Republic of W, were married in 2006 in W, having met in that country in 2005 when MZ was travelling there. The children were born in the UK, X in 2007 and Y in 2010, and have remained living here; there is no dispute that this Court has jurisdiction based on the habitual residence of the children.

9. The 1st respondent entered the UK on a spousal visa and the family lived in England. Both children were born in England and the 1st respondent registered as their father on their birth certificates. Their marriage had conferred on FZ parental responsibility by virtue of s2(1) CA 1989. In her written evidence to this court MZ said *“During the course of the marriage, the [1st] Respondent became more and more coercive and controlling towards me. He was also physically, emotionally, psychologically and sexually abusive towards me”*. MZ said that his abusive behaviour included threats to kill with the use of a knife and, on a separate occasion, with a screwdriver. Her allegations form the basis of the schedule of findings she invites the Court to make; the findings the Court makes are based on her written evidence and are contained in the body of this judgment. MZ and FZ separated in 2013.
10. As alluded to above the abusive behaviour complained of by MZ is set out in her written evidence to this Court to which I shall refer in detail below. Not only was the currency of the marriage itself characterised by domestic abuse (of which the elder of the two children was well aware) its aftermath consisted of a prolonged period of repeated harassment, including behaviour amounting to what can most accurately be described as stalking, by FZ.
11. In addition to MZ’s statement the court bundle contains disclosure from Police Force A and the Crown Court regarding the complaints of harassment and abusive behaviour on the part of FZ directed at the children and their mother. After the involvement of the police and social services and with their encouragement and FZ’s continuing abusive behaviour MZ applied for a non-molestation order in July 2016; by then she had been separated from her husband for some 2 ½ years. Her statement in support her application sets out FZ’s failure to respect or adhere to any boundaries MZ had tried to impose in relation to him spending time with the children after they separated. It appears that at times he was homeless and would insist on sleeping on her sofa despite her objections. The non-molestation order was granted in what are the usual terms against FZ, the order to remain in force until 4th July 2017. Following attempts to serve him with the order and notice of the return hearing FZ attended court on 2nd September 2016, for a hearing when the non-molestation order was confirmed, remaining in force until 4th July 2017.
12. As a direct result of his continuing and persistent harassment and abuse (of which more below) and on the advice of the police MZ took the decision to uproot herself and the children to protect them all from FZ. She moved to an entirely different confidential location resulting in the loss to the children and MZ of their home, their friends and community. The children had to move schools. On the evidence before this Court, it is clear that MZ and the elder child in particular were, and remain, emotionally damaged and affected by FZ’s abuse both before and after the separation.
13. In January 2017, FZ tried to challenge the protective order and was told that he would have to make a formal application or appeal. From the police records it would appear that FZ was then arrested on a number of occasions for breach of the order. This started in October 2016, a month after the return hearing. He was arrested and made a number of allegations against the police. At that point FZ was living, described as “temporarily”, in a location in the Southeast of England. The arrest record discloses that FZ was arrested several times between 12th December 2016 and 26th April 2017 for offences under the Protection from Harassment Act 1997.

14. FZ was convicted in the Crown Court on 16th April 2018, having pleaded guilty to the following: i) a breach of a non-molestation order on 10th June 2017, resulting in a Hospital Order being made; and ii) breaches of a non-molestation order between 1st September 2016 and 13th May 2017, in respect of which, again, a Hospital Order was made. The Crown Court imposed an indefinite Restraining Order pursuant to the Protection from Harassment Act 1997.
15. On arrest FZ had been remanded into custody from 10th June 2017 and a number of psychiatric assessments were carried out which set out a number of concerns in respect of FZ's behaviour and his acceptance or otherwise of the jurisdiction of the Court over matters concerning his family and himself. The psychiatric reports set out opinion and evidence as to his state of mind and fitness to plead. On 31st August 2017, Dr Rule (a psychiatrist approved under the relevant sections of the Mental Health Act 1983) described FZ as "*suffering from a mental disorder of a psychotic nature*" and "*not fit to plead*" based "*on his apparent inability to understand that he even faces charges*".
16. In a report dated 18th October 2017, Dr Hardy (also approved under the relevant sections of the Mental Health Act 1983) wrote FZ "*presented with behaviour which has been persistently challenging*" and that he had demonstrated beliefs which "*represent paranoid delusional beliefs, and that he is suffering from a psychotic illness*" and that "*he is due to be imminently transferred to conditions of medium security at [C]medium secure unit*"; and was "*not currently fit to plead and to stand trial*".
17. In a further report dated 21st November 2017, Dr Hardy wrote "*I remain of view that these beliefs represent paranoid delusional beliefs, and that he is suffering psychotic illness*". Such was FZ's presentation and condition at the time that "*depot antipsychotic medication is being administered under restraint*". FZ "*is not currently fit to plead and to stand trial*". By 15th January 2018, Dr Hardy wrote "*there has been an observed improvement in [FZ's] mental state since the time*" and that "*he has now been diagnosed as suffering from paranoid schizophrenia...a severe and enduring mental illness*". Dr Hardy reported that "*the improvement in his mental state is the result of the antipsychotic medication that he has been receiving*" and that although FZ had limited insight, "*I now consider [FZ] is fit to plead and to stand trial*".
18. In a report containing a risk assessment for the Crown Court dated 1st February 2018, Dr Durge wrote, "*In terms of risk assessment, Nurse...noted that he had been getting restrained on many occasions. She noted that it appeared that each time was due to refusing to locate as opposed to him being violent. There was some information that he had barged female staff on A wing when he had been attempting to leave the ward, stating that he could walk out*". In respect of FZ's history, the report read that FZ had "*had some contacts with mental health services in 2012, 2013 and 2016 prior to coming to the attention of the fixated threat service in March 2017.*" Further, FZ's presentation "*indicates that at least since June/July 2017 he has been paranoid in his mood and has developed numerous fixed beliefs (delusional beliefs) some of which are unrelated ... his clinical condition can best be encapsulated under diagnosis of paranoid schizophrenia.*" Nonetheless, that "*FZ has now seemed to have regained his fitness to enter a plea and stand trial*". Dr Durge recommended that the court consider a hospital order.
19. FZ had told Dr Durge on 10th January 2018 that he was "*nice*" to his wife in their relationship but there were problems which he refused to discuss saying he didn't want

to answer any specific questions as they were irrelevant. He said he was fine with his children too and that there was nothing wrong posting videos of his children on social media as he wanted his family in W to see them. He planned to get help from social services to have some contact with the children. FZ denied being an aggressive or violent person, but he had been recorded as aggressively breaking a razor when staff had tried to enforce ward rules for its use. He was noted as having threatened to assault staff when he was administered his depot injection. It seemed that FZ had contacted a previous landlady despite being told not because she found him contacting her distressing.

20. Pertinent to the applications made by MZ, it had been reported that FZ believed that he had been “nice” to his wife, and he did not believe that there was a non-molestation order nor that he had breached it nor that he may have caused MZ emotional distress. *“It seems this loss of touch with reality and lack of insight into his situation would mean controlling his psychosis may assist in reducing the risk of causing serious psychological distress to others. Thus, he needs ongoing evaluation and inpatient treatment for his mental illness and its associate risks to help manage risk to others. Currently, the risk to others is contained in the conditions of medium security”*.
21. In a report dated 21st February 2018, Dr Hardy wrote that he agreed with the diagnosis of paranoid schizophrenia and that while *“I remain of the view that there has been a significant improvement in his clinical presentation....in response to medication... I am mindful he presented a somewhat guarded manner”*. FZ *“continues to demonstrate poor insight into his mental health problems”*. At that time Dr Hardy considered that FZ was not fit to plead.
22. In his report of 1st March 2018, Dr Hardy reported a significant improvement in FZ’s clinical presentation and wrote that although his beliefs *“remain fixed and unshakeable”* and that FZ continued to demonstrate poor insight into his mental health problems, in view of the information made available relating to FZ meeting his legal team on 12th February 2018 he considered that FZ was fit to plead.
23. In the last psychiatric report, which was seen by this Court dated 9th April 2018 and prepared by Dr Galappathie, it is written, *“In my opinion FZ is likely to have been suffering from a prodromal phase of his paranoid schizophrenia at the time of the alleged offences. He is likely to have been starting to experience paranoid thoughts to the extent that he may have had difficulty interpreting information and accepting his circumstances at that time”*. The report goes on that FZ *“does not present with the risk of harm to the general population in terms of violence but he may be at risk of further attempts to contact his family [my emphasis] if he perceives his situation as unfair or cannot keep to his non-molestation order”*. FZ’s condition was considered to be stable but that he was still likely to relapse due to limited insight and a risk of not taking antipsychotic medication. FZ was reported as having denied any violence in his relationship with MZ despite having said she had slapped him and that he had slapped her. There was no recorded or reported instance of FZ acknowledging any other instances of domestic abuse.
24. On 26th February 2018, FZ pleaded guilty and was sentenced on 16th April 2018. The Crown Court judge made a hospital order. In his sentencing remarks the judge said to FZ:

“You’ve made huge progress over the last four or five months. Back before Christmas you weren’t able to recognise this room as a courtroom. You didn’t accept it was a courtroom and you refused to recognise the fact that you weren’t very well, and you refused to have any treatment to try and make you better. You’ve made massive progress from that point, and the great thing about schizophrenia is it is treatable, and if a careful plan is set up it is treatable within the community, so long as the person who is suffering from that illness cooperates and works with all of the mental health staff, and it’s very much the wish of this court that that is what will happen to you.”

25. In respect the sentence the judge said, *“...the sentence I’m going to pass on both of these offences is a hospital order made under section 37 of the Mental Health Act...I do it in the hope that you will be released into the community soon, and as soon as the doctors feel it is sage and proper to do so... I’m also going to put an order in place to safeguard. I’m going to put a restraining order in place which will prohibit you from contacting, directly or indirectly, [names], and [names], save through solicitors for the sole purpose of arranged contact with and as part of an application for contact within family court proceedings. So that means that, until further court order, you can’t have contact with your ex-wife or your children, but you can apply to have contact with your children through family court proceedings and that contact can take place so long as the family court agrees to it. So, it doesn’t preclude you in any way from having contact with your children in the future, but that must be done through solicitors and as part of family court proceedings”*.
26. It is not clear from the papers available to this Court when FZ was released from hospital, but as submitted by Mr Jarman, it is reasonable to assume that he had been released by the time he changed his name by deed poll in 2019. The Court has no more recent information than that of April 2018 as to the state of FZ’s mental health, his compliance or otherwise in taking prescribed medication or any engagement he may have had with mental health services.
27. After FZ’s conviction it is MZ’s case that she and the children have *“been completely uprooted from our home, schools and daily lives...I cannot underestimate the impact that the respondent’s behaviour has had on all of us emotionally, psychologically, physically, socially and financially.”* They have relocated and their address, the address of the children’s schools and all other features which might identify their location have been kept confidential and are unknown to FZ and will continue to be by way of court order. Since their relocation there has been no repetition of the behaviour that led to FZ’s conviction nor is there any evidence that he has tried to find out where they are living. He may by now have moved to live abroad (as he said he was going to in an email to the Court) and no longer be in the jurisdiction. Although FZ was served with the application at his bail hostel and remained in the UK at the time of the hearing in May 2021 the Court has no information or evidence as to his present circumstances nor the state of his mental health now or at the time of the hearing in 2021.
28. MZ’s history of the case. MZ has set out her evidence in respect of the domestic abuse, including a prolonged period of coercive and controlling behaviour after the parents separated, in her statements. She described a marriage marred by the 1st respondent’s violent, abusive, coercive, and controlling behaviour. Her evidence is not challenged, and it is clear that both she and the children have been emotionally harmed by the behaviour of FZ during their marriage and after it ended and continue to suffer its

aftereffects to this day. MZ said in her statement that FZ *“became more and more coercive and controlling towards me. He was also physically, emotionally, psychologically, and sexually abusive towards me. There were some very serious incidents of sexual assault by the Respondent against me during the marriage – I once wrote down what happened for the police but did not pursue the matter as I simply have never been able to speak about it due to the way he degraded and disrespected me, and I am still unable to vocalise what happened.”* The Court is therefore unable to make specific findings in respect of unparticularised sexual violence and abuse, nonetheless I do find that MZ suffered trauma as a result of FZ’s sexual behaviour towards her which has contributed to the Post-Traumatic Stress Disorder (PTSD) with which she has been diagnosed and which she continues to suffer.

