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IN THE FAMILY COURT  
(Sitting at East London)

No. FD22P00191  
Neutral Citation Number:  
[2024] EWFC 139

East London Family Court  
11 Westferry Circus  
London  
E14 4HD

Friday, 23 February 2024

Before:

HER HONOUR JUDGE SUH

**(In Private)**

B E T W E E N :

THE FATHER Applicant

- and -

THE MOTHER Respondent

**ANONYMISATION APPLIED**

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MR A ASPINWALL (instructed by Heaven & Co Solicitors) appeared on behalf of the Applicant.

MR R POWELL (instructed by Lillywhite Williams & Co Solicitors) appeared on behalf of the Respondent.

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**J U D G M E N T**

JUDGE SUH:

- 1 Today I am concerned with A-M, date of birth [redacted] and T, born on [redacted]. A-M was born in Norway. T was born in the UK. The applicant is their father. He is represented by Mr Aspinwall. The respondent is their mother represented by Mr Powell.
- 2 On 24 July 2020 the mother brought the children to England. The father issued proceedings for the summary return of the children to Norway under case number FD20P00580. The father's application was dismissed at a final hearing in December 2021.
- 3 The father lives in Norway, the mother lives at a confidential address in the UK. Both children have continued to live in England with their mother.
- 4 I have set out the procedural history in my fact-finding judgment. Since then we have had a hearing on 23 May 2023 when I ordered the father to undergo alcohol hair strand testing and a psychological report by Dr Derry. I also ordered a section 7 report. I provided for contact to take place indirectly, fortnightly, as directed by Moore J in 2022.
- 5 On 29 September 2023 the matter was listed for a directions hearing and I timetabled to a final hearing and a pre-trial review. The parties were ordered to file statements and the father specifically to provide evidence of his engagement with a professional support service and an alcohol report. Indirect contact continued once a month.
- 6 At the pre-trial review on 6 February 2024 I allowed the admission in evidence of four videos which have been sent to me and I have watched. I set out that if anyone wanted the mother to give evidence they should make a C2 application. No such application was made and Mr Aspinwall did not seek to cross-examine her. This final hearing was heard on 20, 21, 22 and 23 February 2024.
- 7 The parties' positions are now as follows. Cafcass maintained that there should be letterbox contact. The Cafcass officer changed her position, having heard Dr Derry, and did not recommend video contact continuing. She supported the father having parental responsibility for T.
- 8 The father's position is that video contact should continue as a minimum. He seeks supervised contact with the intention it should progress in time. He seeks parental responsibility for T and opposes a s.91(14) order.
- 9 The mother agrees with Cafcass about contact. She does not agree for the father to have parental responsibility for T and she seeks a s.91(14) order.
- 10 I have been mindful at all times of Family Procedure Rule Part 3A and Practice Direction 3AA. The mother has attended on the link. We have had the benefit of an interpreter throughout the proceedings and I have given a plain language summary of my judgment to help the father before this full set of reasons. Of course, this full reasoning takes precedence. I am satisfied, therefore, that I have taken all reasonable measures to be fair to the parties and no one has alerted me to any unfairness as we have conducted this final hearing.

### **The Law**

- 11 The children's welfare is my paramount consideration. I must consider whether making an order for them is better than making no order at all. There is a presumption that, unless the contrary is shown, the involvement of a parent in the life of the child will further that child's welfare. Involvement means involvement of some kind, direct or indirect, but not any

particular division of the child's time. I have had regard to the general principle that delay in determining issues for these children will be prejudicial to their welfare.

12 Mr Aspinwall provided a comprehensive summary of the law in relation to contact in his position statement. This was agreed by Mr Powell. I will reproduce it in its entirety as I approve the transcript but I will simply highlight now some of the main points that I bear well in mind. Mr Aspinwall's summary of the law is set out at annex two of this judgment.

13 I remind myself of the case of *Re C (A Child)* [2011] EWCA Civ 521:

“Contact between a parent and a child is to be terminated only in exceptional circumstances, where there are cogent reasons for doing so and when there is no alternative. Contact is to be terminated only if it [is] detrimental to the child's welfare.”

14 I must be careful not to come to a premature decision for contact to be stopped only as a last resort and only once it has become clear the child will not benefit from continuing the attempt. I remind myself of the case of *Re M* [2017] EWCA Civ 2164, that I have a positive duty to attempt to promote contact and that I must grapple with all the available alternatives before abandoning hope of achieving some contact.

15 In relation to the cases for supervised contact to which Mr Aspinwall refers, I have reread the case of *Re A (A Child)* [2021] EWCA Civ 1749, and I note that case was a seven-year-old girl who had originally lived with her mother but between her and her mother contact had become sporadic and not progressed further.

16 I have reread the case of *Re D* [2016] EWCA Civ 89. That was a case about a nine-year-old and a six-year-old and their contact with their father, with whom they had lived for a number of years before their parents separated. In both cases the children had a clear, pre-established relationship with the absent parent and so is factually different from this case but the principle of these cases is that there is no principled reason why contact cannot be made subject to a long-term supervision provision.

17 I remind myself of Practice Direction 12J, in particular paras.35-38:

“35 When deciding the issue of child arrangements the court should ensure that any order for contact will not expose the child to an unmanageable risk of harm and will be in the best interests of the child.

36

(1) In the light of –

(a) any findings of fact

(b) admissions; or

(c) domestic abuse having otherwise been established

the court should apply the individual matters in the welfare checklist with reference to the domestic abuse which has occurred and any expert risk assessment obtained.

(2) In particular, the court should in every case consider any harm –

- (a) which the child as a victim of domestic abuse, and the parent with whom the child is living, has suffered as a consequence of that domestic abuse; and
  - (b) which the child and the parent with whom the child is living is at risk of suffering, if a child arrangements order is made.
- (3) The court should make an order for contact only if it is satisfied –
- (a) that the physical and emotional safety of the child and the parent with whom the child is living can, as far as possible, be secured before, during and after contact; and
  - (b) that the parent with whom the child is living will not be subjected to further domestic abuse by the other parent.

37 In every case where a finding or admission of domestic abuse is made, or where domestic abuse is otherwise established, the court should consider the conduct of both parents towards each other and towards the child and the impact of the same. In particular, the court should consider –

- (a) the effect of the domestic abuse on the child and on the arrangements for where the child is living;
- (b) the effect of the domestic abuse on the child and its effect on the child's relationship with the parents;
- (c) whether the parent is motivated by a desire to promote the best interests of the child or is using the process to continue a form of domestic abuse against the other parent;
- (d) the likely behaviour during contact of the parent against whom findings are made and its effect on the child; and
- (e) the capacity of the parents to appreciate the effect of past domestic abuse and the potential for future domestic abuse.

