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Case: OX20P00167

IN THE FAMILY COURT AT OXFORD

**IN THE MATTER OF THE CHILDREN ACT 1989 AND IN THE MATTER OF
A and B (CHILDREN)**

Date: 30 July 2021

Before: HHJ Vincent

Between :

Ms C

Applicant

and

Mr D

Respondent

and

A and B

(by their r16.4 Children's Guardian, Ruth Palayiwa)

Second and Third Respondents

The Applicant mother represented herself
The Respondent father represented himself
Craig Jeakings, instructed by Trueman's solicitors for the children

Hearing dates: 14, 15, 16, 17 June and 30 July 2021

JUDGMENT

Summary of judgment

Are the boys at risk of harm from Mr D?

Did Mr D kick B in the stomach?

No. Ms C has not proved to the Court that Mr D kicked B in the stomach.

Did Mr D push A off a trailer or cause him to be frightened so that he ran away and hid up a very tall tree?

No. Ms C has not proved to the Court that Mr D pushed A off a trailer or did anything to make him scared or frightened so that he ran away from him.

Mr D has not caused the boys any harm and they are not at risk of harm in his care.

Parental alienation

Ms C and Mr D share parental responsibility for the boys. However, the judge finds that Ms C has undermined Mr D's parental responsibility and this has caused damage to the relationship between the boys and their father.

Examples:

- Changing the boys' schools several times without consulting Mr D;
- Asking lots of questions of the boys about what happens at their father's house and showing them by her responses that she had worries about how their father had treated them, or that she was disappointed for them;
- Being very ready to criticise the father on the basis of what the boys have said and assuming the worst of him without first speaking to him to get his version of events;
- Sharing information with the children about her experiences of the father that has reinforced in them that they should be fearful or wary of him;
- Consciously or unconsciously sharing her deeply negative and hostile views of Mr D with the children so that they have developed a belief that they have cause to be scared or wary of him;
- Calling the police to check up on Mr D rather than speaking to him as a co-parent to air her concerns and ask him if everything was ok. This suggests to the children she does not trust their father and that he is a danger;
- Not sharing with Mr D significant information about the children's health, education and welfare – for example not telling him she had called NHS direct leading to the police attending on Christmas day in respect of an incident involving a knife in which A displayed aggressive behaviour towards her;

- Creating an environment for the children in which she suggests to them that she is the only person they can confide in and their home with her is their only safe space.

The boys have sometimes said they do not want to see their dad, but this is more likely to be because of the actions of their mother than to do with their experiences of their father.

Domestic abuse

Mr D was responsible for domestic abuse in the relationship. This was perpetrated by him against Ms C. This caused emotional harm and the risk of physical harm to the boys. It caused physical and emotional harm to their mother.

However, Mr D does not present a current risk to Ms C or to the children for the following reasons:

- Since the time of the admitted domestic abuse Mr D has undergone a DAPP and anger management therapy;
- There is no evidence of current concerns of domestic abuse in his relationship with *M*;
- There is no evidence of him using the proceedings or in any other way seeking to continue to act in an abusive way towards Ms C;
- The Court has found that he has not hurt either A or B.

Conclusions

There is a risk of harm to A and B if their relationship with their father is not allowed to develop.

The benefits to A and B of having a relationship with their father far outweighs any possible risk to them.

The Court agrees with the guardian's analysis that what is needed now is an order that provides for the boys to have regular contact with Mr D (fortnightly building up to two overnight stays, and for longer periods of time in the school holidays – up to a week at a time in summer 2021).

It is not necessary for there to be conditions attached to the contact. Not in respect of alcohol or drug testing, nor about where Mr D can take the boys.

The contact should happen according to the order, the boys should not be asked to decide whether or not they want to go.

What is needed is to restore Mr D's parental authority, putting conditions on it might give the impression to the boys that Ms C continues to be in charge of contact which would not be helpful.

The parents should continue to share the burden of transporting to and from contact. Each of them should pay their own expenses related to travel costs.

Section 91(14) application

The application for a section 91(14) order is refused. It would be good for the parties to have some space away from Court. However, this is not one of exceptional cases where such an order is necessary to protect one or other of the parties from unacceptable strain.

Non-molestation order

The application for a non-molestation order is refused. There is no evidence that Mr D has harassed or molested Ms C at all or that an order might be required for her protection.

Cross-undertakings

Both parties wish to keep their addresses confidential. It would be helpful if each of them gave undertakings to reassure the other. Both parents have said they will undertake not to speak badly of the other parent either directly to the children or in their presence.

Long Judgment

Introduction and background

1. I am concerned with two brothers, A who is ten, and B who is eight and a half. Their parents were in a relationship between 2004 and 2016.
2. Following the separation the children's parents have been in dispute about a number of issues, including the arrangements for the children to spend time with their father, the boys' education, and financial matters. There have been a number of Court hearings.
3. There had been a substantial time following separation when Mr D did not see the boys at all and thereafter his contact with them was sporadic and for short periods.
4. Mr D brought an application in **September 2017** for child arrangements orders and for specific issue orders in respect of the children's education. At around that time Ms C had arranged flexi-schooling for the boys attending school three days a week and to be home-educated the other two days. She was seeking permission to take the boys out of school for five months in order to attend festivals with her, in keeping with her heritage as a member of the travelling community. Mr D opposed this.
5. The first court hearing was in **November 2017**. Ms C alleged that on 30 July 2016 Mr D raped her while the children were asleep and had then thrown her across the caravan where she sustained an injury to her leg, and the children had woken up at this point. She said that in August 2015 Mr D pushed her and B had said '*if you ever push my mummy again I will shout in my loudest voice*', and that Mr D had pushed A off her '*with force.*' She raised concerns about Mr D driving fast and about the boys' exposure to domestic abuse in the relationship, but agreed to regular staying contact between the boys and their father.
6. The father denied the allegation of rape, accepted that there had been a few arguments during the relationship, which he says got physical, and accepted that he was the more physical. He accepted that the boys had suffered emotional harm as a result of their exposure to this. He said he would provide assurances about where the boys would stay when with him and about not driving too fast (which he said he did not do). He did not accept that he had an anger management problem but said he had spent three years seeing a professional in relation to anger management with a view to trying to make the relationship work. He agreed to participate in a Domestic Abusers Perpetrator Programme (DAPP).
7. The magistrates asked for a Scott schedule with responses. This was considered at a hearing on **29 March 2018** where it is noted that all parties (both legally represented at the time) and the Court agreed that a fact finding hearing in respect of the disputed allegations was unnecessary because the progress of contact would be based on the father's assessment for and progress on the DAPP, and given the admissions of domestic abuse, the Cafcass officer's recommendations would not change depending on findings in respect of the disputed issues.
8. The Scott schedule with Mr D's responses is annexed to this judgment.

9. The children were seeing their father every Saturday from 10am to 6pm and every Wednesday after school.
10. Towards the end of **April 2018** Cafcass made a referral to [redacted] social services because it had been reported to them (by a source they did not reveal) that the children were spending overnight in shared accommodation, that father was drinking high levels of alcohol and was driving under the influence and that he had assaulted his ex-partner twice. Contact was stopped for a brief time and an application made to the Court. In a conversation with Cafcass Ms C had reported that B was displaying very aggressive and violent behaviour towards her. On Cafcass's recommendation a Court hearing was listed at short notice, on **8 May 2018**, but Ms C then is reported to have said that she did not feel the father posed a risk to the children, and that B's behaviour had only got worse since contact had been stopped.
11. Social services' investigation at that time found that the school reported no behavioural issues from either child, and no concerns so far as father's presentation was concerned. The plan was for father to continue with the DAPP, for there to be further investigation of the domestic abuse claims in respect of the ex-partner and for support with parenting for Ms C as the children were thought to have additional needs so far as managing their behaviour was concerned. She did not undergo the course as she then moved to Oxfordshire with the children.
12. It is not clear what the outcome of the investigations into domestic abuse was. My understanding is that the police did not take any action, and Cafcass did not provide any further evidence to substantiate their initial concern.
13. Ms C and the children moved from [redacted county] to Oxfordshire in around **September 2018**.
14. Oxfordshire Children's services received a referral from [redacted children's services] in **September 2018** and noted the concerns at that time as the impact of the children witnessing domestic abuse between the parents, B displaying violence towards his mother, B's behavioural issues at home and school (report of assault of a teacher), his mother's query around a diagnosis of autism and him having a diagnosis of PTSD, and '*concerns (although unsubstantiated) that father has entered into another relationship with domestic abuse and the children have contact with their father*'. The case was transferred to the early help team, and assigned to Ms P, early help practitioner.
15. In September 2018 the children started at [redacted] primary school, but in October the children moved to a different primary school.
16. Contact progressed to overnight stays. When Ms P met with the boys in November she recorded that B said he loved seeing his dad. They watch DVDs and have midnight feasts, play crazy golf and go bowling. B said things were better now his parents didn't live together. He said his parents don't live together because they used to fight and dad used to hurt mum. He said this made him feel angry and scared. He said he had seen his dad throw a cup at his mum and once his dad was shouting at her and threw a watering can into next door's garden. He said he had been woken up one night by his dad shouting at his mum and had got out of bed and saw his dad hurting her. B told Ms P that he gets angry quickly and he doesn't know why. His mum had changed his diet

to gluten and dairy free and this was helping. He recalled the time at his old school when his mum had tried to take him into the classroom, the teacher wouldn't let her come in, a teaching assistant tried to take him away from his mum so he hit her.

17. A met Ms P on the same day and told her he was enjoying spending time with his dad every other weekend, they had sleepovers and did fun things like watching DVDs and going to local sports centre were going to play pool. He said his mum and dad don't live together because they don't agree on things.
18. In **December 2018** the manager of the after-school club contacted Ms P for advice, reporting that both boys' behaviour was quite difficult at times and '*when we give feedback to mum she tends to give us a different reason*'. B had been upset with A who had taken a ball and wouldn't give it back at first. B got very angry and couldn't calm down.
19. Ms P spoke to the boys. She reported that A was looking forward to spending Christmas with his dad and said everything was going well. Both boys were really happy dad came to see B in school play, they couldn't think of anything that was bothering them, save that B said he found it hard to get to sleep at night. Both reported they liked mum's boyfriend [*name redacted*].
20. At around this time Ms C was exploring the possibility of moving A to a private school but in the event both boys remained at [*redacted*] primary school.
21. In **January 2019** the school was raising concerns about the boys' behaviour, particularly B's rough play, pushing other children and their lack of social skills. The school reported some difference of opinion between them and Ms C as to whether a diagnosis of autism might apply to B, the school did not think so.
22. On **6 February 2019** Ms P wrote to the father reporting that the boys had said they were tired and not sleeping well and missing their mum when they were with him and that there was a decline in their behaviour after they had spent the weekend with him. She proposed reducing the overnights to one rather than two nights.
23. The Team around the Family (TAF) meeting on **27 February** highlighted medical issues, that B was reported to have migraines and a hernia. The boys were reported as having raised concerns that dad drinks a lot and sleeps in the day – this is in a case note from Ms P, the source of this information is not clear. B is also reported as having said that there was no food in the house and that his mum was giving him migraine tablets to help him sleep.
24. On **4 March 2019** Ms C reported a difficult interaction between her and Mr D on a Friday. He had collected A from school and then went on to hospital where B was having an MRI under anaesthetic. B said he didn't want to go to his father's house. Ms C reported that he [father] seemed stressed, snappy and shouting. Ms C drove B the next day, the parents had another difficult exchange in front of the children about school uniform, bags etc. Following the contact Ms C reported that B had told her his father had locked him in a room and barricaded the door, that he had climbed out of the room through the window and then in through the back door of the kitchen. A confirmed this was true but said B was being very cheeky. Ms C's account is that she then gave B a

hug and explained she was sorry it had been hard for him, he didn't need to worry and everything would be ok. Ms C raised a number of other concerns about Mr D's ability to prioritise the boys' needs and to take care of them during the time he spent with them.

25. On **13 March 2019** Ms C reported B having an intense migraine that caused him to be up vomiting the whole night and accompanied by head banging, screaming and intense fear of going to sleep. Ms C reported that B was not wishing to see his father, reminded of the domestic abuse he had witnessed, and requested information about the pending CAMHS referral.
26. In an internal meeting on **25 March 2019** Ms P reported her concerns that the children were not going to breakfast club or after school club due to their behaviour, and that Ms C had said she no longer wanted support from her (Ms P). The note reads, '*Ms P is concerned that mum is making up illnesses. Mum is challenging all health professionals. School have said that there is not a diagnosis for anything with the boys. Mum is reducing contact with dad for the boys. Ms P feels that mum has stopped her [Ms P] seeing the children at home and school. She feels that the boys have started opening up to her so now mum does not want her to work with them.*' It was acknowledged this was a feeling and there was no evidence for this. Notes show Ms C had reported the boys did not like to be seen at school and that home was their 'safe space', so not a place for Ms P to visit.
27. By **April 2019**, at the time the final section 7 report was written, Mr D had completed the DAPP, was reported to have engaged well and developed insight into how his own frustrations and communication could cause others, including the children, to be wary of him. The s7 reporter's recommendation was for contact to continue fortnightly, for the father to become more involved in the children's school, and both parents to complete a parenting course.
28. While it was noted to be positive that the father had attended the DAPP, it was noted that the relationship between the parents had deteriorated over time and they were now communicating only through solicitors.
29. Ms C was raising concerns about the time the children were spending with their father and that he was not caring for them in a child-centred way – telling jokes that were inappropriate, was not doing child-centred activities but taking them to work or to the pub, not giving medication when he should, that B said he was locked in a room and was hurt by Mr D, and that he was refusing to go and see his father. The father responded that he had become assertive with B who was shouting and being aggressive and he had picked him up and put him in the room next door whereupon B had climbed out of the window and walked back around to the window of the dining room. He said he had taken the children to the pub to watch rugby as they had wanted to watch it but he did not have a TV.
30. On **23 April 2019** Ms C sent an email passing information on 'just in case'. She said the boys told her they had watched a video at their father's of a naked man tied up by his feet being spanked. The rest of the email hints at concerns of sexual abuse perpetrated by the father – noting that B had been hitting Ms C's bottom hard, noting that B had not had any problems with his anal prolapse during the period he had not seen his father, alleging (for the first time I believe) that she was raped daily by the

father, that he had a high sex drive and a friend had complained about him being ‘inappropriate’, and notes from her diary in which she records the boys using overly sexual language, including B singing a song about putting a willy in his mouth.

