



Neutral Citation Number: [2024] EWFC 167

Case No: LE17P51040

IN THE FAMILY COURT

Leicester Magistrates Court
15 Pocklington Walk, Leicester LE1 6BT

Date: 24/05/2024

Before :

MS JUSTICE HENKE

Re: B and K (Children: Contact: Section 91(14) Orders)

The **Applicant** appeared as a **Litigant in Person**
Heather Popley appointed as a **Qualified Legal Representative** to cross-examine the **First Respondent** on behalf of the **Applicant**
The **First Respondent** appeared as a **Litigant in Person**
Steven Veitch (instructed by **Straw & Pearce Solicitors**) for the **Second and Third Respondents**

Hearing dates: 13, 16-17 May 2024

Approved Judgment

This judgment was handed down in private at on 24 May 2024 by circulation to the parties or their representatives by e-mail. For the purposes of publication, it has since been anonymised to protect the parties' identities. It is published by release to the National Archives at 10:30am on 3 July 2024.

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MS JUSTICE HENKE

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

Ms Justice Henke :

Summary

1. For the reasons I set out in the lengthy judgment below, there should be indirect contact between the children and their father. The father shall send to the children one letter per child per month. In addition, he may send each child a small gift and card on special occasions. The mother should encourage the children to write back and to say thank you for any gifts they receive from their father. The father should send the letters and the gifts and cards by registered post or similar modes of communication. That will avoid direct contact between the parents. The mother can and should send 'no reply' emails four times a year to which she attaches a short report on the children for the father's benefit. That way the father should be able to stay abreast of important developments in the children's lives and will have subject matter that is pertinent to the children for the letters. That will be in addition to any information the father receives directly from the schools.
2. The non-molestation order and prohibited steps order remain in force.
3. I grant a s.91(14) order in the terms set out at greater length below until the conclusion of the non-molestation order and prohibited steps order.
4. I dismiss the father's application for expert assessment of the mother.

Introduction

5. This is an application for child arrangements order in relation to two children. They are a boy who is 12, nearly 13 years old, who I shall anonymize with the letter K, and a girl who is nearly 11 years old who I shall anonymize with the letter B.
6. Their parents' relationship endured from about 2009 until 2013/2014. Since that time, both parties have formed new relationships. The mother has two further children by her new partner. B and K live with their mother, her new partner and their two children. The issue before me is what contact B and K should have with their father. Their mother admits that she has breached previous contact orders but asserts that she has had reasonable cause to do so, namely: the children's wishes and feelings; and to protect both children from what she says is the aggressive, manipulative, and impulsive behaviours of the father and resultant emotional harm. The father asserts that the mother has alienated the children from him.

The Parties Positions in Closing

7. The application before me is made by their father. In closing, he told me passionately that he just wanted to be a father to his children. He wants contact to be encouraged and supported and he will be led by CAFCASS to that goal. He seeks to increase contact over time from letter contact to supervised telephone and video contact. The calls can be video recorded. He told me that he would do what he can to prove himself. In closing, the father sought to resist a s.91(14) order and said he would abide

by any contact order the court made. He cited as an example how he had abided by the contact order made in July 2023 by the Recorder, even though he wanted more. He told me that the gateway provided by s.91(14) would be a waste of everyone's time. He apologized to this court for his behaviour during the mother's cross-examination by the QLR. He accepted that his behaviour before the Recorder in July 2023 was unacceptable. He wished he could turn the clock back and that he had just kept his mouth shut. He told me that he would always fight to be a father to his children, and he would never stop; his whole life is built on being a father to them. He was willing to reflect on what had been asked of him in the hearing before me and he was willing to work towards better insight and understanding of his behaviours on others. In closing, he accepted that he was not an easy person to deal with but told me he was willing to change. He said in closing that he will undertake any and all courses recommended for him by the Guardian.

8. The mother accepts the Guardian's recommendations. She can see nothing positive coming from direct contact and told me in closing that she wants no more trauma for herself and the children.
9. In closing, the Guardian's view remained that the children should only have indirect contact with their father in the form of one letter a month from him to each child and small gifts and cards to mark special occasions such as birthdays, Christmas, and Easter. She seeks the continuation of the non-molestation order and the prohibited steps order. The guardian wishes me to make a s.91(14) order until each child is 16 years old to maintain the stability that they have each achieved since direct contact stopped. The father has a blind spot to his own deficits and there is going to be no lightbulb moment in this case. His behaviour before this court has been performative. The trouble is that it is difficult to know what lies behind the performance and see the father's true self. It is as if he has to fight to prove himself. He is unlikely to change because he cannot reflect. The Guardian has applied the appropriate tools to the evidence in this case and there is no evidence of alienating behaviours. Here, B gives cogent reasons grounded in her own experience for not wanting to see her father. K is not alienated from his father. He has his photograph on display and keeps his father's letters under his pillow. K's current expression of wishes and feelings is a justified response to all that has happened to date.

The Relevant Chronology

10. This case has had a significant litigation history over the last 10 years. The mother and the father are litigants in person. I have not been assisted by a comprehensive and referenced chronology. Instead, as best as I can on the papers before me, I have drawn together a chronology which reflects the relevant history accurately. I have indicated where an event is accepted by a party and what remains in dispute.
11. The mother and father met in 2009 and began cohabiting the same year. The mother alleges that the father was violent and abusive towards her in their relationship. The mother reported the alleged abuse to the police who arrested the father.
12. In 2009, the father pleaded guilty to offences of obtaining personal data from the police force's CIS system about associates and family members of the mother. The

same year, he was cautioned for common assault, the particulars of which were that “*during domestic arguments, accused assaults aggrieved by striking her to her legs. Aggrieved does not wish to attend court. Minor bruising sustained*”. The aggrieved was the mother. The accused the father.

13. However, the parties reconciled, and the mother now alleges that the father manipulated her to believing the relationship could be salvaged.
14. The mother alleges that in 2014 the father physically abused her in the presence of B. The children’s parents separated and divorced shortly thereafter.
15. In the aftermath of the separation, the mother alleges that the father’s behaviours escalated. He is said to have attended the maternal grandmother’s home where the children and the mother were staying and to have assaulted her brother. The father denied this and says he was put upon by four adults. He says that he was the victim. I have before me a letter from the Professional Standards Department of the local police force dated 2 December 2015 which upholds the father’s complaints against the police, namely that on 14 February 2014 the police failed to treat him as a victim; failed to take a statement from him or photographic evidence of his injuries and failed to conduct house-to-house enquiries.
16. In February 2014, the father pleaded guilty to offences of harassing the mother by sending texts and WhatsApp messages to the mother and to an offence of harassing the mother in person at a local Tesco store.
17. On 17 April 2014, the children’s mother applied for a Prohibited steps order. The order was granted. It directed the father to refrain from contacting the children or the mother. Later, the mother applied for a Child Arrangements Order. A s.7 report was completed which recommended supervised contact.
18. Contact between the children and their father was eventually established on 20 May 2014.
19. The mother says that it was in the summer of 2014 that the father learnt of her new relationship with her current partner. The mother alleges that the father would threaten to harm the new partner and would take steps to intimidate him.
20. I have before me photographs dating back to August 2015 which the mother admits shows her restraining her current partner from attacking the father. The father is the photographer.
21. In 2015, the father made an application to vary his contact with the children. On an *ad hoc* basis, contact had progressed outside court to include staying contact. Those arrangements however stopped when the mother alleged further harassment by the father and raised concerns about the physical and emotional presentation of the children after contact. Two s.7 reports were completed, and they concluded that the children could safely spend unsupervised time with their father. Contact resumed in March 2016 and the proceedings eventually concluded by agreement.