29. FZ’s abusive behaviour towards the children from when they were very young as well as the attitudes he displayed towards women and others in society caused MZ anxiety and concern. She said that FZ was volatile, lost his temper quickly including around the children, something graphically described by X who told the guardian about FZ pinching and hurting X. MZ said when *“...little [X] was quite fussy and [FZ] couldn’t cope with that”* and that he would pinch X when the child got older. MZ recalled a specific incident at the seaside where X *“was a bit cranky and he pinched [X] and twisted the skin.”*
30. This violent and abusive behaviour towards his own, and on occasion other children, took place more than once. In her evidence MZ described an incident when on holiday in W and FZ got annoyed with X being noisy with the young cousins and had lined all the children up against the wall and then pulled the cable out of the iron and threatened to beat them with it, all the children had been crying. Still in W but when the children had spilt food outside, FZ had thrown a shoe at his nephew causing bruising to the child’s shoulder and had made him cry. MZ described FZ as struggling to moderate his behaviour around the children and said that she had been concerned about the attitudes that he displayed in front of them, such as telling X when only seven years old that X was going to have *“a nice arse like mine”* and making comments when X had been watching X-Factor on television such as *“look at those fucking faggots”* and *“if you turn out like them I will never speak to you”*. FZ would show the children disturbing images and talk about death, had shown them videos of dead children in Palestine and that he had shot an air rifle at animals in front of the children.
31. It is MZ’s evidence that FZ was violent and had made threats to kill before and after they separated. MZ told the Court of an occasion when the family were in the car with the children that he threatened to kill them all. He was openly interested in firearms and guns. MZ said that when she had cleaned out the house to move, she had had to dispose of a sword, air rifle pellets, and a night-sight for a rifle.
32. MZ said in her written evidence that she had eventually managed to separate from FZ, but it had taken place over a period of time in 2013 to 2014 as FZ would not accept that the marriage had come to an end. FZ initially moved out of the family home in 2013 but would repeatedly return, *“often forcing his way into the property and refusing to leave. He would claim that he had come to see the children. He expected to see them everyday. He made it quite clear from early on in the separation that he would see the children when he wants and turn up when he wants[sic].”* MZ described in detail how

his behaviour escalated, and that FZ had begun “*a violent campaign of harassment, intimidation and stalking towards me.*”

33. While it is not necessary for the Court to rehearse the entirety of the written evidence filed by it behoves the Court to consider it in some detail as it was not subject to any challenge. MZ told the Court that there were, and I accept there were not least as MZ’s written evidence is supported by the police, “*many occasions where I was either followed by the Respondent or I had returned home, to find the Respondent waiting on the doorstep, or sitting in his car waiting for me to come home. I was also subjected to persistent phone calls and messages in which the Respondent would try and find out where I was and what I was doing and would demand to see the children. He also made threats of physical violence (including threats to kill) towards me, the children, and the police, including with a knife. He also on one occasion threatened me with a screwdriver and threatened to kill me if I ever cheated on him.*”
34. MZ told the Court, and I accept, that there were so many incidents of harassment and calls to the police, that it was hard for her to remember everything that has happened over the years. As MZ accepted some of these incidents, if taken in isolation, may not seem significant but I accept that when considered in the context of FZ’s continuous harassment, threats, and abuse over a prolonged period of time, it is evidence of dangerous, obsessive behaviour which led MZ and the children to feel like prisoners in their own home. It must be observed that it is almost impossible for those who have not experienced it to understand the powerlessness, lack of control over one’s own life, fear and trauma induced in victims of stalking. MZ has suffered from PTSD (and is prescribed medication for anxiety) which is directly attributable to FZ’s abusive behaviour and harassment. MZ also suffers from memory loss and can find it difficult to recall matters which her psychiatrist has explained to her was as a result of the trauma that she has suffered.
35. In her statement MZ said that she would “*endeavour to briefly set out some of the many incidents and examples of [FZ’s] abusive behaviour and harassment which arose over the years, and which eventually led to his convictions.*” I have set out in this judgment some of what she told the Court here by way of illustration, but I find that all the incidents she describes took place on the balance of probabilities and when considered in the light of the evidence as a whole. MZ said that in 2013 to 2014, during the period after she had separated from FZ when he repeatedly and frequently returned to the family home and would not leave, he had discovered that she had applied for a job abroad, he was furious and started shouting. In another incident in 2014 when FZ had insisted on entering the property to see the children and MZ had reluctantly agreed to allow him to come in, he then made MZ listen to him and threatened to pour his drink over her and the child’s tablet device if she did not.
36. As part of his controlling behaviour FZ insisted on knowing where MZ and the children were at all times. Another example of his abuse that MZ gave was of taking the children to the seaside for the day (in or around 2014/15) when they had left their car at the train station. FZ texted her throughout the day and when they returned to the car at the end of the day, he had left a hand-written note on the car which read “*Where the hell are you? Why aren’t you back yet?*”. Bizarrely he had also left cakes and doughnuts on the car bonnet. FZ repeatedly came to their home unannounced, sometimes as often as two or three times in a day, and often at times when the children would be in bed. MZ told the Court that “[e]ven if he had seen the children in the

morning, he would message me to then see them in the afternoon. I did let him in sometimes as I felt scared, and the children were young and sometimes got upset if I didn't. I did not want him there and told him so, but he just would not listen." MZ had started to contact the police in 2014 or 2015 when FZ was refusing to leave the premises.

37. During this period FZ had threatened MZ in numerous ways, for example by telling her that if she ever went to W, the children would stay there with his family, and he would not let them leave. FZ used these and other threats to intimidate MZ into allowing him to see the children whenever he wanted to; an all too commonplace example of controlling behaviour. In March 2015 MZ found out that FZ had been posting abuse about her on Facebook, such as that she was a bitch and should burn in hell; MZ had reported this to the police in April 2015. His threats extended to the children such as on another occasion when one of the children told FZ that they had a dream that people were trying to kill him, their father told the child this was true and going to happen. FZ told MZ that there was a "*wide-ranging conspiracy by security services to ruin his life and I was somehow part of this.*" While taken on its own this may appear risible, as part of a pattern of longstanding and persistent harassment it is intimidating and distressing.
38. A further serious incident occurred on X's eighth birthday in 2015 when the children and their mother met her brother and X's friends for pizza. On their return home FZ had knocked on the door of their home with a present. One of the children had let him in, not only had FZ refused to leave when asked by MZ to do so he had insisted on cooking a birthday tea for X, although they had already eaten. When he was holding a knife and chopping vegetables FZ began arguing because he had not been invited to the birthday meal. When MZ had asked him to leave FZ said that she would have to call the police to get him to leave and he said he would slit the throat of the first officer who knocked on the door. MZ pointed the knife at the children's mother's face with the blade so close that, as she described it, if she had moved the blade would come into contact with her. FZ stepped back when MZ had tried to push him away and placed the flat edge of the knife on her forearm as he put her right wrist on the counter. MZ said FZ was in a furious rage, and he told her to go on and call the police. MZ was very scared and worried that things could get worse, so she left the room. FZ had then left the house. MZ said that she did not call the police as she did not want the child to remember their eighth birthday as the day the police were called, and their father arrested. This incident must have been frightening and distressing for the children, and for MZ.
39. During the summer holidays of the same year (2015) FZ entered the home uninvited through the back door and had started to fix the front door lock, which was broken, again without being invited to do so, making the problem with the door worse and arguing with MZ calling her an "*ungrateful bitch*". MZ had pushed FZ to get him to leave and he responded by slapping her "*with such force that it threw me over the living room chair from the back of the chair. This caused a red mark on my face for three days afterwards.*" The incident occurred in front of the children and is remembered clearly by X who told the guardian about it.
40. In August 2015 following a water leak MZ and the children had had to leave their home for four months while the repairs took place. The family were put up in a hotel and MZ took the opportunity to visit the children's maternal uncle for six days. FZ had continued his campaign of harassment while they were away continuously contacting

MZ on every day, sometimes as much as 12 times on one day, and sending her numerous texts asking why she was not answering his calls. FZ had even gone to another town to look for them. When he knew, they had returned to their hometown he came round uninvited and was “*really angry*” that MZ had taken the children away for a break. The insurance company then moved the family temporarily to another area while the house repairs continued. Although MZ did not tell FZ where they had gone, but he managed to find them and had come banging on their door. Unsurprisingly MZ was scared when FZ had turned up late at night, she had felt intimidated and was coerced into letting him in as, she said, she “*did not want to cause a drama where we were staying, knowing that the insurance company was paying. This went on for around 2 weeks. He would sometimes turn up 2-3 times per day. He would tell me and make me promise not to meet anyone else as he did not want another man around me. He also tried to be very ‘touchy-feely’ which was completely unwanted. It made me feel dirty and like a disgusting object. On another occasion after we separated, he had grabbed my hand and put it on his crotch, in front of the children. This made me feel dirty, cheap and worthless and again like any object.*” I find that FZ’s abusive behaviour on these occasions amounted to sexual assault and harassment in addition to the threatening behaviour and harassment, controlling and coercive behaviour set out above.

41. When, later in 2015, FZ had gone to W to see his family he did not text or call MZ as much during this time and, as MZ said, it was a welcome break for the family; but as soon as FZ returned to the jurisdiction the harassment started again. When MZ didn’t respond to FZ’s messages, he threatened to call the police and report her missing. At this point FZ had been contacting MZ four or five times a day on average, in addition to which he followed her and waited for her at their former home when she returned to feed the animals and to top up electricity meter. The family moved to further temporary accommodation, at an address unknown to FZ, which he did not find initially. The intimidation extended to the children as MZ had been told by a woman who worked at the children’s breakfast club that FZ was seen waiting in the car outside the school at half past seven in the morning. MZ had had to start dropping the children off at a different entrance. FZ continued to send MZ text messages and notes saying how he loved her and “*wanted to reclaim his family*” and “*let’s all have a good Christmas together*”. In the context of FZ’s previous behaviour in this case I find that these messages were threatening and intimidating as they were totally at odds with the reality of the situation, the marriage being at an end and contrary to MZ’s express wishes.
42. Unsurprisingly by late 2015 MZ had been in contact with social services and had been advised she should not let FZ see the children, who were the subject of Child Protection Plans because of his harassment, domestic abuse, and controlling behaviour towards MZ. Another distressing and intimidating incident which took place about this time occurred when MZ had been driving into Tesco’s car park to go shopping with the children and had seen FZ pulling out. MZ had decided not to go to Tesco and drove out of the car park, whereupon FZ had then driven back in and followed them in their car up as they had pulled into Lidl. One of the children got upset as FZ had been waving to them. A couple of weeks later when MZ had gone shopping at Lidl FZ had been there and had called out to her inside the shop. FZ had told MZ that she “*looked nice*” and had attempted to engage her in conversation about the children and social services and said, “*that he didn’t think it was me and that it was the police who had spun a load of*

lies". As FZ had been right in front of her, MZ had been intimidated and felt scared and had left the shop as quickly as she could.