### 37A Orders under section 91(14) of the Children Act 1989

37A.1 In every case where a finding or admission of domestic abuse is made, or where domestic abuse is otherwise established, the court should consider whether an order under section 91(14) of the Children Act 1989 would be appropriate, even if an application for such an order has not been made. Section 91(14) orders are available to protect a victim of domestic abuse where a further application would constitute or continue domestic abuse. A future application could be part of a pattern of coercive or controlling behaviour or other domestic abuse toward the victim, such that a section 91(14) order is merited due to the risk of harm to the child or other individual. The court should refer to Practice Direction 12Q for direction on section 91(14) applications and orders.

Directions as to how contact is to proceed

38 Where any domestic abuse has occurred but the court, having considered any expert risk assessment and having applied the welfare checklist, nonetheless considers that direct contact is safe and beneficial for the child, the court should consider what, if any, directions or conditions are required to enable the order to be carried into effect and in particular should consider –

- (a) whether or not contact should be supervised, and if so, where and by whom;
- (b) whether to impose any conditions to be complied with by the party in whose favour the order for contact has been made and if so, the nature of those conditions, for example by way of seeking intervention (subject to any necessary consent);
- (c) whether such contact should be for a specified period or should contain provisions which are to have effect for a specified period; and
- (d) whether it will be necessary, in the child’s best interests, to review the operation of the order; if so the court should set a date for the review consistent with the timetable for the child, and must give directions to ensure that at the review the court has full information about the operation of the order.

Where a risk assessment has concluded that a parent poses a risk to a child or to the other parent, contact via a supported contact centre, or contact supervised by a parent or relative, is not appropriate.”

- 18 In addition to Mr Aspinwall’s comprehensive summary of the law I would simply add this: it is almost always in the interests of the child to have contact with the parent (and I have cited the cases in Mr Aspinwall’s note to that extent) and that past domestic abuse is not as a matter of principle a bar to making child arrangements orders. However, there is also authority to suggest that a parent’s past behaviour and reasons for it may provide sufficient cogent reason for refusing contact (*Re A (Contact: Domestic Abuse)* [1991] 1 FCR 729).
- 19 I remind myself that there is also authority that where there is a history of domestic abuse courts should not minimise the weight to be attached to the need for the abusive party to change its behaviour and demonstrate that he is a fit person to have contact before an order is made. There is a number of cases I rely on for that proposition: *Re M (Contact: Violent Parent)* [1991] 2 FCR 56; *Re L, V, M, H (Contact: Domestic Violence)* [2000] 2 FCR 404 and *Re G (Domestic Violence: Direct Contact)* [2001] 2 FCR 134.
- 20 Where direct contact is not appropriate it is necessary to consider whether indirect contact should take place (*Re S (Violent Parent: Indirect Contact)* [2001] 1 FLR 481) and where past domestic abuse has led to the need for a child’s contact to be supervised there is a strong presumption against the victim of that abuse being required to pay the costs (*Griffiths v Griffiths* [2022] EWHC 113 (Fam)).

### **Evidence**

- 21 I remind myself of the evidence in this case and I have heard expert evidence from Dr Derry and from Cafcass but experts do not decide cases, judges do. Of course, if I depart from their expert opinion I would need to give reasons.

- 22 Dr Derry was a clear and persuasive witness with considerable experience of working in the field of domestic abuse. Although he referred to what he perceived to be patterns of behaviour amongst those who perpetrate domestic abuse, he also showed a detailed and thoughtful approach to the facts of this case and its particular circumstances. He had had the benefit of meeting both the children and the mother in 2021, and the father in 2023. His evidence was authoritative and well-informed.
- 23 The Cafcass officer was a measured and thoughtful witness. Mr Aspinwall criticises her in his closing submissions for making indirect contact conditional on the mother's willingness to facilitate it. That is para.22 of the Cafcass officer's analysis. She actually resiled from this view in the witness box and had the professional courage to change her mind. She did so having heard Dr Derry and said she no longer supported indirect contact, even if the mother were willing to facilitate it. She clearly stated that supervised contact should not take place because there is no route out of it and concluded that no direct contact was better than indefinite supervised contact.
- 24 Mr Aspinwall criticises her for not giving the case the requisite level of care or thought. For example, he points to para.20 of her analysis in which she says it would not be fair for the children to start spending supervised time with the father. He points out that that is not the right test. However, when I look at the totality of Cafcass evidence in writing and in the witness box, it is very clear to me the officer is firmly focused on the children's welfare and that her report picks up the factors of the welfare checklist. Although she has not slavishly recited the welfare checklist and she has not peppered her report with the word "welfare", that does not mean her report is unreliable. The children's welfare and the checklist pervade her work, in my view. It is fair to say that harm to the boys arising out of stopping contact is not covered expressly in her report but it was covered comprehensively in her oral evidence, as were the steps that could be taken to mitigate harm.
- 25 Both professional witnesses acknowledged, when challenged about absolutist language, that they could have been more nuanced. Neither of them came across as fixed or dogmatic in their views and there was a high level of consistency between them in their approach and their view as to the best way forward for these children.
- 26 The father was tearful throughout his evidence and he has been highly emotional throughout this final hearing. What struck me is how his evidence lacked any depth of appreciation of the relevance of the facts found in relation to his relationship with his children. His written evidence sets out clearly he does not accept the court's findings. His oral evidence did not suggest that his position had changed. However, he offered no apology to the mother, nor has he expressed any remorse for the past. He has not taken a great deal of personal responsibility for responding to the judgment or seeking appropriate help. He did not offer any explanation for failing to find a domestic abuse programme, and I tried to assist him by spelling out on my order of 29 September 2023 exactly what type of programme might help him.
- 27 When asked why he had not written to his children, he said he had difficulty spelling and writing. This is the first time he has raised literacy limitations as a barrier to his engagement. However, it is consistent with what he told Dr Derry, to whom he described some difficulty in certain areas of reading and writing, particularly spelling, suggestive of dyslexia. However, he is able to read letters, he says, like bills, and he says he can write to the children: "Hi, how are you?"
- 28 He did not report that he was unable to understand the judgment in translation due to literacy difficulties and throughout these proceedings he has annexed complex official

documents to his statements, signed his statements and not flagged any literacy barriers to participation. The evidence suggests his grasp of English is good enough to write to a pre-school child in simple terms. With Google Translate, spelling correction and dictation software now regularly available, it seems to me that he has support, should he wish to do this.