31. The local authority investigated. B when prompted is reported to have said that when they were at his dad’s house they had been in bed in the morning, turned on the TV and seen a funny programme where a man was hanging by his feet, had no clothes on and you could see his butt and you had to guess if the act was true or false. B said they watched it and it was fake. A said he had no idea what B had been talking about, nor did Mr D. School had not identified any change in the children’s behaviour at school or picked up on the boys raising any concerns.
32. At this time B was still not seeing his father but said that he was going to go to see his dad next time because he thought his dad felt guilty about the way he behaved – he could tell because his dad gave him lots of hugs and kisses when he dropped A off. B’s description of the incident was *‘I was bad. Daddy got angry. Daddy hurt me. He was trying to stop me being unkind to him. I was only talking at the dinner table and Daddy took me out of the room and hurt me. He crossed my arms like this and pulled me tight.’* B describes running to his room and locking the door and hid under the bed. ... *‘Then I went into the living room and daddy was still being unkind, he locked me in the living room by myself so I climbed out of the window and went around the side of the house to get back in. Daddy said go away.’* Following B saying that he was going to see his dad next time, Ms P says A seemed to be a bit put out, and her reading of the situation was that he had enjoyed having his dad to himself.
33. At a TAF meeting on **14 June 2019** things seemed more positive. B was enjoying school, had been discharged from hospital following investigation into his migraines, his prolapsed bowel was regarded as being manageable. He had confirmed he wanted to see his dad, saying hopefully he had thought about his behaviour and wouldn’t behave like that again. The father had confirmed that he had removed B from the dinner table because he was being silly and he had been reminded several times to behave. A was reported to be enjoying school, and continued to be working at a level below his peers but not to any degree of concern.
34. In the family Court, the final order made on **18 July 2019** was made by consent and, broadly following the s7 reporter’s recommendations, provided for the children to spend time with their father every other Friday from after school until Sunday afternoon. The intention was that if contact progressed well over the next six months then the children could spend longer periods of time with their father building up to a week at a time with Mr D being able to take the children away. The issue of home-schooling and time out from school had been resolved by agreement.
35. On **30 August 2019** Ms C enrolled the children at [redacted] school, a private school.
36. A TAF meeting was held at [redacted] school on **18 September**. Mr R, head teacher of [redacted] school reported that he had spoken to teachers at all the boys’ previous three schools, noting that all raised concerns regarding the boys’ behaviour, frequent changes of school and noting concerns *‘about Ms C’s approach towards school and staff when issues occur.’* The boys said they were happy at their new school and had made friends. A said they had spent the weekend at their dad’s, had a barbeque and

met his new girlfriend *M*, and her daughter [*name redacted*], who was nine and funny and kind.

37. On her last visit Ms P asked the boys who they would talk to if they had worries, A said his mum and B said his new friends at school.
38. The case was closed to the local authority shortly thereafter.
39. At 1.15 p.m. on **Friday 28 February 2020** Ms C called the local authority's multi-agency safeguarding hub (MASH). She reported that she had called the police for a welfare check to Mr D on the last contact visit (17 February 2020) and that the boys were due to see their father this coming weekend but she has stopped contact and did not want the father to collect the children from school that afternoon. She reported that on the last visit A had hidden up a tree as the father was upset, angry and shouting and the police had been called out. Ms C again reported domestic abuse in the relationship in the past, and her concerns about the way he was treating the boys. She had spoken to *M*'s daughter's father and expressed her concerns, and reported he had said he would try to make sure his daughter would not be there when *M* saw Mr D.
40. The children did not go to contact that weekend and thereafter Ms C made her application to the Court.

Court process

41. On **20 March 2020** Ms C made her application for variation of the July 2019 order. In the summary of the application she recorded the following:

There is a long history of domestic abuse between applicant and respondent, because of this the children have previously been victims too. This situation was thought to have changed following a year long domestic abuse perpetrator programme that was ordered by Cafcass. Respondent was treating the children well for a while, but in the last six months they have disclosed he is often treating them 'like he did you mummy'. Our youngest son recently said he kicked me in the stomach and I couldn't breathe, corroborated by my elder child. They need a break from seeing him, as the fortnightly contact cycle was thought to be regularly triggering our youngest son [B's] PTSD. Behaviour in school got very bad around time of abuse, meetings with teachers. Since contact has stopped behaviour in school normalised.

42. The children were joined as parties on **29 April 2020**. The children's guardian was initially Emma Brown but the case was reallocated to Paul Sheffield about a month later.
43. On **15 May 2020** District Judge Matthews ordered disclosure from the local authority of their records and directed Ms C to file and serve within seven days the bundle from the previous proceedings, a copy of the original diagnosis of PTSD in respect of B, a report from CAMHS, and her statement.
44. The children were to have weekly WhatsApp video calls with their father.
45. Shortly after being appointed the children's guardian, Paul Sheffield made a referral to MASH (on **26 June 2020**) in respect of the allegation that B had been kicked in the stomach by his father. FH, local authority social worker, was assigned on **2 July 2020**

to carry out an assessment. It was noted that when Ms C called MASH on 28 February to report that she had stopped contact because A had hidden up a tree because his father had shouted at him, no mention had been made of any kicking incident. FH's report of what the boys had said was that A said their father had kicked B because he could not find his school uniform, but was not able to give more detail, and B had said that his father had put his boot on him when he was on the floor, but had not said he kicked him. FH reviewed the previous local authority intervention, noted that the boys had moved schools seven times, and three times within the most recent period of local authority involvement. She notes that when local authority involvement came to an end in October 2019 all was fine and neither boys were raising concerns about their father. FH reported that Ms C would make a disclosure, *'it was felt by professionals ... that [B] would use [his] mother's words and narrative, and repeat what [she] had said'*, and A would deny anything had happened.

46. Following the referral to MASH Ms C was invited to attend at a police station in respect of the allegations of rape and domestic abuse. Following investigation no further action was taken.
47. The children and family assessment dated **21 August 2020** concluded that there was no need for local authority involvement at this time, given that the parties were in Court, Cafcass was involved and although the children had raised concerns about their father, at the time the children were not seeing him.
48. At a hearing on **15 July 2020** DJ Matthews had appointed Dr Misch as an expert in the case to report on both parents and children. He also directed hair strand testing of the father in relation to alcohol use.
49. Dr Misch's report was dated **13 September 2020**. He concluded that none of the family members were suffering from a psychiatric disorder, but that B had been assessed by CAMHS in May 2020 to have possible PTSD and anxiety. He identified that both A and B would be stressed and adversely affected by the parental disagreements around contact and in his opinion, *'the most likely driver of both B's and A's emotional symptomatology is their exposure to the ongoing parental dispute, in particular, the implacable hostility from their mother to their father to which they have been chronically exposed.'* He described Ms C as not promoting a positive relationship between the boys and their father and to be entrenched in a position of alienation. He recommended that the boys remain living with their mother and for her to promote meaningful staying contact with their father. He described the boys as showing clear signs of being alienated from their father by their mother. He recommended that the parents and relevant members of the extended families met with him and the guardian at a clinical meeting, without lawyers present, but at Court so that any agreement reached could be considered by legal representatives and then presented to the Court.
50. At a hearing on **25 September** the Order records that both parties agreed to attend a meeting with Dr Misch and the guardian to discuss the progression of contact.
51. That meeting was held on **16 November**. It did not take place at Court. Dr Misch and Mr Sheffield wrote a letter the same day in which they recorded their shared opinion, as suggested in the meeting, that staying contact with Mr D was both safe and in the children's best interests. They wrote, *'we think it is vitally important that the children*

re-establish a trusting and meaningful relationship with their father as their current anxieties about their father are causing them significant harm.'

52. The letter set out proposals for a swift reintroduction of contact and asked the parents to indicate whether or not they agreed to it. The letter said, *'you need to be mindful that if meaningful staying contact is not re-established, that the Court may need to consider a change of residence for the children in line with the recommendations set out in the part 25 assessment, and with which the guardian agrees.'*
53. The proposals were for contact to start with parents meeting the children together (supported by family members) in a park the following week to show the children they were working collaboratively, to build up to a four hour visit a few days later, followed a week later by an overnight stay, repeated the following weekend and a longer period of time over the Christmas holidays, eventually settling to fortnightly weekend contact once the children were back at school.
54. Following receipt of the letter, Ms C called the police on **20 November 2020**. A referral was made to social services the same day and a further assessment carried out, this time by JR. Her summary of the reason for assessment is as follows:

A and B, your mother called the police as she'd received a letter from CAFCASS and a child psychologist advising that you should have 4 hours of contact with your father, with your mother present. The intention was to increase contact to overnights and your mum had to respond by 5pm that day. Your mother said she didn't feel it was appropriate for her to accompany you due to previous domestic abuse. Your mum shared that you don't want to see your dad and haven't seen him since February 2020. B, you told her that your dad always hurts you in some way. Your mum told the police that she doesn't intend to send you to see your dad this weekend. Your mum reported to the police her worries; that B your father kicked you in the stomach wearing steel toe capped boots and that you told her your father made you watch pornography. A, your mum was worried as you told her your dad pushed you off a trailer and shouted at you. Your mum told the police she keeps a record of the incidents, and talked about one of you having a burn on your face. There are no pictures of any injuries.

55. JR started the assessment on **23 November** and completed it on **15 December 2020**. She spoke with both the children and reviewed the history. Her conclusion was that the cause of concern for the children was the difficulties the parents were experiencing in sharing parental responsibility for them and the emotional impact this is having. Neither child had given her any specific information to raise any safeguarding concerns about their father and she concluded that there was no further role for social services, given that no additional concerns had been raised which were not already being addressed by the current family court proceedings.
56. Together with the children and parents she arranged for a slower reintroduction of contact than envisaged by Dr Misch and Paul Sheffield, starting on **5 December 2020**. The children were then to spend time with their father on alternate weekends with time gradually increasing so as to be a whole day by 17 January 2021 and overnight contact to start on 14 February 2021. Since December the children have been seeing their father every fortnight but overnight contact did not start in February, due to Ms C's concerns about the risk she considered their father posed to the boys.

57. In general Mr D reports that the time he has spent with the boys has gone well, Ms C continues to express significant concern about the safety of the boys in their father's care and says that their behaviour has deteriorated significantly as a consequence of their distress. She cited an occasion on Christmas Day 2020 that she says she had to call the police because A threatened her with a knife and an incident a week or so before where she says he threw a book at her. Directions were made for the police to give disclosure of bodycam footage and other records relating to the call out on 25 December but regrettably they have not complied with that request, saying the relevant material has been deleted.
58. On **10 February 2021** Ms C applied to the Court requesting a fact-finding hearing into the issues she had raised at the outset of proceedings, and seeking findings into two allegations; that Mr D had kicked B in the tummy with a steel toe capped boot and that Mr D had thrown A off a trailer. In addition she applied for an addendum report from Dr Misch.
59. At a hearing on **24 February 2021** District Judge Matthews refused Ms C's application for a separate fact-find but did give permission for her to seek findings in respect of the two allegations raised in her application. He gave permission for questions to be put to Dr Misch, and listed this final hearing, reallocating to a Circuit Judge.
60. It was recorded that the parents agreed the boys should spend one day a fortnight with their father pending the final hearing.
61. Ms C's application for permission to appeal the order was refused on the papers. The appeal was largely in respect of the drafting of the recitals. Ms C sought for the order to record that previous admissions of domestic abuse had been made, for FH to be the social worker giving evidence in place of JR, and for an additional allegation that A had run away from his father and hidden up a tree to be considered at the fact find. Following refusal of permission to appeal she did not seek an oral hearing, although the order did at paragraph 2 set out that she could make a written request for an oral hearing within 7 days.
62. On **13 May 2021** Ms C applied to withdraw her application on the basis that she said the children were now willing to stay overnight with their father, albeit this position was essentially reached under duress - in the sense that they understood that if they agreed to stay overnight the threat that they would be made to go and live with their father would reduce. I heard the application on **19 May**. It was made on the basis of an offer not a concluded agreement, and in my judgment it was not appropriate to give permission for the proceedings to be withdrawn at that point where there remained significant issues of fact between the parties, and questions about the effectiveness of any order the Court might make, where the underlying issues had not been investigated and considered by the Court.
63. I saw the parties for a pre-trial review on **28 May 2021**.
64. The guardian and her solicitor had spoken with the boys on **10 May 2021** and her advice to the Court was that they were indeed willing to stay the night with their father and any concerns raised by them were of a practical nature, around what they would be doing, where they would sleep etc. Given that this was consistent with Ms C's position

at that time was that the boys were willing to stay overnight with their father, I directed that the boys should stay with him for a night during half term week, before the final hearing.