43. FZ continued to intimidate and intrude into the lives of MZ and the children. One incident was particularly sinister and frightening. In November 2015 MZ and the children had been living in temporary accommodation staying in a first floor flat in a building for which a code was required to gain entry to the building and a key required to get into the flat itself. On the 17th November MZ had left the property with both children at half past seven in the morning and dropped them off at the breakfast club but returned because she had forgotten their lunchboxes. MZ said that on leaving she knew all the windows were shut and that she had made all the beds but that she was not sure if she locked the flat as she was in a rush. When MZ had returned home around six o'clock in the evening she found that the main entrance was open, and their flat door unlocked (she had not needed the key to open it). On entering their flat she had immediately noticed that the hallway window was open as far as it would stretch and from the hallway had seen that in the first bedroom on the right three teddy bears were now tucked in a row underneath the duvet. Neither she nor the children had done this as the bears were normally kept on the windowsill. Then one of the children had come into the room holding a child's toy wand in its wrapping which the child had found it in doorway of the second bedroom. No one had seen this toy before, and MZ had not bought it. There was no explanation for its appearance and as nothing was missing there was only one probable intruder, FZ. MZ felt "*creeped out*" by this incident as the only person she could think of who did this FZ; and I find that on the balance of probabilities that is the most likely explanation.
44. MZ believes that FZ must have followed her from the family home when she had gone back there to feed the rabbits. Her neighbours had told her that he had been seen around there. Although MZ reported this incident to the police who told her they were concerned that she was being stalked and had made enquiries (including of local toy shops) she said that she was always "*worried about escalating matters further and things becoming worse, this was always something I was very scared of when reporting matters to police as I was always scared that it would push the Respondent to threaten and intimidate even more.*" This is an all-too-common fear in victims of harassment and is used by perpetrators to further intimidate and in this case MZ's fears proved to be well-founded.
45. A further incident occurred in early December 2015, when on the 2nd a message was sent to X that "*your daddy has presents and kisses in the car.*" X had become really tearful and upset, although MZ did not find out about it until she had collected X from the after-school club on the late afternoon of 9th December 2015. FZ had again followed MZ when she had returned to her family home and on pulling up outside the house had seen FZ's car drive past which he then parked in front of her. MZ was frightened and in panic she had pulled away and had turned around at the end of the road and as she did so FZ did a three-point turn and left the road. MZ had then decided to carry out the tasks she had intended to do at the house but as she was driving back to their temporary accommodation had seen FZ's car again as it had pulled out in front of her. Understandably in fear MZ had turned left into another road and then the first right and had spent "*five minutes mazing around the roads*" fearful that FZ would try and follow her again. MZ had been convinced that FZ had been trying to keep track of her movements and knew her daily routine. "*I was very scared but also felt very trapped in*

the situation.” I find that FZ had been following her and deliberately tracking her movements.

46. On 17th December 2015 MZ had found the tyres on her car replaced with flat tyres, and a neighbour told her they that had seen FZ changing the tyres. No doubt as he intended her to, she felt intimidated and frightened. I find that FZ was responsible for this as there is no other probable or likely explanation for all four tyres being replaced with flats. MZ reported this to the police who she said were very worried about the family returning to the family home, which had by then been repaired. The police and social services insisted that a panic alarm be fitted into the house before they returned to live there. The garden fence was fixed to prevent intruders from climbing into the garden easily. MZ had been scared to return to their house but as she said, *“this was our home, and my job and children’s school were nearby.”*
47. As understood by this Court and MZ at the time FZ was arrested after the tyre incident and put on police bail with the condition that he was not to contact MZ either directly or indirectly. There followed a brief period that FZ did not contact MZ, but he soon resumed his harassment and kept on contacting her. Although MZ had tried to ignore him and to live as normal a life as possible with the children she had been constantly on edge and worried that she was being watched or followed. As MZ described it she *“was on high alert.”* She recalled an incident after they returned to live back home when there had been *“a knock on the door, and it was [FZ] saying he was doing a parachute jump and wanted me and the [children] to come and watch him. I told him we could not do this and reminded him about social services. He started texting me again asking why I was stopping him from seeing the [children]. I did not respond.”*
48. There then followed a period of over a year straddling 2016 and 2017 when FZ’s harassment escalated to involve of other people including MZ’s neighbours and their children. This harassment continued after FZ had been served with the non-molestation injunction, breaches of which ultimately led to FZ being held in custody and sentenced in the Crown Court. This period of escalating abuse and harassment started on 4th May 2016, when MZ received a letter from a person [FB] whom she did not know telling her he had been asked to write to her to ask if FZ could collect tools from the family home, although there were none of his tools left there. *“It also asked me to say hello to the [children] and that [FZ] respected me as their mother and that ‘we would be fine if we were on an island with no other people’”* Manifestly intended to intimate, that was the result and MZ felt scared; as she said, it is sinister to send messages through a complete stranger. For some time MZ had been trying to apply for protection from the family courts as advised by police and social services but was hampered in doing so, as is all too common, as she was not entitled to public funding and was left unprotected. As MZ said finally *“I summoned the courage to apply in person to [the] Magistrates and Family Court, without legal representation in July 2016”*. Later MZ was granted a further injunction to extending the non-molestation order in September 2016.
49. Notwithstanding the court order, and as MZ had feared, the injunction being in force did not deter FZ and his abusive behaviour and harassment and stalking of MZ escalated and worsened in the year that followed. Within weeks of the order being in place, FZ had breached it and went on to include the family’s neighbours and his own children. MZ discovered in early September 2016 that X had been contacted by FZ through social media and was in communication with him unbeknownst to X’s mother.

“This was entirely against advice from social services. I removed the apps from [X’s] phone. On 5 September 2016, back at the family home, we were burgled. I had fallen asleep in [the child’s] bedroom when putting [them] to sleep. I had meant to lock the back door but had fallen asleep. I woke the next morning at 5.45am to discover that someone had entered the back door which was open. I found that my jewellery had been stolen (2 x gold wedding rings, an engagement ring and another wedding ring and some other sentimental jewellery) together with the children’s baby tags and baby hair from when they were newborns [sic]. The bag I had left inside the house with my work laptop was taken and I later discovered this bag containing my laptop outside the rear gate, but my purse had been taken from it. I reported the incident to police. This made me scared. I was convinced it was [FZ] who had entered the property given what was taken but I had no proof.” Although the police considered that they could not find evidence that it was FZ, he was arrested. Later that week MZ had come back home to find FZ parked outside her neighbour’s house, *“I left and did not go back home until later, feeling very nervous.”* By his conduct I find that FZ had interfered with MZ’s ability to access and egress her home unmolested.

50. FZ was then seen outside a nearby house. One of the children had been playing outside and ran back into the house, scared and told MZ that they had seen FZ and knew they were not meant to see him unsupervised. By his conduct FZ had put the child in a situation where, at the very least, they had felt conflicted and confused. That evening a local resident D knocked at the door to tell MZ that FZ had left her a present of a bike. *“I felt like he was drawing attention to the fact I had been burgled. [D] then told me [FZ] wanted her daughter and [one of my children] to have a play date. He also told [D] he wanted her to supervise contact. This was completely against advice by social services who by that stage had said only supervised contact should happen between [FZ] and children. [FZ] bizarrely also hand delivered birthday cards for the [children] in October (despite their birthdays being [on other dates].”* Leaving a “present” in these circumstances is an act of aggression; it is intimidating and oppressive to the recipient.
51. In the late afternoon of 2nd October 2016, when MZ was going to drive her brother home, she saw FZ outside in the road and had panicked, *“[I] got us all in the car and drove off and could not call police immediately as I did not have my phone. I was in a complete state and drove us around for 40 minutes, not knowing what to do and too scared to go home. I eventually got back at 6.30pm and could not see him there anymore. I was so scared that the Respondent was completely disregarding the non-molestation order and was trying to intimidate me by coming so near to the home.”* I find that, by his conduct set out in the evidence of MZ, FZ succeeded in intimidating MZ, as to his motivation the only likely explanation was that he had set out to control and frighten MZ.
52. MZ were called the police again December 2016 and January 2017 as FZ had continued to try and contact MZ indirectly through a neighbour despite the non-molestation order being in force. FZ had recruited this person to act as a conduit for his harassment. Whether this was done by the neighbour wittingly or unwittingly is something that this Court is unable to determine, but as FZ had been phoning the neighbour weekly to ask them to pass messages to MZ and as they must have been aware that MZ was separated from FZ and did not have direct communication with him, why they thought it appropriate to do so is incomprehensible. In addition, FZ had been

asking the neighbour for Facebook and email contact details for the family and about collecting his (non-existent) possessions. Not content with recruiting one neighbour to use as a vessel for harassment, on 2nd January 2017 FZ sent a message on ‘Messenger’ to another local resident saying he needed to speak to MZ urgently. The very next day on 3rd January 2017 a “present” was delivered to the family home by yet another neighbour, who told MZ that FZ had delivered pencils and pens to their house across the road. During this time FZ had been repeatedly contacting the Family Support Worker and the children’s school leaving numerous messages.

53. Around 15th January 2017 another local resident called on MZ to say that she had a video message to show MZ. *“I said I did not want to see it, but she insisted saying [FZ] was contacting her a lot. As I reluctantly watched the message, [FZ] then phoned her. This scared me as he used to go on about how people are watching us through cameras on phones and laptops, I felt like he was watching me. The video message said, ‘Ignore the views of social workers’”* and said that the social workers *“‘would not really help me’ and it then gave a tour of his home. When the video finished, it led to another video of him punching a punch bag, it was very intimidating.”* I find that it not only was meant to be intimidating, but that FZ was using someone-else to evade the restrictions imposed on him by the court order also illustrates his determination to try to control of MZ.
54. Later in January 2017 FZ contacted MZ’s brother for the first time in two years. MZ’s brother told her on 27th January 2017 that FZ had sent him a message saying that someone was trying to *“destroy my reputation”* and then sent him a link to a pornographic website with a female in it who in her brother’s words looked *“freakishly like [you]”*. *“My brother realised it was not me, but I felt degraded and intimidated that [FZ] would trawl the internet or use photo-shop to send such an image, looking like me. I later saw a copy of the video sent to my brother. I did not want to see it but as he had said it would destroy my reputation, I felt forced to look at it. What disturbed me was that the people in the video appeared strikingly similar to [FZ] and I in terms of how they looked, their clothes and in a home that could have been ours. I felt again like a cheap and worthless object when [FZ] sent such material to me, and it reminded me of the uncomfortable feelings I had had when [FZ] had tried to touch me in the past when this was unwanted.”* It is more likely than not that FZ intended to intimidate and harass MZ in a sexually abusive way.
55. As a result of the harassment MZ had tried to leave their home in early 2017 and move to a location unknown to FZ, without the support of social services, because she was desperate, but FZ soon found them again and they moved back into their home. The continuous harassment resumed, and in March 2017 MZ found out that that FZ had been contacting the school and had asked about the children’s pick-up times, despite the fact that he knew he could only have supervised contact. Also, in March 2017 sex toy catalogues addressed to FZ were delivered to the family home. MZ believed this was done by FZ to make her feel uncomfortable and intimidated; I find that there could be no other reason and that it was further harassment of a sexual nature.
56. FZ had been continuing to contact various local residents and had been speaking to them about MZ; his statements and behaviour were becoming more bizarre. MZ was told by one person that FZ had been ranting at her for 50 minutes that MZ was part of a corrupt system and his conduct had reduced her to tears. FZ had again contacted the school and said that they were plotting against him and he that he would have to go to the media to expose them. In April 2017, he contacted another neighbour and

asked him to view a YouTube video in which FZ was speaking and said the people who did this [to him] will be punished. Inevitably MZ had become more intimidated, more anxious, and even more scared for her own and her children's safety as well as becoming increasingly worried about FZ's apparently worsening mental state.