22. The father asserts that by 2016 the mother was “*forcing*” the children to call her new partner ‘daddy’. In the same year, it is said the mother tried to secretly relocate with the children.
23. The father alleges that in July 2017 the mother’s partner took the paternal grandmother’s mobile phone number and started messaging her abusive and threatening messages. The father says that is why the paternal grandfather started doing handovers rather than the paternal grandmother.
24. The mother alleges that on 17 July 2017 when she went to collect the children after contact, she was confronted by the father and the paternal grandfather who she says was behaving aggressively. The mother removed herself and the children from the scene but her new partner remained behind. The father asserts that the new partner nearly killed the paternal grandfather who, it is admitted by both parties, suffered a heart attack shortly after the incident. The incident was thus temporally linked to the events just described, even if the mother’s partner did not directly cause the cardiac arrest.
25. The mother asserts that on 27 July 2017 the social services department contacted her because the father had made false allegations about her partner. B was spoken to alone by a social worker that day and did not reveal any information which supported the father’s allegation that furniture within the mother’s home had been broken by the mother’s partner.
26. The father alleges that in August 2017 the mother’s partner was stalking him and his father.
27. In 2017, the father applied for a Child Arrangements Order defining that the children should live with him and a Specific Issue Order to enable him to take the children on holiday.
28. On 19 October 2017, a lay bench made a Child Arrangements Order. Interim orders were made and a s.7 report from CAFCASS was ordered because of safeguarding concerns and to consider mother’s suitability for enforcement.
29. A final Child Arrangements Order was made on 22 January 2018 by consent before the justices in the family court. By that order, the children were to live with their mother who was to make sure that the children spend time with their father as set out in the schedule attached to the order. The contact schedule was extensive and provided that the mother must make the children B and K available to spend time with the father as follows:

“1. Every other weekend.

a. During school term the father to collect the children from school on Friday and drop them off at school on Monday morning.

b. During school closures the handovers to take place at the local shops or such other place and at such times as may be agreed.

2. *Every Wednesday evening from after school until Thursday morning during term time*
3. *During half term breaks the father to spend half the week with the children. The part of the week each parent spends with the children will be the part of the week falling on their weekend pursuant to paragraph 1. For February half term 2018 the father will spend time with the children from the 9th February to Wednesday 15th February. Times to be agreed between the parties.*
4. *At Easter the father to spend one week with the children from Friday to Friday. His week will be the week that falls on his weekend pursuant to paragraph 1. In 2018 this will be from 23rd March after school until Friday 30th March. Times to be agreed between the parties.*
5. *For 3 weeks during the summer holidays. Two weeks can be taken consecutively. Dates of the weeks should be agreed by the 23rd April. Holiday dates to be agreed with the other party in writing in the contact book prior to the holiday being booked and paid for.*
6. *At Christmas. In 2018 from Christmas Eve to Christmas day at 2pm. In 2019 from Christmas Day at 2pm until Boxing Day at 2pm. This arrangement to alternate annually thereafter.*
7. *For one week during the Christmas holidays in addition to Christmas day times. Dates to be agreed between the parties. This time can include some of the time at the weekend which would usually be the Applicant father's weekend. In 2018 this shall be Thursday 27th December until 3rd January 2019.*
8. *On the children's birthdays, the child will spend the day with the parent with whom they are staying on the day of their birthday unless alternative arrangements can be made between the parties.*
9. *On the parent's birthdays, the children will spend the day with the parent with whom the children are staying on the day of the parent's birthday unless alternative arrangements can be made between the parties.*
10. *Handovers to take place at the local shops at Little John Road or school as agreed and at such times as may be agreed. Handovers will be facilitated by the maternal grandmother handing them over to the Applicant father. When the maternal grandmother is not available the Respondent mother will hand over the children to the Applicant father's partner Jess at the local shops on Little John Road or school as agreed. When the Respondent mother and Jess are meeting then the Applicant father and the Respondent mother's partner must not attend.*
11. *Any communication by the Applicant father regarding the contact arrangements can only be made by phone text and email to the maternal grandmother. Communication between the Respondent mother and the father's partner Jess can take place in the future by email once a level of trust*

has been established and the Respondent agrees to this. The parties will continue to use a contact book.

12. Such other contact as may be agreed between the parties.

13. This contact schedule to continue until further order or the written agreement of the parties.”

30. It is the father’s perception that although the mother withheld contact on a few occasions, the order of January 2018 *worked well*.
31. The mother says that in late 2018 she became aware of domestic abuse between the father and his then partner, S-L. B is said to have been aware of the abuse and to have had a nightmare in her father’s home as a consequence. The father is said to have reacted badly to this and the partner is alleged to have had to intervene. The situation is alleged to have escalated as the children reported on return to their mother that they had observed their father breaking into the partner’s home. Their father is then said to have let them into the house through the front door. Once in the home it is said they witnessed their father shouting angrily at his partner and B is said to have heard the partner tell the father to get off her as he was hurting her. The father admits that he did break into his partner’s house when he had the children with him. He says his actions were justified as it was a medical emergency; his partner was potentially overdosing on cocaine. He tells me that the children witnessed nothing more than him climbing over the garage and into the house as once he let the children in, they remained downstairs in a room whilst he tended to his partner.
32. In 2018 the mother made an application for a Child Arrangements Order and Prohibited steps order, alleging that the father had been abusive to his then-partner. A FPR 2010 r.16.4 Guardian was appointed for the children, but their parents reached agreement again. On 8 September 2019, permission was given to the mother to withdraw her applications as matters were proceeding satisfactorily by agreement.
33. However, the father says that in 2020 things changed. The mother started to withhold contact. The same year, he received what he alleges were “*homophobic and threatening messages*” from the mother’s partner.
34. Things deteriorated further and the father says that by the middle of June 2022 the mother was demanding more money from him and her messages to the father, which were sent via a third party the maternal grandmother, were becoming increasingly more “*desperate and threatening and aggressive*”. The father set out in his statement to the appellate court (see below) that he had always paid £150 per month and half of the cost of school uniforms, school trips etc. Against that background it appears the mother applied to the CMS. She sought more maintenance and did so on what the father asserts was a false basis.
35. The mother puts matters differently. She asserts that during the school holidays in July 2022, the children, B and K, enjoyed spending more time at their mother’s home and did not want to spend as much time with their father as previously. The father, she says, simply would not accept this.

36. The next date in the chronology comes from the father who says that on 3 August 2022 he was subjected to threatening, abusive behaviour and language from the mother's partner when he attended the mother's home to collect the children for contact.
37. On 24 August 2022 the father, who had notified the CMS of the false premise upon which he said the mother's application was based, received a response from the CMS. The amount he was required to pay was less than that which he had previously paid each month.
38. The father asserts that on 26 August 2022 he dropped the children back to the mother's home after contact. Once the children were in her home, the mother approached the car and is said by the father to have shouted at him and been aggressive and abusive. The father recorded the incident on voice note.
39. The father states that the mother was again abusive and aggressive to him when he attended a football match in which K was playing on 2 September 2022.
40. On 16 September 2022, the father attended a charity ball. The children B and K were amongst his guests at his table. The mother's partner was serving behind the bar at this event. The father contends that at this event he was verbally attacked by the mother's new partner. The father reported the matter to the police there and then. I am told the police have now NFA'd this matter.
41. B last saw her father on 19 September 2022. It is said that this was B's choice and that she does not want any further contact with her father.
42. On 25 September 2022, the maternal grandmother is said by the father to have attended the father's home and promised him that she would not let him lose contact with the children. She implied at that time that she did not know what was going on with the mother's mental health.
43. On 28 September 2022, both children were asked by their schools whether they wanted to go to contact with their father or home with their mother. They are both said to have chosen the latter. The mother tells the court in one of her statements that she works in close collaboration with the schools to support the children's emotional wellbeing and maintain boundaries.
44. The mother alleges that on the same day, the father arrived at her home unannounced and employed what she considered to be intimidating tactics. He was waiting outside the home for the children when they returned from school. The mother spotted him and says that she drove off.
45. On 29 September 2022, the father accepts he sent a letter to the mother reminding her of the child arrangement orders and her responsibilities as a parent and co-parent.
46. On 30 September 2022, the Family Court sitting at Leicester made a 12-month non-molestation order which was served on the father on 8 October 2022. The terms of the order protected the mother from violence, intimidation, threats, or abusive behaviours

and provided an exclusion zone around her home. The father tells the court that on the return date an undertaking was given in its stead.

