



Neutral Citation Number: [2022] EWHC 746 (Fam)

Case No: MA19C00252

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Manchester Civil Justice Centre,
Bridge Street,
Manchester,
M60 9DJ

Date: 04/04/2022

Before:

THE HONOURABLE MR JUSTICE MACDONALD

Between:

Bury Metropolitan Borough Council
- and -

Applicant

ML
-and-

First
Respondent

LN
-and-

Second
Respondent

DW
(By Her Children's Guardian)

Third
Respondent

Ms Frances Heaton QC and Ms Emma Greenhalgh (instructed by **the Local Authority**) for
the **Applicant**

Mr Karl Rowley QC and Ms Yvonne Healing (instructed by **WHN Solicitors**) for the **First**
Respondent

The Second Respondent was not given notice

Mr Darren Howe QC and Ms Sandi Pope (instructed by **Garratts**) for the **Third**
Respondent

Mr Simon P. G. Murray (instructed by the **Attorney General**) as **Advocate to the Court**

Hearing dates: 14 March 2022

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this
version as handed down may be treated as authentic.

MR JUSTICE MACDONALD

This judgment was delivered in private. It has been redacted to remove certain information the court directed not be disclosed pursuant to the application before it. The Judge has given permission for this anonymised version of the judgment (and any of the facts and matters contained in it) to be published on condition always that the names and the addresses of the parties and the children must not be published. For the avoidance of doubt, the strict prohibition on publishing the names and addresses of the parties and the children will continue to apply where that information has been obtained by using the contents of this judgment to discover information already in the public domain. All persons, including representatives of the media, must ensure that these conditions are strictly complied with. Failure to do so will be a contempt of court.

Mr Justice MacDonald:

INTRODUCTION

1. In this matter I am concerned with an application by Bury Metropolitan Borough Council dated 10 November 2021, for an order that LN (hereafter “the father”) should be discharged as a party to care proceedings concerning DW, born on 14 October 2005 and now aged 16, for whom the father holds parental responsibility. Further, the local authority applies by way of an application dated 5 January 2022 for a declaration under the inherent jurisdiction of the High Court that it is relieved of its statutory duties under ss. 22 and 26 of the Children Act 1989 with respect of the father. The local authority is represented by Ms Frances Heaton of Queen’s Counsel and Ms Emma Greenhalgh of counsel.
2. The applications are supported by DW’s mother, ML, represented by Mr Karl Rowley of Queen’s Counsel and Ms Yvonne Healing of counsel, and by the Children’s Guardian, Ms Rachel Humphries, represented by Mr Darren Howe of Queen’s Counsel and Ms Sandi Pope of counsel. DW attended throughout the hearing by way of a video link from her placement, she having expressed a wish to attend.
3. This matter is made more complex by the fact that the father was spoken to by the local authority during the pre-proceedings Child and Family Assessment, is aware that DW is a looked after child, is aware of these proceedings and has corresponded with the local authority, both directly and through solicitors, with respect to the proceedings, to which correspondence I shall come to. The father has expressed a firm wish to be involved in the proceedings and has lodged a formal complaint with the local authority with respect to what he considers is its failure to involve him. The father was not given formal notice of the applications now made by the local authority (albeit he is aware in broad terms, again through correspondence, of the orders the local authority is seeking). He has not attended this hearing in circumstances where this would have had the effect of largely defeating the object of the applications before the court had decided them, having regard to the basis on which the applications are made.
4. Within the foregoing context, at the invitation of HHJ O’Leary, the Attorney General has appointed an Advocate to the Court. At this hearing, Mr Simon Murray of counsel has appeared in that role. Mr Murray rightly reminds the court that his presence at this hearing is not, to adopt the phrase used by the Court of Appeal in *Re A (Father: Knowledge of a Child’s Birth)* [2011] 2 FLR 123, to be regarded as a fig leaf for the father’s Art 6 rights, not least in circumstances where it is not the Advocate’s role to marshal contrary evidence or to put a contrary case on behalf of the father. Rather, and as is appropriate, Mr Murray has assisted the court with the legal principles and with marshalling the arguments that arise from those principles. Within this context, I accept that the statement of this court in *A Local Authority v M and others* [2020] 4 WLR 157, to the effect that where an application is made not to serve a parent with proceedings, consideration should be given to inviting the Attorney General to intervene in circumstances where the party concerned is not before the court to argue the contrary case, must be treated with caution in light of the tightly proscribed role of the Advocate to the Court, as confirmed in *Re A (Father: Knowledge of a Child’s Birth)* and by the terms of the *President’s Guidance: The Role of the Attorney General in Appointing Advocates to the Court or Special Advocates in Family Cases*.

5. Finally, at the conclusion of the hearing, Mr Howe notified me that DW wished to address the court. The fact that DW wished to attend the hearing was only made known to the court very late last week. The court was not notified that DW wished to address the court until the very end of the hearing itself, with no prior notice that that course of action was to be proposed and only once all parties had concluded the totality of their submissions. Self evidently, there had been no opportunity to comply with *Guidelines for Judges Meeting Children who are Subject to Family Proceedings* [2010] 2 FLR 1872 (or, arguably more appropriately in circumstances where DW wished to speak to the applications before the court, the principles set out in the authorities concerning children and young people giving evidence). The court, of course, understands that these matters develop in real time and that children and young people are apt to change their minds. However, those matters simply serve to emphasise the need to deal with the question thoroughly, well ahead of the hearing. The task of a judge speaking to, or hearing from, a vulnerable child or young person who may have certain expectations, sometimes misplaced, about the proceedings is a challenging one. It requires to be carefully planned. In some cases, a misdirected or poorly judged phrase in a hurriedly arranged exchange between the child and the court can have enormous adverse consequences. Consideration also needs to be given to how the court is to treat what it hears from the child or young person and to decide whether the parties will be invited to respond. In these circumstances, it is vital that the principles I set out in *London Borough of Brent v D and Ors (Compliance with Guidelines on Judges Meeting Children)* [2017] EWHC 2452 (Fam) are followed. It is simply not acceptable to leave these matters until the last minute. Having spoken to the legal team representing her and the Children's Guardian, DW did not, in the end, seek to address the court herself.

BACKGROUND

6. The mother and father separated in 2006 when DW's sibling, M, was 3 years old and DW was 1 year old. The local authority asserts that during her early years DW was subjected to physical abuse by the father and witnessed domestic violence between the parents. However, for reasons I will come to, the local authority no longer seeks a finding in this respect. Whilst there are no PNC records in the bundle, the social work evidence records that on 1 December 2014 the father and his partner were convicted of child neglect. Each received an 18-month conditional discharge and the father was made subject to a two-year restraining order preventing him from contacting the mother or M. Whilst at some points in the bundle it is asserted that the father received a conviction in respect of both M and DW, it is not clear that this is correct. A redacted social work record in the bundle records that DW made an allegation, but that the police were unable to substantiate that allegation due to the absence of injury, and the case in respect of DW was closed. As I will come to, DW has made further allegations of physical abuse, and allegations of sexual abuse against the father, occurring when she was around the age of 6. Within the foregoing context, it is said that the father has not played an active part in DW's life for some eight years, since 2014.
7. [...]
8. In July 2020, DW [exhibited difficulties]. It is recorded that there were concerns about the relationship between DW and the mother, with DW describing her mother as shouting at her and her mother's boyfriend being of concern to her. The statement of the social worker describes the mother as being very detached and as not acknowledging that DW was experiencing [difficulties]. Within this context, in her

initial analysis, the Children’s Guardian opined that the relationship between DW and her mother is central to her emotional wellbeing. [DW] stayed with friends in circumstances where the mother refused to have her return home.