57. On 9th April 2017 FZ stooped to using a neighbour's child to harass MZ and the children by getting the child to knock at their door saying, "*something along the lines of 'the children's dad is here and wanted to know if we can see the children'. I did not know the girl's names, but the children were not friends with this girl...*" MZ declined, closed the door and reported FZ to the police. Within several days FZ came into their road again. At around nine or half past on Sunday morning when MZ was at home when there was a knock on the front door and because it was still broken, she had had to go round to the side of the house to see who was there. This time it was an unknown woman who MZ assumed lived nearby. The woman had had a parcel in her hands and walked towards MZ saying "*I have been asked to give this to you, I hope it doesn't cause any trouble'.*" The parcel was a box wrapped in blue paper with "Happy Birthday" written all over it. MZ had then noticed someone standing diagonally from her at a distance of about twenty feet and had seen FZ staring at her. "*I was freaked out and quickly walked back to the rear of the house, went inside and locked the door. I was then worried all morning about leaving the house and stayed in until lunchtime, worried [FZ] was still waiting.*"
58. MZ has told this court in her written evidence that by then FZ "*had used every single neighbour to now either deliver parcels, notes or messages to me despite the terms of the non-molestation order. I now felt like all of my neighbours were acting as some kind of agents for [FZ]. I felt like everyone knew my business and that I could not go in or out of the house without someone reporting back to the Respondent, I felt like a prisoner in my own home.*" FZ's behaviour was abusive, controlling and destructive; it amounted to a deliberate course of conduct designed to threaten and intimate and it succeeded. Regardless of his subsequent diagnosis of mental illness there is evidence here of a planning and he must have been sufficiently convincing to be able to recruit several neighbours of a period of months. MZ's description of feeling like a prisoner in her own home rings true, and it must have caused the children harm as well.
59. The harassment continued when on the next day, 24th April 2017, as MZ was driving to work and school with the children at about half past seven in the morning they saw two very large fabric signs which were hung at the end of their road. "*They were written in black and red, and one said, 'HAPPY BIRTHDAY' and the other said something like I MISS YOU SO MUCH'. This left me feeling shocked and even more freaked out. X was mortified by this, as all [their] friends would see it on their way to school, [X] asked why [FZ] cannot just send ... a card.*" The intensity of the campaign of harassment continued; on 26th April 2017 after MZ had gone out to the local shops she encountered FZ in his car. FZ stopped his car and got out so that MZ had had to move away but when she had looked back, she saw him still standing there and holding flowers in his hand. MZ had ignored FZ and gone home, where, as she did not have her mobile with her, she phoned the police immediately. The next day MZ had gone outside to top up the electric meter when "*I opened the door to the meter and found a bunch of fresh flowers with a card attached to the flowers which read, 'thank you for being the perfect mum you are...' and signed as 'Daddy loves you forever'.*" The note was in FZ's handwriting and it constituted a further breach of the non-molestation order. As MZ had only made a statement to the police the day before

following the previous breaches MZ had been very shocked to have received the flowers and had thought FZ was still in police custody. As she put it in her statement there seemed to be no end to FZ's relentless, obsessive harassment which was causing her immense stress, fear, and frustration. MZ had decided to arrange for the house to be sold so they could move to get away from FZ. MZ reported the incident with the flowers and gave the note to the police.

60. A further incident which took place occurred at around half past nine at night on 12th May 2017. Following a knock at the front door MZ had gone round to the side of the house and was confronted by a pizza delivery driver with a pizza in his hand which he was trying to deliver. Although MZ had told him she had not ordered a pizza he was so persistent MZ had to take it so he would leave. The children who were 10 and 6 at the time were already in bed and, because of what had happened before, MZ was frightened that FZ would be nearby and that he had watched her go outside and to collect the pizza. As the most likely person to have ordered an unwanted pizza was FZ, MZ thought that he had breached the court order again. I consider that MZ's conclusion was reasonable and that it is more probable than not that FZ had ordered the pizza to be sent to the home of MZ and the children. MZ had reported the incident to police and gave them a copy of the receipt for the pizza. MZ must have felt that there was little or no point in the existence of the injunction as it had failed to contain or stop FZ's harassment and abusive behaviour.
61. Indeed, FZ continued to harass MZ and the children. On Saturday 10th July 2017 at shortly after eight o'clock in the morning MZ was woken up by the sound of banging coming from the door or windows in the living room. She described it as follows: *"The sound was a frantic hammering noise which was continuous and so I assumed it had to be [FZ]. I went to the front window and looked through the blind and saw [FZ] walking away from the front to the side of the house. I could see he was wearing a black T shirt and dark blue jeans. The banging then began at the side of the house, and I pressed the police panic alarm installed in the property and went to find the children and hid in the back bedroom with them as he would have had to climb the fence of the garden to access the back bedroom window. We must have sat hiding for 10 minutes in the bedroom until the knocking and banging stopped. I did not look out of the window again in case [FZ] was still waiting. I did not answer any doors until I heard a police officer shout through that they had arrived. When they had arrived, I checked the front door and found a note that had been left by [FZ], I recognised the handwritten as [his] on the envelope. I gave the note to the police. I felt terrified for myself and the children, given his past behaviour towards me and the persistent harassment and stalking behaviour despite the existence of the non-molestation order."* This must have been a terrifying and traumatising event for the children and their mother.
62. It would have been sometime after this incident that FZ was arrested and remanded in custody. FZ was eventually charged with 2 breaches of non-molestation order, 2 harassment charges and one charge of witness intimidation. After sentencing on 16th April 2018, he was moved from prison to a secure mental health unit. An indefinite restraining order was made against the Respondent not to contact the children and/or MZ either directly or indirectly. MZ remained "terrified" that on his release from prison that FZ would find her, and the children and that the relentless harassment would start again. It was and is a reasonable fear based on her previous experience.

63. The children's view of the history. X has seen the report and commentary of the guardian and agrees that it is an accurate report of what X had said during the meeting with the guardian. X has described incidents which correlate with what MZ has told the court in her written evidence.
64. X is the elder of the two children and was described by the guardian as academically and emotionally intelligent and mature beyond the child's years. Despite this X told the guardian that it is hard to enjoy school and to connect with the other children and to find things in common with them. X's past experience of social workers has led to them being held in low esteem by X who considers that the family have not been helped by social services. The guardian considered that X showed profound care and concern for MZ and the younger sibling, Y. X supported the applications made by MZ including the name change and curtailment of FZ's exercise of parental responsibility. The guardian considered that X demonstrated an understanding of what parental responsibility is in legal terms including the practicalities of what it would mean for this to be extinguished or curtailed and gave as an example being able to obtain a passport, which X has been unable to do. I am unclear as to why, as an application could be made with reference to the court, if necessary, I presume that it is because X would not want FZ to be involved and that this is because, as the guardian said, X resents the fact FZ retains an element of control and power over their lives which X considers he does not deserve. Any application that X now makes for a passport will not involve FZ by reason of the existing court orders. The guardian's analysis does not fully consider or explore this child's understanding of the long-term effects of extinguishing parental responsibility in respect of the child in terms of connection with X's parental family and dual heritage.
65. X's feeling about FZ's PR being removed as reported by the guardian was that "*it is not as though anything will be lost*". X told the guardian that X could remember the precise date that FZ was last seen in December 2016, a period of almost four and a half years, during which FZ has played no role in the lives of X or Y. It is of deep concern to the Court that despite this absence X has, according to the guardian seen FZ as "*continu[ing] to be a malevolent presence*" and that she has said he is "*not here physically, but like a shadow hanging over us.*" I find that X's fearful and negative view of FZ was formed not only by memories of the time prior to the parents' separation but also by the subsequent years of harassment and stalking. The guardian said some of what happened in the home went over X's head, and didn't strike the child at the time as dysfunctional or inappropriate, but the effects of domestic abuse in the home on the children living there are now recognised and it is more likely than not that the overall feeling or atmosphere in the house which X has described as "*chaotic and tense*", and the tell-tale description of tiptoeing around trying to avoid triggering FZ into behaviour which was aggressive or abusive, which X recalled he regularly was, have had a lasting effect and caused X long lasting emotional harm. The description the guardian gave of "*walking on eggshells*" with which X agreed is redolent of the fear induced by coercive and controlling behaviour.
66. X has what is on the guardian's evidence (as contained in her analysis for the court) a clear recollection of particular incidents of abuse, including violence such as FZ striking MZ across the face with a "*monumental amount of force*" which had caused MZ to fall to the floor and left "*a huge red mark*" on her face. X told the guardian that when X was seven years old MZ had "*had the strength to kick him [FZ] out*", but following

their parents' separation, FZ continued to do “*creepy and disturbing things*” recalling that despite their separation, on X’s ninth birthday FZ put up banners outside their home saying ‘[X] AND [Y], MISS YOU SO MUCH’. That FZ had taken tyres off MZ’s car and that he had broken into their home and rearranged things. It is unsurprising that these and other instances of FZ’s behaviour subsequent to the children’s parents’ separation continue to unnerve, disturb and distress X. That X continues to be distressed by the abuse was evinced by X crying when remembering the events when discussing them with the guardian and recalling the feelings of helplessness they induced. This child told the guardian there had been occasions when FZ had hurt X by twisting and pinching X’s skin and digging his nails into the child until it bled. X had never seen F hurt Y and hoped that he never did and told the guardian that it was MZ who “*got most of [the abuse]*”. I accept what X told the guardian as an accurate report of X’s experience of the abuse suffered by the family as perpetrated by FZ. It is clear too that X has been the more obviously affected of the two children by his abuse and shall make further reference to this below.

67. Fortunately, X told the guardian that X mostly feels able to talk to MZ about it, and that MZ had told X that FZ had been diagnosed with paranoid schizophrenia, which made sense as X feels it explains his behaviour which was “*not normal*”. Sadly, as it is the experience of the family courts that the behaviour described by X and MZ is far from uncommon or unusual. The guardian’s view, which I share, is that the cumulative effect of FZ’s behaviour has had a profound impact upon X and that the transition into a new life has not been easy. X had not been comfortable choosing and coming to terms with a new name and has struggled to settle into a new life, and, in the guardian’s view, did not enjoy school as much as a child of X’s intelligence and academic capability should be able to. X continues to worry about MZ and Y coping with the struggle of adapting to their new life and surroundings which, in turn, the guardian has told the Court has an impact on X’s ability to heal.
68. X told the guardian that FZ did not “*deserve the honour*” of being the father of X and Y, and that he is not someone X wants in X’s life. This latter wish has been granted to all intents and purposes by the extensive orders made by this Court and by FZ himself declaring (albeit by email) that he intends to live outside the jurisdiction and is seeking neither contact with, nor to play any role in X’s life. X told the guardian that FZ is not well enough to fulfil his role and while there is some basis (see the assessments carried out for the Crown Court précised above) for that belief this Court was not in a position to decide the current state of FZ’s mental health including his capacity to litigate nor his mental stability and the effect it may or may not have on his ability to exercise parental responsibility. The orders that have been made amount to a comprehensive and wide-ranging bar on his legal right to do so are made as a result of his past behaviour including criminal breach of previous court orders and the hospital order made by the Crown Court.
69. X also wants the Court to remove FZ’s parental responsibility, as X told the guardian, to assist X and the family to achieve closure from what has been a lengthy and traumatic ordeal for them. As a matter of law, it is agreed by all parties that this Court cannot extinguish his parental responsibility as FZ has it because he was married to the children’s mother when X and Y were born (I shall return to the law below). The most this Court could do is to find the current legislation in respect of s2 of the CA 1989, by which parental responsibility is conferred on married fathers and “second” mothers and

parents in civil partnerships automatically on the birth of a child, incompatible with the ECHR by virtue of the Human Rights Act 1998. Whether the Court does or does not do so it may not bring matters to a close, there could be continuing litigation through the appellate procedure and beyond. The guardian's conclusion that it is her assessment that "*Court Order sought by [MZ] on behalf of the children is in line with the emotional needs of X, who currently is unable to fully move on from [X's] experiences with the knowledge that [FZ] maintains parental responsibility for [X]*" is based on a fundamental misunderstanding of the orders which this Court can make. FZ's parental responsibility will remain unless and until there is a change in current law in this jurisdiction. It is worrying that X does not understand that legal reality, even more so if this child's well-being is to be predicated on a mistaken understanding of the Court's powers.