47. On 12 October 2022, the father applied for an enforcement order. This was his third application for an enforcement order. A second gateway hearing was ordered which took place on 22 December 2022. Having considered the CAFCASS safeguarding letter, a further case management hearing was listed on 23 February 2023.
48. The mother alleges that on 9 December 2022 the father used K as a go-between in respect of Christmas arrangements and was encouraging the mother, through K, to communicate with him by phone despite undertakings then being in place.
49. The father tells this court that he had arranged to spend time with K on 21 December 2022 but that the mother, with CAFCASS' agreement, did not facilitate that contact.
50. On 6 January 2023, the mother reported to CAFCASS that the father had telephoned her on numerous occasions as well as the children's school. It was said that the children did not want to spend time with their father and there were concerns expressed by the mother that he would attend at the children's schools and collect B against her wishes.
51. As a consequence, there was an urgent hearing on 12 January 2023 listed at short notice because of CAFCASS' concerns for the children's emotional welfare. On the basis of CAFCASS' recommendation, a rule 16.4 Guardian was appointed for the children.
52. Within that set of proceedings, B wrote to the judge expressing her wish not to have contact with her father. She is worried about seeing him. She is even worried about having telephone calls with him. Her reasons are "*because of what he has done in the past, for example throwing stuff across the room, lying to her, breaking into houses (like his EX's). what is making her worried is that he is going to do it in the future*". B has told the CAFCASS officer that she is scared of her father.
53. A FHDRA took place on 23 February 2023. At that hearing, District Judge Worth suspended the child arrangements order. Any contact between the children and their father was to be facilitated and approved by a CAFCASS officer as part of ongoing work to improve the relationship between children and their father. At this hearing, the father gave an amended undertaking not to communicate with the mother save through the OurFamilyWizard app or other parenting app agreed between the parents. Arrangements were made to collect K from school and for father to liaise with B's school to see whether she wished him to collect her. He said that he will only do so *if she responds positively*. The father was to identify a limited number of breaches to which the mother was to respond.
54. During contact on 27 February 2023 with K (the first since the last court hearing), the father covertly took a DNA sample from his son. He considers that his actions were justified as he alleges the mother had multiple affairs at the time of her pregnancy with K. The report was obtained by 3 March 2023 and confirmed he was indeed K's father.

55. On 19 April 2023, the father left a number of voice messages for the Guardian on her mobile phone. Within the fourth message the father says he knows the messages will be used against him to show he is some kind of arrogant and angry man.
56. On 21 April 2023, the father sent the court, the Guardian and the children's solicitor three emails. In each he expressed in what I consider to be intemperate terms his dissatisfaction with the Guardian and the children's solicitor. Over the coming days, he continued to email in similar vein.
57. On 22 May 2023, the Guardian submitted a position statement recommending no contact order or enforcement of contact order was appropriate in relation to B who was adamant she did not want to see her father. In relation to K, reasonable contact between the father and the K to be negotiated through a Parenting App. The children's wishes and feelings were to be influential in whether or not contact took place. Within that statement, she sets out the effect on her and the children's solicitor of receiving numerous emails from the father and the level of abuse they say they were subjected to.
58. An updated position statement on behalf of the Guardian was prepared for the hearing on 16 June 2023. Within that position statement, she reported to the court that B was settled at school and is progressing well academically. K was also progressing well at his school, having initially struggled with the transition from primary school. He has access to support in a wellbeing drop-in session should he need to talk. K told the Guardian that he still found school difficult. The guardian was of the view that K struggled with divided loyalties. She also expressed the view that the father's continued dismissal of the mother's role with K and her position, raises considerable difficulties. K is in the middle and has too much pressure on his shoulders which his father does not appreciate. K is, according to his Guardian, a compliant child who wishes to please and is likely to be struggling to voice his own views. She considered that in the circumstances she described in the position statement, contact should be reduced to one day a month. It is worth pausing and noting at this point in the judgment that the father used to have a lot of contact with the children; there was a shared care arrangement until 2020 or 2021 and for about the next two years, until July 2023, K was with his father every Wednesday night and every other Saturday night, which meant that in any period of 14 days K was spending three nights and substantial parts of six days with his father
59. The next substantive hearing was before Recorder Trussler on 16 June and 5 July 2023. At the beginning of that hearing, the judge clarified with the father that his primary focus was not on enforcement action but upon ensuring that the children spent time with him. Thus, she did not feel it necessary to determine the allegations of breach but focused on the future arrangements for the children. At the hearing the father sought direct contact with both children. Having heard evidence from the father, the mother and the children's Guardian she made no order on the father's application dated 22 October 2022 to enforce the Child Arrangements Order made on 22 January 2018 and the Child Arrangements Order was discharged. She made an order that the children should live with their mother and ordered that the father be prohibited from removing the children from the care and control of the mother or any third party, school, club, or venue to whom she had entrusted the children's care until further order. In relation to contact with the children, the learned Recorder followed

the recommendations of the Guardian. Thus, she initially ordered that K's contact with his father should be reduced to one day a month. That decision prompted what the Recorder at the time described as "*unacceptable and very concerning behaviour*" from the father in the courtroom and outside of it. His conduct was such that the Guardian changed her recommendations in relation to contact for K. In her opinion, the children could only be kept safe from any emotional harm from the father if there was an order for indirect contact only for the children with their father. At the same time, the Recorder made a Non-molestation order to protect the mother, B, K, and their half-siblings. The order extended to prohibit the father from telephoning, texting, emailing or otherwise contacting or attempting to contact the children except as directed by the court and from entering their schools between specified hours. The Non-molestation order also forbade the father from using or threatening to use violence against the children and from intimidating, harassing or pestering them.

60. Before me, the father has been apologetic for his behaviour before the Recorder as he has previously by email and in a position statement submitted after the appeal.
61. From 5 July 2023, the father sent each child a letter as directed by the court. The mother asserts that until the hearing before Sir Jonathan Cohan (see below) some of their content was inappropriate. The mother says she read to the children that which was appropriate and encouraged the children to respond. Neither did so.
62. The father sought permission to appeal the orders of Recorder. On 22 November 2023, Keehan J granted the father permission to appeal the orders for the following reasons:

"1. The father was excluded from the hearing part way through the recorder's judgment because of his poor behaviour and conduct.

2. In the absence of the father, further evidence was heard which the father had no opportunity, at this hearing or subsequently, to challenge.

3. This led the recorder to make a 'final' order for no direct contact without the father having had an opportunity to be heard and, of the court's own motion, a prohibited steps order and a non-molestation order without notice to the father."

63. The appeal from the Recorder was heard by Sir Jonathan Cohen on 12 January 2024 who set aside that part of the order which terminated K's direct contact with his father.
64. in January 2024, shortly after the appeal, K with the support of his Guardian replied to his father's letter. It appears that K had had writer's block and that once he started, he produced a lengthy letter with minimal prompting. I have read that letter. In my view, it captures K's relationship with his father. In addition, after the appeal hearing, the father could send small Christmas gifts to both children facilitated by the Guardian. The Guardian took photographs of the children receiving their gifts and sent them to their father.

65. Despite the father's view of the Guardian on 16 February 2024, the father and the Guardian discussed the letters he wrote to the children, after which the father made appropriate amendments to their style and content. The letters have since been appropriate and child-focused. Sadly, the letters for April 2024 were not delivered through no fault on behalf of either party.
66. On 23 February 2024, the Children's Guardian made an application for a s.91(14) order which she considered necessary because in her opinion the children are suffering emotional harm by reason of the ongoing and protracted litigation.
67. On 28 February 2024, the Guardian submitted a report to this court updating the court on the children's wishes and feelings. Amongst their views K expressed he did not like school. He is struggling with attendance and with his behaviours in school. The Guardian, in her report, has concluded that K's non-attendance at school is more to do with his own difficulties with education than it is with his views about his father. In relation to contact, B's view that she should have no contact with her father was maintained. She however has told the Guardian that her mother does share the contents with her. K was different. He said he would like the indirect letter contact to continue but that he would wish to "*resume direct contact at a later date*". He immediately said he would tell his mother if he wanted direct contact. He was confident his mother would act on those requests. In the circumstances the Guardian recommended to the court that the Child Arrangements Order and the Non-molestation order should remain as they are. There should be indirect monthly correspondence from the father to each child and that can include a small gift and card on birthdays and special occasions. There is an expectation that the mother will share the letters etc. with the children and encourage a response. The Guardian also recommends, in this report, that both parents should attend the Planning Together for Children course and the father should complete the online Solihull course choosing the teenager modules or the Teen Triple P course in person. A s.91(14) order until the end of the non-molestation order was proposed. The purpose would be to give the children a break from continued and continual litigation.
68. The application next came before HHJ Patel on 8 March 2024. Although Sir Jonathan Cohen had remitted the issue for contact to K alone, she noted that the Guardian's application for a s.91(14) order related to both B and K and that the father sought direct contact with both children and was asking the court to consider his allegations of alienating behaviours. Thus, she considered that this court should determine the issue of contact in relation to both children together with the Guardian's application for a s.91(14) order and the father's application to vary the Non-molestation order. To enable the father to cross-examine the mother, HHJ Patel appointed a QLR.
69. The father accepts that on 24 March 2024 he did report the mother for vaping in the car in the presence of the children. The mother denies that it was her that the father saw, and I have no evidence upon which I can determine the issue either way.
70. On 26 March 2024, the father made an application pursuant to FPR Part 25 for the court to *action* an independent mental health medical professional to assess the mother on the basis that the mother "*has admitted to suffering from post-natal depression, Bi-polar disorder and personality disorder. These three illnesses alone*