9. The Child and Family Assessment commenced by the local authority on 31 July 2020, in response to [the difficulties] exhibited by DW, indicates that prior to February or March 2020, DW had not displayed any significant concerning behaviours [...]. In this context, the assessment records as follows:

“It is clear that around this time something has changed for DW. There has (*sic*) been two significant life events that have been identified as possible triggers; firstly was the closure of schools due to COVID as DW spent a lot less time with her friends, which is her main support network, and has also begun to spend a lot more time with her Mum. Secondly, it was around this time when her relationship with [her step-father] broke down...”

10. [DW continued to experience difficulties of the type set out in the chronology before the court]. On 11 August 2020, an attempt was made to return DW to the care of her mother with outreach support. However, on the same date the mother requested that DW be accommodated under s.20 of the Children Act 1989.

11. [...]

12. DW was accommodated in her [current placement] on 9 September 2020. [DW continued to experience difficulties of the type set out in the chronology within that placement].

13. The local authority contends that the foregoing [difficulties] are prompted by thoughts and anxieties about past and present events in DW’s life. Within the first social work statement, the allocated social worker ascribes the behaviour exhibited by DW to her relationships with significant people, rather than simply ascribing the difficulties to the conduct of the father. Within this context, the ongoing Child and Family Assessment of the local authority analysed DW’s situation as follows at a review on 11 March 2021:

“DW is a young person who has experienced trauma and abuse in her early years, and she has experienced a lot of instability and rejection from key adults in her life. Her 'lived experience' has been punctuated by uncertainty, unpredictability and abuse. She also appears to have been exposed to parenting which has featured high levels of criticism and low levels of warmth...DW presents as young person who is desperately seeking attention, validation and approval from her Mum. It appears this has not provided by [the mother], and some of DW's behaviours appear to be her way of seeking attention from her Mum, irrespective of whether this is positive or negative attention.”

14. On 18 August 2021, DW made allegations against her father [...]. The allegations are distressing but it is important in the context of the application before the court to summarise them in this judgment in broad terms:

- i) The father had handcuffed both her and M to a radiator on one occasion. M was naked and the father had forced DW to remove her trousers and underwear.

- ii) On one occasion, the father locked DW in her room for three weeks and fed her food and water.
 - iii) On one occasion, the father attempted to drown DW in the bath by holding her head under water.
 - iv) The father force-fed M.
 - v) The father forced DW to remove all of her clothing and locked her in the bathroom.
 - vi) The father dragged DW out of bed and assaulted M on the landing.
 - vii) The father sexually abused M and DW.
15. DW stated that she did not want to involve the police in respect of these allegations, and said she was fearful that her father would come and find her and that M would be angry with her. However, pursuant to the demands of the safeguarding duties [...] those allegations were reported to the police. The social worker's second statement describes DW as having handled this development well, although a later social work statement describes DW as being fearful of the father finding out where she lived and of repercussions for her having made allegations [...].
16. [...]
17. As a result of DW's allegations, the father was requested to leave his family home. He was thereafter arrested following his attendance at the police station and released on bail with conditions that he not contact DW. On 7 September 2021, DW was asked to consider providing a statement to the police. Both DW and her sister ultimately declined to provide statements and the police closed the case. Within the bundle is a redacted Children and Family Assessment of the father's family. Within that assessment, the assessing social worker records that the father's children living within that household did not report any concerns or conduct by the father that had caused them to be worried or fearful. No ongoing role was identified for Children's Services and the father returned to his family home and resumed care of those children.
18. The local authority issued care proceedings in respect of DW on 16 September 2021. The Form C110A names the father and records that he has parental responsibility for DW. The first directions order made by the Legal Adviser on 17 September 2021 made no mention of an issue concerning the father's party status and directions were made for him to file and serve a response document by 30 September 2021. However, on 5 October 2021 an order made by HHJ O'Leary recorded that the local authority had not served the father with the proceedings in circumstances where it intended to make an application "to be relieved of its obligations to serve him pursuant to FPR 2010 and to consult with him". HHJ O'Leary listed that application for determination on 9 November 2021. In the event, the local authority failed to comply with directions made with respect to that hearing and the application did not proceed.
19. On 10 November 2021, the local authority issued a C2 application seeking to "withhold the application and court papers" from the father. The matter came before HHJ O'Leary again on 3 December 2021, at which hearing the local authority application was

expressed to be an application “to remove his party status and to be relieved of its obligation to consult him in respect of any matters pertaining to DW”. On 17 December 2021, the local authority issued a further application on Form C66 for “leave to invoke the inherent jurisdiction for permission not to serve a father with PR and to remove him as a party to the proceedings”. A further C2 application was issued by the local authority on 5 January 2022 seeking “Permission not to serve father and remove him as a party pursuant to rule 12(3) and 12(4) FPR 2010”. On 10 January 2022, the local authority issued yet another, amended, application on Form C66, this time stated to be an application for “Leave to invoke the inherent jurisdiction. Declaratory relief that the local authority need not comply with its duties pursuant to section 22 and 26 of the Children Act 1989.”

20. As can be seen, the local authority has issued *five* applications in its attempt to properly articulate what orders it seeks from the court with respect to the father’s status in these proceedings. For the avoidance of doubt, and in circumstances where following the issue of care proceedings the father is an automatic respondent to those proceedings pursuant to FPR r. 12.3(1), I have proceeded on the basis that the local authority pursues (a) an application for an order removing the father as a respondent to these proceedings and (b) an application for a declaration under the inherent jurisdiction that the local authority need not fulfil its obligations towards the father under ss. 22 and 26 of the Children Act 1989.
21. Following the issue of care proceedings in respect of DW, [she continued to experience some of the difficulties she had previously displayed].
22. Currently, the evidence suggests that DW is now significantly more settled in her placement and has been engaging [in that placement]. DW benefits from a good routine and there are no plans for her to move from that placement. Her current circumstances in the placement do *not* constitute a deprivation of her liberty for the purposes of Art 5 of the ECHR and the local authority has not sought a declaration under the inherent jurisdiction in this regard [...].
23. Within this context, the care plan for DW is for her to remain in her [current placement] and to be supported into independent living. The mother accepts she is unable to care for DW and supports the local authority’s application for a care order on the basis of that care plan. There is no suggestion in his correspondence that the father seeks to care for DW, although when first approached by the local authority during the Children and Family Assessment, the father evinced a wish to have contact with DW. DW does not oppose the care plan advanced by the local authority or the making of a care order, and this course is also supported by the Children’s Guardian.
24. DW continues to attend mainstream school, which provides a consistent source of support and engagement for DW. She has a good friendship group of “feisty” friends who stick up for each other. The school consider her to be an intelligent, capable, hard-working young person [...]. The social work evidence records that DW has a “brilliant attitude to learning”, that she can show great resilience at times, is considerate of others, is learning independence skills and is involved with activities. As of December 2021, her attendance at school was 96.7% with no punctuality concerns. Within this context, the statement from Rachel Evans dated 17 December 2021 records as follows:

“School has always been a huge strength of DW’s and the support she receives at school is fantastic, DW thrives in education, [...]. DW is now learning independent life skills, and with this we are noticing considerable progress in her presentation, behaviours and maturity as she grows into a young adult [...].