Final hearing

65. On the morning of the first day of the final hearing (**14 June 2021**) Ms C requested that an additional witness statement prepared by her over the weekend be introduced in evidence. The statement contained details of the alleged rape in July 2016, and an allegation that while Mr D was participating in the DAPP, he had seriously assaulted his ex-partner by beating her up so severely while pregnant that she lost the baby.
66. Unquestionably it would have been better for these allegations to have been raised formally at an earlier stage, and for the same formal process that the magistrates in Gloucester had carried out to have taken place, so that the Court could consider a Scott schedule of allegations and the relevance of the allegations to the current issues. However, it is clear from the recitals on District Judge Matthews' order of 24 February that he did consider the necessity or otherwise of a fact-finding into issues that had arisen before the previous proceedings, and concluded that it was not so necessary.
67. On balance I decided it was not appropriate for me to revisit that decision on the morning of the final hearing. Ms C had not within these proceedings sought any other findings than the three in respect of the father's behaviour towards A and B. To give permission to Ms C at this stage of proceedings to raise previous issues of domestic abuse would be effectively to reset the proceedings back to the beginning, direct filing of Scott schedules, a further hearing to consider them, further witness statements and the possibility of further police disclosure, the direction that the ex-partner attend and give evidence. This would cause delay and uncertainty for the boys in proceedings that have already lasted for fifteen months and have caused significant stress and anxiety for both parents and children.
68. Given Mr D's previous admissions of domestic abuse, the Court will approach this application with practice direction 12J firmly in mind. While a fact-find into disputed allegations of abuse within the relationship may illuminate further, it was also noted that Ms C is accepting and has consistently advocated that the children should have a relationship with their father, providing they are safe in his care.

Parties' positions at final hearing

69. Ms C accepts the boys should have a relationship with their father but she regards him as posing a risk to them – on the basis that there have been two incidents where she says he has caused harm to the boys and there is therefore a risk of further harm. For that reason she does not consider overnight contact is safe. She proposes the boys spend four hours' direct contact with him every four weeks, and in the intervening fortnight to have a virtual meeting with him over Skype or similar. However, if the children were to express to her a wish to have overnight contact in future she says she would be supportive of it. Conversely, if the children expressed to her a wish to reduce contact, then she considers their wishes and feelings should be heeded and contact reduced. She does not consider there should be any change in arrangements for school holidays.

70. Ms C strongly rejects the conclusions of Dr Misch that the children's views of their father are influenced – whether consciously or unconsciously – by actions on her part. She says they are rooted in their own experiences of their father – both from being exposed to domestic abuse when the parents were together and when spending time with him. She invites the Court to make findings that Mr D did kick B in the stomach, that he did push A off a trailer or otherwise behave in a way that led A to run away from his father and hide up a tree, and to call his mother in a state of fear and panic.
71. Ms C asks the Court to make of its own motion a non-molestation order against Mr D, in particular preventing him from taking steps to find out her address or to come within a certain distance of her property should he discover it. She does not know the father's address but asks him to disclose it. Mr D asks that he be permitted to continue to keep his address confidential from Ms C but would agree not to take steps to try and discover her address nor to attend there should he discover it.
72. The father strongly denies that he poses any risk to his children. He accepts Dr Misch's analysis that the children's responses to him are caused by her failure to promote a positive relationship between the boys and their father, because she is entrenched in a position of alienation.
73. Mr D would like an order in terms in line with the guardian's recommendations for regular staying contact fortnightly overnight and for staying contact in the holidays – effectively a return to the terms of the order envisaged by the parties and approved by the Court in July 2019.
74. The guardian essentially accepts Dr Misch's conclusions but is most concerned by the continued conflict between the parents and its impact on the boys. She recommends certainty in the arrangements and she invites the Court to make a section 91(14) order restricting them both from making applications to the Court for a period of time without first obtaining the permission of the Court.

The law

Fact-finding

75. Extensive guidance is given to the Court by Macdonald J in the cases of Re P (sexual abuse (fact finding)) [2019] EWFC 27 and AS v TH (false allegations of abuse) [2016] EWHC 532 Fam. I have read both cases and take into account all that he says, but extract only some key paragraphs from each judgment below. From paragraphs 23 of the AS v TH case, Macdonald J says as follows:

Burden and standard of proof and evidence

*23. The burden of proving a fact is on the party asserting that fact. To prove the fact asserted that fact must be established on the balance of probabilities. The inherent probability or improbability of an event remains a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. As has been observed, "Common sense, not law, requires that in deciding this question regard should be had, to whatever extent appropriate, to inherent probabilities" (**Re B [2008] UKHL 35** at [15]).*

24. *The decision on whether the facts in issue have been proved to the requisite standard must be based on all of the available evidence and should have regard to the wide context of social, emotional, ethical and moral factors (A County Council v A Mother, A Father and X, Y and Z [2005] EWHC 31 (Fam)). Where the evidence of a child stands only as hearsay, the court weighing up that evidence has to take into account the fact that it was not subject to cross-examination (Re W (Children)(Abuse: Oral Evidence) [2010] 1 FLR 1485).*

25. *If a court concludes that a witness has lied about one matter, it does not follow that he or she has lied about everything. A witness may lie for many reasons, for example, out of shame, humiliation, misplaced loyalty, panic, fear, distress, confusion and emotional pressure (R v Lucas [1981] QB 720).*

26. *The court must not evaluate and assess the available evidence in separate compartments. Rather, regard must be had 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 has been made out on the balance of probabilities (Re T [2004] 2 FLR 838 at [33]).*

27. *There is no room for a finding by the court that something might have happened. The court may decide that it did or that it did not (Re B [2008] UKHL 35 at [2]). However, failure to find a fact proved on the balance of probabilities does not equate without more to a finding that the allegation is false (Re M (Children) [2013] EWCA Civ 388).*

28. *In principle the approach to fact finding in private family proceedings between parents should be the same as the approach in care proceedings. However, as Baroness Hale cautioned in Re B at [29]:*

"...there are specific risks to which the court must be alive. Allegations of abuse are not being made by a neutral and expert Local Authority which has nothing to gain by making them, but by a parent who is seeking to gain an advantage in the battle against the other parent. This does not mean that they are false but it does increase the risk of misinterpretation, exaggeration or downright fabrication."

29. *Within this context, it has long been recognised that care must be taken not to focus attention on statements made by the child at the expense of other evidence, particularly where allegations of abuse arise in the context of private law disputes. The Best Practice Guidance of June 1997 Handbook of Best Practice in Children Act Cases Section 4, Annex para (k) cautions that:*

"Any investigation which focuses attention on the statements of the child runs the risk of producing a false result if what the child says is unreliable or if the child's primary care taker is unreliable, particularly where the allegation emerges in bitterly contested section 8 proceedings."

76. *The burden of proof is on the party making the allegation, there is no burden on the party defending the allegation to prove the contrary. This is true whether it is for a matter such as sexual or physical abuse or parental alienation.*

77. A failure to find a fact proved on the balance of probabilities does not equate, without more, to a finding that the allegation is false (see *Re M (Children)* [2013] EWCA Civ 388). Having heard and considered the evidence, it is open to the Court to conclude that the evidence leaves it unsure whether it is more probable than not that the event occurred and accordingly, that the party who has the burden of proving that the event occurred has failed to discharge that burden (See *The Popi M Rhesa Shipping Co SA v. Edmunds, Rhesa Shipping Co SA v. Fenton Insurance Co Limited* [1985] 1WLR 948). The Supreme Court has made clear that whilst not routine, this outcome is permissible in cases relating to children. In *Re B (Care Proceedings; Standard of Proof)* [2008] 2 FLR 141 at [32], Baroness Hale stated that:

“In our legal system, if a Judge finds it more likely than not something did take place, then it is treated as having taken place. If he finds it more likely than not that it did not take place, then it is treated as not having taken place. He is not allowed to sit on the fence. He has to find for one side or the other. Sometimes the burden of proof will come to his 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 is able to make up his mind where the truth lies without needing to rely upon the burden of proof”.

78. When considering the evidence of the witnesses I must take care to identify those parts of their evidence which is part of their direct recollection, and those parts of their evidence where they are reporting what someone else has said, and to assess the relative weight of such evidence accordingly.

79. I must bear in mind the difficulty of analysing evidence, particularly if hearsay evidence, from a child. Frequently, there will be concerns that the child may have been influenced by other people when making allegations, particularly if they arise in the context of disputes between parents. Per Baker LJ, *Y and E (Children) (Sexual abuse allegations)*, *Re* [2019] EWCA Civ 206:

‘In most cases, there will be no physical evidence of sexual abuse, and the evidence will often consist only of statements made by the child. Evaluating that evidence can be extremely challenging, especially where the child is very young, and/or if, as in most cases, he or she is not called to give evidence in court and therefore not subjected to cross-examination. Frequently, there will be concerns that the child may have been influenced by other people when making the allegations, particularly if they arise in the context of disputes between parents. Unpicking what exactly the child said when and to whom, often through layers of hearsay, can be very difficult.’

80. At paragraph 259 of *Re P*, Macdonald J, gives guidance about hearsay evidence:

259. In family proceedings, evidence given in connection with the welfare of a child is admissible notwithstanding any rule relating to the law of hearsay (see the Children (Admissibility of Hearsay Evidence) Order 1993). The weight to be attached to a piece of hearsay evidence is a question for the court to decide (Re W (Fact Finding: Hearsay Evidence) [2014] 2 FLR 703). Within this context, a serious unsworn allegation may be accepted by the court provided it is evaluated against testimony on oath (Re H (Change of Care Plan) [1998] 1 FLR 193). It is very important to bear in mind at all times that the court is required to treat hearsay evidence anxiously and consider carefully the extent to which it can properly be relied upon (see R v B County Council Ex parte P [1991] 1 WLR 221).

260. In this case, these principles are thrown into particularly sharp relief in circumstances where none of the children who have made allegations of sexual abuse have given oral evidence at this hearing and been cross-examined on behalf of those against whom they level those allegations. Mr Bagchi and Ms Bains, citing the American jurist John Henry Wigmore, who observed that "Cross-examination is the greatest legal engine ever invented for the discovery of truth", remind the court that oral evidence given under cross-examination reflects the long-established common-law consensus that the best way of assessing the reliability of evidence is by confronting the witness (see *Carmarthenshire County Council v Y & Others* [2017] EWFC 36 at [8] per Mostyn J). Within this context, I remind myself that the Court of Appeal has made clear that where the evidence of a child stands only as hearsay, the court weighing up the evidence must consider the fact that it was not subject to cross-examination (*Re W* [2010] 1 FLR 1485). I make clear that I have done so.

261. In circumstances where, in this case, the allegations are comprised of hearsay evidence from children concerning (at least in respect of the children) events which are alleged to have occurred some years prior to the allegations being made, I also remind myself that a court considering the hearsay evidence of a child must consider not only what the child has said, but also the circumstances in which it was said (*R v B County Council, ex parte P* [1991] 1 FLR 470) and, again, that it has long been recognised that care must be taken not to focus attention on statements made by the child at the expense of other evidence (1997 Handbook of Best Practice in Children Act Cases).

81. Within Re P, Macdonald refers to psychological research about memory, guidance in respect of evaluating children's allegations and achieving best evidence from children and the need for caution. Earlier, at paragraph 6 of his judgment he says the following:

'More generally, human memory is not a single, simple system. What is remembered of an experience by a child or young person, will not be a complete picture akin to a photograph or CCTV recording, and will vary depending on the age at which the experience took place. What an adult may consider to be a key element of a remembered experience, and therefore key to assessing reliability of the memory, may not be significant from the child's perspective. The psychological processes involved in encoding, storage and retrieval of memories are susceptible to internal and external influences. With all this context, children's accounts can be affected by their level of functioning, their emotional state and the levels of suggestibility. It is possible for a child to 'remember' an event that has not in fact occurred, or it has not occurred precisely in the way remembered. The child's recollection of past experience can be influenced by the process of questioning the child.'

82. In the same case, Macdonald J refers to the 1991 Orkney Enquiry, and the difficulties of starting from a point that the 'child must be believed'. His comments are specifically in relation to allegations of sexual abuse but have general application:

"[15.22] "It is recommended as matter for guidance that all those involved in investigating allegations of child sexual abuse must keep an open mind and not fall into the trap of confusing the taking of what a child says seriously with believing what the child has said."