are dangerous but mixed together cause massive concern. The reason for the assessment is to understand, monitor and check:

- *Her ability to provide evidence. It is known that character traits of these disorders to include narcissistic behaviours and the ability to lie.*
- *Secondly to understand her capabilities as a mother and a responsible adult*
- *Finally to understand how these mental illnesses can be triggers towards parental alienation.”*

71. That application came before HHJ Patel who dealt with it on the papers on 23 April 2024 together with the live applications I have already set out above. They were all adjourned for hearing before me.

72. On 29 April 2024, the father notified the Guardian that the mother had contacted his current partner offering her support as she believed that she was struggling with the way the father treated her and with his behaviours. The partner denied that she had any reason for such support and the father was distressed deeply by the mother’s actions. It has led to the father making a complaint to the police of harassment, stalking, perjury and breach of confidentiality against the mother.

73. On 2 May 2024, the Guardian’s final report was filed. The report details the father’s allegation about the mother vaping and the investigations the Guardian undertook. It also documents how since the hearing on 8 March 2024 the father has sent 22 emails to the children’s solicitor and the Family Court. Some of them are accusing CAFCASS of being biased, taking bribes, tampering with information and evidence, and having an inappropriate relationship with the mother. The father had by this time made two SARS requests. The report also documents how the father inadvertently saw K whilst out driving and K and he made eye contact. The father behaved responsibly and drove away. In terms of contact orders, the Guardian’s recommendation remained the same but she now sought a s.91(14) order throughout each child’s minority or until *he can evidence that he has completed some work regarding his parenting and that he has a more positive mindset to the children and their mother given the father’s behaviours since the last report which have only served to have heightened the Guardian’s concerns*. He has no insight, she says, into the effect of his behaviours on others and seeks to blame others for the lack of contact with his children.

The Hearing Before Me

74. The hearing before me took place on 13, 16 and 17 May 2024. At that hearing, the mother and the father represented themselves and the Guardian was represented by Mr Veitch of Counsel. In accordance with the order of 8 March 2024, the court appointed QLR, Ms Popley, questioned the mother on behalf of the father. I am grateful to her for the care and skill she showed in putting the father’s case accurately and effectively to the mother in a measured way which was forensically effective and appropriate given the mother’s vulnerability and the allegations of domestic abuse.

75. In order to determine the applications before me, I read a bundle of core documents which ran to 387 pages. In addition, I had a voicemail and documents bundle which contained 60 pages and a further bundle of 38 pages submitted by the father. The latter bundle included character references which were glowing but of only limited evidential value as their deponents did not know of the factual matrix that lies behind this case and my decision-making. In addition, I allowed the father to file the 2018 CAFCASS report on Monday 20 May 2024.
76. I have also listened to RSA1 and watched RSA2 in court in the presence of the parties. RSA1 is a voice memo of 26 August 2022. It captures him driving and speaking to K. The clip captures him saying to J, “*I will drop you here, not far to walk*”. Further on, you hear the father interacting with K. I remind myself that the father knows that he is recording on his phone. The father’s interaction may thus be staged and of little evidential value. K’s is not. From the clip, K appears to have a natural relationship with his father. The clip also captures the mother’s reaction to the father dropping the children after contact at a spot other than that agreed. The mother does not know she is being recorded. Her reaction is one of irritation that the father will not do as agreed. The clip records her becoming angry about the father and his attitude to child maintenance. She explains to him forcefully her view that he should contribute to the children’s school uniform. The father does not respond well. He will buy the uniform for the children’s use at his home, and she can buy that for use at her home. I find that there is a childishness about the father’s reaction. It winds up the mother. Having listened to the memo and taking into account that the father knows it was being recorded, I find he is likely to be trying to wind the mother up. Towards the end, the mother tells the father to “*go over there*” and threatens him with a Non-molestation order. Having listened to the clip as a whole, I find she was provoked by the father, probably deliberately, to catch her reaction on the memo but I also find that her reaction is not of someone who is fearful of the father. Rather, it is someone who has had enough of him and his irritating ways. I also record in this judgment that whilst the children were in the mother’s home during this incident, the father remarks that B is poking her head out. I consider that the children are likely to have been aware of the unpleasant scene that developed between their parents. RSA2 is a short video clip of 28 September 2022. The father knows he is recording and thus what he says and how he acts during that clip has, I find, little evidential value.
77. In addition, I listened to the agreed selection of audio clips relating to 5 July 2023. The father admitted their content and asked that I listen to them in private so that he did not relive the trauma of that day. I acceded to that request. Having listened to the records I find that they capture the raw distress of the father. His reaction to the judgment was one of despair and anger. It was extreme. In the moment, he blamed everyone but himself. I have said ‘in the moment’ because I consider that the clips must be viewed in context. I find that context provides an explanation for what he did and said that day but not an excuse.

The Evidence and My Assessment of the Witnesses

The Father

78. The father gave evidence and was the first to give evidence before me. He described himself as a good, loving, and doting father. He confirmed the truth of the statements and position statements he had placed before me and the Appellate court. He considered that he was a good role model for his children. Within his statements before this court and in his oral evidence he emphasized his business acumen, his social responsibility, and his philanthropy. He was obviously proud of all he had achieved. The father was anxious to emphasize to me that he considered the mother to be a liar and a manipulator. He denied that he has ever been aggressive or abusive (physically or verbally) to the mother and asserts that over the past 4 years or more the relationship between them has become "*peaceful and somewhat enjoyable*". He accepted in his written evidence that he had raised his voice to the children but denied that this was ever emotionally abusive, asserting that it was only ever in context and appropriate as part of normal parenting. He denies manipulating his children. He asserts that the mother's current partner has been violent to him. He tells this court that the partner has sent him messages which are homophobic, discriminatory, and abusive. He alleges that the mother's new partner has been violent to her, and the children have witnessed this. He asserts that he had a good, healthy relationship with B and K until such time as the mother wanted more money from him, obstructed contact and alienated the children from him. He links the mother's mental ill-health to the alienating behaviours he alleges she demonstrates and says that she transposes the abuse she suffered as a child into his relationship with their children. In one of his statements, he pinpoints that demand for more money to in or around July 2022. The father relies upon a voice message dated 26 August 2022 as showing that the mother's claims to be frightened of him are false. He accuses the Guardian of not doing her job asserting that she has conducted a "*witch-hunt*" against him and that it is easier for her to paint the mother as a victim than to confront the truth which is that this is a case of parental alienation. He does not accept his children's wishes and feelings as reported by their Guardian. He says that she is biased against him and that her investigations have been one-sided. The father asserts a "*very unethical, unprofessional and a very close relationship*" between the Guardian and the mother. He accuses the Guardian of not listening to his son's voice.

79. As I listened to the father give evidence, I concluded that he was overly anxious to present a good impression before me and to present his case to the extent that at times it appeared as if he was performing a role. He was a brittle witness who bristled with obvious hurt and anger at not being able to see his children. He sought to blame others for the children not wanting to see him but somewhat unexpectedly during the hearing seemed to gain insight, until the point in closing when he told me that he accepted that he had been a "*right gobshite*".