## **Welfare**

- 29 The children's welfare is my paramount consideration. I look at their ascertainable wishes and feelings. Ms Jobson took time to speak to A-M. He describes speaking to his father and says he likes it, he would like to see Daddy. He says that he loved his mum because she is so kind. She concludes that A-M would like to see his father if it was safe for this to happen and a relationship with his father would clearly be in his interests. A-M and T are too little to be aware of the complexities of the decision the court has to make, but of course every child would want a relationship with both parents that was safe and happy.
- 30 I look at the children's physical, emotional and educational needs. Children need both a mother and a father. Particularly important is a role model that fathers can provide for their boys. Their need is a healthy relationship with their father that can develop. The difficulty of boys growing up without their fathers was pointed out by Dr Derry in his reference to the poor outcomes for those children.
- 31 In meeting the children's emotional needs Dr Derry explored with the father his own family history. His own father passed away when he was two years old, and the insecurity of the father's own attachment development would predict he would be less able to parent sensitively and responsively with his own children, says Dr Derry. He would be less aware of their thoughts, feelings or experiences. He would be less able to develop a self-reflective awareness of how they perceive him. The children also need to be safe and emotionally safe with their main caregiver and for her not to be destabilised or undermined in the attention she gives them.
- 32 The evidence suggests the mother has made efforts to promote the boys' relationship with their father. Dr Derry pointed out that the fact that the boys refer to the father as "Daddy" is probably down to their mother describing him in that way and promoting that sense of identity.
- 33 I look at the boys' educational needs. Cafcass have taken the time to speak to A-M's school. They say A-M is a well-presented boy with good attendance and punctuality. He is sociable, curious and occasionally needs help to play with his friends with gentle hands and feet, although this has improved. A-M is meeting age-related expectations across most areas of learning, but he needs significant support with his personal, social and health education. He has a behaviour plan in place. The mother has a good relationship with the school and works with them to put in place strategies to manage and improve A-M's behaviour.
- 34 Cafcass's view was that the mother paid close attention to the boys' developmental and educational needs. The officer fairly noted:
- "You cannot attribute A-M's developmental challenges to any one factor."
- 35 However, there is well-established evidence to suggest that domestic abuse is harmful to children, particularly in the early years. A-M is a victim of domestic abuse and has been harmed as a consequence of it. He has been a witness of it and his mother needed to move countries as a consequence of it. Paragraph 36 of PD12J requires me to consider that

specifically.

- 36 I look at the likely effect on the boys of any change of circumstance. A-M moved country with very little planning and went from having a father figure in his life to not. When the mother moved to the UK in 2020 it was at the height of the pandemic. She lived with the children in a hostel for a month before finding more permanent accommodation. In my view there is a need to safeguard the boys against further dramatic or unplanned changes of circumstances for them.
- 37 Cafcass, considering direct contact, note that currently there is a clear possibility of further abuse occurring, which would impact on A-M and T's well-being and the mother's parenting capacity. Should abuse occur the mother would be likely to flee again and this would disrupt A-M and T's sense of security, their education and their social relationships.
- 38 The mother in evidence at the fact-find was clear that by making certain notes and recordings she was leaving an evidence trail in case one day the father killed her. She was sufficiently scared of him to leave one country and flee to another with very little planning, two young children and when pregnant with no means of supporting herself, such was her level of fear of the father.
- 39 I explored the risk that the boys could disclose where they live to the father in any form of contact by describing where they lived and the name of their school. The Cafcass officer described A-M as "very chatty" and he told her the name of his favourite park. She said it was difficult to mitigate these risks by telling a child of his age not to tell Daddy certain things, which might immediately bring them to the front of the child's mind. It is not realistic to expect children to filter what they share with their father or expect a supervisor to step in quickly enough to stop them saying something that they should not. Local landmarks or the name of their school could easily slip out.
- 40 Dr Derry formed the view that when he met the father in summer 2023 there was a risk of abduction. Ms Jobson accepted the father had never said he would abduct the children. However, in his final statement he said he would like to take them to Norway to have a holiday with them there and the risk of them not being returned cannot be discounted. Even if the father knew where the mother lives, she might feel the need to move or feel very anxious. The father is very emotional and may not be able to resist going to the local area to try and see the boys.
- 41 In my view, it would be very harmful to the boys to have another change of circumstance that took them away from their current network of support. Should details of their location be given to the father there is a real risk of radical and upsetting change for these children either arising out of the mother feeling sufficiently scared that she feels the need to relocate again or the father seeking to find them. I do not overstate this risk but I cannot ignore it. The mother describes to Dr Derry A-M being embedded in a community of friends and neighbours. I would not want that to change for him.
- 42 I look at the children's age, sex and background. Both parents are of Muslim heritage, the mother from Morocco, the father from Iraq. The father has lived in Norway since the age of 15 and speaks Norwegian and Kurdish-Sorani.
- 43 The children's older sister is described as a "significant attachment figure" for A-M in Dr Derry's first report. She takes a role in caring for him. Overall Dr Derry saw an interaction between the boys that demonstrated a normative, secure attachment and predicted that any separation would be detrimental to the psychological well-being of each child. So these boys are very much part of a group of three siblings.