[15.23] The preservation of an open mind requires a concentration in listening with care to what a child says, absorbing all that is said and weighing the child's words objectively. A mind coloured by suspicion or a mind already moving towards a diagnosis can readily undervalue or ignore material that does not fit with the preconceived picture. Similarly material which does appear to fit may be over emphasised and highlighted in such a way as to distort the child's further account of the situation ... as much care should be given to assessing a denial as examining an allegation ... Where allegations are made by a child regarding sexual abuse those allegations should be treated seriously, they should not necessarily be accepted as true but should be examined and tested by whatever means are available before they are used for the basis of action."

83. Finally I remind myself that the evidence of the parents is very important and the Court must be able to form a clear assessment of their credibility and reliability. I further remind myself that credibility alone cannot decide this case and that, if a court concludes that a witness has lied about one matter, it does not follow that he or she has lied about everything.
84. Any findings of fact are for the Court to make based on the evidence before it. No weight should be given to the opinions of others about the credibility of a particular witness.

Application for child arrangements order

85. In determining Ms C's application for a variation to the existing order, **s.1(1) Children Act 1989** applies: the children's welfare must be the court's paramount consideration and the court's welfare assessment must be informed by an analysis of the factors in the welfare checklist under s.1(3).
86. Further, s.1(2A) provides a presumption that involvement of both parents in their children's lives after separation is in their children's best interests unless it is contrary to their welfare. Case law has emphasised that the Court must only stop contact between a child and a parent as a last resort. See for example, In Re C (A Child) (Suspension of Contact) [2011] EWCA Civ 521, [2011] 2 FLR 912 in which Munby LJ summarised the relevant ECHR case law as follows:
- "a) Contact between parent and child is a fundamental element of family life and is almost always in the interests of the child.*
- b) 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.*
- c) 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.*

d) The court should take a medium-term and long-term view and not accord excessive weight to what appear likely to be short-term or transient problems.

e) 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.

f) 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.”

87. In Re W (a child) [2012] EWCA 999, McFarlane LJ (now the President of the Family Division) referred to, *‘the definitive exposition of the relevant principles which apply in relation to issues of parental contact is to be found in the judgment of Sir Thomas Bingham MR in Re O (Contact: Imposition of Conditions) [1995] 2 FLR 124 at pages 128C to 130E. That substantial passage was helpfully and correctly summarised a year later in the Court of Appeal by Wall J (as he then was) in Re P (Contact: Supervision) [1996] 2 FLR 314 at page 328. Before turning to quote more fully from Sir Thomas Bingham’s judgment in relation to principles (1) and (2) it is useful to set out Wall J’s shorter summary:*

“1. Overriding all else, as provided by s 1(1) of the 1989 Act, the welfare of the child is the paramount consideration, and the court is concerned with the interests of the mother and the father only in so far as they bear on the welfare of the child.

2. It is almost always in the interests of a child whose parents are separated that he or she should have contact with the parent with whom the child is not living.

3. The court has power to enforce orders for contact, which it should not hesitate to exercise where it judges that it will overall promote the welfare of the child to do so.

4. Cases do, unhappily and infrequently but occasionally, arise in which a court is compelled to conclude that in existing circumstances an order for immediate direct contact should not be ordered, because so to order would injure the welfare of the child: see Re D (A Minor) (Contact) [1993] 1 FCR 964 at pp 971G–972A per Waite, LJ.

5. In cases in which, for whatever reason, direct contact cannot for the time being be ordered, it is ordinarily highly desirable that there should be indirect contact so that the child grows up knowing of the love and interest of the absent parent with whom, in due course, direct contact should be established.”

88. Where domestic abuse has occurred, **Practice Direction 12J of the Family Procedure Rules 2010** provides that the court must take into account a number of factors when considering whether to make a child arrangements order. Paragraphs 35- 37 provide as follows:

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

In the light of any findings of fact or admissions or where domestic abuse is otherwise 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. In particular, the court should in every case consider any harm which the child and the parent with whom the child is living has suffered as a consequence of that domestic abuse, and any harm which the child and the parent with whom the child is living is at risk of suffering, if a child arrangements order is made. The court should make an order for contact only if it is satisfied 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 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.*

89. In the case of *MS v MN* [2017] EWHC 324 (Fam) per Moor J an appeal was allowed against an order that a mother should make a child available for contact with a father who had been found to have perpetrated serious domestic violence upon the mother. In the course of his judgment, Moor J emphasises the need for the Court to consider Practice Direction 12J. He referred to comments of Wall J in the case of *Re M (contact: violent parent)* [1999] 2 FLR 321:

'Often in these cases where domestic violence has been found too little weight ... is given to the need for the father to change. It is often said that, notwithstanding the violence, the mother must nonetheless bring up the children with full knowledge in a positive image of their natural father and arrange for the children to be available for contact. Too often it seems to me the courts neglect the other side of that equation, which is that a father, like this father must demonstrate that he is a fit person to exercise contact; that he is not going to destabilise the family; that he is not going to upset the children and harm them emotionally.'

90. Moor J then referred to the case of *Re L (A child)(Contact: Domestic Violence) & Ors [2001] FLR 260*. This is a well-known case. It was one of four joined cases all involving a background of domestic violence. The Court had the benefit of a psychiatric report from two consultant psychiatrists, Dr Sturge and Dr Glaser, together with a report from the Children Act Sub-Committee of the Advisory Board on Family Law. In her judgment Lady Justice Butler-Sloss, who was President of the Family Division at that time, gave guidance as to the approach that should be taken. The path from this case to Practice Direction 12J is evident. At pages 272-273 of her judgment, she said:

‘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.’

Section 91(14) Children Act 1989

- 91. Section 91 (14) Children Act 1989** provides 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 the leave of the court’*.
- 92.** The court must balance the welfare of the child and the right of unrestricted access of the litigant to the court. The following are principles of general application (Re P (Section 91(14) Guidelines) (Residence and Religious Heritage) [1999] 2 FLR 573):
- a) The welfare of the child is paramount: s. 1 (1) applies.
 - b) The power is discretionary and all relevant factors must be weighed in the balance.
 - c) 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 on matters affecting his child.
 - d) It is generally a weapon of last resort in cases of repeated and unreasonable applications.
 - e) A restriction may be imposed where the welfare of the child requires it, but where there is no past history of making unreasonable applications.
 - f) The degree of restriction should be proportionate to the harm it is intended to avoid. *The making of these orders should always be exceptional and careful consideration in every case should be given to the duration of the order to see that by unnecessary extension it did not prejudice rights of access to the court.* Per Thorpe LJ in Re C (Litigant in Person: s. 91(14) Order) [2009] 2 FLR 1461 at [9].

93. Where there is no history of repeated and/or unreasonable applications, the Court should apply a two-stage test. First, the court must be satisfied 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; secondly, that there is a serious risk that, without the imposition of the restriction, the child or primary carers will be subject to unacceptable strain.

Non-molestation order

94. The test is found at section 42(5) of the Family Law Act 1996. The Court must have regard to, '*all the circumstances including the need to secure the health, safety and well-being of the applicant and any relevant child.*'

95. In deciding whether to exercise its discretion to make the order, the Court must consider three principles when considering whether to grant the relief sought:

- a. there must be evidence of molestation going on (*which term implies some quite deliberate conduct which is aimed at a high degree of harassment of the other party so as to justify the intervention of the courts.* C v C (non-molestation order: jurisdiction) [1990] 81 FLR 554;
- b. The applicant must need protection; and
- c. The judge must be satisfied that judicial intervention is required to control the respondent's behaviour.

Final hearing

96. The hearing took place remotely apart from the second day, which was the day the parents attended to give evidence in Court. The guardian and her barrister Mr Jeakings attended remotely, as did all other witnesses.

97. Both the parents represented themselves at the final hearing. Mr D was ably assisted by his McKenzie friend Mr Gill on the second day.

98. Following discussions at the pre-trial review Ms C had opted to put questions directly to Mr D rather than submitting a list of questions for me to read. She chose to ask her questions from behind a screen.

99. Mr D had submitted in advance a list of questions for Ms C and in the event I gave permission for Mr Gill to read them out so that Ms C was not questioned directly by Mr D. The parents were separated by a screen throughout the time they were in Court and given separate waiting rooms at Court so they did not encounter one another.

100. The bundle ran to over a thousand pages. Ms C cross-examined all witnesses thoroughly and extremely competently. Mr D asked fewer questions as his position was effectively aligned with the guardian's. All parties and the Court were greatly assisted by Mr Jeakings who shepherded us round the bundle most efficiently.

101. Over the course of three days I heard evidence from Dr Misch, from each of the parents, the two social workers who had carried out assessments, Paul Sheffield the previous guardian, and the current guardian Ms Palayiwa. I heard closing submissions on the fourth day and reserved this judgment to be sent out the following Tuesday morning by e-mail.

Evidence

Dr Misch

102. Ms C robustly challenged Dr Misch in a number of different areas. She noted that he retired from NHS practice in 1998, but he explained that he has continued to work professionally as a consultant psychiatrist ever since, still seeing children in a clinical environment and making assessments. Over recent years he told me he has been asked to advise more frequently in cases where ‘parental alienation’ is alleged but I was not satisfied that it had been established that he has any predisposition or tendency to describe parental alienation as the driving factor in all or even a majority of his cases.
103. He acknowledged that the term ‘parental alienation’ when connected to ‘parental alienation syndrome’ described by the American clinician Gardner was now largely discredited, but maintained that it remained valid for him to refer to the behaviours he identified in this case as ‘alienating’.
104. It was put to Dr Misch that he had improperly formed a view that the two key allegations in the case – that B had been kicked and that A had been kicked off a trailer – were not proved, and that his recommendations were made on that basis. It was put to him that he should have considered the other side of the coin – if their allegations were found to be true, would that not be a justification for them to have rejected their father? Dr Misch conceded that he could have set this out in his report, but ultimately said that his task was to come to a conclusion, to give a professional opinion, having regard to all the evidence before him, and that his opinion was that it was safe for the boys to spend time with their father, and that the boys’ reluctance to see him was because they had picked up on the dispute between their parents, in particular Ms C’s entrenched hostility to Mr D.
105. Ms C described the letter of 16 November as an ultimatum. She said the observation that if contact did not proceed in line with the recommendations then the Court may consider a change of residence came across as a threat. She reminded me that at the Court hearing on 25 September in which it was decided to have the clinical meeting, she had been the only woman in a room of men, that it had been intimidating and was not appropriate for her to be told she had to attend a meeting with Mr D there, let alone meet with him and the children in a park. I think there is some force in what she says, although I do also note that it was noted on the order that all parties agreed to it taking place and that the parties were expressly invited to take a family member with them; Ms C’s father attended with her, Mr D brought his partner. I would agree that

given the short time to respond to the letter, the mention of a change of residence was clumsy and could well have been interpreted by her as a means of exerting undue pressure. It is to the credit of JR (social worker) that she was able to find a way through the difficulties and negotiate with the parents a staged process of reunification once she became involved.

106. Dr Misch was extensively cross-examined over the course of a day. It is my role to make findings and come to conclusions based on an assessment of all the evidence, of which Dr Misch's report forms one part. He has given an opinion and it is my task to evaluate his opinion both on its own but also in the light of all the other evidence that I have read and heard.

107. On its own, I did not find the report to be biased as was suggested. I found that he had approached his report with an open mind, he had not prejudged the outcome. When he discussed a framework for reintroducing contact he was proposing a pattern of rapid reintroduction of contact that he gave evidence had worked before in cases he identified as similar and in circumstances where neither he, nor the guardian and social work professionals had identified safeguarding issues and Ms C's stated position to the court was that she was willing to take part in the meeting and that she wished the children to be spending time with their father. I do not consider that coming to the meeting with such a framework in mind meant that Dr Misch's whole approach to the assessment was to decide the outcome or type of case beforehand.

108. Dr Misch had reviewed all the information provided to him, including having spent six hours with Ms C and the children. He used his experience and professional expertise to assess the children's presentation. It is not his role to investigate factual matters to the extent it was suggested by Ms C that he should; for example by contacting more friends and relatives.

FH

109. FH gave a brief statement describing her involvement with the assessment in July and August 2020. There is no reason to challenge the notes of her conversations with the children. Her review of the case was thorough, and she explained the reasons for her conclusions. She described having a difficult discussion with Mr Sheffield, because she said he did not initially agree with her preliminary view that the case should be closed to social services, but ultimately that was the decision that was taken and Mr Sheffield had in fact written to her managers to commend her for the quality of her report. There is in my judgment no substance at all to Ms C's suggestion that FH must have produced an initial draft and had submitted to pressure put on her by Mr Sheffield to alter it. I am quite satisfied having heard both FH and Mr Sheffield give evidence that FH's report and the social work analysis within it is entirely her own, based on a thorough assessment of all relevant evidence.

JR

110. JR met with the boys just over six months ago and had a good recollection of the meeting. She described clearly to me the conversations she had with them, how the boys' presented and the reasons for the conclusions she had reached in her analysis. She recalled that Ms C seemed very sensitive and caring to the boys, something noted by all other professionals, she said perhaps a bit over sensitive. She said that very early on B said his dad hurts him and it seemed almost as though he had been programmed to say it, so she thought better to play a game for a little bit and to see if discussions came more naturally later on, which they did. When she asked B how his father hurt him he said he didn't know.