The Mother

80. The mother gave evidence before me. She confirmed the truth of her written evidence. She asserted that during July 2022, the children, B and K, wanted to spend more time at her home. B last saw her father on 19 September 2022. It is said that she has not wanted to see her father since. The mother alleges that the father has become more demanding of the children over the years, wanting to see them on his own terms. The mother asserts that over the past 14 years the father regularly manipulated, humiliated, verbally abused, and degraded her. He is said to have put the children in dangerous

situations and has been aggressive to them physically and they have witnessed his physical aggression to others. She asserts that he is impulsive and unpredictable. His actions are provocative.

81. The mother described to me how the children were so much more settled since their direct contact with their father had ceased and their wishes and feelings were being respected. She assured me that she did all that she could to promote contact and she wanted the children to have a positive relationship with their father. She had told the children the gist of the father's letters when she considered that some of the content was inappropriate. K kept the letters he had received under his pillow. The mother kept B's for her under the bed where B knew they were.
82. The mother told me that she feels extremely distressed at having to go through the process over and over again; each time having to prove herself. She regarded it as a form of abuse. The father, she told me, is controlling and manipulative.
83. I listened to the mother being cross-examined on behalf of the father carefully. I formed the view that she is not frightened of him, but she is worn down by him and his behaviours. He is obsessive and relentless in his determination to get what he wants and that all impacts on her and her ability to function. She has been exhausted by the process.

The Guardian

84. The Guardian gave evidence before me. She was courteous and calm when cross-examined by the father. The Guardian gave evidence compassionately and professionally. She told me that a s.91(14) order until the children each reached 16 years of age was proportionate and necessary because the children had been before the Family Court most of their lives and they needed a rest from the bombardment of constant applications. The father has previously said he has gained insight but there has been no real change in his behaviours since 2018. There is unlikely to be the necessary change in the future. The mother has been a very good mother to these children. There is no concern that would justify their removal from her care.

The Law

85. I now turn to the law relevant to the applications before me. Before I set out my findings and my reasons, it is important that I consider the law which I must apply to the evidence before me.

Findings of Fact

86. In *Re C (Parental Alienation: Instruction of Expert)* [2024] 1 W.L.R. 1 the court commented at paragraph 103 that, in parental alienation cases, what was important, as with domestic abuse, was the particular behaviour that was found to have taken place within the family concerned, and the impact that that behaviour might have had on the relationship of a child with either or both parents. In that regard, the

identification of "alienating behaviour" should be the court's focus, rather than any quest to determine whether the label "parental alienation" could be applied.

87. As with all allegations the burden of proof lies, throughout, with the person making the allegation - *Re B (Care Proceedings: Standard of Proof)* [2008] UKHL 35, at [2] and [70]. In this case, both the mother and the father make allegations against each other.
88. In private law cases, the court needs to be vigilant to the possibility that one or other parent may be seeking to gain an advantage in the battle against the other. This does not mean that allegations are false, but it does increase the risk of misinterpretation, exaggeration, or fabrication - *Re W (Children) (Abuse: Oral Evidence)* [2010] UKSC 12.
89. It is not for either parent to prove a negative; there is no 'pseudo-burden' on either to establish the probability of explanations for matters which raise suspicion - *Lancashire County Council v D and E* [2010] 2 FLR 196 at paragraphs [36] and [37].
90. The standard of proof is the civil standard – the balance of probabilities. The law operates a binary system, so if a fact is shown to be more likely than not to have happened, then it happened, and if it is shown not to cross that threshold, then it is treated as not having happened; this principle must be applied, it is reasonably said, with 'common sense' (*Re B* (above), at para [2] per Lord Hoffmann).
91. Sometimes the burden of proof will come to the judge's rescue: the party with the burden of showing that something took place will not have satisfied him that it did. But, generally speaking, a judge ought to be able to make up her mind where the truth lies without needing to rely upon the burden of proof - *Re B* (above) at paras [2] and [32].
92. The court can have regard to the inherent probabilities of events or occurrences - See Lady Hale in *Re B* (above) at 31. But this does not affect the legal standard of proof, as Lord Hoffmann emphasised in the same case ([15]): the more serious or improbable the allegation the greater the need for evidential 'cogency' - *Re Dellow's Will Trusts; Lloyd's Bank v Institute of Cancer Research* [1964] 1 WLR 451 at 455.
93. Findings of fact must be based on evidence, including inferences that can properly be drawn from the evidence and not on suspicion or speculation - see Sir James Munby P in *Re A (A Child) (No.2)* [2011] EWCA Civ 12 at [26], confirmed in *Darlington BC v M and F* [2015] EWFC 11 at [8]; it is for the party seeking to prove the allegation to "adduce proper evidence of what it seeks to prove".
94. The court must consider and take into account all the evidence available. My role here is to survey the evidence on a wide canvas, considering each piece of evidence in the context of all the other evidence. I must have regard to the relevance of each piece of evidence to other evidence and to exercise an overview of the totality of the evidence in order to come to the conclusion whether the case put forward by the person making the allegation has been made out to the appropriate standard of proof.
95. The evidence of the parties themselves is of the utmost importance. It is essential that the court forms a clear assessment of their credibility and reliability.

96. It is not uncommon for witnesses to tell lies in the course of a fact-finding investigation and a court hearing. The court must be careful to bear in mind that a witness may lie for many reasons, such as shame, misplaced loyalty, panic, fear, and distress. I am conscious that the fact that a witness has lied about some matters does not mean that he or she has lied about everything (see *R v Lucas [1981] QB 720*). I have borne firmly in mind what Lord Lane CJ said in *Lucas*, namely that:

"To be capable of amounting to corroboration the lie told out of court must first of all be deliberate. Secondly it must relate to a material issue. Thirdly the motive for the lie must be a realisation of guilt and a fear of the truth. The jury should in appropriate cases be reminded that people sometimes lie, for example, in an attempt to bolster up a just cause, or out of shame or out of a wish to conceal disgraceful behaviour from their family. Fourthly the statement must be clearly shown to be a lie by evidence other than that of the accomplice who is to be corroborated, that is to say by admission or by evidence from an independent witness."

97. My function in resolving disputes of fact in the Family Court is fundamentally different from the role of the judge and jury in the Crown Court. As the Court of Appeal made clear in *Re R [2018] EWCA Civ 198*:

"The primary purpose of the family process is to determine, as best that may be done, what has gone on in the past, so that that knowledge may inform the ultimate welfare evaluation where the court will choose which option is best for a child with the court's eyes open to such risks as the factual determination may have established." [62]

98. At all times, I must follow the principles and guidance at PD12J of the Family Procedure Rules 2010. I have reminded myself of *Re H-N [2021] EWCA Civ 448*, in particular that:

"... there are many cases in which the allegations are not of violence, but of a pattern of behaviour which it is now understood is abusive. This has led to an increasing recognition of the need in many cases for the court to focus on a pattern of behaviour and this is reflected by [PD12J]" [25].

99. I have also re-read Peter Jackson LJ's judgment in *Re L (Relocation: Second Appeal) [2017] EWCA Civ 2121* (§61), cited with approval in *Re H-N*, to the general effect that:

"... not all directive, assertive, stubborn, or selfish behaviour, will be 'abuse' in the context of proceedings concerning the welfare of a child; much will turn on the intention of the perpetrator of the alleged abuse and on the harmful impact of the behaviour."

100. Finally, I have reminded myself of Judd J's judgment in *M (A Child) [2021] EWHC 3225 (Fam)*:

"The reason it was so important for the judge to give very careful consideration to the question of vulnerability in this case is because a vulnerable person may not act in the same way as someone more independent or confident if they are exploited or abused in a relationship. Such an individual may be so anxious for the relationship to succeed that they accept treatment that others would not. They may be easy to exploit. They may not even realise what is happening to them, and will cling to the dream of a happy family and relationship ..."

Welfare

101. When determining the applications before me, the children's welfare is my paramount consideration – s.1 of the Children Act 1989. I must apply the welfare checklist in s.1(3). I must not make any order unless I consider that doing so would be better for the child than making no order.