- 44 I look at any harm that they have suffered or are at risk of suffering. I have already talked about the risk of harm for them if they had to relocate again. Domestic abuse is harmful to children. This principle is clearly articulated at paras.35, 36 and 37 of PD12J. Cafcass say it is clear that what A-M has experienced is likely to be a factor in some of the behaviours he is currently displaying. It is very important he is not exposed to any further abusive behaviour and is allowed to work with the support offered by his school and his mother to improve.
- 45 Key to the mitigation of this harm is the father's view of the very serious findings I made. His final statement says he does not accept them. Dr Derry explored in detail his response to the court's findings. The father did not accept, he said, any of the court's findings against him and continued to present himself as the victim of the mother's malicious treatment and the findings of the court as unfair. There was evidence he continued to blame the victim for his behaviour and lacked good empathy. He maintained extremely negative views of the mother, describing her parenting in exclusive negative terms and believing the state should remove the children from her care. The severity of his negative views would indicate he would remain at elevated risk of domestic abuse and abduction of his children from her care.
- 46 The father reported he would not engage in any domestic violence intervention. He reported he would not move to the UK to develop his relationship with his children unless he was awarded an equal share of care of them. This suggests that the father may not be motivated by a desire to promote the best interests of the children and PD12J, para.37 requires me to look at that.
- 47 Another key part of PD12J requires me to look at the effect of domestic abuse on the child and their parents. The father's understanding of domestic abuse and its impact on children was, says Dr Derry, that he was unable to think about the impact of abuse in his relationship on his children. He said that the father did not think domestic abuse could affect children in the womb, he tended to consider that pre-verbal children would have no recall of abusive incidents so the impact of them would be less. He was more able to appreciate it would be a negative effect on verbal children, although his appreciation was limited.
- 48 He was not able to think about the long-term consequences for his children's mental health or emotional well-being. He was less able to appreciate how his negative feelings towards the mother could impact on the children's feelings and attachment security. He felt that having no interest in the mother presented a neutral position for the children. He was not able to accept his attitudes towards her were strongly negative.
- 49 The capacity of a parent to appreciate the past effects of domestic abuse is another factor in para.37 of PD12J. In this respect Dr Derry records that the father did not consider his own attitudes or behaviour needed to be addressed. He did not believe he had ever been controlling, coercive, aggressive or violent towards a woman. He said, "I'd never attend these programmes. I do not need them. I'm not that sort of person."
- 50 He gives granular examples of his views of the mother. He suggests that she has manipulated the legal system to take his children away from him or to profit financially from them. Although he states he did not want to say anything negative about her as she is the mother of his children, he did so repeatedly to Dr Derry. That chimes with the impression the court has gained of him in the fact-finding hearing.
- 51 In my fact-finding judgment the father sees himself as a victim and this is a theme he continues in his discussions with Dr Derry. When I look for evidence of the father's likely behaviour in contact I must bear in mind he presents to Dr Derry as vindictive, wanting the

children to be cared for by the British government rather than by the mother.

- 52 It was submitted on behalf of the father that he did not understand the documents, such as the judgments, which would have impacted his ability to reflect on the findings. However, the father has had the benefit of legal aid. Documents have been translated, including the judgments, and at every single hearing we have had the benefit of a court-appointed interpreter who was there throughout the judgment.
- 53 Dr Derry accepted in evidence that when he spoke to the father the father did not have the benefit of the judgment in Kurdish-Sorani but only Norwegian. However, he pointed out that the father was aware of the allegations, that he had his own lived experience and that most individuals who perpetrate domestic abuse do not have the benefit of a judgment. We rely, he said, on their insight and their personal assessment of their behaviour. The bottom line is that the father was there when these events happened.
- 54 I look at whether the father may use contact to continue a form of domestic abuse against the mother. Dr Derry describes the father's reaction to the judgment as "characteristic and strategic". He blamed the victim. He pathologised the victim and he wanted revenge on the mother. His reaction was passionate and defensive but also strategic within the context of the findings. He highlighted the difficulties for the courts when individuals learn what they should or should not say for the court's purposes. He pointed out the mother left Norway in 2020 and that any changes have only been seen at the end of the court process and whether the father could maintain those changes remain to be seen. He took the view it might be difficult for the father to have a constructive, therapeutic relationship, given his fierce independence and difficulty placing emotional trust in people and use of coercive strategies.
- 55 The Cafcass officer says he does not show empathy or any appreciation of why he is in his situation and that is clear, she said, from his final statement of February 2024. She said:
- "Until he took the first step of acknowledging his behaviours he was unlikely to change."
- 56 Dr Derry took the view that the father's negative attitude towards the mother means that contact would be fraught with the risk he would undermine the children's relationship with their mother. He maintained this view with great clarity in the witness box.
- 57 I look at alcohol use. Dr Derry said the father's lack of insight into the impact of his alcohol use on others would limit the extent that he would be able to regulate or manage any alcohol problems in the future. I have been clear throughout these proceedings that I need a hair strand test. The test provided does cover ethanol but is not detailed enough to give me a picture of alcohol usage. This is important because the domestic abuse happened under the influence of alcohol on occasion and it has a disinhibiting effect. I have no clear explanation as to why there has not been a clear hair strand test report. I acknowledge it is difficult because the father lives in Norway but he has been to the UK on several occasions for the hearings.
- 58 The GP letters in the bundle provide a confusing picture. At p.413 on 29 June 2023 a PEth test was planned but not taken. On 17 August 2023 a medical letter suggests that the hair was too short for a hair strand test and on 25 August 2023 a PEth test was planned but the GP notes that the patient reports they are not interested in hair strand testing in the UK and this testing is now ordered "but we are waiting for [his] hair to grow. . ."

I have made it clear that parents in proceedings having testing should not cut their hair.

- 59 I look at how capable each of the parents is of meeting the children's needs. The mother contacted social services on arrival in the UK. Cafcass spoke to the local authority in question, who report that the mother is warm and affectionate with her children and she is confident she will get it right by prioritising their needs. Cafcass spent time with the boys with their mother in their home and had no concerns about them in her care.
- 60 In order to meet the children's needs the father needs to be able to reflect on the dynamic between him and their mother. He has set out the work he has done in this respect. He has attended six hour-long sessions between 6 November 2023 to 22 January 2024 about aggression control. He said he found it informative and it has helped him to understand how to control his anger and aggression better.
- 61 In the witness box Dr Derry was clear that this course was far too short to address the issues around domestic abuse. He said:

“The content seems to be directed to general anger management and is not specific to domestic abuse, which is a very different area of control and difficulty. It is focused on anger inhibition. It can be helpful to turn it inwards but counting to ten does not work, breathing in and out does not work, taking a step back has not worked and we have known this since the 90s. These are rudimentary and old-fashioned. We try to acknowledge our own red flags and triggers thinking forwards. His programme is about when he becomes angry but it does not look at the individual's response signature. The programme he has engaged in does not address the issues of concern in my report.”

He viewed it as fairly tokenistic attempt to engage to satisfy the court.

- 62 The father in evidence said he told the course providers that, “I told them that the court ordered me to go to this.” He said he showed the course providers the video clip of A-M. That would have not helped them to understand the dynamic between the parents. He also showed them the court judgment.
- 63 When asked expressly by Mr Powell whether he discussed with them the fact that he had hit and slapped the mother, he did not give a clear answer as to whether he addressed the details of the behaviour I found happened.
- 64 Dr Derry's view was that he was sure that there were domestic abuse services in Norway and possibly with greater levels of state subsidy than in the UK. I returned to the original bundle for the fact-finding and looked again at the welfare services and police disclosure. It is clear that the Norwegian authorities have a detailed appreciation of the impact of domestic abuse and do provide services to support families. My impression was that this is a country with structural and organisational appreciation of domestic abuse.
- 65 The father was given the opportunity in his own words to describe what he had learnt from the anger management course. He said:

“If someone gets angry quickly or has family problems it makes you upset. This is how to deal with it.”