25. The Children’s Guardian likewise assesses DW to be a thoughtful and intelligent young person who has insight into her situation, is very articulate and is able to communicate her wishes and feelings clearly.
26. With respect to her own views regarding the involvement of the father in the proceedings, DW has been consistent in her view that the father should not be involved in the proceedings in any way. The social worker’s statement dated 5 August 2021 records that DW had stated that she did not want the father to know anything about her. Notwithstanding that position however, the social work statement goes on, under the heading “Statement of Procedural Fairness”, to evince an intention to notify the father by letter of the local authority’s wish to share parental responsibility for DW. As I will come to, that step of informing the father was taken by the local authority in September 2021. The initial analysis of the Children’s Guardian dated 3 October 2021 records that DW is “adamant that she does not want him in her life or to be involved in these proceedings.” I note that in undertaking her initial analysis dated 3 October 2021, the Children’s Guardian did not speak with the father.
27. On 1 November 2021, DW reiterated to her solicitor and the Children’s Guardian that she did not want her father to be notified of proceedings or to play any part in the proceedings. On this occasion, DW told the Children’s Guardian and her solicitor that she did not want her father to be able to make decisions about her. On 12 January 2022, DW provided a letter for the court through the Children’s Guardian setting out her views regarding the involvement of her father in the proceedings. In her articulate letter, contained in the body of the report of the Children’s Guardian, DW makes [clear her wishes and feelings in respect to the issue before the court].
28. In addition to the historic [difficulties] of DW summarised above, and DW’s own statement regarding the impact on her of the father becoming involved in proceedings, the local authority relies in support of its application on the evidence of the allocated social worker, [expert evidence] and a report the Children’s Guardian prepared for this hearing.
29. In her statement dated 16 December 2021, the social worker Charlotte Turner makes clear her strong view that the involvement of the father in the proceedings on any level would have a detrimental impact on DW’s emotional wellbeing [...]. The social worker considers that her thoughts and beliefs with respect to her father continue to cause DW significant emotional distress. However, Ms Turner also concludes as follows:

“[3.3] The local authority position is that [the father] should not have any involvement in the proceedings at all. However if the court decided that [the father] should be invited to argue his point about his involvement in DW’s proceedings, although this would likely cause DW some degree of upset and anxiety, I feel she would likely be resilient enough to manage this decision, only if she is told clearly what [the father] would be privy to and that that information was extremely limited. If it is decided that [the father] can attend

a hearing to argue his point, I believe DW would only be resilient enough to cope with that, if she understands that [the father] will only know that she is looked after by the local authority (not disclosing the address); that care proceedings are in place; that his attendance to a hearing would only be to argue his point about his involvement and that myself and her guardian have recommended he is not involved in her proceedings after such hearing. I would need to ensure that DW was informed of [the father's] court attendance beforehand and would need to ensure that she had a good understanding of the extreme limitations that were in place in respect of her information being shared with her father.”

30. [The court proceeded to deal with the contents of the expert evidence relied on by the local authority in support of its application].
31. [...]
32. [...]
33. [...]
34. [...]
35. [...]
36. [...]
37. [...]
38. The report of the Children’s Guardian is dated 21 February 2022. In that report, the Children’s Guardian reiterates the strength and consistency of DW’s view that the father should not be involved in the proceedings. The Children’s Guardian articulates the risk arising out of his involvement as being one of DW [experiencing difficulties] in response:

“[16] Whilst there are various ways the court could involve [the father] in these proceedings from allowing him full party status and access to all the documents to having limited or redacted documents (*sic*). DW could be supported by her [...] carers, and the impact of this limited as far as professionals are concerned, it must be recognised that DW feels any involvement from [the father] (including even hearing his name) will cause her ability to use positive coping strategies to deteriorate and that the progress she has made to regress, ultimately which will impact upon her ability to gain the independence and future she has planned.”
39. Finally, as I have noted above, this matter is made more complex by the fact that the father was spoken to by the social worker during the course of the pre-proceedings assessment, is aware that DW is now a looked after child, is aware of these proceedings, has corresponded with the local authority, both directly and through solicitors, and has expressed a wish to be involved.
40. The Child and Family Assessment commenced by the local authority on 31 July 2020 indicates that the father was spoken to by the assessing social worker. The father denied

physically abusing DW (whilst the social worker records this denial as being given despite the father having been convicted of assaulting DW, as I have noted it remains unclear on the evidence before the court whether that conviction related to *both* M and DW or just M). The father further stated he wished to resume contact with DW, and, in response, the social worker advised that he would need to be assessed, to which course of action the father agreed.

41. On 17 September 2021, the father telephoned the social worker. During the course of that conversation the father stated to the social worker that he was aware that DW was now a looked after child. The social worker thereafter advised the father that care proceedings would be commenced in due course. When the father was asked whether he wished to be involved in those proceedings, he stated that he was not sure. It is not clear whether the father appreciated at that point that, as a holder of parental responsibility, he would be an automatic respondent to the proceedings. On the same day, the father emailed the social worker to request that no information regarding DW be given to the step-father.
42. On 20 September 2021, the social worker wrote to the father to confirm that DW had been accommodated pursuant to s.20 of the Children Act 1989 since 24 August 2021. Following the issue of proceedings, on 17 October 2021 the father wrote to the social worker requesting a copy of the interim care order and stating that he had heard nothing from the local authority. The father sent a further email to the social worker on 19 October 2021 (replying to an email that had been sent to him by the local authority in error) reiterating that he had received nothing and wished to know what was happening as he had parental responsibility for DW. In that email, the father states that he had previously been contacted by the local authority requesting an address for service of the care proceedings.
43. On 2 November 2021, the social worker replied to the father stating that the court was considering whether he should participate in the proceedings. The father replied stating that he is DW's biological father, that he retains parental responsibility and that, in the circumstances, he was entitled to the information he had requested. He objected strongly to not being provided with information regarding the proceedings. The father further informed the social worker that he was intending to instruct solicitors.
44. Solicitors instructed on behalf of the father wrote to the local authority on 4 November 2021 confirming they had been retained by the father. On 18 November 2021, the local authority received a formal complaint from the father regarding his exclusion from knowledge of, and involvement in, the proceedings concerning DW. On 22 January 2022, the father's solicitors wrote to the local authority in response to a letter from the local authority asking what the father could add to the proceedings. The father's solicitors reiterated his wish to be involved in proceedings and, not unreasonably, pointed out that the father would not be able to indicate what he could add to the proceedings until he knew what they were about.

THE LAW

45. FPR 2010 r. 12.3(1) provides that, in respect of an application for a care or supervision order, every person whom the applicant local authority believes has parental responsibility *will* be a respondent to an application for such an order. In the circumstances, a father with parental responsibility is an automatic respondent to public

law proceedings concerning their child. In accordance with FPR r. 12.8(1) a person who is a respondent to proceedings must be served with the documents specified by FPR r. 12.8(5) and notice of any hearing set by the court.