102. In the context of the decisions that I am asked to make, I particularly note and bear in mind that s.1(2A) of the Act provides as follows:

"A court, in circumstances mentioned in subsection (4)(a) or (7), is as respects each parent within subsection (6)(a) to presume, unless the contrary is shown, that involvement of that parent in the life of the child concerned will further the child's welfare."

103. When assessing whether the contrary is shown for the purposes of s.1(2A) of the CA 1989, I have reminded myself of what MacDonald J said in D v E (by her Children's Guardian) [2021] EWFC 37.

104. Given the background of the case, I take the view that it comes within the scope of FPR 2010, PD12J. Paragraph 7 of PD12J states that:

"In proceedings relating to a child arrangements order, the court presumes that the involvement of a parent in a child's life will further the child's welfare, unless there is evidence to the contrary. The court must in every case consider carefully whether the statutory presumption applies, having particular regard to any allegation or admission of harm by domestic abuse to the child or parent or any evidence indicating such harm or risk of harm."

105. I have also reminded myself of paragraphs 35-38 of PD12J. I have specifically considered FPR PD4A which states:

"4A.1 Under section 91(14) of the 1989 Act orders are available to prevent a person from making an application under that Act without leave of the court. Section 91(14) leaves a discretion to the court to determine the circumstances in which an order should be made, which may therefore be many and varied. However, section 91A specifies certain circumstances "among others" in which the court may make an order. These circumstances include where an application would put the child concerned, or another individual at risk of harm. This would include, but not be limited to, a risk of harm arising where an application could be used to carry out 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.

4A.2 Where allegations of domestic abuse are alleged or proven, the court should consider whether a section 91(14) order might be appropriate even if an application for such an order has not been made.”

106. That brings me to s.91(14) of the Children Act 1989 itself. That states that:

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

107. Further provision about the making of orders under s.91(14) is contained in s.91A. Section 91A(2) contains the circumstances in which a court may make an order under s.91(14). They include, among others:

“Where the court is satisfied that the making of an application for an order under this Act of a specified kind by any person who is to be named in the section 91(14) order would put —

(a) the child concerned, or

(b) another individual (“the relevant individual”),

at risk of harm.”

108. Section 91A(3) specifically states that “harm” in this section “is to be read as a reference to ill-treatment or the impairment of physical or mental health”.

109. In July 2022, FPR 2010 PD12Q came into force. It sets out under paragraph 2 the key principles to be applied when making s.91(14) orders. They are:

“2.1 Section 91(14) orders are available to prevent a person from making future applications under the 1989 Act without leave of the court. They are a protective filter made by the court, in the interests of children.

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

2.3 These circumstances can also include where one party has made repeated and unreasonable applications; 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; or where a person’s conduct overall is such that an order is merited to protect the welfare of the child directly, or indirectly due to damaging effects on a parent carer. Such conduct could include

harassment, or other oppressive or distressing behaviour beyond or within the proceedings including via social media and e-mail, and via third parties. Such conduct might also constitute domestic abuse.

2.4 A future application could also 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 also merited due to the risk of harm to the child or other individual.

2.5 There is no definition in section 91A of who the other individual could be that could be put at risk of harm. However, it is most likely to be, but is not limited to, another person who has parental responsibility for the child and/or is living with or has contact with the child, or any other individual who would be a prospective respondent to a future application.

2.6 In proceedings in which domestic abuse is alleged or proven, or in which there are allegations or evidence of other harm to a child or other individual, the court should give early and ongoing consideration to whether it would be appropriate to make a section 91(14) order on disposal of the application, even if an application for such an order has not been made (since the court may make an order of its own motion – see section 91A(5)).

2.7 Section 91(14) orders are a protective filter – not a bar on applications – and there is considerable scope for their use in appropriate cases. Proceedings under the 1989 Act should not be used as a means of harassment or coercive control, or further abuse against a victim of domestic abuse or other person, and the court should therefore give due consideration to whether a future application would have such an impact.

2.8 The court should consider case law for further guidance and relevant principles, bearing in mind Parliament’s insertion via the 2021 Act of section 91A into the 1989 Act.”

110. Paragraph 3 of PD12Q deals with the procedure to be adopted by the court when considering making a s.91(14) order. It is relevant to note within this judgment that:

3.4 Under section 91(14), an order may only be made when disposing of another application under the Act, but section 91(14) is silent on when an application for such an order may be made. In proceedings in which risk of harm is alleged or proven, including but not limited to domestic abuse, the court should therefore give early and ongoing consideration to the question of whether a section 91(14) order might be appropriate on disposal of the application, and to whether any particular findings of fact will be needed to determine the section 91(14) application.

3.5 If an application is made, or the court is considering making an order of its own motion, the court should also consider what opportunity for representations should be provided to the parties. Courts should look to case law for further guidance and principles.

3.6 *If the court decides to make a section 91(14) order, the court should give consideration as to the following matters:*

a. the duration of the order (see section 4);

b. whether the order should cover all or only certain types of application under the 1989 Act;

c. whether service of any subsequent application for leave should be prohibited until the court has made an initial determination of the merits of such an application (see section 6). Such an order delaying service would help to ensure that the very harm or other protective function that the order is intended to address, is not undermined; and

d. whether upon any subsequent application for leave, the court should make an initial determination of the merits of the application without an oral hearing (see section 6)."

111. As heralded above, the duration of any s.91(14) order is considered in paragraph 4 of PD12Q which states:

"4.1 Sections 91(14) and 91A are silent on the duration of a section 91(14) order. The court therefore has a discretion as to the appropriate duration of the order. Any time limit imposed should be proportionate to the harm it is seeking to avoid. If the court decides to make a section 91(14) order, the court should explain its reasons for the duration ordered."

112. FPR 2010 PD12J paragraph 2.8 reminds the court to consider case law for further guidance and relevant principles, bearing in mind Parliament's insertion via the 2021 Act of section 91A into the 1989 Act. Accordingly, I now turn to consider the case law.

113. The leading modern authority is the Court of Appeal's decision in Re A (A Child) (Supervised Contact) (Section 91(14) Children Act 1989 Orders) [2021] EWCA Civ. The lead judgment in Re A was given by King LJ. At paragraph 32, King LJ repeated the classic statement of the legal principles at play when making a s.91(14) order as put by Butler-Sloss LJ in the form of guidelines in Re P (Section 91(14): Guidelines; Residence; and Religious Heritage) sub nom: In Re P (A Minor) (Residence Order: Child's Welfare) [2000] Fam 15; [1999] 2 FLR 573 at page 19. Before proceeding to place the Re P guidelines into a modern context and to consider how the provision in section 67 of the Domestic Abuse Act 2021 may impact upon the guidelines when that section to be brought into force.

114. The guidelines in Re P are as follows:

"Guidelines

(1) Section 91(14) of the Act of 1989 should be read in conjunction with section 1(1), which makes the welfare of the child the paramount consideration.

(2) The power to restrict applications to the court is discretionary and in the exercise of its discretion the court must weigh in the balance all the relevant circumstances.

(3) An important consideration is that to impose a restriction is a statutory intrusion into the right of a party to bring proceedings before the court and to be heard in matters affecting his/her child.

(4) The power is therefore to be used with great care and sparingly, the exception and not the rule.

(5) It is generally to be seen as a useful weapon of last resort in cases of repeated and unreasonable applications.

(6) In suitable circumstances (and on clear evidence), a court may impose the leave restriction in cases where the welfare of the child requires it, although there is no past history of making unreasonable applications.

(7) In cases under paragraph 6 above, the court will need to be satisfied first that the facts go beyond the commonly encountered need for a time to settle to a regime ordered by the court and the all too common situation where there is animosity between the adults in dispute or between the local authority and the family and secondly that there is a serious risk that, without the imposition of the restriction, the child or the primary carers will be subject to unacceptable strain.

(8) A court may impose the restriction on making applications in the absence of a request from any of the parties, subject, of course, to the rules of natural justice such as an opportunity for the parties to be heard on the point.

(9) A restriction may be imposed with or without limitation of time.

(10) The degree of restriction should be proportionate to the harm it is intended to avoid. Therefore, the court imposing the restriction should carefully consider the extent of the restriction to be imposed and specify, where appropriate, the type of application to be restrained and the duration of the order.”