- 66 Mr Powell pressed him. He said:

“There are different disputes in the family, different opinions by family

members so if that happens you have to sit back and relax and breathe. They told me how to sit to calm down and relax, that if I sit back and breathe, that would help.”

This is simplistic in the extreme and does not address the dynamic of coercive control that I identified in my judgment and the fact that Dr Derry identifies coercive strategies in the father’s interactions with the children is of great concern.

- 67 When I look at how the father is able to meet the children’s needs there is evidence of him putting his own needs before those of his children. For example, he wants to do things on his own terms. He says that setting up a PO box is too expensive but he is prepared to spend money on flights to the UK and supervised contact.
- 68 Dr Derry’s view is that the father would tend to use coercive threats or an evocative self-pity to draw attention to his emotional needs during their meeting. He maintained this view in the witness box, saying he has got a self-pitying and coercive strategy in terms of meeting his needs. He will force people to pay attention to his emotional needs and the loss of his father at an early age suggests he has developed a belief system around hypermasculinity.
- 69 Cafcass had a similar experience of the father when he joined the call in floods of tears, saying his son was desperate to see him and would call, “Daddy, Daddy.” I agree with Cafcass that there is an extent to which the father is preoccupied with his own emotions rather than engaging in contact. He is visibly emotional and seems to struggle to contain this at times. He has been having video contact with the boys so I look at how able he is to meet the boys’ needs during that contact. I understand how difficult and somewhat artificial it is for the father to have video contact with the children. I understand he would much rather see them face-to-face and that it would be easier to play with them like that. But various suggestions have been made in these proceedings about things that might help him to make the most of that video contact. In April 2023 Cafcass suggested reading a book or stories. The mother says that the father has not taken up Dr Derry’s suggestion of playing online games with the boys. She says he shows baby photos of A-M and balloons. She has tried to set up colouring for the boys. It is clear from the videos I have seen she has provided a conducive environment for them speaking to their father. The mother writes:

“In my opinion the children are not gaining anything in having contact with the father. If video contact continues going forward I would expect him to put in a lot more effort and provide his own entertainment for the children that is age-appropriate and conducive to them. If he does not the children will not sit still for the contact session and will be very disinterested.”

- 70 So these children have a limited span of attention and they need adults to tailor their communication to their age and stage of development.
- 71 I want to stress there are some positive things about the contact. The father’s tone of voice is gentle and encouraging and he is trying to find things that interest the boys by bringing a toy, balloon or chocolate into view but the way that this is done turns coercive, in my view. Cafcass says:

“I was concerned that the mother reports the father shows A-M large toys which he says A-M would receive when he went to live with him. This causes A-M emotional distress and confusion.”

- 72 This is consistent with the video calls I have seen. A-M sees a balloon and says, “I want to take it.” The father says, “You want to take it? Come to Daddy then,” with a long explanation of why he cannot bring the balloon to him. The father says on another occasion, “We’re going shopping. You like shopping? You want me to take you to a toy shop?” He shows the boys chocolate. They ask, “Is that for us?” “Yes, for A-M and T,” the father replies. He goes on to talk about whether they got the toys that Daddy sent them. I notice in the background in that video the mother seems to provide chocolate fingers to the boys from off-camera.
- 73 Cafcass is right: he is trying to engage the boys in things he cannot give them. They have no concept of time and when they might get the chocolate or the balloon. I know it is very hard but it might have been better if he read them a story, played a game or drew something for them.
- 74 Dr Derry made similar observations that the videos were not structured assessments but they did not indicate this was a sensitively-attuned father. He did not pick up a child-orientated perspective or an awareness of what the children were thinking or feeling.
- 75 In oral evidence the father did not grasp the points that if he promised the children chocolate or a trip to the toy shop he could not fulfil that promise to them. He said he was not a professional and his children lived in a different country when asked about his ability to engage with them. I make full allowance for the language difference but his ability to think about what might help the children relate to him on the video link was limited.
- 76 I also have to say that I am concerned about the way these videos came to be made. The father is recording them on his phone and he often asks A-M very leading questions, for example: “You want I come back?” and then steers the conversation to the boys expressing they want to see him. I am concerned that these recordings may have been filmed as part of an attempt to persuade the court that the boys asked to see their father and to influence me into doing what the father wants. It would, of course, be quite wrong to structure contact for this purpose and to lead the boys, for evidential reasons.
- 77 I look at the range of the powers available to the court. The children live with their mother. If contact is granted that would remain their base. I make a lives with order that they live with her, which cannot sensibly be opposed and is manifestly in the children’s best welfare interests.
- 78 In relation to parental responsibility I remind myself of the case of *Re C & V (Minors) (Contact: Parental Responsibility Order)* [1998] 1 FLR 392. The court considers the degree of commitment that the father has shown towards the child. The father has come to court face-to-face in the UK and on the link from Norway. He has made the use of online contact sessions offered. He has bought gifts for T on two occasions when he has been in the UK and he has repeatedly made applications on an interim basis for the increase of contact.
- 79 I look at the degree of attachment between T and his father. T has not met his father face-to-face but he now takes part in video calls and has seen Daddy. I consider the reasons for his application, primarily because he is their biological father. He loves T and wants a greater role in his life. He does want to understand what is going on for T educationally. I have looked for signs that he would use the declaration to exert control over the mother but I have not found them. That was not one of the submissions made to me.
- 80 I think it is also important that there is parity between T and A-M. The father has parental responsibility for A-M. I would not want them to be treated differently or to find out in later life the father has parental responsibility for one but not the other. They may wrongly

interpret that as a lesser degree of love or commitment to the father in his relationship with T.