111. I was impressed by JR as a witness and the report she wrote which demonstrated to me that she had sensitively explored the issues for the children in a holistic way and very much from a way that was trying to understand their experiences. She said in her report:

The main concern for A and B is the emotional impact of the parental acrimony, court proceedings and allegations of harm. A and B have clearly voiced they are scared of their father; it is unclear how much of this opinion is them, versus their mothers influence, but regardless, they are sharing fear of being hurt. They have been seen and spoken to by social workers, teachers, CAFCASS, a psychiatrist, which perhaps reinforced their feelings toward their father as they have shared feeling angry following speaking to professionals. Both parents are willing to move forwards positively, but must also do so in the best interests of A and B. It is my opinion that contact would be a positive thing, as the boys shared lots of things they value about their father, however if A or B feel forced or that it is too much too soon, they may struggle to accept the reintegration of Mr D back into their life. I see A and B likely struggling to negotiate the terms of what this will look like practically. I also feel it will be important for A and B to continue to talk to staff at school so that they can share their feelings with people outside of each family home.

Paul Sheffield

112. Mr Sheffield explained the reasons for making the referral to MASH both in Oxfordshire and [previous county - redacted], his attendance at a MASH meeting in [previous county - redacted] and described the conversations he had with FH. I accept it is odd that in June 2020 he gave Ms C an incorrect email address – one which suggested he worked for the local authority. He was presumably around that time applying to work for the local authority as he has now been working for them since January 2021, but there is no evidence at all to support Ms C's assertion that he was in fact working for the local authority at the same time as Cafcass in the summer of 2020. I accept his evidence that he made a mistake, and I do not find anything sinister about it. I do not find there is anything amiss in him having moved from Cafcass to the employment of the local authority or that it could have caused any conflict of interest for him or any professional involved in this case.

113. I accept his description, which chimes with that of FH, of their conversation about her preliminary views. I accept that the conversation took place at a point in time when the majority of her information had come only from Ms C, and that he suggested to FH that it would be important for her to review all the evidence in the case and to look at the whole picture before coming to her final opinion.
114. Even though he has not prepared a report in this case, he had a good recollection for and understanding of the issues. The position statements prepared on his behalf and in his oral evidence to me demonstrated to me that he had a good grasp of the complexities of the case, and he clearly articulated relevant concerns and the evidence base for them. His analysis is broadly consistent with that of the current guardian and social work professionals.

Ms C

115. Ms C had carried out meticulous research, had engaged in extensive work to contact various individuals and agencies for information and opinions, and made numerous freedom of information/subject access requests. Her questions for cross-examination were well prepared, clearly structured around relevant topics and identified clearly the areas of challenge. She put questions fearlessly; if she was intimidated by any witness or by the process she did not show it, but got her point across clearly and robustly. She questioned and challenged the process and professionals appropriately, not accepting anything at face value but testing and questioning if things were seen or done a certain way, whether that was the right approach in the particular circumstances of the case. She articulated precisely and clearly her parenting style, and described hers and the children's personality and values. There is no question that she loves her sons deeply and that they have a strong and close bond.
116. She readily accused others of coming to the situation with a preconceived, blinkered or fixed view, but it did ultimately seem to me that her own perspective was itself very narrow. Where there was a difference in perspective or view between a professional and her, her response has tended to be to robustly defend her own point of view, to assert that the professional is wrong, sometimes to issue a formal complaint about them, and to continue to repeat with great certainty her own analysis and assessment of the situation as correct.
117. She was unremittingly negative about Mr D. Whether asking questions of others or giving her own evidence, she almost invariably expanded sentences to highlight additional facets of what she regarded as his shortcomings as a father, and as a man. By highlighting the Court might take note that the children chose to call him [by his first name] from an early age, she seemed to the Court to be implying that they did not connect to him as their father in some way. She made clear that she did not regard his word as credible on any matter at all. She accused him of a range of things

for which there was no evidence before the Court; being an alcoholic, regularly misusing drugs, driving under the influence of alcohol, driving too fast with the children in the car.

118. The burden of proving a fact rests on the party asserting it and to that extent there is a responsibility on Ms C to put the evidence before the Court to support her assertion that the children are not safe in their father's care. However, in this case my concern was that Ms C has been unable to accept the weight of evidence from professionals, from the children themselves and from contemporaneous records, and has regarded her duty to the children to be one of finding more and more evidence to counter what is there. At a number of points she described what the children had said to her as being 'not enough' to enable a decision to be made to stop contact (*'saying daddy hurts me was not enough telling me isn't enough, they need to tell a teacher ...'*) The allegations of abuse of father's ex-partner had been investigated by Cafcass and the police, but it was Ms C who told me that in response to advice from her father she decided to contact her directly and to ask her about her experiences for the benefit of the Court.

119. I do not find to the standard of a balance of probabilities that Ms C has been overtly coaching her children to make allegations. However, having regard to all the evidence I have seen and heard there is in my judgment a wealth of evidence that by what she has said and done, she has undermined Mr D as a parent and this has had a negative effect on the children's relationship with him. I find that she has done this by instilling a sense of insecurity in the children about him, by presenting herself to them as their place of safety and as the only person they can really turn to in need, and to present their father as a danger and a threat. In particular:

- (i) The number of unilateral changes of school without consultation with the father have undermined his parental responsibility;
- (ii) She would appear to have excessively quizzed the children about their visits to their father. She described to me lots of details which she could only have obtained from asking a large number of questions about what had happened during the times they spent with their father. She told me that she found it impossible not to share her involuntary emotional reactions with her children and given she reported both to professionals and to me these details in order to present evidence of shortcomings in the way Mr D had taken care of the children, there has to be a risk that her negative responses were also conveyed to the children;
- (iii) If an event that could reflect badly on the father or there was room for criticism she would appear always to have chosen that interpretation without further enquiry or provided her own explanation. For example, when B told her about being locked in a room, A said that B had been being cheeky. Ms C does not appear to have spoken to the father, her co-parent, to discover his version of events, but appears to

have indicated to B that he would be right to think that it was his father who had been ‘unkind’ and ‘mean’ and that he would be justified in not wanting to see him, unless and until his father had reflected on his behaviour. Of course she does not need to accept without enquiry Mr D’s version of events, but it is undermining of Mr D’s parental authority not even to enquire;

- (iv) She has shared information with them about her experiences with the father during the relationship that has created or reinforced in them that they should be fearful of him. For example B telling Dr Misch that his mum had told him his father had beat her up (it is my finding on the balance of probabilities that Ms C had indeed told B this);
- (v) In her descriptions to me of conversations she had with the children in which she suggested that she had been reassuring the children, quite the opposite impression was given. She seemed to have said numerous times (I paraphrase), well I’m sure yes he did hit you but maybe it didn’t hurt so much or you were brave or he won’t hurt you so much the next time, or yes it may well be frightening to go to your father’s, but she would provide a phone so that they could check in with her twice a day or call the police or ChildLine if they felt unsafe;
- (vi) I do agree with Dr Misch’s description of her hostility towards the father to be entrenched. She accepted that there were times she had expressed directly negative views about the father to the children (for example when she said she was disappointed to hear of what they had done with their father and said so – ‘if I didn’t see you regularly I would have made picnics and climbed mountains’ – implying that their father did not value the time they spent together in the same way that she valued and made the time she spent with her children fun). More generally it may be that she is not aware of it and does not always say such negative things, but her hostility and relentlessly negative view of Mr D came across vehemently and clearly throughout the proceedings before me. In all the circumstances, I conclude, as Dr Misch did, that the children have picked up on it and been influenced by it;
- (vii) Calling the police when she was feeling worried about the children in their father’s care rather than contacting him as a co-parent to ask what was happening and whether the children were ok. This again undermines the father as a co-parent, escalates a situation for the children rather than diffuses it, shows the children a complete lack of trust in their father to take care of them;
- (viii) She has not shared information with the father about significant events that have happened to the children which would help him to understand what is going on with them and to enable them to co-parent together. This would appear to be the case with regard to their education, health and welfare. For example, he says that he only found out that she called the police on Christmas day when B threatened her with a knife in these proceedings, similarly about the earlier incident when she says

he threw a book at her face. Mr D said he would also like to hear about good news and positive things about the children;

- (ix) She has created an environment for her children in which she suggests that they can trust and confide only in her. The close relationship between her and the children is observed by all professionals and her sensitivity to their wishes and feelings is of course to be valued. However, if true, her description of her conversations with B in which she reported he said that he would only tell her the details of being kicked in the stomach if she promised not to tell anybody else was of some concern to me, as it appeared that she puts the need to be seen as B's protector and confidante first and foremost before the need to alert safeguarding authorities. She did not ever make a referral to MASH specifically about the kicking, it was Mr Sheffield who did after he was assigned as guardian in June;
- (x) This appears to have created in the children an idea they shared with JR which is consistent with Ms C's view repeated to me, that agencies such as the police, social services and the family Court are not to be trusted and will do nothing, so she is the only one they can really turn to. For example, she said to Ms P that the children did not want to see her at school anymore and then that they regarded home as their only 'place of safety'. If this is what the children believe, it is likely to make them more aligned to their mother, and more fearful of spending time with their father.

Mr D

120. Mr D was cross-examined extensively by Ms C.

121. In general he came across as straightforward and truthful. He had admitted a number of things that did not cast him in a particularly good light as a parent; telling inappropriate jokes in front of the children, being late to pick up, on one occasion dropping them back to their mother's without checking she was there to receive them, sometimes being snappy and irritable with them, and finding their behaviour difficult to manage. He accepted that the hair strand tests had revealed alcohol use in excess of what is recommended over the relevant period, but denied that this illustrated any dependency on alcohol and asserted that the results were consistent with his disclosed use of two to three alcoholic drinks a day. I accept his account, consistent with the position statement filed at the relevant hearing before District Judge Matthews, that he had said he worked long hours and did not have time to be an alcoholic. Ms C asserted that in fact he had said he did not have time to drink at all and therefore he must have been lying to the Court - because it later transpired that he had used alcohol and in excess of recommended levels of alcohol consumption during the period tested. She did not have a contemporaneous note to support her own recollection.

122. He accepted that during the parents' relationship there had been domestic abuse, that the children had been exposed to it and that this had caused them harm. He

maintained, as he did in the previous proceedings, that this abuse was in the context of a toxic and volatile relationship in which the parties both had frequent arguments which often escalated and became physical. There was an element I thought of him suggesting that Ms C had ‘pushed his buttons’ causing responses that he later regretted, rather than being able to accept that in fact it was his inability to manage his responses and in particular his difficulty with managing his anger that was an essential element of what took place. There is further evidence for this in the report from the counsellor who he saw for a period of three years towards the end of the relationship and the reports from the DAPP. Both clearly identify a significant issue with anger and I thought Mr D did seem to somewhat minimise the extent of the difficulties he clearly had at the time.

123. He has not been given any opportunity to respond to Ms C’s allegation about assaulting his ex-partner and I make no findings about this. Mr D said that there was no danger of domestic abuse arising in his current relationship because it was a loving, stable relationship in which he could not see any difficulties arising. Ms C suggested he had said this about both his relationship with her in the first instance and then with his ex-partner, and that had not proved to be the case. She maintained that there remains a risk of domestic abuse in Mr D’s current relationship because he has not sufficiently demonstrated a change in his behaviours from the time they were together.

124. The report of the DAPP completed between 2018 and 2019 is positive. There is no evidence of any current concerns about Mr D’s current relationship. Due to the number of referrals to social services, (from Paul Sheffield, and as I understand it via information given by Ms C to M’s ex-partner and father of her daughter), there has been an exploration and investigation into Mr D and his partner M. There have been no reports to the police, no concerns raised by the children, no concerns raised by their school, nor by M’s daughter or her school.

125. While Mr D readily admitted certain things, on quite a number of occasions he said that he did not recall things which Ms C expected him to be able to recall. The impression he gave was that he was somewhat guarded but also that he felt that whatever he said might be twisted or turned and used against him. In his witness statement and in his oral evidence he expressed frustration that while he (like others) found the boys’ behaviour difficult at times, he felt that he was restricted in how to manage it because of a fear that he would be criticised or accused for the manner in which he had dealt with it:

What concerns me most is the more the children are around their mother and fed lies the harder it will be to rebuild a relationship with them. The last contact it was obvious they were both aware of how precarious the situation is, their behaviour was not good, burping and farting and laughing at me when told to stop and their language is terrible. I did not get angry but did say firmly that that kind of behaviours is not welcome in this house. It is a very difficult situation to not be allowed to help our boys grow into decent young men because I am worried what the next allegations will be.

126. His description of the way he had disciplined B when he had been misbehaving at the dinner table seemed to me to be well within the range of what a reasonable parent might do.
127. When asked about her approach to discipline, Ms C described a ‘non-violent communication approach’ that was based on her practice within the Montessori teaching school. She said she did not use the word reprimand and her approach was one to empathise with the child, for example by first observing a child’s behaviour, then showing empathy for their feelings (I can see you are feeling angry you are hitting a toy with a stick), and then making a request to stop the behaviour, at the same time explaining what might be the consequences of the behaviour continuing (i.e. I need to you to stop hitting that toy car with a stick so that you don’t break it).
128. Ms C defended her methods as effective and empathetic and she is of course entitled to parent her children in line with her beliefs and values. The difficulty is that she seemed to be very ready to identify Mr D’s perhaps more conventional parenting style as violent or abusive, where I am not persuaded that there is evidence of the same. Having had regard to all the evidence I find that the boys have developed a readiness to criticise their father’s parenting, to describe being told off by him as him being unkind or mean, or else on his evidence, which was not challenged, to have laughed at him and to have continued with silly behaviour long after he had asked them to stop, or else to have run away from him when told off. I find this is because their mother has been critical of Mr D’s parenting directly to the boys and has also influenced their behaviour towards him because of the way she has undermined his authority as her co-parent in the ways I have previously described.