70. Moreover, whether or not FZ's parental responsibility could be extinguished in law, his exercise of it already being virtually extinguished in fact, he will remain the birth or biological father of X and Y throughout their lives. There should be, and is on the part of this Court, concern that without appropriate professional intervention and support long-term well-being of both X and Y, who are of dual heritage, in respect of their self-image and in their ability to feel empowered not powerless will be further compromised. This will not only affect their view and ability to come to terms with their own father but also their future relationships with others as older adolescents and into adulthood. I am most concerned that they are able to access the appropriate professional support and counselling that will enable them to achieve the closure they want and come to terms with their past experience, something this judgment cannot do for them; the primary purpose of the Court's judgment as with any judgment is to set out reasons for decisions the court has made.
71. Y is described by the guardian as a charming child "*with a chatty, chipper nature, and [there is] an endearing quirkiness to [Y's] personality*". The guardian went on to say the child "*creates an easy, social warmth ... and upon first entering the meeting venue [Y] seemed quickly comfortable, chatting animatedly and making everyone laugh.*" Although Y "*seems creative and free spirited, but there are concerns for [Y] being unable to fully express ... emotions, for example, masking when ... feeling worried and appearing less able to express negative emotions*". This later concern of the guardian's became apparent when Y came to talk about FZ when the child's "*demeanour changed markedly. [Y] became quiet and withdrawn and looked at the floor whilst fidgeting with ... hands in [the] lap.*" Even accounting for the fact that FZ is a source of fear, uncertainty, and distress within the household generally Y's reaction as the younger child is evidence of the trauma and distress caused to Y particularly during the prolonged period of harassment by following the end of the parents' marriage.
72. The guardian reported that Y did not remember much about FZ, indeed did not remember him living with them but does recall some frightening events when he came round to the house and frightened the children and MZ. Y recalled seeing MZ scared which had naturally caused Y to feel scared. Nonetheless, unlike X, Y was able to tell the guardian that Y had some happy memories of FZ from a long time ago but no longer felt love for FZ mainly because of the amount of time which has elapsed since Y had seen him. Significantly Y would like to have a dad, although not the FZ. Y feels envious of the peers and classmates who have two parents and feels as though there is an important component of Y's own childhood missing. This is a comment of some

prescient wisdom and I consider that Y is able to reflect on the situation in respect of FZ in a more nuanced and balanced manner than the older sibling which I hope is a sign that Y will be able to mature without the level of residual trauma currently displayed X.

73. Y spoke to the guardian regarding the family's forced relocation about which Y had had mixed feelings at the time. Y had been sad to have to leave behind the old school and found it hard to remember and get used to their new names. Y missed all the friends left behind and having a new school, house and name all at once was a very big transition, as it would be for any child whatever the reasons. Y and Y's family were effectively forced to be like refugees within their own country. Y remembered moving and told the guardian how halfway there they suddenly starting to use their new names which Y said felt weird.
74. Regrettably the situation the children found themselves in is not unique nor are cases of extreme domestic abuse; one only has to refer to some of the other cases in which the court terminated or effectively removed the exercise of abusive fathers' parental responsibility: *AB v BB & Ors* [2014] 1 FLR 178; *Re A and B (Children: Restrictions on Parental Responsibility Radicalisation and Extremism)* [2016] 2 FLR 977, FD (where, as in this case, the court granted prohibited steps and specific issue orders permitting the children's mother to change the children's names and preventing their father from accessing their health and education information, effectively terminating his parental responsibility); *Re B and Another (Change of Names : Parental Responsibility: Evidence)* 1 FLR 1471, FD; *PM v CF* [2019] 1 FLR 670, FD (wherein the father's parental responsibility was terminated with his agreement); and *CW v SG (Parental Responsibility: Consequential Orders)* [2013] 2 FLR 655 (an unmarried father acquiring parental responsibility and registered on the birth certificate may have parental responsibility terminated placing such fathers in the same category as other *unmarried* fathers – which forms part of the basis of MZ's HRA 1998 argument in respect of discrimination in respect of married mothers). Commentary suggesting that these cases are exceptional, given their regular appearance in the law reports, belies both the experience of families who have suffered domestic abuse and continuing coercive and controlling behaviour and the prevalence of domestic abuse itself.
75. As with X, Y is said to be fully aware of these proceedings and knows what orders MZ is seeking. Y's understanding of what parental responsibility is that it meant the person who has it can approve important things "*like what medicine I have.*" Y told the guardian that only MZ should be able to do this because FZ is "*quite unwell in his mental state*". Y told the guardian that FZ has some mental health issues which is the main reason they have to keep their identities a secret. Y supported the name-change as "*empowering*" because Y had chosen it. It was the guardian's view that Y might feel that the change could help Y to feel more settled in their new life and that Y had said that it "*would help me feel completely whole*". Again, displaying considerable insight and ability to reflect Y told the guardian that it sometimes feels as though there are two parts to Y's identity, and feels torn between the two halves of Y's life, and wasn't sure how or if they fit together. It was the guardian's assessment that, as was the case with X, Y was trying to recover from not only from experiences of domestic abuse and the absence of their father but also reconcile to the new life that was required to create safety for the family.

76. As she had done with X the guardian had a follow-up videocall during which Y had approved the guardian's report of what Y had said and confirmed that they were an accurate reflection of Y's feelings. Y had begun writing a letter to the judge which the guardian had typed contemporaneously. Y had begun by saying "*Dear Judge, I would like if I could see my dad just once. I would want to speak with him alone but would want my mum with me at the place, maybe waiting outside.*" The guardian remarked to Y that these thoughts were quite different to what Y had discussed when they last met and asked if Y was having some mixed feelings. Y then began "*to sob and was unable to express what was upsetting [Y]*". After a time, the child had been "*able to say that [Y] was just finding everything very confusing and had lots of different feelings that [Y] didn't know how to make sense of. [Y] is worried that removal of [FZ's] parental responsibility means that [Y] will never get a chance to see him again and is worried about the finality of this.*"
77. The guardian reassured Y and told the child that these circumstances would be confusing to anybody. Y asked the guardian to tell the Court that Y was feeling confused about everything but would like the judge and responsible adults to decide what is in their best interests and then tell Y about it afterwards. Y had wanted the guardian to delete the letter to me, but Y had also confirmed that the guardian had Y's consent to share the letter to the judge; and to convey that Y is having some mixed feelings that are difficult to articulate.
78. It was the guardian's view that as Y was younger than X when the family had relocated, and that Y had a more limited understanding and experience as to the extent of FZ's past behaviour and family circumstances Y was "*struggling to understand the reasons for what has happened*" The guardian observed, and I agree, that as Y "*is growing older and more cognisant, the limited information and memories which [Y] currently possesses are becoming increasingly inadequate to explain [Y's] life story, and [Y] is beginning to feel conflicted by [the]current circumstances.*" It is the guardian's view that Y would benefit from having age-appropriate information as to the reasons behind the protective measures put in place to safeguard Y and the family. Y, as is common for youngsters who are seeking information about what is happening to them, had turned to social media for answers about this and told the guardian that Y has watched the videos which FZ had uploaded. The guardian has discussed this directly with MZ who planned to speak to Y and look into placing restrictions on the website to protect Y from this content. It is unlikely that these actions alone could provide is a long-term answer or solution to Y's conflicted feelings.
79. Although it is the guardian's assessment that the orders sought by MZ are critical to Y gaining physical security and the sense of a settled life under Y's new identity, and emotionally so that Y can begin looking forward in life and thinking more about a brighter future than about the past, I remain unconvinced and am concerned that the children do not understand of the limits of the Court's power in respect of actually removing or extinguishing legal parental responsibility rather than the practical and virtual removal of FZ's ability to exercise parental responsibility achieved by the orders already in place; furthermore, without in any sense diminishing the harm, distress and long-term effects of FZ's behaviour on Y and the family. I question whether court orders alone can achieve the reconciliation with the past that both the children so badly need, and hope that Y and X are able to access the professional help and support that can help them as they grow into adulthood so that they may achieve their real potential.

The Law in respect of the Children Act 1989 Applications.

80. In reaching any decision about the facts in this case I shall apply the civil standard of proof, which is the balance of probabilities and those principles as set out in the seminal case *Re B (Care Proceedings: Standard of Proof)* [2008] UKHL 35, [2008] 2 FLR 141, and in the words of Baroness Hale, at [70] *“the standard of proof in finding the facts necessary to establish the threshold under s 31(2) or the welfare considerations in s 1 of the 1989 Act is the simple balance of probabilities, neither more nor less. Neither the seriousness of the allegation nor the seriousness of the consequences should make any difference to the standard of proof to be applied in determining the facts. The inherent probabilities are simply something to be taken into account, where relevant, in deciding where the truth lies.”* The burden of proof lies with the party seeking findings, in this case MZ. In deciding this matter, I shall consider all the evidence put before the Court and, to paraphrase Dame Elizabeth Butler-Sloss P (as she then was) in *Re T [2004]* EWCA (Civ) 558, a judge is to exercise an overview of the totality of the evidence and consider the wide canvas of evidence before it.
81. I am mindful of the fact that MZ’s version of events is unchallenged by the 1st respondent FZ against whom the findings are sought. There is a description of domestic abuse as reported to their guardian by the two subject children and no direct evidence from either X or Y themselves. This is far from unusual in family cases and while I shall keep in mind that FZ did not challenge what his children said, nonetheless I must give it some weight when considering the evidence as a whole. There is no dispute as to the applicable law in respect of the findings made by the court, but I have given careful consideration and analysed MZ’s evidence and to that end have set it out in some detail above.
82. The relief that MZ as applicant sought pursuant to the CA 1989 in respect of child arrangements, namely a Child Arrangements Order that the children live with MZ; Prohibited Steps Orders substantially restricting FZ’s exercise of parental responsibility; a specific Issue Order to change the children’s names; an Order under section 91(14) of the Children Act 1989 restricting FZ’s ability to make further applications in respect of the children; and orders or declarations that MZ does not have to consult or inform FZ regarding the exercise of parental responsibility and prohibiting people and organisations (such as schools and medical practitioners) from disclosing of information about the children or their mother; all these order are already in place.
83. The evidential foundation for the orders MZ sought are the findings made by the Court (above) based on the evidence of MZ along with what the children reported to the guardian. It is the Court’s view that the orders that have been made are necessary and amply justified by that evidence. Indeed, the behaviour of FZ after the parents separated must amount to degrading treatment as MZ suffered feelings of fear, anguish and inferiority by FZ’s prolonged and relentless harassment and attempt to continue to control MZ and the children. MZ has suffered PTSD as a result (I have accepted the evidence filed on her behalf in regard to that disorder) and would arguably be of sufficient severity to amount to a violation of Art 3 had it been as a result of the direct action of the State or its agents, but it was as the action of a private individual, FZ.
84. On behalf of the children, their counsel expressly accepted, as did MZ’s counsel, that in respect of s2 of the CA 1989 there is no dispute as to the law as set out in the established case law to which the Court was referred. To be clear, the accepted law is

that this Court *does not* have the power to rescind or extinguish FZ's parental responsibility as a married father (FZ was married to their mother at the time of the children's birth), the dispute is as to whether that amounts to a failure in legislative provision incompatible with the Convention.

85. As there was no dispute as to the law in respect of the protective and other orders sought under the CA 1989 it is not necessary to set out a full disposition of the law here, nonetheless the principles and history of acquisition and retention of parental responsibility is pertinent as it illustrates the changes to the CA 1989 that have been brought into force in recognition of the changing nature of families and the differing routes by which parental responsibility may be acquired by relevant adults, including those that are not biologically related to the subject children. The legislative framework in this jurisdiction by which parental responsibility is acquired or conferred has become increasingly complex and flexible, recognising as it does the children of same-sex married couples and not just fathers (Cf. for example s4ZA CA 1989, the acquisition of parental responsibility of a second female parent), of same-sex parents or heterosexual couples who are civil partners and parents whose children are born as a result of surrogacy agreements: s54 Human Fertilisation and Embryology (HFEA) Act 2008 wherein parental orders extinguish the parental responsibility of the surrogate mother. The need for legislative flexibility in recognising those in a parental role who may need to exercise parental responsibility is explicitly provided for in s4ZA (3) whereby the Secretary of State may by order add further enactments listed in that section. Of course, parental responsibility is extinguished on adoption when the child ceases to be the child of the birth family in law.
86. It must be emphasised that parental responsibility itself (as defined by s3 CA 1989) is not solely a right of a parent whether father or mother, but includes duties, powers, responsibilities, and authority "*which by law a parent of a child has in relation to the child and his [sic] property.*" The concept is described¹ as an adult's responsibility to secure the welfare of their child to be exercised for the benefit of the child and not the adult. The status relates to welfare not to the mere existence of paternity or parenthood.² While in *Re W (Direct Contact)* [2013] 1 FLR 494 the Court of Appeal described parental responsibility as being a significant matter of status between the parent and child and between the parents, it is the exercise of that responsibility that makes it meaningful and when it is, to all practical intents and purposes, terminated, all that remains is the recognition in law that the father is the father of the subject child i.e. parenthood *simpliciter*. The residual psychological and cultural status is of a tie of biology, heritage, and identity; whatever the socio-political and or sociolegal rights and wrongs of differentiating between married and unmarried fathers those ties would always remain as a matter of fact if not of law. The ability and rights of parents to exercise parental responsibility diminishes as a young person grows towards their majority when it ends but the psychological and cultural ties do not.
87. In any event the exercise of parental responsibility is not limited to married or, indeed, unmarried parents: by virtue of the CA ss8, 10 & 12 1989 (as amended), when the court makes a child arrangements order any named adult with whom a child is to live acquires parental responsibility (s12(2)) and the court can provide for parental responsibility to

¹ 2.189(1) page 425 The Family Court Practice 2021

² *Re D (Withdrawal of Parental Responsibility)* [2015] FLR 166 CA & *Re A and B (Children: Restrictions on Parental Responsibility Radicalisation and Extremism)* [2016] 2 FLR 977, FD

be conferred on any adult, who is not a parent or guardian who is named in a child arrangement's order as someone with who the child is to spend time by making a parental responsibility order (Cf. CA 1989 s12 (2A) (b)).