- 81 Having looked at the welfare checklist and mindful that the children's welfare is my paramount consideration, I think it is in T's welfare interests for his father to have parental responsibility.
- 82 I turn to contact. Any interference with family life should only be to the extent that it is necessary and proportionate, so I am going to expressly balance the risks and advantages of the different types of contact. I look at direct contact. The Cafcass view, criticised by Mr Aspinwall, is that the risks of direct spending time arrangements outweigh any possible benefits. I undertake my own balancing of risk and benefit. The benefit is of face-to-face relationship with the father and an ability to play more easily. They would have an appreciation of cultural heritage and language. That would be best for the children to see their father face-to-face as long as it is safe. The father has shown a clear commitment to wanting that type of contact.
- 83 Against this I balance that Dr Derry was clear that face-to-face might benefit the father but would not benefit the children, unless there was a clear pathway to address risk. The disclosure of the children's location and the anxiety that this would cause the mother is a risk and regardless of whether the father would try to remove the children, it would be unsettling for the mother to risk the disclosure of her location if the children inadvertently told the father in contact. If the father does not engage with domestic abuse work or do it in a meaningful way, there is a risk that the children will later on suffer the loss of their relationship with their father if the contact stopped or it did not progress.
- 84 The cases I have read about supervised contact have been about older children with whom they have had a long-standing relationship. That is not to say that in principle I cannot order supervised contact but these children are four and two and their father has not shown a deep commitment to doing work to address the court's findings and that is detrimental to their welfare. It may well lead to parental disagreement about progression and potentially further court involvement if one party wants it to progress and the other does not. I am worried that the father may not be able to control his emotions sufficiently, which may upset the boys.
- 85 A risk is that until he has addressed the pattern of coercive, controlling behaviour there is a risk that contact could be used to undermine or subtly control the mother. There is evidence in the existing contact that it has been used to continue the abusive dynamic that the mother and children have experienced.
- 86 It is clear that the father wants contact to progress and that he wants as much contact as he can but it is concerning that he would continue to put pressure on the mother through the children subtly until he gets what he wants. When A-M wants the balloon the father replies, "Come to Daddy then." A-M then wants to see Daddy "tomorrow". This leaves the mother in an impossible position when she cannot take A-M to see his Daddy tomorrow. The father has not managed the boundaries of contact at present for the children and the evidence suggests that he will be dissatisfied until he gets what he wants. This coercion is subtle and cumulative and difficult for a contact supervisor to stop. The risk could, of course, be mitigated by the father doing a domestic abuse programme but he is not eligible for that because he does not accept he has done anything wrong. Working with a contact supervisor and interpreter to make contact enjoyable would be important if there were direct contact.
- 87 Mr Aspinwall points to the anger management course as evidence that father can work with professionals but there is a longer history in this case of him not working with professionals to address the dynamic in the family. He did not work with the police authorities in Norway

to be open about the dynamic of the relationship. He did not pick up Dr Derry's suggestions about contact or make sure that he understood this expert report, which I am sure his legal team explained to him. If he did not understand what was recommended he should have asked for further help or a translation. Ms Jobson says he did not seem particularly interested when she explained domestic abuse programmes to him. So his ability to work with others is still at surface level, rather than showing a real willingness to learn and change.

- 88 There are the physical risks around delivery and pick up from the contact centre and the possibility of the father or an associate following the mother and boys home and the supervisor, of course, would need to be alert to if the father had been drinking, given the history.
- 89 I look at indirect contact by video. The father can see the boys and they can see him. It allows them to talk and share activities. It is interactive and immediate in its response. Against this there is evidence of coercive strategies being used to engage the boys. For T and A-M to conceal their location from their father becomes increasingly difficult as they get older. As they get older it would be harder to explain to them why they see their Daddy on the video but not face-to-face and, as I have already observed, A-M wants Daddy to come to his home and wants him to come "tomorrow" in one video.
- 90 Dr Derry and the Cafcass officer took the view that contact would need to be progressed to benefit the children and there was no clear mechanism for this, given that the father does not accept he has done anything wrong. There is a risk this would become an obligation to the children. Dr Derry observed it is hard for the father to engage them without a coercive strategy and that is worrying because if he becomes frustrated with them in contact that contact may break down over time. He was clear in his evidence that if the contact does not progress it cannot continue like this, i.e. on the video link and he gave a clear welfare-based reason: that children will lose interest. The onus is on the mother in indirect video contact to make sure it happens and that it is enjoyable so when the father is talking about chocolate, she produces it. She is in effect supervising the children, which puts her in a very vulnerable position if she needs to challenge anything said or done. Of course, the father does not appear under the influence of alcohol in these video calls but that is another risk that any person facilitating video contact would need to be alive to and I think it is unfair on the mother to monitor this.
- 91 Letterbox contact: that is a very draconian interference with family life. Dr Derry and Ms Jobson queried the extent to which the children would suffer a loss if they longer saw their father in video contact and Dr Derry did not view it as an attachment relationship. Ms Jobson saw the risks of contact outweighing the loss of it.
- 92 It is hard to quantify such matters and I do not have a formal attachment assessment of the father and the children but it seems to me the children would experience a degree of loss if they did not see their father face-to-face or by video. I agree with Dr Derry they do not have a clear understanding of their father but they do have a mental representation of their father through these contacts and it would be a loss to them not to see him. Certainly over the years it will be a loss to them not to speak to their father and for him to become more real to them.
- 93 I have already referred to that long-term impact of boys growing up without father figures but there are benefits to letterbox contact. If the father wrote every two months it underlines that he has not forgotten the boys and he could have a regular update on their progress. It sends the strong message that they are loved and not forgotten. It allows the father to send

pictures of Norway, to tell them about his heritage and to share information about their school and their drawings and reports (redacted if necessary) could be sent to him. Letters can be kept and read and reread and opened when the children get older to read yet again. Any inappropriate information or ways of writing could be filtered so the boys would not be upset or coerced and the mother is not supervising the contact in a direct way.

- 94 For completeness, I have considered pre-recorded messages, Facebook messenger and the use of electronic apps. However, Ms Jobson has concerns about security and the ability to track using such methods.
- 95 Sadly, having balanced the risks and advantages of each option, I am driven to the conclusion that letterbox contact is best for the boys every two months to a PO box and for birthdays and religious festivals there can be an additional card or letter sent. This best meets the boys' welfare needs. The mother, in response, should provide an update about the boys, any art work they want to share, photos, school reports and any medical updates. She will send those updates in response to the father's letters to the boys.
- 96 I have looked at s.91(14). I have reminded myself of the guidance in PD12Q of the Family Procedure Rules, that the circumstances where such an order may be made being "many and varied". The welfare of the child is paramount and there are some circumstances set out in para.2.3 of PD12Q which are particularly relevant to this case:
- ". . . where a period of respite is needed following litigation; where a period of time is needed for certain actions to be taken for the protection of the child or other person . . ."
- 97 I remind myself of the case law and in particular of the case of *Re P (Section 91(14) Guidelines)* [1999] 2 FLR 573, the case of *Re A (Supervised Contact) (s.91(14))* [2021] EWCA Civ 1749 when King LJ pointed out that the jurisdiction to make an order under s.91(14) is not limited to a case where the parties made excessive applications and that the landscape has changed since the case of *Re P* and there is "considerable scope for the greater use of this protective filter" in the children's best welfare interests.
- 98 I remind myself of the new provisions of s91A of the Children Act 1989, that the court may make a s.91(14) order where the person named in the order would put the child or another individual at risk of harm and that if such an application were made the court must determine in whether to grant leave whether there has been a material change of circumstances since the order was made.
- 99 Very clearly, on 6 January 2024 the mother put the father on notice of her request for a s.91(14) order. I can make such an order of my own motion. The father was fully aware I would be asked to make this order. He has legal representation to explain what this means to him. He has heard the evidence of the experts about the impact of further litigation on the mother and the children and he has had Mr Aspinwall to make very clear representations on his behalf. Ms Jobson says:
- "It is in the interests of everyone not to have further proceedings until the father has made changes. It would take a year or two, I would say."
- 100 Dr Derry's view was that in 2021 the proceedings had even then impacted the mother. She lacked resources and did not have money or support. She was caring for three young children. Coming to court had a negative effect on her parenting and her emotional availability was not as good as it could be. "If court could be avoided," he said:



“ . . . it should be. It has a negative impact on the mother and, vicariously, the children.”