46. Pursuant to FPR r. 12.3(3), the court has the power to remove a party from the proceedings. By FPR r. 6.36 the court can make orders dispensing with the service of any document that is to be served in those proceedings. It has long been recognised that one of the grounds for excluding a parent with parental responsibility from proceedings (whether by way of dispensing with service of proceedings, their removal as a party to proceedings or by withholding disclosure of evidence relied on) is that the participation of the parent would create a risk of harm to the child or to another party to the proceedings. In *In re H; In re G (Adoption: Consultation of Unmarried Fathers)* [2001] 1 FLR 646 at [43] Butler-Sloss P held as follows:

“This raises the difficult question of the impact of the rights of other parties under article 8, and the welfare principles, on the right to a fair trial. There must, however, in principle, be some qualification of the right of a party to be heard in proceedings. This would be likely to arise under two separate categories, namely, a policy decision of the court, in the exercise of its right to run its own proceedings within the requirements that there should be a fair trial, and, secondly, the practicalities of service on a potential litigant or his attendance at the hearing. There will be cases where notice to a father would create a significant physical risk to the mother, to children in the family, or to other people concerned in the case (see for instance *In re X (Care: Notice of Proceedings)* [1996] 1 FLR 186). That might result in the court balancing the fairness to the father of notice, against the real risks of the consequences of such notice.”

47. The authorities dealing with applications that aim to prevent or restrict the involvement of a parent in proceedings have tended to address that issue either by way of what might be termed a rights based approach, or by way of an approach that encompasses consideration of a wider range of factors relevant to the determination of the application than simply the competing rights engaged under the ECHR.
48. Thus, in *A Local Authority v M and F* [2010] 1 FLR 1355 Hedley J considered Art 6 and Art 8 provided the appropriate analytical framework to determine whether the father should be given notice of proceedings. In that case, with respect to Art 6, Hedley J observed, following the aforementioned passage from the judgment of Butler-Sloss P in *In re H; In re G (Adoption: Consultation of Unmarried Fathers)* at [43], that the right of access to the court is not an absolute one and not every limitation or even exclusion is unlawful, highlighting the seminal passage in *Ashingdane v United Kingdom* (1985) 7 EHRR 528 at [57]:

“... the limitations applied must not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired [and] a limitation will not be compatible with article 6(1) if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved.”

49. In *Re X v Y (Children)* [2018] 2 FLR 947 Gwynneth Knowles J followed the same rights based approach based on Arts 6 and 8 taken by Hedley J in *A Local Authority v M and F* when deciding to discharge the father as a party to the proceedings. In that case, Gwynneth Knowles J provided the father with an opportunity to make representations as to whether he should remain a party before granting the application. In *A City Council v Mother and Father and X* [2021] EWHC 3375 (Fam), Lieven J likewise adopted a rights based approach to an application by a mother to injunct the local authority from consulting the father.
50. Within this context, in their written submissions, Ms Heaton and Ms Greenhalgh appeared at one point to suggest that *only* if the father had rights under Art 8 would the father also benefit from rights under Art 6, the local authority contending that, on the facts of this case, the father does not have a ‘family life’ with DW for the purposes of Art 8. This contention appeared to derive from certain passages in the judgment of Gwynneth Knowles J in *Re X v Y (Children)* and in particular, the observations at paragraphs [40] and [45] that:

“[40] I approach the question of the father’s involvement in both sets of proceedings by acknowledging that he has been accorded by the FPR 2010 a status within the proceedings commensurate not only with fatherhood but also with the fact that he has parental responsibility for both girls. Thus, an application to end his involvement in the proceedings would require particular justification. The father would be entitled to respect for his family life under Art 8 and therefore, also the right to have a fair trial under Art 6. It would be rare that his Art 6 right to participate in the proceedings would be displaced by another person’s Art 8 rights.”

And:

“[45] As the father has Art 8 rights, Art 6 is engaged by these proceedings. Where a parent is entitled to respect for his family life under Art 8 and also to the right to a fair trial under Art 6, it will only be in exceptional circumstances that the Art 6 right will be displaced by another person’s Art 8 rights.”

51. I am satisfied that Gwynneth Knowles J was not seeking to suggest by these passages in *Re X v Y (Children)* that it is *only* Art 8 rights that give rise to rights under Art 6 in the situation there under discussion, and Ms Heaton and Ms Greenhalgh did not seek to further pursue that point in oral submissions. It is plain from the wording of Art 6 that it cannot be the case that a father with parental responsibility conferred by domestic legislation derives his civil rights and obligations for the purposes of Art 6 *only* from such Art 8 rights as he is able to establish. Rather, the father’s civil rights and obligations for the purposes of Art 6 will extend to those derived from the fact that the father has parental responsibility by operation of law under the Children Act 1989 s.3 (which defines parental responsibility as meaning “all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property”) and a formal status in proceedings derived from the FPR 2010 r. 12.3. This much was recognised by Court of Appeal in *Re B (Children)* [2021] EWCA Civ 122, where Macur LJ held at [13]:

“There will obviously be cases where the issue of Article 8 rights will take considerably more examination. The erstwhile family ties that are recognised by designation of parental responsibility do not always march hand in hand with the exercise of those rights as to demand the protection of Article 8 and, as a corollary, Article 6, of the HRA and vice versa. However, the statutory framework provided by the Family Procedure Rules differentiates between a father with and those without parental authority even if they do have Article 8 rights. In the former case the father is an automatic party, in the latter, he must be notified of the proceedings. The imperative text in FPR Part 12, rule 12 and FPR PD 12C recognises the importance of the father, or other parent's, participation in the family proceedings beyond, I would suggest, for reasons of procedural fairness. However, in either case, the Court in accordance with FPR rule 6.1 and 6.36 may dispense with service upon him/her if in the circumstances it is necessary to safeguard the welfare interests of another predominant party and/or the child.”

52. In the foregoing context, and by contrast to the rights based approach taken in the first instance decisions in *A Local Authority v M and F, Re X v Y (Children)* and *A City Council v Mother and Father and X*, the Court of Appeal in *Re A (Father: Knowledge of Child's Birth)* [2011] 2 FLR 123 articulated the following principles as governing the exercise of the court's discretion to dispense with service on a father in the context of care and placement proceedings:
- i) The starting point is that a father should know of the existence of his child or children and should be able to participate in proceedings concerning them.
 - ii) The court's task is first to identify the nature and extent of the harm in contemplation. The court should be rigorous in its examination of the risk and gravity of the feared harm. The court must be satisfied that the child is likely to suffer harm in the sense of a real possibility that cannot be sensibly ignored having regard to the nature and gravity of the feared harm in the particular case.
 - iii) The exceptionality test does not require significant physical risk to be demonstrated. Harm and risk come in many guises and there is no single path to exceptionality.
 - iv) When evaluating the risk of future harm, there is no minimum requirement. The greater the harm the smaller need be the risk. The risk of death may be very small, whereas the risk of turbulence in family relationships would need to be much higher.
 - v) The court is not determining a question with respect to the upbringing of the child so the welfare of the child, whilst an important consideration, is not paramount.
 - vi) Authorities in the Strasbourg jurisprudence put a high bar on exclusion. In this context, a high degree of exceptionality must be demonstrated by strong countervailing factors.
 - vii) Cases involving well-established relationships will almost never succeed in justifying exclusion.