88. As can be seen above, families and society have changed markedly and in many ways since the CA 1989 came into force, not only in the make up of families themselves but in attitudes and mores in respect of relationships. It is of note that in terms of domestic abuse marital rape was not illegal until 1992, that is after the CA 1989 came into force on 14th October 1991, criminal and civil legislative provision in respect recognising and combatting domestic abuse continues, as has provision for marriage and civil partnership. This latter has reflected not only long-overdue recognition of gay couples and relationships, but of their status in respect of their children. It is of further note that same-sex marriage was achieved after legislative provision for civil partnerships and was keenly sought in terms of equal treatment.

HRA 1998 application: declaration of incompatibility

89. Although MZ's application for a declaration of incompatibility in respect of ss2 and 4 of the CA 1989 is supported by the guardian on behalf of the children, the application is their mother's alone and not an application made by or on behalf of the children nor was leave sought or given for such an application under s4(3) (b) CA 1989. I consider that there is insufficient evidence before the Court to support such an application based on the analysis of their guardian and conclude that further information and evidence would have been required in respect of the children's understanding, particularly Y's, in respect of the long-term effects of terminating FZ's parental responsibility; the Court would be required to be satisfied that both X and Y have sufficient understand pursuant to s 4(4) of the CA 1989. I shall endeavour to set out as the reasons for my decision in respect of MZ's application as succinctly as possible. It must be said that I have grappled with this part of the case for far too long and found it a difficult decision to make not least because of the concerns that there must be about the effects on MZ and the children, their likely disappointment if it is refused and the family's likely distress caused by any continuing litigation.
90. The Court was presented with a very large number of authorities, far in excess of the relevant practice direction, and with equally lengthy legal argument, which again exceeded the length provided for in practice. The legal arguments on behalf of MZ and the Secretary of State for Justice as the interested party were at times convoluted and repetitive. It is unnecessary and undesirable for them to be set out and rehearsed in this judgment; to do so would be render the judgment even more unwieldy and not assist in setting out the Court's reasons for its decision, but I have considered them carefully and in full.
91. On behalf of the Applicant the Court was asked to find "*that the absence of a power to rescind parental responsibility acquired under sections 2(1) and 2(2)(a) – regardless of the extremity of the circumstances, or any other factors – is incompatible with the HRA. She submits that the blanket nature of the existing position under section 2 of the CA, and the absence of any exceptionality test or other mechanism for rescinding parental responsibility, violates both her rights, and the rights of the 2nd and 3rd Respondents ('the children'). For fathers who have acquired parental responsibility pursuant to section 2(1), simply by virtue of being married to, or in a civil partnership with, the applicant at the time of the child's birth, there is no equivalent provision to*

that set out in section 4(2A) and (3) CA in relation to unmarried [parents].” It was noted that s4 CA 1989 provided for a mechanism for the rescission of parental responsibility of unmarried fathers who had acquired parental responsibility in certain tightly defined circumstances (which do not apply here as the sub-section 2A refers to unmarried fathers at the time of the child’s birth) and only if the court so orders.

92. The submissions on behalf of MZ continued, setting out that s2 CA 1989 is “*is incompatible with her rights and the rights of the children protected by Art 8 of the Convention; and/or incompatible with her rights and the rights of the children protected by Art 14 read with Article 8; and/or incompatible with her rights and the rights of the children protected by Art 3 ECHR.*” On MZ’s behalf it is argued that it is impossible to interpret this provision of primary legislation in a Convention compliant manner, and it is open to the Court to make a declaration of incompatibility under section 4(2), HRA 1998.
93. At the hearing on 4th February 2021, the Secretary of State for Justice (the “Secretary of State”) on being given notice of the HRA 1998 application was joined to the proceedings as an interested party, directions were given to provide a further opportunity for the 1st respondent to engage with the proceedings, and a timetable was put in place to a final hearing commencing on 24th May 2021.
94. The Secretary of State submitted two written skeleton arguments (the second dealing with Parliament’s consideration of domestic abuse and the victims of sexual abuse at the time the CA 1989 was debated and considered and conceded that there had been little if any such debate) rejecting the arguments put forward by and on behalf of MZ. The court must accept that the institution of marriage (which may be said to retain elements of its patriarchal foundations as illustrated in the proceedings brought in respect of heterosexual civil partnerships) is a fundamental part of the sociolegal familial framework in the United Kingdom. As referred to in the submissions of the Secretary of State, Parliament has had to consider the rights of parents and children on divorce including where a married mother or a married father acts incompatibly with their parental responsibility.
95. There is, as the court must accept, a balance in applying a range of general principles including the presumption that it is in the best of interests of children that parental responsibility should be acquired by interested and engaged parents (of both genders) and that retention of parental responsibility is important. Birth mothers and married fathers continue to acquire parental responsibility automatically and while unmarried fathers (being considered less committed parents) did not. We shall see that this dichotomy has been extended to other parents. As time has passed changes in society led Parliament to legislate so that “unmarried” fathers acquire parental responsibility more easily and that the current legislative provision, including the courts’ power to revoke parental responsibility, was to encourage the granting of parental responsibility overall. It was further submitted that the “special status” of birth mothers and married fathers should be retained and that their parental responsibility should not be “formally” revoked, but if a parent’s behaviour was such that continued exercise of their parental responsibility required it, the courts have a range of orders at their disposal, and the power to impose conditions.
96. As a further example of the legislative changes in respect of the recognition of unmarried fathers, those changes included the provisions of the Adoption and Children

Act 2002 which granted parental responsibility to an unmarried father named on the birth certificate when the position of victims of domestic violence was specifically considered and whether mothers who were victims of coercion by violent or abusive fathers would need the protection of special provisions for the revocation of parental responsibility acquired in this way. The decision of Parliament was ultimately to continue to allow revocation of an unmarried father's parental responsibility, but also to continue to allow for the parental responsibility of a married father to be curtailed by the imposition of a series of orders and conditions by the courts.

97. In essence the Secretary of State argues the status of married fathers including the lack of legislative provision to revoke their parental responsibility falls within legitimate parameters in simplified terms (given that this judgment should be capable of being read and largely understood by the children who are the subject of these proceedings), the provisions of the CA 1989 that the parental responsibility is acquired automatically by a "birth" (my distinction) mother or "married" father/parent is irrevocable, whilst that of an "unmarried" parent is not, is intended to give mothers and married parents a special status. Nonetheless the CA 1989 has been amended to reflect changes in society for example in relation to same-sex partners and an easier acquisition of parental responsibility for "unmarried" fathers.
98. These underlying principles have been upheld by the Strasbourg Court. The European Court of Human Rights (ECtHR) has decided, as was accepted on behalf of MZ, that a difference in treatment between "married" and "unmarried" families, in the context of unmarried fathers, and the revocability of a married father's parental responsibility are compatible with Article 8 and/or Article 14: *McMichael v the UK* (1995) 20 EHRR 205; and *Smallwood* (1999) 27 EHRR 155. In the latter case it was concluded that "*a difference in treatment between unmarried mothers and fathers with respect to the revocation of parental responsibility cannot give rise to an appearance of a violation of Article 8 in conjunction with Article 14 of the Convention*".
99. The Secretary of State argued that as Parliament has also provided that prohibited steps and other orders under s8 of the CA 1989 are available against any person with parental responsibility and as in the most serious cases that order may effectively strip parental responsibility of all rights, powers and authority and, based on the child's best interests, the irrevocability of parental responsibility does not constitute an interference under Art 8 and the difference in treatment under Arts 8 and 14 is justifiable. There is no "difference in treatment" for the purposes of Art 14 because there is no real or material difference between an order for revocation on the one hand and a series of prohibited steps orders (and indeed other orders) on the other. This submission has considerable force.
100. In fact, as well as in law, as was submitted on behalf of the Secretary of State, there is little or no difference in respect of a revocation of parental responsibility and the making of far-reaching orders which have virtually extinguished the parent's ability to exercise parental responsibility. At the outset of the proceedings the application would (even if the court could extinguish parental responsibility) have proceeded with the same evidence and required consideration of protective orders and/or injunctive relief. The need to communicate the order and service of the order on third parties (such as schools and GPs) is almost indistinguishable be it one under the CA 1989 s8 for prohibited steps and specific issue orders or an order revoking parental responsibility.

101. After the court has made the orders and even if parental responsibility had been extinguished, the possibility of one party continuing to cause harm by issuing new proceedings has to be considered in the context of this case and secondly more generally. In this case, there is little evidence to suggest that FZ is likely to issue further proceedings as was submitted by Mr Jarman on behalf of the children. He has never done so in the past, he did not participate in these proceedings and his ability to make further applications has been curtailed in any event under s 91(14) CA 1989 and could be further restrained, if necessary, by making a civil restraint order under FPR 2010 r 4.8 and PD4B, thus reducing the possible impact of further harm. Revoking his parental responsibility would not preclude his making an application for permission to apply for a CA 1989 order (to do so would be a breach of Art 6 rights) but any such application need not be served on MZ. In short, even if parental responsibility were revoked FZ could apply for variation of the orders.
102. To continue with this thread of the argument, in oral submissions it was submitted on behalf of the Secretary of State that there is no authority concerning a violation of Art 8 where an individual had been caused emotional suffering by being denied a remedy by a court but when there was an alternative and virtually identical remedy. Those representing MZ made reference to the second of the “bedroom tax” cases, *JD and A v the United Kingdom* [2019] ECHR 753, but not only did that case not concern Art 8 rights (being brought under Art 14 and Art 1 of Protocol 1), it was also not a case about court remedies and was a case about substantive benefits so the position remains that there is no case where the courts have found a violation of Art 8 (or indeed Art 14) where an individual is said to have been caused emotional harm by not having their preferred choice of court remedy. Furthermore, the case on which those representing MZ sought to rely differed in other fundamental factual respects, not a case where it was argued that virtually the same outcome could be achieved by a different means.
103. The Secretary of State sought to rely on *Carson v United Kingdom* [AB/1559] as identifying “*all the correct legal principles as applied in Strasbourg cases in relation to Article 14. As the Court will appreciate, in that case, the applicants complained under Article 1 of Protocol 1, but also under Articles 8 and 14 of the Convention. Paragraph 61 provides as follows (under the heading ‘The Court’s General Approach’): The Court has established in its case-law that only differences in treatment based on an identifiable characteristic, or “status”, are capable of amounting to discrimination within the meaning of Article 14 (see Kjeldsen, Busk Madsen and Pedersen v. Denmark, 7 December 1976, § 56, Series A no. 23). Moreover, in order for an issue to arise under Article 14 there must be a difference in the treatment of persons in analogous, or relevantly similar, situations (see D.H. and Others v. the Czech Republic [GC], no. 57325/00, § 175, ECHR 2007-IV, and Burden v. the United Kingdom [GC], no. 13378/05, § 60, ECHR 2008).*”
104. Namely that such a difference in treatment is discriminatory (such as between married women and unmarried women when it comes to the revocation of the parental responsibility of the fathers of their children) if it has no objective and reasonable justification, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. As it is, the ECtHR approach is that a Contracting State can employ a wider margin of appreciation in assessing whether and the extent to which differences in

similar situations justify a different treatment³ the scope of which will vary according to the circumstances, subject matter, and background when it comes to general measures of economic or social strategy. This is based on the principle that a State's direct knowledge of its society and the requirements of that society means it is better placed than the international judge to appreciate what is in the public interest on social (or economic) grounds and the ECtHR will generally respect the State's legislature and policy choices unless "*manifestly without reasonable foundation*"⁴.