Ruth Palayiwa

129. Ms Palayiwa has been the children’s guardian since November 2020 and has reviewed information on the Cafcass file from the two previous guardians. Ms C praised her report for its clarity and thoroughness. Ms Palayiwa has met with the children three times and has carried out a thorough appraisal of all the local authority and other disclosure in the case.
130. The report sets out the content of her conversations with A and B clearly, thus forming a significant part of the evidence base for her conclusions, but which also take into account the whole range of the evidence in this case. The guardian’s conclusions are well-reasoned and she sets out the evidence base upon which she relies. She notes that in the period of time since contact was restarted in December 2020 no issues have arisen and the boys appear to feel more reassured. The most recent overnight stay was described by B as being ‘quite cool’, Mr D described a fun weekend where they made a fire out of an old washing machine, toasted marshmallows, the boys read books to him and they were able to snuggle up in bed in the morning. Ms Palayiwa’s

recommendations are in line with those of Dr Misch, Paul Sheffield, and of the section 7 reporter in the previous proceedings, with JR who supported the parents to formulate a contact plan in December, and with Ms P, who spent extensive time supporting the family in 2018 to 2019.

Conclusions re fact-finding

131. It is Ms C's case that the reason the boys should not be staying overnight with their father is because he poses a direct risk to them. She relies upon two incidents where she says he caused them direct harm and which led to her making the decision, supported by professionals, that it was not safe for the boys to spend time with her father.

132. The allegations of previous domestic abuse are relied upon by her to show a propensity to violence and loss of temper, and therefore she would say to make it more likely than not that he has caused harm to his children, but it is these two specific allegations upon which she relies. She says the boys' experience of their father as a result of these two incidents that has led to them rejecting him, and that they are justified in doing so.

(i) Allegation that Mr D kicked B with a steel-toe-capped boot;

133. The only details about this incident have come from Ms C. B's and A's accounts have not been consistent and have been in very general terms.

134. Ms C told me that as a teacher she knew how to respond when children made allegations. However, she also told me that she was a person who wore her heart on her sleeve and that she could not prevent her face from showing her reactions when her children told her things, there was only so much she could conceal from them. This means that B would not have been speaking to a person who was receiving information in a neutral way.

135. She appears thereafter to have had a number of conversations with him thereafter. She described that after his initial report the information came out *'drip by drip'* information, in circumstances where she would say *'don't worry you are safe'* and this *'allowed him to open up more'*. She described him providing details that gradually over time became more dramatic – his father hit him with a boot, later that it hurt, later that he couldn't breathe, later still that at the time he had felt he would never be able to breathe again. She said that she did ask questions – not leading ones – but questions like *'where was that'*, *'how did it make you feel'*. She told me that *'90% of what he said was voluntary'*.

136. In my judgment this manner of questioning has from the outset led to a danger that Ms C approached this, as Macdonald J said in Re P, from a starting point that confused taking what a child says seriously with believing what he has said, or has fallen into the error of hearing only what fit with her notion of what had happened. In the circumstances she cannot be regarded as an objective witness:

'The preservation of an open mind requires a concentration in listening with care to what a child says, absorbing all that is said and weighing the child's words objectively. A mind coloured by suspicion or a mind already moving towards a diagnosis can readily undervalue or ignore material that does not fit with the preconceived picture. Similarly material which does appear to fit may be over emphasised and highlighted in such a way as to distort the child's further account of the situation ... as much care should be given to assessing a denial as examining an allegation ...'

137. Ms C has been very ready to inform social services, police and school of even very minor issues that have she has suggested are matters of concern. If she had been told by B on or shortly after 17 February 2020 that his father had kicked him in the stomach, I consider that she would have reported it. In Court she told me that she promised B not to say anything about it to professionals in order to secure his trust in her and to get him to open up and share more details. This is not something mentioned in her witness statement, nor in the local authority's report. That she took B to the doctor on 12 February reporting he had said that his father had hurt him, is more consistent with her readily sharing what he said with professionals, and is not consistent, as she later suggested, with her having made a promise following him saying that to her, that she would not tell anyone at all. She has told me and professionals that in early February she had concerns about the boys going to their father's but did not feel there was 'enough' to make a conclusive decision about it. Even on her case after she had been told by B of the increasingly concerning details, she never did report it to MASH, it was Mr Sheffield who made the referral in June.
138. B and A have been spoken to by a number of different professionals, all of whom have found the boys engaging, forthcoming, chatty, polite and straightforward in their manner, and all of whom have taken a careful record of the conversations. In not one of these conversations have B or A given any information that could lead the Court to conclude to the standard of a balance of probabilities that there was ever an occasion when the father has kicked B hard in the stomach in the way Ms C asserts.
139. B said to FH that his dad had put a boot on him when he was lying down – this is very different from a kicking. It is conceivable that someone putting their foot on their child's tummy could be an act of abuse, but that does not appear to be what B was describing to FH. A did tell her that Mr D had kicked B but did not give any details.
140. JR said B seemed to feel he had to say something very early on in the conversation about his father hurting him but then gave no details about it.
141. The wider context, I find, is a situation in which the boys have over time been telling their mother about what they have done when in their father's care, and been met with a response consistent with their mother's deeply negative view of Mr D. She is deeply mistrustful of his ability to parent her boys as she would wish them to be parented, and I find that she has communicated that mistrust to her boys. In my judgement this has created a situation in which their descriptions of their father being unkind, or not nice, or frightening, or having kicked them or pushed them, must be treated with some caution, because there is a risk that they have come to interpret perfectly ordinary behaviours from him as abusive or a violent or unkind or non-empathetic form of parenting, as their mother appears to do.

142. It was instructive to read accounts given by B to the guardian about the time the boys were with their father over May/June half term. B said that his father had got 'stressy' and 'angry' on a few occasions, once when he and his brother had been playfighting with sticks and his father had picked him up, taken him away from A and hugged him. The guardian asked what B had perceived as his dad being angry and A had said *'I think he did it because he thought me and A might hurt ourselves, when he picked me up he did it in a nice way and then hugged me I guess to make me feel better about it.'* B then said his dad had become annoyed with him when he had walked ahead of him at the quarry, in areas which were really steep. In conversation with the guardian B appeared to understand it was necessary for parents to put in boundaries to make sure their children were safe. The guardian says she told B that it sounded to her as though his father was trying to make sure he did not get hurt rather than being mean to him and B agreed with this. I contrast this with the descriptions given by B and his mother of the time in May 2020 when he was apparently being silly or cheeky at the dinner table, then ran away to hide, then his father put him in a room and he climbed out of the window. The conclusion reached by his mother and subsequently B, was that this was an instance of Mr D being unkind and thereafter B's mother supported him in not having contact with his father for six weeks until his father had reflected on his behaviour and could show that he could change.

143. Having had regard to all the evidence I have heard and read, I am not satisfied that this allegation is proved to a balance of probabilities. I do not find that the father has kicked B in the stomach, whether with a steel-toe-capped boot or not.

(ii) Allegation that the father pushed A off a trailer

144. This allegation has changed a great deal over time.

145. There does seem to be some consensus between Mr D and the boys that there was a time when the father was pulling a trailer with logs on it, A was on the trailer and his father shouted at him to get off. There is no evidence anywhere to support Ms C's previous assertion that there was a time when A was pushed off a trailer by his father or anybody else. When it was put to Ms C in cross-examination that the boys had not reported any such thing to any professional or to school, her response was to say that a complaint had been made to the independent schools inspectorate about the school, for not having a sufficiently robust safeguarding policy. When it was put to her that there was no report of A saying this to FH, her response was to say that it was her belief that FH's report had been tampered with through the influence of Paul Sheffield, a conclusion that I reject.

146. In cross-examination Ms C accepted that she was not there, and could not know whether A had been pushed off a trailer or not, she said that she believed her children, but there is no evidence of either of them having said this to her. So it is difficult to identify the reasons that her conviction that this happened was so firm.

147. Ms C suggested that the question of the trailer was really a distraction and what was significant was that some kind of event had occurred that led A to run away from his father, to climb high up a tree and hide so that he could call her. She invites the Court to find that because in her judgement the situation required the police to be called,

her son must have been terrified, and therefore some incident must have occurred to have justified his fear, and therefore this must have been an abusive incident at the hands of his father.

148. Having regard to all the evidence, in particular noting that despite having regular interactions with teachers who were monitoring the boys' behaviour closely and giving them additional support, with social workers, including FH and JR who were specifically assigned to investigate allegations of abuse, the boys have not made any allegations that are consistent with their mother's interpretation of events.
149. The wider context shows Ms C's concerns growing over time, of her having called the police out for a welfare check when the children did not answer the phone because – their father says – they were watching a film, causing Mr D to have to drive the boys to a police station, and the next weekend suggesting to the boys that they would need to check in with her at 12pm and 6pm both days, and providing them with a phone specifically for the purpose of calling her.
150. On a balance of probabilities I find that the more likely explanation for A's call to his mother was a time when he had been told off by his father. Mr D told me that he does recall an occasion when he was upstairs in the loo, the boys were fighting and he shouted down at them to stop fighting, whereupon A ran off and climbed an apple tree in the garden. Mr D was with the boys and is the more reliable witness compared to Ms C who was not there, and who has a tendency to interpret events through a lens that sees Mr D as an abuser and an aggressor at every turn.
151. For all these reasons the allegation about the trailer or an abusive incident causing A to run and hide up a very tall tree is not proved.
152. My conclusion is that Mr D does not present a risk of physical or emotional harm to his children. I do not find that there has been any incident that occurred while the boys were in his care that would justify their rejecting him as it is suggested by Ms C that they have.
153. For the avoidance of doubt, I make no findings in respect of the alleged showing of a pornographic video, nor that Mr D's alcohol use is such that it would interfere with his capacity to parent his children. Mr D admitted that he had used cocaine around twice a year but there is no evidence to support any finding that he misuses drugs on a regular basis or in any way that would prevent him from parenting his children.
154. There is no evidence to support the assertion made that Mr D is a careless or reckless driver or drives under the influence of alcohol.
155. No findings are made in respect of the allegations in respect of domestic abuse against his ex-partner for the reasons given.
156. There is no evidence of a current risk of domestic abuse in Mr D's relationship with *M*.

Conclusions on welfare

157. I turn now to consider the applications before the Court with regard to the welfare checklist at section 1(3) of the Children Act 1989 and practice direction 12J of the Family Procedure Rules 2010.

(a) the ascertainable wishes and feelings of the children concerned (considered in the light of their age and understanding)

158. There has been some ambivalence from the boys but in general they have consistently communicated to a number of professionals that they would like to spend time with their father although they are 'cautious' or 'wary'. Throughout the long involvement of professionals in their lives they have described positive things about the time they spend with their father, they have said they like his partner and her daughter. They like telling jokes and riddles with him, enjoy going to his yard and riding on quad bikes or seeing trees felled, or making bonfires. They like reading to him, snuggling up and watching DVDs. They have both expressed a worry not to hurt his feelings if he knew they had said they didn't want to stay overnight, which is indicative not of children who are alienated, but children who care about their father and his feelings. This is in my judgement more likely than that they are scared of him and what he might do to them if they said they didn't want to go, which interpretation is not based on any rational appraisal of the evidence.

(b) their physical, emotional and educational needs;

159. The boys both need extra support at school to manage their behaviour and A has some additional support around his learning. I have seen a note within B's general practitioner records raising a query about a diagnosis of PTSD, and understand that CAMHS had raised it as a possibility, but I have not seen any other evidence to support that, and Dr Misch, the consultant child and adolescent psychiatric expert in this case has not made a diagnosis of that or any other psychiatric condition in either child.

160. There is overwhelming evidence that the boys have been and continue to be impacted emotionally by the continuing conflict between their parents. If this continues they are at risk of lasting psychological and emotional damage. They need the security to know that their parents can function together to make basic arrangements for them, and they need to be allowed to be children, who do not have to take responsibility to reassure one parent about the other, to be informants, or to make decisions about whether or not they see another parent for themselves. They should be allowed to go to school and learn and play with friends and build relationships with teachers on their own terms, and not feel the pressures of conflicts at home travel with them into their school lives.

161. They need their parents to keep them safe and they need to feel safe and secure in their parents' care, but they also need to understand that sometimes their parents and other adults need to set clear, consistent boundaries around their behaviour in order to keep them safe and that being told off is not abusive or unkind, and that if they repeatedly ignore a boundary that is being set, then an adult may intervene to enforce that boundary so that they can be kept physically or emotionally safe.