53. In *Re A (Adoption Notification of Fathers and Relatives)* [2020] Fam 325 the Court of Appeal further pointed out that, in the context of the approach articulated in *Re A (Father: Knowledge of Child's Birth)*, it must be remembered that exceptionality is *not*, in itself, a test or a short cut and that a fair balance must be struck between the factors that are present in the individual case.
54. Within the foregoing context, in *A Local Authority v M and others* [2020] 4 WLR 157, this court drew together the following principles from the aforementioned appellate case law, which it considered applicable to determining an application to dispense with service of proceedings under the inherent jurisdiction on a father with parental responsibility. I am satisfied these principles are equally applicable to determining whether a father with parental responsibility should be discharged as a party to proceedings:
- i) The starting point is that a father should be able to participate (in a wide sense) in proceedings concerning his child. The court should start with full participation then consider partial participation and then, only as a device of last resort, the father's exclusion from the proceedings.
 - ii) The court's task is to identify the nature and extent of the harm in contemplation. The court should be rigorous in its examination of the risk and gravity of the feared harm. The court must be satisfied that the child is likely to suffer harm in the sense of a real possibility that cannot be sensibly ignored having regard to the nature and gravity of the feared harm in the particular case.
 - iii) There is no requirement that a significant physical risk be demonstrated. Harm and risk come in many guises.
 - iv) When evaluating the risk of future harm, there is no minimum requirement. The court must be alert both to the risk and to the magnitude of the consequences should the risk eventuate, and must also consider whether and to what extent that risk can be managed by the court's control of its own processes. The greater the harm the smaller need be the risk.
 - v) The court is not determining a question with respect to the upbringing of the child so the welfare of the child, whilst an important consideration, is not paramount.
 - vi) Authorities in the Strasbourg jurisprudence put a high bar on excluding a parent with parental responsibility. In this context, where a parent has parental responsibility or a right to respect for family life under Art 8, a high degree of exceptionality must be demonstrated by strong countervailing factors to justify their exclusion from participation in the proceedings.
 - vii) It must be remembered that exceptionality is not, in itself, a test or a short cut and a fair balance must be struck between the factors that are present in the individual case.
55. In *Re B (Children)* at [19] the Court of Appeal approved the foregoing list of principles as rightly drawn, but cautioned that principle (iv), that a high degree of exceptionality must be established, should be read as necessarily subject to principle (vii), that

exceptionality is not, in itself, a test or a short cut and a fair balance must be struck between the factors that are present in the individual case. Within this context, in undertaking my evaluation of the application to remove the father as party to proceedings, I proceed on the basis of the foregoing principles extracted from the decisions of the Court of Appeal.

56. Finally, the local authority also applies in this case for declarations under the inherent jurisdiction of the High Court that it be absolved from its duty to provide information about the child to the father and/or consult him pursuant to ss. 22 and 26 of the Children Act 1989. Gwynneth Knowles J set out the legal framework applicable to the determination of such applications under the inherent jurisdiction in *Re X v Y (Children)*, the cardinal aspects of which can be summarised as follows:
- i) Pursuant to s.22 of the Children Act 1989 there is statutory duty on the local authority to ascertain the wishes and feelings of the father regarding any matter to be decided about DW.
 - ii) Pursuant to s. 26 of the Children Act 1989 the Secretary of State has made regulations requiring the case of each child who is being looked after by a local authority to be reviewed in accordance with the provisions of the regulations. The regulations require the local authority, before conducting any review of a child in care's wellbeing, to seek the views of the child and their parents.
 - iii) Even a parent who has behaved egregiously may have some important contribution to make in respect of decisions concerning the subject child. The requirement to solicit the views of the parent is not contingent on a moral judgment of the parents' behaviour (see *Re O (A Child)(Care Proceedings: Issues Resolution Hearing) Practice Note* [2016] 1 WLR 512).
 - iv) Pursuant to s. 100 of the Children Act 1989, the local authority requires the permission of the court before it can apply for relief under the inherent jurisdiction in respect to DW. Permission will only be granted where (a) the order sought is only available by way of the exercise of the court's inherent jurisdiction and (b) there is reasonable cause to believe that if the court's inherent jurisdiction was not exercised with respect to subject child he or she is likely to suffer significant harm.
 - v) In deciding whether to make a declaration under the inherent jurisdiction of the High Court, the subject child's best interests are the court's paramount consideration.
 - vi) A parent is ordinarily entitled to be fully involved in the decision-making process relating to his, or her, child, and if not to be involved then, at least, to be informed about that decision-making process.
 - vii) A local authority can only be absolved of its duty to consult and provide information to a parent in exceptional circumstances (see *Re C (Care: Consultation with Parents not in Child's Best Interests)* [2006] 2 FLR 787).

DISCUSSION

57. I have found this a difficult and finely balanced case to decide. However, having anxiously considered the evidence and submissions in this case, and having sought to strike a fair balance between the competing factors, I am on balance satisfied that I cannot make orders in the terms sought by the local authority. Rather, I consider the proportionate approach in this case to be for the father to remain a party to the proceedings but subject to careful limitations being placed on the information he is provided with in respect of those proceedings. My reasons for so deciding are as follows.
58. The appellate authorities discussed above make clear that the starting point is that the father should, as a parent accorded by law parental responsibility for DW, be able to participate in the proceedings concerning her. The starting point reflects the fact that, in domestic law, the father is accorded by the FPR 2010 a status within the proceedings commensurate with the fact that he has parental responsibility for DW, as well as reflecting the demands of Art 6 of the ECHR, as incorporated into domestic law by the Human Rights Act 1998.
59. In this case, I am satisfied that this starting point is brought into even sharper focus by the fact that the father is aware of these proceedings and seeks to be involved in them. This is not only a case in which the father has no knowledge of the proceedings but a case in which the local authority actively sought the views of the father when undertaking its initial assessment, advised the father that care proceedings would be commenced and requested an address for service. When he deemed the local authority's responses to further requests for information to be insufficient, the father made a formal complaint regarding what he considered to be the local authority's failure to involve him in proceedings in a manner commensurate with his parental responsibility. I accept, as made clear by the approach of the court in *Re X v Y (Children)*, that the father's knowledge of proceedings does not prevent his removal as a party *per se*. However, the fact that a parent with parental responsibility, who is an automatic respondent to the proceedings by reason of their holding parental responsibility, has previously been consulted by the local authority, has been made aware proceedings are to be issued and has expressed a wish to engage in those proceedings, thereby indicating an explicit wish to seek to exercise their rights under domestic law and Art 6 of the ECHR, must in my judgment act to reinforce the importance of the starting point in this case and to increase the weight to be attached to this factor. In particular, I accept Mr Murray's submission that, in light of the father being informed of DW's status as a looked after child, having been spoken to as part of the initial assessment and having been informed of proceedings and corresponding with the local authority, the question for the court becomes one of the impact on DW of the father's *continued* involvement in the proceedings.
60. When considering whether, and if so how far, to depart from the starting point, I remain satisfied that the approach taken by the Court of Appeal in the authorities I have set out above is the approach that should be adopted by this court. Within this context, and in circumstances where the countervailing factors relied on by the local authority in support of its application in this case centre on harm, the court's task is first to identify the nature and extent of the harm in contemplation. In line with the legal principles summarised above, the court must be rigorous in its examination of the risk and gravity of the feared harm that is said to constitute such a factor. Within this context, when

evaluating the risk of future harm, I remind myself that there is no minimum requirement and that the greater the harm the smaller need be the risk. As Hedley J noted in *A Local Authority v M and F*, in this context the court must be alert both to the risk and to the magnitude of the consequences should the risk eventuate, and must also consider whether and to what extent that risk can be managed by the court's control of its own processes.