105. As I have endeavoured to set out above, albeit briefly, how societal values have, as is accepted by all parties, shifted and how the CA 1989, specifically including the sections providing for parental responsibility to be conferred or acquired,⁵ has been amended. There is express provision for the inclusion of further changes in legislation, as the concept of a family developed so has the Children Act 1989. The most recent being (in addition to the legislative changes to which I had previously referred) the Civil Partnership (Opposite- sex Couples) Regulations 2019, which extended the rules relating to parental responsibility for civil partnership to opposite-sex couples. At all times, there has been what Ms Patry referred to as the "bright-line distinction"; that is to say the recognition that the distinction between married and unmarried parents which had been considered to be reasonable and important and has been maintained. The basic position in this jurisdiction is that the parental responsibility of a married mother, married father and married second female parent is irrevocable; and that the parental responsibility of an "unmarried" father, "unmarried" second female parent and stepparent is revocable.⁶
106. The ECtHR has considered the general assumptions made in relation to mothers, married fathers and unmarried fathers in two cases: *McMichael v the UK* (1995) 27 EHRR 205 and in *Smallwood v the UK* (1999) 27 EHRR 155. In both cases the so called "bright-line distinction" was the subject of challenge and considered not to amount to a violation of Art 8 and/or Art 14 of the Convention.
107. In *McMichael* the ECtHR accepted [at para 98], "*As the Commission remarked, 'it is axiomatic that the nature of the relationships of natural fathers with their children will inevitably vary, from ignorance and indifference at one end of the spectrum to a close stable relationship indistinguishable from the conventional matrimonial-based family unit at the other' (paragraph 126 of the report). As explained by the Government, the aim of the relevant legislation, which was enacted in 1986, is to provide a mechanism for identifying 'meritorious' fathers who might be accorded parental rights, thereby protecting the interests of the child and the mother. In the Court's view, this aim is legitimate, and the conditions imposed on natural fathers for obtaining recognition of their parental role respect the principle of proportionality. The Court therefore agrees with the Commission that there was an objective and reasonable justification for the different of treatment complained of.*"

³ Burden

⁴ *Stec and Others v. the United Kingdom* [GC], no.65731/01 and 65900/01, para 52, ECHR 2006-VI)

⁵ In respect of acquisition, the position as of today's date is set out in the table in Hershman and McFarlane: Children Law and Practice (December 2020, [209A]).

⁶ Ibid Hershman & McFarlane Cf footnote # 5. This is a precis of the law in respect of married and unmarried parents and does not encompass others who may have parental responsibility conferred and revoked.

108. Thus, the ECtHR accepted that that the distinction in Scots Law between married and unmarried fathers in respect of the acquisition of parental responsibility, is objective and reasonable, because of the need, in effect, to protect children and mothers from “unmeritorious” fathers, with the need to apply to a court a filter mechanism. *Smallwood* involved revocation (the domestic court had rescinded the parental responsibility of an unmarried father) and was focused on section 4(3)⁷ of the CA 1989, the which provided the statutory mechanism for that rescission. In its consideration, the Commission wrote “*The provisions of section 4 and of the 1989 Act as a whole were the product of consideration and consultation by the Law Commission... The Commission found in 1982 that a proposal for the automatic conferment of parental rights on unmarried fathers was a source of serious anxiety to a significant body of well-informed and experienced commentators. However, recommendations were made that the law should provide for an unmarried father to have the right to apply to the court for parental rights and duties. This was to enable the court to assimilate the position of an unmarried father to that of a married father if it considered this to be in the child’s interests. In its Report in 1986 the Law Commission recommended that courts should have the power to revoke parental responsibility orders. It was considered that courts might be reluctant to make such orders at all unless they were also able to revoke them, where it subsequently provided not to be in the child’s interests for the father to have them.*”
109. The father’s complaint was that he is discriminated against as a natural father because parental responsibility can only be rescinded (or revoked) under section 4 of the Children Act in the case of a natural father, based on a claim that compared with married fathers and unmarried mothers he has been the victim of a violation of Article 8 together with Article 14 of the Convention. The conclusion of the Commission was that there was no violation in respect of marital status because “*it [parental responsibility] ... does not necessarily entail contact rights... The Commission recalls that in its 1986 report the Law Commission considered that, if courts were unable to rescind parental responsibility orders when this is found to be in the best interest of the child, they would be reluctant to make such orders and mothers would be more likely to oppose their provision. Moreover, the Commission recalls that parental responsibility may be granted again should a further request be made by the applicant*”. The ECtHR itself relied on the margin of appreciation in relation to Contracting States referred to above.
110. Further, no violation was found on grounds of gender (despite the fact that the parental responsibility of an unmarried mother cannot be rescinded) because “*the Commission has considered compatible with the Convention a system whereby the rights of unmarried fathers the aim of the power given to the court under section 4 (3) is identical, namely, to balance the interests of the child and the mother with those of the father in the case of a conflict*”.
111. The existing position in respect of the Convention is that a) as in *McMichael* in respect of the acquisition of parental responsibility, the difference in treatment between married and unmarried fathers on the basis of marital status is justifiable and that b) as in *Smallwood* the difference in treatment between married and unmarried fathers on the basis of marital status as regards rescission is justifiable and c) the difference in treatment on the grounds of gender as between unmarried mothers and unmarried

⁷ 1. Section 4 (3) then became sections 4 (2A) and (3), themselves amended, a further example of the flux and flexibility in respect of this area of law in reflecting changes in society.

fathers is justifiable. The “*mirror principle*” set out by Lord Bingham in *R (Ullah) v Special Adjudicator* [2004] 2 AC 323 at [20] provides that pronouncements by national courts on Convention rights should match those of Strasbourg, and it dictates caution before concluding that Art 8 is engaged or interfered with in circumstances which go beyond the jurisprudence of the ECtHR.

112. On behalf of MZ, it is conceded those findings of the Strasbourg Court remain good law as indeed they do. It is submitted on behalf of the Secretary of State that the logical conclusion to MZ’s argument (the previous case in the ECtHR having twice failed that unmarried father should be treated like all others) is that all others should be treated like unmarried fathers in respect of revocation. This would reduce the recognition and distinction in status of married mothers and married fathers based solely on the differential in effect for women who are married to men and not, as is now the law, between married and unmarried *parents* (my emphasis).
113. The Secretary of State went out to point out that the distinction in domestic law between “married” and “unmarried” families is not limited to parental responsibility and is also present in financial remedies as can be seen in the contrast between the Matrimonial Causes Act 1973 on divorce; and TOLATA 1996 and Schedule 1 to the Children Act on the separation of unmarried couples. That financial remedies retain that difference in treatment and whether it is itself discriminatory is not the subject of these proceedings.
114. The Court fully appreciates that the argument made on behalf of MZ is that the reality is that statistically the victims of domestic abuse and those that are in most need of protection are mothers and their children. Nonetheless the Court has to accept that the legislative body has considered the effects of domestic abuse, indeed it had formed part of the rationale for legislating for the revocation of parental responsibility from unmarried parents so as to encourage the making of parental responsibility orders in the interest of the children of unmarried parents. MZ’s case is that the comprehensive powers under s8 of the CA 1989 which permitted this Court to remove all rights, powers, and authority from the exercise of FZ’s parental responsibility in the best interests of these children is insufficient. Some of the shortcomings of this argument are set out above, not least the fact that even if a declaration of incompatibility were to be made, MZ would continue to need the very relief that has been granted.
115. Art 8. In respect of interference, MZ’s case is that she has been forced to apply for a more complex range of orders and not simply for an order revoking parental responsibility amounting to an interference, and that the orders she can apply for provide a “*lesser degree of protection*”, that she and the children “*will continue... to remain aware of the father continuing to hold parental responsibility*” and suffer emotional harm as a result, and the orders are a “*less efficient course*”. In respect of the first, it is questionable and most unlikely that the revocation of parental responsibility would of itself obviate the need for protective and other orders. In respect of the second limb, no order of revocation would cure all continuing psychological and emotional harm for the reasons I have set out already and I remain concerned about the long-term effects on X and Y in any event. In respect of the third, any application for the revocation of parental responsibility would require similar proceedings and consideration of similar, if not identical, questions in respect of the orders to be made in the light of the best interests of the children and their welfare under the provisions of

the CA 1989. Had FZ never been married to MZ the Court would still have been required to consider the merits of the case and the need for further protective orders.

116. As we have seen, and is expressly accepted by the Secretary of State, to paraphrase Baker J (as he then was) in *P v D & Ors* [2014] EWHC 2355, the court has the power to make an order prohibiting a parent from taking any steps in the exercise of parental responsibility. This was endorsed by MacDonald J in *H v A* [2015] when he said, “*Where however the manner in which a parent chooses to exercise an aspect of their parental responsibility is detrimental to the welfare of the child, the court may prescribe, to whatever extent is in the child’s best interests and proportionate, the exercise by that parent of their parental responsibility*”. The basic test would remain the child’s best interests, applying the principle of the paramountcy of the child’s welfare and the checklist in section 1 (3), CA 1989, and which (to make it clear beyond peradventure) I applied when making the comprehensive orders in this case; effectively stripping FZ of all parental responsibility and leaving only the term “parental responsibility”; the recognition of parenthood.
117. In respect of FZ in this case, and any parent in a similar case, their “*rights, duties, powers, responsibilities and authority which by law [which means both common law and statute] a parent of a child has in relation to the child and his property*” as defined by s 3 CA 1989 have been curtailed and removed by court order leaving only their status as a parent; the only difference between them and an unmarried parent is that they retain that status in law, but that retention alone cannot be considered an interference with MZ or the children’s Art 8 rights. At the risk of further repetition any parent, regardless of whether or not they have parental responsibility can make applications under s 8 of the CA 1989 (Cf. section 10 (4)(a)) as can “*any party to a marriage, whether subsisting or not*” (ibid: s10 (5)(a)). In that respect the submissions made on behalf of MZ are wrong in law.
118. The primary purpose of Art 8 is to protect against arbitrary interferences with private and family life by a public authority, here on behalf of MZ it is argued that there is an obligation on the state to protect an individual from other persons and that there should be an legal framework provided to protect against acts of domestic abuse by private persons; but as there is a legal framework in place in this jurisdiction to provide protection to families and individual family members from domestic abuse, MZ’s argument can only remain that it is the failure to legislate for the revocation of a married parent’s parental responsibility which amount to a failure to meet that positive obligation. As to that failure, this Court accepts the need to maintain a fair balance that has to be struck between the competing interests of the individual and of the community as a whole; applying the principles as set out in *Hamalainen v Finland* [2014] ECHR 787. The apparent current imperative in society to maintain the different status between married and unmarried parents as set against the range of orders available to curtail or extinguish or exercise the parental responsibility leads the Court to conclude that there is no such failure.
119. In seeking to remove the status that the law affords married parents, I also keep in mind in the context of this application that the difference in treatment is one which the ECtHR has approved specifically in respect of the revocation of parental responsibility in respect of unmarried/married fathers. It is said on behalf of MZ that “*the aim of promoting a traditional family unit*” and identifying “*meritorious/married*” fathers should not hold in circumstances where the conduct of a father in that marriage and

family requires revocation. It is certainly a matter of fact that there are too many cases where a “married” parent does not offer a safe and a stable family life, or where the “married” parent is very far from meritorious, and there are also many instances where “unmarried” parents provide safe, secure, and loving homes for their families. This does not detract the general justification that Parliament is entitled to continue to recognise and provide for a distinction in status between married and unmarried parents. At present the Court has to accept that marriage remains a fundamental feature of family law.