115. The modern context in which King LJ considered s.91(14) is set out in paragraphs 34-36 of her judgment. The modern legal landscape includes the advent of the smart phone and social media and “*the almost universal use of email as a means of instant communication*”. Another development considered of relevance by King LJ is the withdrawal of legal aid in the majority of private law cases leaving litigants unrepresented without the “*steadying influence*” of legal advisers. According to King LJ, one of the consequences of these changes not uncommonly seen in private law proceedings is that the other parties, and often the judge themselves, can be (and often are) bombarded with emails from a parent, whether male or female, who is representing him or herself. Such behaviour may be the result of anxiety but in other cases, as in the case before King LJ, it is part of a campaign of behaviour by one parent against the other which amounts to a deeply disturbing form of oppressive behaviour on their part.

116. At Paragraph 36 of her judgment King LJ stated: -

“Regardless of the motivation, behaviour of this type, as exhibited by the mother in this case by way of an example, is deeply distressing to the parent who is the subject of such abuse and litigation at this level and is highly debilitating to each of the parties and to their children. All too often such communications are ill-considered and ill-judged with the consequence that every minor dispute or misunderstanding is met with an application to the judge. More importantly, the distress and anxiety caused to the other parent and to the children at the centre of such a raging dispute cannot be overestimated, nor can the damaging consequences where the focus of the litigation veers away from what, on any objective view, would and should be regarded as the real issues going to the welfare of the children concerned.”

117. In anticipation of section 67 of the Domestic Abuse Act 2021, which came into force after *Re A* and which brought into force s.91A of the Children Act 1989, King LJ stated at paragraphs 45-46 of her judgment:

*“45. It is not for this court to presume to interpret or to purport to provide a commentary upon a section in an Act which is not yet in force and in respect of which statutory guidance has yet to be published. It is worth however noting that the proposed new section 91A dovetails with the modern approach which I suggest should be taken to the making of s.91(14) orders. In particular the provision at section 91A(2) , if brought into effect, gives statutory effect to Guideline 6 of *Re P* (see para 39 above) by permitting a s.91(14) order to be made where the making of an application under the Children Act 1989 would put the parent or child at risk of physical or emotional harm.*

46. Under section 91A(4) when considering whether to grant leave the court will consider whether there has been a material change of circumstances. Again, this would put the current approach to the granting of leave on a statutory footing.”

My Findings

118. This judgment is written in a linear fashion, but it is intended to be read as a whole.

In so far as I have already made findings in earlier paragraphs of this judgment, I have applied the law I have just stated. In this part of the judgment, I shall make such other findings as I consider necessary to inform my welfare decisions.

119. I begin by finding that both parents in this case love their children. I have reminded myself of that and the importance of the children knowing that they have two parents who love them dearly.

120. I also find that since their parents separated the children have lived with their mother and have had contact with their father albeit that that has been disrupted as set out in the chronology above. I remind myself that that chronology shows that B has not had contact with her father since September 2022, but that K continued to have significant unsupervised contact with his father for three nights and six days a fortnight until 5 July 2023.

121. I find that the mother does suffer mental ill-health. She has depression, a bipolar disorder, and a personality disorder. However, I find that she takes steps to manage her mental ill-health. She regularly attends her GP. She takes the medication that is prescribed for her. She accesses talking therapies. As a consequence, she is able to work five days a week as an accountant and bring up the four children who live with her. I find as a fact that as long as the mother takes steps to manage her mental ill-health, it does not impair her functioning or impact on her ability to live her daily life or care for the children. In the circumstances, I find that there is no need for the expert assessment that the father applied for in March 2024 (see above). I therefore formally dismiss that application.
122. The father in closing accepted that he too suffers from mental ill health. He has been concerned for his own mental health because he acknowledges that these proceedings and losing actual contact with his children “*has hurt him greatly*”. He told me he has been fighting on and off to be a father to the children since 2014 and he tells me he acknowledges that has taken a toll on him. He has taken up various courses to help himself and he deliberately looks after himself physically to ensure his own mental stability. However, he acknowledges that he has not sought any help through his GP. As he gave evidence before me and as he closed his own case, I formed the impression that he is emotionally fragile. My assessment of him is consistent with his assessment of himself. Accordingly, I find that the father is emotionally fragile and in his own way vulnerable at this time.
123. The mother is a victim of domestic abuse of which the father is a perpetrator. In 2009 the father was cautioned for common assault of the mother. I remind myself that a caution is based on an admission. The father has thus previously admitted such abuse which, to his credit, he has not sought to retract at this hearing. In 2014 the father pleaded guilty to offences of harassing the mother by sending text messages and on one occasion in person. I have heard no evidence which undermines those convictions, and they stand. I accept that a significant passage of time has passed since the date of conviction and that overtime the dynamic of the relationship may have changed. However, I find that harassment through texts and emails is part of how the father reacts to stress and decisions adverse to him. I find that he has, as recently as earlier this year, bombarded the Guardian and the solicitor with emails. I further find that the father’s past behaviours towards the mother are likely to have impacted on the mother at the time and that even in 2023, when the relationship between the mother and the father broke down again are likely to impact on her reaction to the father, in that she is likely not to trust him and to wonder (with good cause given his recent behaviour to the Guardian and the Childrens solicitor) whether history is about to repeat itself. That said the voice memo of 26 August 2022 demonstrates that the mother is not physically afraid of the father and will stand her ground with him. However, like life, matters are not straightforward. Having heard all the evidence, I find that the need to be firm and set boundaries as she did on 26 August 2022 is likely to take its toll on her.
124. Having considered all the evidence, I find that the father is forceful and relentless in the pursuit of what he wants. Whereas in business that is likely to be a positive, in family life it is likely to leave others feeling dominated and forced into choices they do not want to make. Have considered all the evidence in the case, I do not think the father truly understands or appreciates that the manner in which he pursues his goals

impacts on others. I find that the mother in daily life, as she was in evidence, is likely to be worn down and tired of his relentless pursuit of what he wants on his terms without consideration of others. She is, I find, exhausted by the battle between them, the need to constantly assert her point of view and with the legal process.

125. I do not consider that the mother has deliberately set out to alienate the children from the father. I do not find on the evidence I have heard that the mother forced the children to call her new partner daddy in 2017. That does not mean that they did not but that what caused them to call him daddy is not proven. I find that the history of the case is that this mother has done her best to promote contact between the children and their father in difficult circumstances. Despite the long history of this case, I accept what the children say to the Guardian about their mother reading the father's letters to them when they are reluctant to do so themselves or when she has needed to edit them because of inappropriate comment. I accept the mother's evidence that K sleeps with his father's letters under his pillow and with his father's photograph in his bedroom. That is evidence of the mother promoting a relationship between the children and the father even in difficult circumstances such as these.

126. I consider on the facts of this case that it is likely that the children have been impacted by the antipathy between their mother and father and between the father and the mother's new partner. In particular, I find that the children are likely to have been aware of and thus impacted by the following: -

- a. Their father breaking into his then partner's home. I am conscious that I have not heard the father's ex-partner, give evidence. I cannot therefore determine why the father broke into her home in 2018. However, I can find on his own admission that he did and that the children witnessed him climb over the garage of her home and into her house through a window. Whatever his reasons, the children witnessed his actions, and they were frightened by them.
- b. On 3 August 2022, the father was threatened by the mother's partner who is photographed holding a baseball bat and being restrained by the mother. I have not heard from the partner, and I thus do not determine who provoked who that day. Indeed, standing back I do not consider that I need to. The reality is that whereas the children may have been in the back garden at the time, they will have been aware of the incident even if they did not see it and they will have been aware of the aftermath. Children pick up on tensions and conversations between adults about events, however well the adult thinks they hide things. I consider it naive to think the children would not have been aware of and thus impacted by this event.
- c. Likewise, the children may not have been actually physically present on 26 August 2022 when the events captured on RSA1 took place but B is likely to have poked her head out to see what is going on and I find that it is a reasonable inference that K too would have been aware of the argument between his parents.
- d. On 16 September 2022, the father and the mother's partner had an altercation. I do not need to determine who started it but I do find that what occurred would have been frightening for the children. They may have been seated at

the table away from the actual location of the scene itself and they may not have been directly within the line of sight when their father rang the police, but I find that events such as happened on this date do not happen in a vacuum and the children are likely to know about it and the impact of it on their father who they were accompanying that evening and on their mother's partner.