61. The local authority and the Children's Guardian submit that in addition to the risk of harm to DW of the father being involved in the proceedings, to which I shall address in detail below, the lack of the father's involvement with DW since 2014 means he does not have an Art 8 right to respect for family life with DW and, in any event, taken with DW's strong wishes and feelings in respect of her father's involvement, the father has, to adopt Ms Heaton's phrase, "nothing to offer but negativity" in respect of the proceedings, either in terms of information or in terms of outcome, and that "there can be no real argument in respect of any contact arrangements" mounted by the father. The local authority and the Children's Guardian submit that these factors offer further justification in this case for departing from the ordinary starting point.
62. However, some care is required in respect of these submissions. As I have already noted, the starting point of parental involvement in proceedings concerning children is not grounded *solely* on the Art 8 rights of the parent in question, but also on the fact that the parent has been accorded a status within the proceedings by the FPR, the parent's rights under Art 6 of the ECHR, the domestic principles of fairness and natural justice and, in addition, simply because a parent, even one who is said to have behaved egregiously, *may* have a contribution to make in respect of proceedings concerning the subject child. Within this context, the absence of the existence of family life for the purposes of Art 8, or the lack of involvement of a parent in the life of the subject child over a significant period, or even the egregious and harmful conduct of a parent towards the subject child or children will not of themselves *necessarily* justify departure from the starting point. Indeed, there are *very* many cases in which historically absent parents, fickle or capricious parents and parents who are alleged to have caused the gravest harm to the subject child or children are *not* excluded from participating in proceedings by reason of those matters. Whilst in *Re B (Children)* the Court of Appeal recognised that factors other than harm may justify the exclusion of a parent, it is perhaps for this reason that the evaluative framework set out by the Court of Appeal in *Re A (Father: Knowledge of Child's Birth)* coalesces around the question of harm and the need for a rigorous examination of that question to be undertaken. In this regard, I also note that *In re H; In re G (Adoption: Consultation of Unmarried Fathers)*, Butler-Sloss P also contemplated harm as being the basis for exclusion, and that in *Re D (Minors)(Adoption Reports: Confidentiality)* [1996] AC 593) harm to the child was the basis for the test for withholding disclosure from a party to proceedings.
63. I accept that the evidence currently before the court tends to demonstrate that the father has not been involved in DW's life since 2014. However, in circumstances I shall come to, the only evidence currently before the court establishing that broad proposition is provided by parties who unanimously support the applications before the court. As Mr Murray points out as Advocate to the Court, the court has no one presently before it to marshal contrary evidence in respect of that, or any other contention. Further, and as I have noted, upon being informed by the local authority of these proceedings, the father has since repeatedly stated his wish to engage in those proceedings and has instructed

solicitors to that end and lodged a formal complaint regarding the local authority's conduct in respect of this issue. Within this context, care must also be taken when weighing the submission, by parties unanimously supporting the exclusion of the father from the proceedings, that the father has "nothing to offer but negativity" and "has no real argument" or, as formulated by the Children's Guardian, "has no independent perspective" and "has nothing to offer". The difficulty, within the context of Art 6 and the domestic principles of fairness and natural justice, of relying on such assertions as grounds for excluding the father from proceedings in which he not able to respond is self-evident.

64. Caution is likewise required when considering the question of DW's wishes and feelings in circumstances where they concern the application of a statutory and procedural imperative that applies to all proceedings and admits only a narrow discretion in its application. In this case, the local authority and the Children's Guardian invite the court to place significant weight on DW's stated wish that her father should not be permitted to participate in the proceedings or in any decisions concerning her given her age and her level of insight into her own situation. However, whilst DW is now sixteen years old and a bright and articulate young person, particular care is needed with respect to the proposition, advanced in plain terms by the Children's Guardian, that her clear wishes and feelings should drive the answer to the question of whether the father should be excluded as a party.
65. A parent's rights under Art 6 of the ECHR and domestic procedural provisions are not conditional upon the consent or approval of other parties to the litigation in question. Within this context, it is again of note that the authorities concerning the narrow circumstances in which a respondent can be excluded from children proceedings coalesce around *harm* as the potentially strong countervailing factor, rather than on wider aspects of the litigation such as the wishes and feelings of the subject child. In the circumstances, the expressed objection of the subject child or children to the involvement of a parent in proceedings will not, even if cogently expressed, *by itself* constitute a ground for discharging that parent as a party. Within this context, I deprecate the following passage in the initial analysis of the Children's Guardian:
- "I recommend that the court approves DW's request that [the father] will NOT be informed of these proceedings. Given DW's age, level of understanding and reasons, these are sufficiently cogent for the court to take note of her wishes and feelings."
66. This passage fails to reflect proper consideration of the strong public policy of involving parents in proceedings concerning their children and the concomitant narrow criteria that inform any recommendation to a court to consider excluding a father with parental responsibility from proceedings (in addition to being a recommendation made without any apparent contact being made by the Children's Guardian with a father who was already aware of the proceedings). To repeat, in the context of the rights afforded to a father with parental responsibility by Art 6 of the ECHR, the fact that a child has stated that they do not wish a parent to be involved of proceedings, or to have any input in decision making, cannot *by itself* be a proper basis for making the recommendation set out above or, by extension, for making applications of the type now before the court. Rather, once again, the wishes and feelings of the subject child fall to be analysed and evaluated as part of the rigorous assessment of the harm contended for as the strong countervailing factor in this case. It is to that exercise that I now turn.

67. With respect to the real likelihood of harm, in the sense of a real possibility that cannot be ignored, contended for by the local authority and the Children's Guardian in this case and supported by the mother, it is submitted that that real likelihood of harm stems from [the difficulties DW has had as set out in the chronology before the court].
68. Within this context, the local authority contends that if the father remains a party to the proceedings, and has sight of any information concerning DW, there is a substantial risk [...] of significant physical and emotional harm [...]. Measuring this against the paradigm of exceptionality, what is said to be exceptional in this case is the nature, extent and consequence of DW's likely reaction to her father remaining involved in these proceedings and being given information from the proceedings. In these circumstances, the local authority submits that the court must distinguish between a subject child who would find the involvement of a parent in proceedings difficult or stressful and a child who [is at risk of] a real likelihood of harm [as a result of that involvement].
69. Within this context, the local authority and the Children's Guardian further rely on DW's own statement [objecting strongly to] the involvement of the father [in the proceedings].
70. Any court faced with the assertion that the service of proceedings on, or the maintenance of party status of, a respondent father will lead to [emotional and psychological harm] will, of course, be given great pause. In particular, I have paid careful regard to the fact that DW has, as a highly intelligent and articulate 16-year-old, informed the court in her own words of what the consequences may be were the court not to accede to the applications advanced by the local authority. [...]. Within this context, when evaluated in light of the information contained in the chronology prepared by the local authority and DW's stated views in January of this year, it can be said that there is a real likelihood of harm stemming from the involvement of the father in proceedings, the evidence before the court [setting out plainly] the magnitude of that harm [...].
71. The matters set out in the chronology regarding DW's [difficulties] are plainly of significant concern [...]. However, the rigorous (and dispassionate) analysis of the contended for risk that the court is required to undertake must be based on *all* of the evidence before the court and must also consider whether, and to what extent, that risk can be managed by the court's control of its own processes. In undertaking that rigorous examination of the nature and extent of the contended for harm, and the extent to which it can be managed, the following factors must be balanced against those relied on by the local authority, the Children's Guardian and the mother:
- i) Albeit it is obviously evidence of [the nature of the difficulties DW has had], the [difficulties] exhibited by DW as detailed in the chronology began prior to the issue of proceedings and, on the evidence before the court appears to be multifactorial, as opposed to being exclusively referable to her thoughts and feelings about the father.
 - ii) Within the foregoing context, there have been no findings of fact made against the father with respect to DW. As I have noted, whilst at some points in the bundle it is said that the father received convictions in respect of both M and DW, it is not clear that this is correct. By way of sentence, the father received