- 101 I am satisfied that further proceedings in short succession would be harmful to the mother and, vicariously, the children. These proceedings have been going on for three years. The mother has created a degree of stability for herself and the children in the UK. I have evidence that these proceedings have impacted her ability to care for the children in the past and I accept Mr Powell’s submissions that further proceedings would cause her harm and distress due to her experience of domestic abuse at the hands of the father.
- 102 Dr Derry’s evidence is domestic abuse programmes run once a week for three to four months. There is the need for a period of respite for the father to do that work. Bearing in mind the time it will take him to find a course, book on to it and complete it and if further work like therapy is indicated for that to be done, I think it necessary and proportionate to provide there should be no further applications for any type of order under the Children Act 1989 for the period of 18 months.
- 103 If the father makes an application during this time for leave, that application should not be served on the mother until the court has made an initial determination of its merits. Such an order delaying service helps to ensure that the very harm and protective function of the order is not undermined, and in any subsequent application for leave I will make an initial determination on the merits without an oral hearing, any further application reserved to me unless I am unavailable for some reason.
- 104 I cannot attach conditions to an order requiring the father to take a specific step before permission will be successfully granted (*Re S (Permission to seek relief)* [2006] EWCA Civ 119). However, it is permissible for a judge in proposing a s.91(14) order to identify a particular issue and suggest to the litigant that unless he can show that that particular issue has been addressed any further application for permission to apply is unlikely to be successful (*Stringer v Stringer* [2007] 1 FLR 1532 CA).
- 105 So any application should, in my view, be accompanied by a hair strand test, evidence of successful completion of a domestic abuse course and a statement of the father setting out what he has learned and how he has changed as a result. The issue that needs to be addressed in this case is domestic abuse and, to a lesser extent, the extent to which the father uses alcohol.
- 106 In making these orders I am mindful of the parties’ Art.8 rights but I am satisfied that these are all both necessary and proportionate. These are actually the least intrusive orders I can make to protect the children’s welfare and it is their welfare which is the principle I have stood by at all times.
- 107 I wish to thank Dr Derry and the Cafcass officer for their evidence and ask that when a transcript is obtained that they are sent a copy by the applicant’s solicitors. I order a copy of the transcript at public expense, which will be anonymised and published.
- 108 Finally, I wish to thank both counsel. Each party has had the benefit of excellent representation and I have been very grateful for the continuity of Mr Powell and Mr Aspinwall throughout these proceedings.

**CERTIFICATE**

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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civil@opus2.digital*

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## **Schedule 1 – Plain Language summary**

Mr [redacted], I know you love T and A-M. You have come to court every time because you want to see them.

I made some very serious findings about what you did to Ms [redacted]. This was harmful to her and harmful to the children. You don't agree with my judgment. You don't think you have done anything wrong.

Although the anger management course was helpful it was not the right course to help you look at how you can change. You need to think about how you are in relationships with other people and how you have an impact on them. I don't think you are ready to make the changes the boys need. I have looked at all the options. I have to put the boys first. I have to do what is best for their welfare, not yours. I am afraid I think until you change, it is best for the boys to stay in touch with you by letter.

I am going to make an order that if you come back to court within next 18 months I will look at your application to see if you have made those changes to before I let you start new proceedings.

I think it is right that you have parental responsibility for T because you have shown commitment to him and it is not fair for him and A-M to be treated differently.

I know you won't agree with this but I hope in time you might ask the right people to help you understand the changes your boys need you to make.

## Schedule 2 – Summary of The Law

### **The Law**

1. The following is said in respect of the law to be applied in the court’s decision as to the type/frequency of contact F seeks.

### No contact order

2. An order for cessation of contact is a draconian step that has significant implications for both parent and child. Such an order runs contrary to the presumption binding the court at s1(2)A; that the court must presume that children will benefit from involvement with both parents *unless* proved to the contrary. The court is pointed to the judgment of HHJ Vincent in *R (no order for contact after findings of domestic abuse)* [2020] EWFC B57 for a helpful summary of the authorities.

3. An order for no contact should only be made as a last resort:

- a. *Re C (Direct Contact: Suspension)* [2011] EWCA Civ 521 [47], as applied in *Re W (Direct Contact)* [2012] EWCA Civ 999:

- i. “Contact between parent and child is a fundamental element of family life and is almost always in the interests of the child.
- ii. Contact between parent and child is to be terminated only in exceptional circumstances, where there are cogent reasons for doing so and when there is no alternative. Contact is to be terminated only if it will be detrimental to the child's welfare.
- iii. There is a positive obligation on the State, and therefore on the judge, to take measures to maintain and to reconstitute the relationship between parent and child, in short, to maintain or restore contact. The judge has a positive duty to attempt to promote contact. The judge must grapple with all the available alternatives before abandoning hope of achieving some contact. He must be careful not to come to a premature decision, for contact is to be stopped only as a last resort and only once it has become clear that the child will not benefit from continuing the attempt.
- iv. The court should take both a medium-term and long-term view and not accord excessive weight to what appear likely to be short-term or transient problems.
- v. The key question, which requires 'stricter scrutiny', is whether the judge has taken all necessary steps to facilitate contact as can reasonably be demanded in the circumstances of the particular case.
- vi. All that said, at the end of the day the welfare of the child is paramount; 'the child's interest must have precedence over any other consideration'.”

- b. And Lord Justice Christopher Clarke in *Re R* [2014] EWCA Civ 1664 [16]:

“The court has in a series of cases stressed the importance of contact between parent and child as a fundamental element of family life, which is almost always in the interests of the child, and which is to be terminated only in

exceptional circumstances, where there are cogent reasons for doing so and where there is no alternative.”