(c) the likely effect on them of any change in her circumstances;

162. After a gap of nine months, since December 2020 the boys have been spending regular time with their father, and it has been successful. The process of gradually stepping up to overnights appears to have worked well and at close of submissions it was agreed that the boys would spend the weekend with their father over the weekend that I was preparing this judgment.

163. What is proposed by the guardian and the father is for this fortnightly contact to become regular and for there to be longer stays in the holidays.

164. This would be consistent with the pattern of what has been happening over the last few months.

165. To revert to non-staying contact only once a month with a virtual contact in the intervening fortnight would be a significant step backwards. I have found that neither of the two incidents relied upon by Ms C can be regarded as a reason that justifies the cessation of contact, because they did not happen as she asserts. To reduce contact would be to send a message to the boys that spending time with their father was not safe or that he had done something wrong or that they had done something wrong, or their father had in some way rejected them. None of these is the case.

(d) their age, sex, background and any characteristics of hers which the court considers relevant;

166. I do not consider there are additional factors to consider under this heading.

(e) any harm which they have suffered or are at risk of suffering;

Domestic abuse

167. Domestic abuse is a serious and significant failure in parenting because it is a failure to protect the child's carer and, if the domestic abuse is not acknowledged and steps taken to repair the situation, it is a failure to protect the child emotionally.

168. It is accepted by Mr D that the boys have suffered harm in the past as a consequence of their exposure to the domestic abuse in the relationship perpetrated by him to their mother.

169. Case law directs me to consider specifically the degree of violence and the seriousness of the impact on the child and on Ms C, and weigh in the balance the seriousness of the domestic abuse, the risks involved and the impact on the children, against the positive factor of contact between a parent found to have been violent and the children. That exercise is made difficult in circumstances where there remains a significant dispute between the parties as to how to characterise the relationship. Ms C has maintained that she was the victim of domestic abuse of great severity throughout the relationship including having been repeatedly raped. Mr D maintains that it was a dysfunctional and toxic relationship in which both parties at one time or another could be he said characterised as 'victim' or 'abuser'. However, he accepts responsibility for the part that he played and accepts that the children were exposed to abuse and were harmed as a result.

170. I have to assess what the current risk is to the boys and to their mother of the boys' continuing to spend time with their father, with specific regard to paragraphs 35 to 37 of practice direction 12J. I have taken into account the matters on the Scott schedule that were accepted. So far as the other allegations are concerned I have proceeded on the basis that Ms C maintains them to be true and that Mr D denies them.
171. With regard to the specific matters at paragraph 37 of the practice direction, I consider first *(a) the effect of the domestic abuse on the children and on the arrangements for where the children are living.*
172. Both children are likely to have been adversely affected by their exposure to domestic abuse in their parents' relationship. However, the children do not display any concerns about their being any continuing risk of domestic abuse between their parents and there have been no reports of any incident occurring post-2016. At different times both have said that their parents did not agree about things, and that it was better that they were separated. The children's parents have been separated for around half the children's lives and both of them have had new relationships with individuals to whom the boys have formed attachments.
173. The boys were exposed to emotional harm and the risk of physical harm when in their joint parents' care as a result of the abuse to which they were exposed, and perpetrated by Mr D. Ms C maintains that the boys' continuing behavioural difficulties are most likely to be connected to the trauma of being exposed to domestic abuse and as a response to having contact with their father. Dr Misch did not make any diagnoses of PTSD or similar in either child when he assessed them. Over the years Ms C has given teachers and professionals a number of different explanations for the boys' sometimes challenging behaviour, but her current view that it must be a manifestation of trauma associated with their experiences of their father is not borne out by the evidence and is not a view shared by any professional.
174. Neither parent is aware of the address of the other and both wish to keep their addresses confidential. On the one hand that could be said to foster an atmosphere of mistrust between the parents which could have an impact on the children, on the other hand, it could be said to provide an element of security and stability in that it reduces the risk of the children being exposed to parental conflict in either of the parent's homes, which should be places of safety and security for the children.
175. Considering next *(b) the effect of the domestic abuse on the child and its effect on the child's relationship with the parents;*
176. The children have developed a sense that they should be cautious and wary around their father. The extent to which this has been the result of their early life experiences is unknown but as Mr D has acknowledged, it is likely that this had an impact.
177. That sense has in my judgement been heightened as a result of the children being exposed to the high levels of negativity with which Ms C regards Mr D.
178. But to counter that, the children are building up memories of more positive experiences with their father, becoming reassured that they are safe in his care.

179. Next is question (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;*

180. It is significant when reviewing the evidence in this case that I have not seen any reports of incidents as between the parents since their separation and despite being in a situation where he did not see his children for nine months, I have not seen any correspondence from Mr D or text messages or other form of evidence to suggest that he has communicated to Ms C in a way that would suggest he is seeking to hold any kind of influence over her, to threaten or make demands of her, or in any way to use the Court process to manipulate, intimidate or cause distress to Ms C. His statements to the Court and his conduct have been in measured terms. Mr D is willing to use an app like Our Family Wizard, recommended by the guardian to assist in building co-operation and positive communication between parents. He has said that he is willing within reason to comply with requests that might reassure Ms C, to do anything that it takes to help rebuild his relationship with his sons. I am satisfied that Mr D's motivation throughout these proceedings has been a desire to find a way to promote a positive relationship between himself and his sons, without seeking to undermine or minimise the loving and caring relationship they have with their mother. He loves them and speaks very fondly of them. His face lit up to recall the fun weekend they had spent together when the boys stayed the night for the first time in nine months.

181. Considering (d) *the likely behaviour during contact of the parent against whom findings are made and its effect on the child.*

182. I have had regard to all the evidence, including the current and previous guardian, the evidence from Ms P and the two children and family assessments in 2020. There is no evidence that since the children have been spending time with Mr D pursuant to orders of the Court from the earlier proceedings nor in these proceedings they are at any risk of harm from their father.

183. I would accept that the father can sometimes appear to be 'a bit stressy' snappy, short tempered, frustrated with the boys, and sometimes may shout at them. He has on occasion been late to collect the children and once dropped them home without checking their mother was there to receive them. He has been violent to their mother in the past, said cruel, demeaning and vicious things to her and he has exposed the children to emotional harm and the risk of physical harm. The toxicology tests show that he drinks more than is recommended for a man of his age.

184. Mr D has not I find been wholly able to protect the boys from his negative views of their mother. For example, the last time the children were with him, a friend of his from the yard called the children 'long-haired yoghurt weaving hippies'. This understandably hurt their feelings and the father did not defend them or say anything to reassure them.

185. He can and should do better, but none of these are reasons to justify bringing an end to the relationship between him and his children.

186. Considering *(e) the capacity of the parent to appreciate the effect of past domestic abuse and the potential for future domestic abuse.*
187. I have considered the capacity of the father to appreciate the effect of past domestic abuse and have regard to the DAPP reports, and to the father's own evidence. I did find a slight tendency to put blame on others and justify his actions as responses to others, but I did also find a willingness to take responsibility for past behaviours and a determination and confidence not to repeat the past, backed up by the absence of any reports of domestic abuse within his current relationship, no evidence of any continuing conduct towards Ms C since 2016 that could be characterised as abusive and a great deal of evidence that he loves his children, can be a good father to them, and that they love him and enjoy spending time with him.
188. Having regard to all the evidence I consider that if the children spend regular time with their father this is likely to provide stability and security to them, and to be for their emotional benefit. I do not find there is evidence to support Ms C's case that spending time with the father represents a source of instability and emotional upset.
189. The boys have sometimes said they do not want to see their father and have expressed some caution and wariness about him. However, having regard to all the evidence, I am satisfied that this is more likely to be because of the actions of their mother than to do with their experiences of their father. I do not consider it has been established that the boys have in fact rejected their father. I do not consider that there is evidence to suggest that any such rejection could be said to be 'justified'.
190. If I were to take Ms C's case at its highest and consider the paragraph 37 factors on the basis that the domestic abuse that she says she sustained at the hands of Mr D had occurred, I would reach the same conclusions. This is not to minimise or disregard as 'historical' events that have happened in the past. However, the weight of the evidence is that the father does not pose a risk to the children, that since the time relating to those allegations Mr D has undergone a DAPP, and therapy, there is no evidence of current concerns in his present relationship, despite investigation by social services, any interactions with Ms C have not been characterised by continuing abuse and so any risk to her must be regarded as manageable. The benefits to the children of spending time with their father significant outweigh any risk of harm.

Risk of harm from continuing parental conflict

191. The risk of harm to them in continuing to understand that their father is bad or dangerous is that they may identify qualities in themselves that are similar to him and then identify themselves as being essentially bad or dangerous too. They are likely to continue to feel stressed and confused by the continuing conflict between their parents when in fact some years ago they were reporting to professionals that they understood their parents did not get on and things were better for them now that they were separated. They are likely to feel some level of responsibility for their parents' emotional well-being or a need to give information that fits in with their understanding of what that parent may want to hear, rather than to give true expression to their feelings or experiences. They may feel guilty and responsible for their parents' dispute, understanding that it revolves around them. They are likely to struggle to identify disputes or conflict as resolvable, given that the template they have received from their

parents is that conflict perpetuates. This is likely to impact significantly on their emotional development and ability to form secure friendships and relationships. If they continue to have very different experiences of disciplining and boundary setting and understand one parent to be critical of another, they are likely to continue to struggle to understand boundaries and managing their emotions and their behaviour when they feel under pressure.

192. For all these reasons, there is a pressing need for the arrangements for the children to see their father to be settled and to enable them to restore their relationship with him by seeing him consistently, without drama or the father's parental responsibility being undermined, as I find it has been.

(f) how capable each of the parents are of meeting their needs

193. I am satisfied that each of the parents can meet the boys' basic needs. For the reasons I have given, I do find that Ms C has been unable to promote the children's relationship with their father or to support him in sharing and exercising his parental responsibility together with her, as it is her parental responsibility to do. I find that this has interfered with the children's relationship with their father and caused them emotional harm. I have reached this conclusion accepting as I do the evidence of Dr Misch, which in my judgment is consistent with the overwhelming weight of evidence in the case, and that of the current guardian, of Mr Sheffield, and the social workers who gave evidence.

194. In the case of Re W referred to above, McFarlane LJ (now the President) described the challenge that this presents, but explained at paragraph 74 onwards why it is so important that it is overcome:

In describing the statutory legal context within which decisions as to the private law arrangements for a child are to be made, I have stressed that it is the parents, rather than the court or more generally the state, who are the primary decision makers and actors for determining and delivering the upbringing that the welfare of their child requires. I have stressed that, along with the rights, powers and authority of a parent, come duties and responsibilities which must be discharged in a manner which respects similarly held rights, powers, duties and responsibilities of the other parent where parental responsibility is shared.

In all aspects of life, whilst some duties and responsibilities may be a pleasure to discharge, others may well be unwelcome and a burden. Whilst parenting in many respects brings joy, even in families where life is comparatively harmonious, the responsibility of being a parent can be tough. Where parents separate the burden for each and every member of the family group can be, and probably will be, heavy. It is not easy, indeed it is tough, to be a single parent with the care of a child. Equally, it is tough to be the parent of a child for whom you no longer have the day to day care and with whom you no longer enjoy the ordinary stuff of everyday life because you only spend limited time with your child. Where all contact between a parent and a child is prevented, the burden on that parent will be of the highest order. Equally, for the parent who has the primary care of a child, to send that child off to spend time with the other parent may, in some cases, be itself a significant burden; it may, to use modern parlance, be "a very big ask". Where, however, it is plainly in the best interests of a

child to spend time with the other parent then, tough or not, part of the responsibility of the parent with care must be the duty and responsibility to deliver what the child needs, hard though that may be.

195. There remains a risk of emotional harm to the children if Ms C continues to struggle with allowing the boys to spend time at their father's, if she continues to quiz them about their experiences and reveals to them her worries or disappointment that she wished better for them, or that she feared for them, or continues to encourage them to feel wary and cautious when they visit him.

196. For the reasons given I find that Ms C's approach does place the boys at continuing risk of emotional harm and I accept the evidence of Ms Palayiwa that there is a significant risk in this case that Ms C will make further allegations on behalf of her children, choosing to see only her interpretation of events, and unable to work co-operatively with Mr D to explore any concerns she may have in an open minded and collaborative way, understanding that these boys present to many adults including herself at times as at times extremely challenging and that different adults may respond in different ways to her ideal response depending on particular circumstances and their own parenting style.

197. A number of professionals have raised concerns about the number of different schools the children have attended. I would agree with recommendations made by the s7 reporter in the previous case that it is important for Mr D to be allowed to exercise his parental responsibility together with Ms C to support the boys' education. This means ensuring that he has a direct line to their school and teachers is invited to events at the school, parents' evenings and can pick them up from school if possible.

198. Given his history it is important that Mr D remains aware of stress factors in his life and to seek support if he identifies that he is struggling to contain his emotions. In line with Dr Misch he must also make efforts to reduce his alcohol consumption in line with government recommendations for his general health. However there is no evidence to suggest that his ability to care for his children has ever been impaired by alcohol misuse and I do not suggest that there is a continuing need for him to be assessed or for the children to spend time with him only if he can produce a clear breathalyser test. This would in my view invite controversy, unnecessary expense and would be a disproportionate and unnecessary measure in all the circumstances.