a conditional discharge. The police did not proceed in respect of the allegations made by DW in September 2021 and the local authority does not proceed with them in these proceedings. Further, the local authority no longer seeks findings in these proceedings that DW has suffered physical abuse from her father, witnessed her father physically assault M and has been exposed to parental domestic violence, or a finding that [DW's difficulties are] as a result of childhood trauma. Whilst this decision appears to have been taken in an effort to bolster its application to remove the father as a party (in circumstances where there would be no allegations for him to answer in the proceedings), this results in the local authority seeking to rely on the assertion that DW's negative emotional affect is associated with the treatment she received, or that she perceives that she has received, at the hands of the father, whilst also abandoning findings in that respect. It is clear from his responses to date that the father is likely to dispute the allegations made in respect of him.

- iii) In this context, and having regard to the demands of Art 6, Mr Murray rightly points out as Advocate to the Court that in circumstances where all parties support the applications before the court, the only evidence before the court in support of the applications is self-serving evidence favouring the case of those advancing it, not tested in cross-examination and with no one before the court to martial any contrary evidence. If this court grants the applications, the father has no standing to appeal (see *Re A (Father: Knowledge of Child's Birth)* at [18]).
- iv) DW's current presentation is, on the evidence before the court, now much improved [...]. This evidence is consistent with the unanimous view [...] that DW is an intelligent, insightful young person who has a good understanding of her own difficulties and has made very real progress [...], and who is a clever, thoughtful and emotionally intelligent young person who demonstrates great strength and resilience.
- v) Within the context of this amelioration of DW's [difficulties], the court has also before it the following sources of evidence relevant to assessing the likelihood of DW [experiencing those difficulties] were her father to remain a party to the proceedings (acknowledging as I do that, to date, DW is aware that the father knows of proceedings but that he has as yet had no papers nor made representations about her future welfare and circumstances):
 - a) As noted above, I accept Mr Murray's submission that, in light of the father being informed of proceedings, the question for the court becomes one of the impact on DW of the father's *continued* involvement in the proceedings. Notwithstanding that the father first indicated a desire to be involved in the proceedings in September 2021, and DW has been spoken to regarding her views about this on 5 August 2021, 3 October 2021, 1 November 2021 and 12 January 2022, DW has not displayed episodes of [difficulty] consequent upon this position. [...] Within this context, I accept Mr Murray's submission that the court must have regard to the absence of evidence of [difficulties for] DW in the period since she became aware of the father's knowledge of, and wish to become involved in, the proceedings. Within this context I further note that in her report dated 3 October 2021, the Children's Guardian records that

DW has also maintained her concentration on school, is on track to achieve her target GCSEs and maintains her 96.7% attendance and her positive behaviour and presentation.

- b) As I have noted above, when the social worker spoke to DW in December 2021 regarding the prospect of the father being involved in proceedings to the extent of arguing this application before the court, the social worker was clear that whilst this would likely cause DW some degree of upset and anxiety, she would likely be resilient enough to manage this decision, provided she was told clearly what information the father would be given and assured that that information would be extremely limited. The social worker likewise considered that DW would be resilient enough to cope with her father attending court to argue his point, if she understood that the father would not be told her address and would know only that she is looked after by the local authority and that care proceedings are in place. I accept that DW took this view within the framework of a discussion that considered only the father's attendance to argue about his participation and that the social worker made clear her opposition to this course and that of the Guardian. However, once again, there is no evidence that this conversation and the contemplation of the father's involvement to this extent resulted in [difficulties for] DW of the type seen in the past.
- c) [...]
- d) Within the foregoing context, I further note that DW sat through the hearing of the local authority's applications with equanimity, despite the challenges to certain of the propositions relied on by the parties made by both the Advocate to the Court and the court itself.
- vi) DW is extremely well supported in her placement and in education [...]. Further, DW benefits from a consistent and supportive educational environment not only from her teachers but also from her strong peer relationships. Within this context, as I have noted, DW has a good relationship with professionals and is self-reflective. Further, [multidisciplinary] support can be introduced to assist DW to deal with any adverse sequelae that might arise were the court to refuse to accede, in whole or in part, to the applications made by the local authority. [...].
- vii) Finally, [there are] concrete steps that can be taken to assist DW, through communication in an age-appropriate manner by [those] trusted by DW, were the court to conclude that the father should remain a party to proceedings. In particular, the extent and reason for the father's involvement could be explained to DW in full and she could be given an exact account of any information provided to him in order to prevent DW from jumping to conclusions and create a sense of transparency, which will serve to mitigate any damage to DW's relationships with professionals. In addition, it could be explained to DW that there are important legal reasons why the court has taken the course that it has, so as to provide a degree of reassurance to DW that her wishes and feelings have not been dismissed or ignored but that decisions have been taken on a legal basis that is the same for everyone.

72. A rigorous examination of the harm contended for must include a rigorous examination of *all* of the evidence before the court. Based on the chronology prepared by the local authority alone, it is possible to conclude that there is a real likelihood, in the sense of a real possibility, that DW will [act] to deal with difficult emotions thrown up by the father's continued involvement in the proceedings [in the manner recorded in the chronology]. DW's welfare, whilst not paramount, is an important consideration for the court. Within this context, the court must and does take careful account of the troubling matters set out in the chronology. Within this context, Mr Rowley's submission that it is "not appropriate for the court to roll the dice" appears initially beguiling.
73. However, the chronology relied on by the local authority must be placed in its present context. Whilst the history [is] demonstrative of a real likelihood of harm arising out of [the difficulties set out in the evidence before the court] that put her at risk of significant physical and emotional harm consequent upon the father remaining a party to, and being involved in, the proceedings, the *totality* of the evidence before the court suggests the position is now significantly ameliorated by the factors set out in the foregoing paragraphs.
74. That evidence demonstrates that DW is an intelligent, insightful young person who has a good understanding of her own difficulties and has made very real progress in learning coping strategies to manage them and who has thereby achieved a significant reduction in [the difficulties set out in the chronology]. Within this context, DW has not exhibited [difficulties] in response to knowing that the father has been informed of the proceedings. In these circumstances, the evidence of the social worker that DW would likely be resilient enough to manage at least the father's involvement in proceedings on the question of the extent of his participation in the same has been reinforced. [...] Overarching this, DW is extremely well supported in her placement and in education by a dedicated [multidisciplinary] team. In these circumstances, DW benefits from a consistent and supportive care [...] and educational environment and from strong peer relationships.
75. Further, the court is under a duty to consider whether the risk of harm can be managed by the court's own process. As I have noted, [the evidence is that] it will be possible, through the use of age-appropriate communication in the context of DW's level of insight, to mitigate the impact on DW of the father's continuing involvement through the provision of clear information and explanation. DW's conversations with the social worker regarding the participation of the father on the question of his involvement, [...], demonstrate clearly that DW is capable of engaging in a reasoned, mature and reflective manner on the issue of the father's involvement in proceedings. Further, [...] additional support will be put in place to manage DW's feelings should this be necessary. In addition, and importantly, given the narrow nature of the issues in the substantive proceedings, particularly as to future placement, and DW's wishes and feelings with respect to contact, I am satisfied that it will be possible legitimately to limit the information that the father sees whilst he remains a party to the proceedings in those areas that have caused DW particular concern [...].
76. Accordingly, whilst the matters set out in the chronology are undoubtedly concerning, on the *totality* of the evidence before the court, I am not satisfied that it can be said that there is at present a real likelihood, in the sense of a real possibility, of harm were the father to continue as a party to these proceedings, provided that limitations are placed