4. The judge has a *positive duty* to promote contact between parent and child.

a. *Re M (Children)* [2017] EWCA Civ 2164 [61]:

“The second, which goes to the heart of the issue in relation to ground (iii), is the principle that the judge has a positive duty to attempt to promote contact; that the judge must grapple with all the available alternatives before abandoning hope of achieving some contact; that the judge must be careful not to come to a premature decision; and that "contact is to be stopped only as a last resort and only once it has become clear that the child will not benefit from continuing the attempt" (see paragraph 56 above). We add that the duty of the judge is not circumscribed by the way in which the parties choose to identify the issues or to argue the case.”

5. Findings of domestic abuse do not, in and of themselves, present an insurmountable barrier to the parent seeking contact.

a. *Re L (A child)(Contact: Domestic violence)* [2001] FLR 260 as per Lady Justice Butler-Sloss:

“There is not, however, nor should there be, any presumption that on proof of domestic violence the offending parent has to surmount a prima facie barrier of no contact. As a matter of principle, domestic violence of itself cannot constitute a bar to contact. It is one factor in the difficult and delicate balancing exercise of discretion. The court deals with the facts of a specific case in which the degree of violence and the seriousness of the impact on the child and on the resident parent have to be taken into account. In cases of proved domestic violence, as in cases of other proved harm or risk of harm to the child, the court has the task of weighing in the balance the seriousness of the domestic violence, the risks involved and the impact on the child against the positive factors (if any), of contact between the parent found to have been violent and the child. In this context, the ability of the offending parent to recognise his past conduct, be aware of a need to change, and make genuine efforts to do so, will be likely to be an important consideration.”

b. And Macur LJ in *Re M* [2013] EWCA Civ 1147:

“A child's continuing relationship with a non residential parent is highly desirable and contact should not be denied unless the child's welfare demands it. Domestic violence is not, in itself, a bar to direct contact, but must be assessed in the circumstances as a whole.”

#### Orders for long-term supervised contact

6. F provides the following for the court's benefit in the event that long-term supervised contact is raised. The court is reminded that, despite a degree of general judicial scepticism, there is nothing in principle stopping the court making an order for long-term supervised contact between parent and child.

- a. An order for supervised contact would, in the majority of cases, provide a stepping stone to unsupervised contact. There are, however, some cases where supervised contact provides a vehicle to ensuring the parent-child relationship subsists in the medium-long term. As per King LJ in *Re A (A child)* [2021] EWCA Civ 1749 [29] (citing herself in *Re S* [2015] EWCA Civ 689):

“That may be so, but as I said in *Re S (a Child)* [2015] EWCA Civ 689, at para.[23], that does not mean that in an appropriate case ‘such a route should not be deployed as a means of allowing a child to continue to have a relationship with her absent parent’.

I am entirely satisfied, as was the judge and the Children’s Guardian, that this is one of those unhappy cases where the inability of the mother to regulate her behaviour in the interests of her child means that the choice was not between supervised and unsupervised contact, but between no direct contact or supervised contact. The judge rightly considered the importance of contact between A and her mother on the one hand, and the need to protect her on the other. I am satisfied that Ms Scotland’s concession was well made and that the judge had no alternative but to order contact to be professionally supervised.”

- b. And Mr Justice Baker in *Re D (Children)* [2016] EWCA Civ 89 [29]:

“In most cases supervised contact is used as a short-term measure – a stepping stone on the way to unsupervised contact. There are, however, a minority of cases where the risks to the children are such that contact must remain supervised indefinitely. In such cases, an order for indefinite supervision of contact is not wrong in principle and the recorder was entitled to conclude that such a course was warranted on the facts of this case.”

#### Order under s91(14) Children Act 1989

7. M will need to set out her position on why a 91(14) order is necessary and proportionate in this case. Counsel need not repeat trite law in respect of 91(14) orders. Of course, the primary consideration is the welfare of the child but the court must also consider the level of interference with F’s article 8(1) rights and the degree to which that interference is necessary under article 8(2).
8. The court’s attention is drawn to two recent cases in respect of the threshold for the making of an order:
  - a. *Re A (A child)* [2021] EWCA Civ 1749, as per King LJ [38] – [42]:

“... The easy accessibility to the court and the other parties as a result of emails means that Guideline 5 in *Re P* which says that s91(14) orders are: ‘generally to be seen as a useful weapon of last resort in cases of repeated

and unreasonable applications’, has even more resonance now than it did in 1999. It seems, however, that the phrase ‘weapon of last resort’, when put together with Guideline (4) which says that: ‘The power is therefore to be used with great care and sparingly, the exception and not the rule’, has led to an understandable, but perhaps misplaced, reluctance for judges to make orders under s91(14), save for the most egregious cases of which, on the facts as found by the judge, this is one.

Although an order made under s91(14) limits a party’s ability to make an application to the court, the court’s jurisdiction to make such an order is not limited to those cases where a party has made excessive applications, although that will frequently be the case. It may be that there is one substantive live application but that a person’s conduct overall is such that an order made under s91(14) is merited....

Further, the guidelines do not say that a s91(14) order should only be made in exceptional circumstances, rather Guideline 4 says such an order should be the ‘exception and not the rule’. That is of course right, there is no place in our child focused family justice system for any sort of ‘two strikes and you are out’ approach, but it seems to me that in the changed landscape described in paragraph 30 above there is considerable scope for the greater use of this protective filter in the interests of children. Those interests are served by the making of an order under s91(14) in an appropriate case not only to protect an individual child from the effects of endless unproductive applications and/or a campaign of harassment by the absent parent, but tangentially also to benefit all those other children whose cases are delayed as court lists are clogged up by the sort of applications made in this case, applications which should never have come before a judge.

In my judgment in many cases, but particularly in those cases where the judge forms the view that the type of behaviour indulged in by one of the parents amounts to ‘lawfare’, that is to say the use of the court proceedings as a weapon of conflict, the court may feel significantly less reluctance than has been the case hitherto, before stepping in to provide by the making of an order under s91(14), protection for a parent from what is in effect, a form of coercive control on their former partner’s part.”

- b. *A v F* [2022] EWFC 127, as per Knowles J on the impact the definitions of domestic abuse and harm in the DAA 2021:

“...Correctly applied to a child's circumstances, section 91A(2) gives a court greater latitude to make section 91(14) orders than the Re P guidelines do. Thus, in coming to my decision in this case, I have applied the new statutory approach to harm set out in s.91A(2) rather than guideline 7 of the Re P guidelines and, in so doing, I have adopted the ordinary civil standard of proof. That course is consistent with the modern approach of the Court of Appeal in Re A as outlined above.”