127. I have considered long and hard about what I should make of the children being asked in their schools on 28 September 2022 whether they wanted to go to contact with their father or home with their mother. I do not have sufficient evidence before me to determine why on that day the schools were asking those questions, but they did. Both did not want to see their father, and both told their schools they wanted to go home with their mother. The mother has criticized the father's reaction to the children not being at school when he went to pick them up for contact. However, I remind myself that the context is that he was expecting to collect them and that the plans were changed without any prior warning to him. He is likely to have been shocked, angry and distressed by what occurred and those initially reactions are likely to be justified. The staged video is however a step too far. It has no evidential worth. It demonstrates almost a child-like reaction to prove himself right rather than an understanding of the need to behave responsibly and put the children first, however distressed he was.

128. I agree with the Guardian that it is positive that the father has shown his commitment to his children by persevering with letters to his children even when he gets no response. I have read the letters sent by the father to the children. I find that although the Guardian described them as *largely positive*, those from July 2023 until January 2024 also contained content which was clearly inappropriate to be sent to children, especially those who are subject of litigation. They included passages such as "*I am sorry, I am not seeing you at the moment. I want to make it clear, and that if it were up to me, we would go back seeing you every week*" etc. In another letter, the father writes "*Don't forget little lady I have a huge pile of presents for you at my house for last Christmas and your birthday*". In another letter containing many positive expressions of love and affection for his daughter which cannot be criticized, the father then states "*I am still paying your mum to ensure you have a good life, and I am also putting lots of money into savings for you so that you can afford a house of your own when you are 18*", he wrote. To his son in November 2023, he stated "*I know there are people in this world who do not want me to be your Dad*". These are only a few examples. They illustrate the dichotomy between the father who expresses love and commitment to his children and the father who cannot hide his bitterness at being kept away from his children or his antipathy to the children's mother and her partner. What is sad is that the father sought initially to defend content which was clearly inappropriate until he gained insight after speaking with the Guardian in February 2024 and took on board her advice. That tells me that he can learn, and he can change albeit his first instinct appears to be hyper defensive and to battle against the world.

129. It is one of the ironies of this case that the father accuses the Guardian of bias and unprofessional conduct, asserting that she is in the mother's camp when in fact, an objective analysis of the evidence is that she has acted to help the father even when it must have been personally difficult to do so because of his harsh and unjustified

criticisms of her. As is implicit in the previous sentences, I reject the father's criticisms of the Guardian. She has acted in good faith and with the children at the forefront of her decision-making and actions since her appointment back in 2018. It is telling that it was to the Guardian the father turned when he reflected on the evidence he gave at the beginning of this hearing. At that point he had sufficient insight into a need to change if he is to rebuild his relationship with the children.

My Welfare Analysis and decisions

130. I factor into my welfare analysis all the findings I have already made. I remind myself that the welfare of each child is my paramount consideration.
131. I find that both parents are capable of meeting their children's physical needs. The mother and the father have different lifestyles and aspirations, but both have proved themselves capable of meeting their children's physical needs.
132. B and K have lived with their mother since their parents separated. It is to their father's credit that he does not seek to disturb that relationship. I find that their mother is attuned to her children's emotional needs and that despite deep reservations, she has promoted contact between the children and their father. I accept her evidence that she will continue to do so in the future.
133. I factor in that the father has had significant contact with both of the children in the past. In particular I factor in that K has had in the past a good relationship with his father which was maintained through staying contact until 5 July 2023, and which is evident in his letter to his father in February 2024.
134. B has consistently articulated that she does not want to have direct or indirect contact with her father. I accept that her reasoning is not influenced by her mother but by her lived experience. B is scared of her father as a result of what she has experienced. However, I note that there is chink in her absolute refusal to have any contact with him in that B accepted the Christmas gift from him and allowed the Guardian to take a photograph of her opening the present to be sent to her father.
135. K's wishes and feelings are more complex than his sister's. When asked if he wants to see him now, he says no but that he may wish to do so in the future but does not specify when in the future that may be. K's letter of February 2024 to his father is evidence of their mutual love for each other and their shared interests. He wrote to his father when he had the time and space to do so. In the mother's busy household, he may rarely have the peace to think and write letters. That is no direct fault of the mother but is a reflection of the circumstance in which she and K live. Having heard the evidence I strongly urge the mother to ensure that K's need for contact with his father is not overlooked and that K should have the space and time within their home to read his father's letters to him and to write back. K is confident that when he is ready to see his father again, his mother will arrange it for him.
136. I take into account the ages of B and K. I factor in that their understanding must be considered in the light of the factual context in which they live and about which I have made findings. I take into account that historically they have wanted to see their

father but that both now do not for reasons which they articulate and which I respect. They have been impacted by what they have experienced to date.

137. I consider that the father loves his children very deeply, but he is not empathetic to their needs. He has no natural insight into the effect of his behaviours on his children. He does not understand that because their mother is affected by his behaviours, they are also affected because it is their mother who provides them with the stability and security they need.
138. I have heard from the Guardian that K is a compliant boy who does not like to let anyone down. Thus, whilst K says that he will tell his mother if he wants direct contact with his father, I consider that he may be reticent to ask for contact in the future for fear of upsetting his mother.
139. I consider that both parents would benefit from attend the Planning Together for Children course and I urge them to do so to enable them to work together in the future for the benefit of their children. Both have said during the hearing before me that they will complete that course.
140. I accept the Guardian's advice that the father should complete the online Solihull course choosing the teenager modules and the Triple P Teen parenting course in person. I consider he will be greatly aided by doing that. Hopefully on completion he will have greater insight into his children and their needs.
141. I accept the Guardian's recommendation for contact now and thus affirm that there should be indirect contact by the father sending to the children one letter a month together with a small gift and card on special occasions. The mother should encourage the children to write back and to say thank you for any gifts they receive from their father. The father should send the letters and the gifts and cards by registered post or similar. That will avoid direct contact between the parents. The mother can and should send 'no reply' emails four times a year to which she attaches a short report on the children for the father's benefit. That way the father should be able to stay abreast of important developments in the children's lives and will have subject matter that is pertinent to the children for the letters. The father wishes to have telephone contact leading to video contact with his children which he says he will accept should be supervised. The problem with that progression of contact is that (i) neither child wants it and is thus unlikely to cooperate with it and (ii) telephone and video contact can be very intrusive. It brings the parent into the child's home. It is hard to proactively monitor. If the father were to speak to either child in the inappropriate terms as seen in the earlier letter, the recording would capture what he had said but would not prevent it from being said or the harm that might flow from it. Hence, I reject the father's trajectory plan.
142. The non-molestation order and the prohibited steps order will remain in place until varied by further court order or they expire.
143. I have decided that I will also make a s.91(14) order but for a limited time. It will expire at the same time as the extant non-molestation order and prohibited steps order. I have made such an order to give the children respite from the almost continuous litigation and to remove any pressure from their shoulders which comes from being

the subject of applications such as these. I consider that such an order is in the welfare interest of the children. It will also be long enough for the mother and the father to undertake the programmes of work they committed to in the witness box. It will allow for a period of settlement and respite. However, I do not agree with the Guardian that the order should be made until each child respectively reaches 16 years of age. The purpose of the order in this case is to give the children respite from the litigation and the stresses that go with it, the purpose is not to send a message that they need not have contact with their father until they are 16 years old. Such an order would be too long. Further, I factor in that towards the expiry of the non-molestation order and the prohibited steps order, the mother will need to return to court for their extension if the need for such orders remains.

144. I consider that it would also be in the welfare interests of the children if their mother was protected from the litigation from a period. I direct therefore that any permission application made by the father under s.91(14) should be determined firstly on the papers or *ex parte* without notification of the mother. If the court hearing the permission application, then considers the application should go forward, the mother can be notified. If the permission application has no merit whatsoever, then this initial sift should protect the mother from meritless applications.

145. That is my judgment.