on the information to which he is privy as a party to those proceedings, that the outcome of these applications, and the courts' reasoning for it, are explained carefully to DW and that she continues to receive the comprehensive care [...] available to her in placement. This is not to downplay or minimise the difficulties with which DW has had to contend during her childhood, nor to minimise the [difficulty] that is depicted in the chronology prepared by the local authority. However, applying the strict legal criteria that I am required to, I am satisfied that the totality of the evidence must result in this outcome.

77. As Peter Jackson LJ made clear in *Re A (Adoption Notification of Fathers and Relatives)* [2020] Fam 325, exceptionality is not a test or short cut. Rather, the application of the principle of exceptionality serves simply to emphasise the very high threshold that must be surmounted before a court excludes a parent with parental responsibility from participating in proceedings concerning their child or children. For the reasons I have given, and provided that certain restrictions on the disclosure of information to the father are implemented, the outcome of these applications and reasoning for it are explained carefully and clearly to DW and that she continues to receive the comprehensive support available to her in placement, I am satisfied in light of the conclusions I have reached in this judgment that the very high threshold for exclusion is not met in this case.
78. With respect to the local authority's application for a declaration excusing it from its duty to consult the father, I am likewise satisfied that, subject to similar controls on the dissemination of information, clear explanations for DW and continued support for her, the grounds are not made out for exercising the inherent jurisdiction in this manner. The requirements stipulated in ss. 22 and 26 of the Children Act 1989 constitute legal obligations on the local authority. The court can only exercise its inherent jurisdiction to absolve the local authority of its duty to comply with those legal obligations where there is reasonable cause to believe that if the court's inherent jurisdiction was not exercised with respect to DW she is likely to suffer significant harm. Having regard to my conclusions above regarding the question of real likelihood of harm, that criterion is not made out in this case. Further, the authorities make clear that, as with the application to remove the father as a party to the proceedings, a local authority can only be absolved of its duty to consult and provide information to a parent in exceptional circumstances. Once again, having regard to the conclusions of the court above in respect of the question of exceptionality, I am satisfied that the local authority's application under the inherent jurisdiction does not meet that threshold.

CONCLUSION

79. Within the foregoing circumstances, and doing the best I can to strike a fair balance between the competing factors in this case, I am not able to conclude on the evidence before the court that the position in this case is one that justifies the father's removal as a party to proceedings of which he has been informed and in which he wishes to play a role and has instructed solicitors in respect of the same. I am likewise satisfied that the criteria for an order under the court's inherent jurisdiction excusing the local authority from complying with its statutory obligations to consult the father pursuant to its duties under ss. 22 and 26 of the Children Act 1989 are not met in this case. Such outcomes would be disproportionate in the circumstances I have set out in this judgment.

80. Rather, I am satisfied that the proportionate course is for the father to continue as a party to the proceedings, which will permit him to provide to the court his views in respect of those proceedings, subject to the level of information provided to the father within the proceedings being carefully circumscribed, to a comprehensive explanation being given to DW of the outcome of the applications and to the provision for DW of continued comprehensive support available to her in placement. The court will now hear further submissions on the question of limiting the disclosure of information, but in broad terms, I am satisfied that the following minimum requirements should apply:
- i) The father should *not* be provided with *any* information that identifies or risks identifying the location of DW's current placement or any future placement that is contemplated prior to the conclusion of proceedings.
 - ii) The father should *not* be provided with *any* information that identifies or risks identifying DW's current school or any future school or college that is contemplated prior to the conclusion of these proceedings.
 - iii) With respect to the question of details of DW's progress, the father should *not* be provided with any information concerning [...].
 - iv) Likewise, the father should *not* be provided with any information with respect to DW's future educational ambitions and intentions.
81. The reason for the decision of the court not to grant the applications of the local authority in the terms sought will need to be explained carefully to DW, including making clear to her that whilst the court thought carefully about her views and took them into account, the decision was taken on the basis of the laws that the court is required to apply to everyone equally. DW should also be informed that it is the court and *not* her father that is ultimately responsible for making any decisions about her future that she cannot or should not make for herself. DW will likewise require to be given an *exact* account of the information that will be provided to the father, in order to ensure transparency and to prevent her from jumping to her own conclusions. The embedded therapeutic team will need to be involved in the planning of this communication and will need to consider the strategies for supporting DW when she receives it.
82. Before leaving this case, it is right to note that I share the concerns articulated by the submissions of Mr Murray as Advocate to the Court regarding the relative lack of attention given by the parties in this case to the Art 6 rights and domestic procedural rights of the father as factors to weigh against the matters relied on in support of the applications.
83. Proceedings under Part IV of the Children Act 1989 have the cardinal aim of protecting children who have suffered, or who are at risk of suffering, significant harm. Within this context, it is perhaps understandable that professionals involved in such proceedings concentrate on the welfare aspects and Art 8 rights of the subject child, and on the wishes and feelings expressed by the subject child, when advancing applications of this nature. However, I agree with the submission of Mr Murray as Advocate to the Court that there was a concerning lack of consideration of the imperatives of Art 6 and the domestic procedural rights of the father in much of the material in support of the applications. I likewise accept Mr Murray's submission that a failure to recognise

properly the Art 6 rights and domestic procedural rights of parents threatens the public interest in parents being able to participate fully in proceedings concerning their child or children. As I have noted, this approach reached its nadir in the recommendation of the Children's Guardian that the court simply accede to DW's view that the father should in no way be involved in the proceedings.

84. It is, of course, eminently understandable that professionals involved in proceedings under Part IV of the Children Act 1989 seek, in so far as possible, to protect children from distress consequent upon care proceedings concerning them. However, save in highly exceptional cases, this cannot be at the expense of the participation of parents with parental responsibility, as required by domestic law and Art 6. Within this context, it requires to be reiterated that applications to dispense with service on persons entitled to be served with public law children proceedings, and / or to discharge as parties to such proceedings persons ordinarily entitled to be a party, remain very much the exception. Applications of the type now before the court are not, and should not in any sense be considered, routine.
85. That is my judgment.