120. Art 8 interference and the best interests of the children. Strictly speaking in law and as I have said, as there was no leave sought or granted on behalf of the children, the arguments put forward on their behalf by MZ and her representatives are secondary in support of her application only. There are and would remain different, and at times necessarily conflicting, issues for family courts to consider in respect of children and their parents. Again, at the risk of repetition, I have previously alluded to issues of self image and identity (including their dual heritage) which are quite different to any argument put forward by their mother, in addition to which the extinguishing of parental responsibility could well have additional ramifications in the future, such as inheritance, none of which have been fully argued or considered by this Court. It is quite possible that a court, had it been able to consider revocation, may have concluded that it was not in the best interests of both children jointly or individually to revoke FZ’s parental responsibility entirely; it is also possible that a court might have considered revocation was in the best interests of one or both of the children. The complex issues involved have not been considered nor the evidence adduced to enable the Court to reach a fully informed decision, were it able to do so.
121. In assessing whether the inability to revoke their father’s parental responsibility amounts to an interference at all, I must keep in mind that I am not addressing a case put on behalf of the children themselves, and in any event the best interests of the children would have to be considered when making any such order were I able to do so: the guiding principle of the CA 1989 and Article 3 of the United Nations Convention on the Rights of the Child (ensuring that they must always be “*a primary consideration*”). On the evidence before me there are questions raised in respect of the competing rights of these two children themselves which would require a delicate balancing exercise which the Court is not equipped or sufficiently informed to make in this case.
122. Article 14. Here Art 14 is taken with Article 8. To establish a violation of Art 14, MZ must demonstrate a difference in treatment amounting to discrimination, extent of that discrimination and that the discrimination cannot be justified. It is MZ’s case that she has suffered discrimination on the basis of marital status, and that there is *Thlimmenos* discrimination. It is also said by MZ that the children are treated differently and afforded a lesser degree of protection compared to children born outside of marriage (it is assumed in respect of protection against domestic abuse).
123. The difference in treatment MZ complains of is that she and her children are prevented from applying for revocation of the FZ’s parental responsibility. It is said (as discussed above) to be on the prescribed ground or basis of her marital status and on gender given the differential and significantly greater impact on women of gender-based violence. It should be noted that the latter submission, as a fact, is accepted by the Secretary of State. In respect of the children, the difference is said to be on the prescribed ground of

birth status; their parents were married at the time of their birth. We have seen that the differences in treatment arise from the fact that Parliament has decided over time, and for what have been accepted as legitimate reasons, to confer automatic acquisition and irrevocability on “birth” mothers and “married” parents, a difference in treatment for persons in different circumstances as a matter of choice. Moreover, the extent of any difference as discussed above is limited to the retention of the term of responsibility following the making of what have described as “draconian” and far-reaching orders resulting in the virtual and total extinction of FZ’s ability to exercise parental responsibility. In reality and in fact the difference in treatment, such as it is, is minor.

124. When it comes to justification the Court has to accept that the residual difference in treatment is as a result of Parliament, through the democratic process, having concluded that “birth” mothers and “married” parents should be afforded an irrevocable status. There are legitimate reasons for the legislative conclusion which has application over other areas of family law, in addition to which any difference in treatment in relation to parental responsibility is extenuated by, in respect of revocation, the provision of extensive orders under the CA 1989 (prohibited steps order & specific issue orders) and, for those who do not have that parental responsibility, ensuring that it can be acquired easily. While, as was submitted on behalf of MZ, “*weighty reasons must be given*” before the difference in treatment on the basis marital status and the marital status of one’s birth parents can be justified, those reasons cannot be divorced (to use an apposite term) from a proper consideration of the extent and effect of that difference in treatment in terms of the relevant legislation.
125. This principle in respect of an objective difference in the situation of a complainant and a comparator such that, although they are treated the same, the difference in fact calls for a difference in treatment is *Thlimmenos* discrimination complained of by MZ: *Thlimmenos v Greece* (2000) 31 EHRR 411, the complainant being a mother who was married at the time of the child’s birth and the comparator all fathers. The objective difference which justifies a difference in treatment is said to be that married mothers are more likely to suffer from the impact of gender-based violence.
126. Although, as is expressly accepted on behalf of the Secretary of State, married mothers are likely suffer disproportionately the effects of gender-based violence, applications for revocation of parental responsibility are not limited to cases of gender-based violence and pursuant to CA 1989 orders revoking parental responsibility are made on the basis of evidence that it is in of the best interests of the children rather than the parent. As the similarity in treatment is justified for all reasons set out above, and as I am reminded, the Court should approach an allegation of *Thlimmenos* discrimination with caution, with due consideration to any explanation which is proffered by the public authority for the discrimination as per Lord Justice Maurice Kay in *Burnip v Birmingham City Council and Others* [2012] EWCA Civ 629. I do not consider that this is a case of such discrimination.
127. Art 3. MZ relies on the positive obligation to establish a framework of law and means of enforcement which will prevent inhumane or degrading treatment to the greatest extent possible. The Court accepts that this must include an obligation to take positive steps to protect women from the consequences of gender-based violence. The application of Art 3 based on ill-treatment must reach “*a minimum level of severity*”. MZ avers that the psychological harm, fear, anxiety, and emotional distress suffered by her as a result of not having the ability to apply to revoke the FZ’s parental

responsibility is sufficient to meet that minimum level of severity. The abuse and ill treatment suffered by MZ, and the children as perpetrated by FZ over a prolonged period, as was accepted above, arguably came near to meeting the Art 3 minimum level of severity if it had been perpetrated by an agent or agents of the State but that her inability to apply for revocation of FZ's parental responsibility by and *of itself* results in harm and ill treatment of sufficient severity is, at best, questionable.

128. The undoubted psychological harm, fear, anxiety, and emotional distress suffered was largely caused before these applications were made to the court. The residual trauma is undoubtedly severe enough to require treatment, but its primary cause was the behaviour of the FZ in the present case and not as a result of her inability to make an application to revoke parental responsibility as opposed to the CA 1989 orders granted which have virtually extinguished FZ's ability to exercise that parental responsibility. Such distress as that inability to apply for revocation has caused fail to meet the minimum level of severity threshold. The courts have held this to be a very high bar. I was referred to a number of cases where the domestic courts have concluded that the minimum level of severity had not been reached and/or Art 3 had not been violated, some of which made uneasy reading.⁸ In *AB v Secretary of State for Justice* [2019] EWCA Civ 9 which concerned a minor, the suffering caused to a young offender who was placed on a "single lock" regime whereby he could not leave his cell unless no other inmates were out of theirs for 55 days was found by the Court of Appeal that it did not violate Article 3, where a positive obligation was asserted.
129. I do not consider that the inability of MZ to apply for a revocation of FZ's parental responsibility amounts to failure on the part of the State in its positive obligation or duty to do "*what is reasonable in all the circumstances to protect her (or the children) a real and immediate risk of harm*": *Re E (A Child) (Northern Ireland)* [2009] AC 536 per Baroness Hale. The available orders which have been granted by this Court are in this context reasonable and afford protection.
130. For completeness, I have considered the United Nations Convention on the Rights of the Child (UNCRC) and the Convention on the Elimination of Discrimination Against Women (CEDAW) which contain significant international obligations. Central to UNCRC is the obligation to act in a way that gives primary consideration to children's welfare and CEDAW constructed to combat discrimination against women and gender-based violence.
131. The rights of these children were given primary consideration by this Court in making the orders that it did; I have already alluded to the fact that had the court had the power to revoke parental responsibility, the considerations and conclusions in respect of best interests of the children would not necessarily coincide with the case put on behalf of MZ. In the applications for orders under the CA 1989, not only was the welfare of the children my paramount consideration, but their interests did coincide to all intents and purposes with that of their mother. In considering their interests I followed the approach UNCRC as set out *R (DA) v Secretary of State for Work and Pensions* [2019] 1 WLR 3289, by the Supreme Court, namely a) that UNCRC does not form part of domestic law and b) that General Comments of the UN Committee on the Rights of the Child are authoritative guidance on the meaning of the UNCRC and do bind states even on the

⁸ *RA (Sri Lanka) v SSHD* [2008] EWCA Civ 1210; *AM (Zimbabwe) v SSHD* [2020] UKSC 17.

international plane, and they should never drive a conclusion that an article of the UNCRC has been breached. I kept in mind that c) ECtHR has held that, where relevant, the content of another international convention relating to human rights such as the UNCRC should inform the interpretation of the ECHR and d) that a breach of the UNCRC may be relevant to whether an interference with an ECHR right was justified.

132. In law and in fact, as I hope is apparent, Art 3 of UNCRC does not separately assist the Court in this case in the approach to Article 8 or 14 of the ECHR, for Art 3 UNCRC in providing that in all actions concerning children the best interests of the child shall be a primary consideration underscores the concerns of the court in respect of the best interests of children which, as I have observed, do not necessarily coincide with the interests of MZ and may point in a different direction, they are competing interests.
133. As far as the state is concerned, I have accepted that the welfare and the best interests of children was a primary consideration in enacting the provisions which form the subject matter of MZ's application. There are clearly matters of public policy to be considered in balancing competing interests in a coherent legislative scheme involving difficult questions of social and political judgment. Art 3 UNCRC does not provide guidance or assistance in determining how that social and political judgment is to be made, nor undermine the important constitutional principle that such decisions to be made by Parliament.
134. CEDAW prohibits discrimination against women in all its forms. While the government and Parliament can hardly be said to have come near to eliminating discrimination against women and girls, it has provided, over the years, legislative remedies for women and girls in relation to the consequences of gender-based violence (including Forced Marriage (Civil Protection) Act 2007; Female Genital Mutilation Act 2003; Domestic Violence Crime and Victims Act 2004). The remedies available in this case continue to be used to protect women from gender-based violence and that use has been extended over time. The Turkish [*Opuz v Turkey* [2009] ECHR 870] case relied on by MZ in which the Grand Chamber agreed that it could have regard to international conventions and that there had been a violation of Article 14 while concerned with domestic abuse and gender based violence had a distinguishably different factual nexus as the court found that there had been a significant failure of the part of Turkish state to provide protection for *all* victims of domestic violence because the Turkish authorities tolerated domestic violence and failed to investigate complaints. While it would be idle to assert that all complaints of domestic abuse are adequately investigated in the UK there is no similar permissive approach in respect of such abuse and there is legislative provision or a statutory scheme in place to combat gender-based violence and abuse involving, as this Court is well aware, a multi-agency approach as well as the courts.

Conclusion

135. HRA 1998. It must follow that this court does not determine that the statutory scheme is incompatible with the Convention for the reasons set out above in the body of the judgment. This decision renders further consideration pursuant to s4 (2) of HRA 1998 otiose. I do nonetheless repeat my concerns that the children should be afforded some professional support and advice for them to be able to move beyond what has happened to them. Y's curiosity about FZ is a positive and healthy sign that Y may be less damaged than X and both children need to develop a healthy self image of their dual heritage and to grow up to fulfil their potential. Their growth should not be hampered

or defined by their current situation, whether or not this judgment brings this matter to a close. As the decision of the Court concerned an application brought by their mother and not by the children, the Court did not consider any possible issues of discrimination or incompatibility in respect of the children of “married” as opposed to “unmarried” parents.

136. Any further amendment to the law in respect of parental responsibility would raise complex societal issues which would significantly impact across the area as a whole encompassing the roles and status of all parents and children while marriage remains to the statutory regime and family law. The birth status of children and the determination of behalf of the legislature to encourage unmarried parents to acquire parental responsibility led to the provision allowing for the revocation of that parental responsibility. I was referred to the words of Lord Neuberger in the Supreme Court case of *Nicklinson v Ministry of Justice* [2014] UKSC 38 [116] *“There are a number of reasons which, when taken together, persuade me that it would be institutionally inappropriate at this juncture for a court to declare that section 2 is incompatible with article 8, as opposed to giving Parliament the opportunity to consider the position without a declaration ... the question whether the provisions of section 2 should be modified raises a difficult, controversial and sensitive issue, with moral and religious dimensions, which undoubtedly justifies a relatively cautious approach from the courts”*.
137. While not without its flaws, the CA 1989 has proved adaptable by applying its principle of paramountcy of the child’s welfare. Issues such as domestic abuse, the changing shape and form of the family along with changing societal values and mores have been accommodated with more success than might have been imagined. When the Act came into force over thirty years ago there was no consideration of same-sex marriage nor of blended families.