(g) the range of powers available to the court under the Act in the proceedings in question

199. *The court should make an order for contact only if it is satisfied 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 that the parent with whom the child is living will not be subjected to further domestic abuse by the other parent.*

200. Having had regard to all the evidence I have seen and read, to the welfare checklists and to the relevant paragraphs of practice direction 12J, I have come to the conclusion that the boys' welfare requires a child arrangements order to be made, in line with the guardian's recommendations, for the children to spend regular weekends with their father and for them to spend additional time with him in the school holidays.

201. It would appear that the boys have responded well to the fairly gradual pace of increased contact, so I would suggest that the fortnightly continues until the school holidays, perhaps with a two night weekend before the end of term. The summer holidays would provide a good opportunity to extend the length of time so that the boys can have some full days without having a long drive to or from handover or worrying about homework to complete, enjoy some holiday time with their father, and reconnect with members of the extended paternal family.
202. I am satisfied that this would not expose either child to an unmanageable risk of harm and would be in their best interests.
203. While I do not underestimate the impact of the previous domestic abuse upon Ms C nor the children, I am satisfied that any continuing risk is mitigated by the following:
- (i) The absence of any findings that Mr D has harmed the children;
 - (ii) The absence of any evidence of current domestic abuse as between Mr D and his partner;
 - (iii) The absence of any evidence that Mr D is using the proceedings to continue to perpetuate abuse against Ms C or in any way seek to cause her or threaten to cause her harm or distress;
 - (iv) The completion of the DAPP and of therapy into anger management with positive reports at the end of each;
 - (v) The evidence that the children have enjoyed spending time with their father and have not come to physical or emotional harm in his care.
204. I appreciate that it is a 'big ask' of Ms C to continue to promote a relationship between the children and their father when in her heart she does not believe it to be in their best interests. However, with respect to her and without in any way diminishing the impact of domestic abuse on the life of an individual, I am satisfied that in the particular circumstances of this case it is overwhelmingly in the children's best interests for their relationship with their father to be supported and encouraged. In my judgement the risk of harm of the children in the current situation continuing is very much greater than any risk of harm to them in an order being made providing for regular and consistent contact.
205. For the reasons I have given within this judgment I consider the order needs to be consistent, to set a clear and understandable framework for contact which is not subject to frequent change or negotiation, and should not be changed on the basis of Ms C's reports of the children's wishes and feelings. Her position about this lacks some logic and is in my judgement putting too much pressure on the boys to make their own decisions about the arrangements.
206. I think there should be some restraint in terms of providing the boys with a phone, or some clear rules set around phone use. I approve the suggestion by Mr D that, as has happened in the past, it can be arranged for the boys to call their mother in the evening as they are preparing to get ready for bed for a quick call to say goodnight and to provide mutual reassurance that all is well.

Section 91(14) application

207. No formal application has been made for a section 91(14) order and the parties represented themselves so have not had an opportunity to take advice or to respond to the application in evidence.
208. A section 91(14) order does not prevent any person from making an application to the Court but does put a restriction on their statutory right to do so, because the Court's permission is required first.
209. This is not a case where there have been repeated and unreasonable applications relating to the children; only two – one made by Mr D and this one by Ms C.
210. A section 91(14) is usually described as a 'weapon of last resort', or 'exceptional'.
211. I am not satisfied on the circumstances of this case that the two stage test is met. The facts do not go beyond the common situation where there is need for a time to settle into the terms of the order, and there is animosity between the parents. Where there is no history of repeated and/or unreasonable applications, the Court should apply a two-stage test. Secondly, while further proceedings would of course be most unwelcome and stressful for parents and children, I am not sure that it can yet be said that there is a serious risk that without the imposition of the restriction, a party will be subject to unacceptable strain.

Non-molestation order

212. There is no evidence of molestation (some deliberate conduct aimed at a high degree of harassment of the other party so as to justify the intervention of the Courts). Ms C has not demonstrated in evidence that she needs protection from Mr D, nor that if she did need protection from the Respondent that could only come from an order of the Court.
213. Mr D agrees to give an undertaking that he will not try to discover Ms C's address and that if he does discover it that he will not go there. He asks that Ms C give the same undertaking to him. As it happens neither of them have taken any steps to try and discover the other's address nor to go to their houses, so it is questionable whether an undertaking is necessary, but I see the force in the argument that if one of them is giving an undertaking then both should.
214. Both parents have said they will undertake not to speak badly of the other parent either directly to the children or in their presence
215. In my judgment each of the parents should share the time and cost of driving the children to handovers; as now with one parent doing one way and the other the return. Both parents are working and this is an essential cost related to the children which they should each include in their financial planning.

216. I do not consider that there should be any conditions attached to the contact in terms of what activities Mr D chooses to do with his sons, he needs his parental authority to be restored. It would in my view send a negative message to the children to imply that their mother was setting the terms of reference for how they spend time with their father.

217. This is my judgment.

HHJ Joanna Vincent
Family Court, Oxford

Draft judgment sent to parties: 21 June 2021
Judgment handed down: 30 July 2021

Annex: judgment in respect of terms of final order

IMPORTANT NOTICE 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 child[ren] and members of their [or his/her] 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.

Case: OX20P00167

IN THE FAMILY COURT AT OXFORD

**IN THE MATTER OF THE CHILDREN ACT 1989 AND IN THE MATTER OF
A AND B (CHILDREN)**

Date: 30 July 2021

Before: HHJ Vincent

Between :

Ms C

Applicant

and

Mr D

Respondent

and

A and B

(by their r16.4 Children's Guardian, Ruth Palayiwa)

Second and Third Respondents

The Applicant mother represented herself
The Respondent father represented himself
Craig Jeakings, instructed by Trueman's solicitors for the children

JUDGMENT

Introduction

1. The draft judgment was sent out to the parties at 9.30 a.m. on 22 June 2021. Following receipt of the judgment, I received written submissions from the mother, a short email from the father and submissions on behalf of the guardian.

Finalised judgment

2. I have corrected the typographical errors pointed out by Mr Jeakings. I have read and considered Ms C's response to my judgment. I have made a few changes where she has highlighted a typographical or factual error or where I think clarification might be helpful. However, many of her comments amount to a critique of the judgment, put alternative facts to those I have found, or record her personal responses. I note what she says, but have not revised my judgment in response to these comments. Within the judgment where I am stating what has been reported by others and recorded in a document I have made that clear.

Publication of the judgment

3. Ms C argues as follows:

'Publishing this case would is promote Transparency in Family Court, create a public record where controversial allegations of discredited science have been relied upon (parental alienation) by experts, and serve to provide information to members of the public who might be concerned about disclosing abuse for fear of false counter-allegations of parental alienation (or any term that serves as a derivative of).'

4. I do routinely publish judgments on bailii (a legal website where Court judgments are published – bailii.org). Those judgments are published in anonymised form, in accordance with the President's guidance issued in January 2014, and for the purpose of informing the public about the work of the family courts. I have some hesitation in respect of Ms C's reasons for seeking publication as I do not agree with her characterisation of my findings or the decisions that I made. However, I accept that it is her right to criticise both the judgment and the Family Court, and that other commentators are entitled to do the same.
5. The only version of the judgment that I authorise to be shared is that which will be published on bailii and will be given a citation.
6. Judgments are published anonymously, and the identity of the children and the parents must remain confidential. That means that either party may not refer others to the judgment and indicate that it concerns them or their children. As requested, I give permission for the father to share paragraph 197 with the boys' headteacher.
7. Ms C highlights s97(2) of the Children Act 1989 which prohibits the publication of material which identifies, or is likely to identify, a child involved in proceedings in which any power under the Children Act 1989, or the Adoption and Children Act 2002, may be exercised.

8. I take it from her submissions that she is suggesting that restriction should apply only so far as these proceedings continued and that she is asking for permission for the names of both the children and the parents to be made public.
9. I am absolutely clear that the published judgment must be in anonymised form and that the identity of the children, the parents, their families and professionals should not be published, nor any information about them which could lead to their identification. I am not authorising the reporting of any element of this case other than from information obtained from the authorised anonymised version of the report on the public website.
10. There is in my judgment no public interest at all in the names of children or their parents being identified and it is obviously the case that there would be a risk to the children, to the parents and potentially to professionals involved if their names were made public. The risk remains the same now that proceedings have concluded and will continue to exist throughout their minority and potentially their whole lives. There is a significant risk of further Court proceedings between the children. The children need to be protected from their parents' dispute, they will not be so protected if knowledge of it is in the public domain.
11. I will in due course prepare an anonymised version of the judgment, and publish it on bailii with the following warning at the top:

IMPORTANT NOTICE 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 child[ren] and members of their [or his/her] 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.
12. I will inform the parties once the judgment has been posted and provide a link.
13. In the meantime, the same rules apply to the approved judgment as to the draft and the parties must keep its contents confidential.

Child arrangements order

14. I concluded that the final order should be in line with the guardian's recommendations. Mr Jeakings prepared a draft final order reflecting the guardian's proposal for fortnightly contact and extended time in the school holidays.
15. I have considered Ms C's written submissions, but they are predicated on the basis that the father poses a risk to the children. I have rejected her case on that. In my judgment I have had regard to practice direction 12J of the Family Procedure Rules and I have weighed up risks and benefits of contact for the children with their father, acknowledging that there was domestic abuse within the parental relationship, to which the boys were exposed. I have concluded that the benefits of the boys spending time with their father outweigh the risks.
16. Ms C's proposal is that contact should be stepped up only very gradually and only by agreement with both parties, and if they are not in agreement for them to go to an agreed arbitrator. She proposes that there should be a review of contact every four months,

and she proposes that it can be reduced – by agreement - if not going well. That position would create future uncertainty and the risk of future disputes. It ignores the fact that the parents’ dispute has now been before the Court and I have now made a decision about what order would meet the boys’ welfare.

17. I agree with the guardian that the children need consistency and stability in the arrangements, and as I said in my judgment, there should be a *‘clear and understandable framework for contact which is not subject to frequent change or negotiation, and should not be changed on the basis of Ms C’s reports of the children’s wishes and feelings’*.
18. The proposed order does in fact proceed very gently in terms of progressing the contact, building up gradually to two nights over a weekend and not extending to four nights until October 2021. This does go some way to meeting the mother’s wish for contact to move gradually forwards.
19. Mr D agrees to the proposed child arrangements order but raises a query about whether or not there should be an order for telephone contact.
20. Telephone contact can be something that provides reassurance, but it also can be a means by which the children can become unsettled, or it can represent an interference or undermining of the parent they are with. If the children are staying with their father only for a weekend I would not consider they must speak with the other parent while away. If they are away for a week I can see that a phone call mid-week may be reassuring and help them settle. It may be in the particular circumstances that more is required. It may be that phone calls too often are not helpful.
21. Setting out a time for telephone contact in an order is in my judgment too restrictive and there is a risk of unnecessary conflict - if for example the signal either end was poor and a connection could not be made, or the boys were doing something that meant it was not convenient to interrupt with a phone call.
22. This is a matter about which Mr D will exercise his parental responsibility and his own judgement.
23. Flexibility is required. I consider it is more appropriate to put this in a recital than an order, and in more general terms than the draft provides:

The father agrees to make the children available to speak briefly to their mother on the phone if they are staying with him for more than two nights or if they ask to speak with her.
24. The rest of the order shall be in the terms set out in Mr Jeakings’ draft order:
 - a. The children to live with Ms C.
 - b. Ms C to make A and B available to spend time with their Father as set out below:
 - i. The children to be collected by their Father from [redacted] school at 10am unless otherwise specified below. Ms C (or a third party) to

collect the children from The Co-op in [place name redacted] (this location being know to both parents) at 4pm.

- ii. From 10am on Saturday 31st July 2021 until 4pm on Sunday 1st August 2021, and then on alternate weekends for two weekends
- iii. From 10am on Friday 27th August 2021 until 4pm on Sunday 29th August 2021, and thereafter on alternate weekends. During term time this arrangement shall continue and it will be from after school on Fridays until 4pm on Sundays.
- iv. For a period of 4 consecutive overnight contacts in the October half term 2021
- v. Thereafter all school holidays shall be divided equally between Father and Ms C.
- vi. Every half term thereafter, for the entire period i.e., 10am on Saturday until 8 days later on the following Sunday at 4pm to be alternated between the parents, so for the avoidance of doubt February 2022 half term shall be spent with their Father.
- vii. During the Christmas Holiday 2021, the children shall spend Christmas Day and Boxing Day with Father, and New years Eve and New Years day with Ms C, thereafter alternating this pattern each year.
- viii. During the Easter holiday 2022, the children shall spend Good Friday and Easter Sunday with Ms C, thereafter this pattern shall alternate.
- ix. For the summer holidays of 2022 and each alternate year the children to be in the Father's care in weeks 1, 3 and 5 of the summer holidays and in Ms C's care in weeks 2, 4 and 6 and in 2023, and each alternate year, the children to be in their Mother's care in weeks 1, 3 and 5 and in their Father's care in weeks 2, 4 and 6. In the event that either party wishes to take the children for a two week summer holiday they will notify the other parent no later than 6 weeks in advance of the holiday and change the first week of their holiday with the other party to make such arrangement possible.

CAMHS

25. Since the hearing Mr D reported on 19 July that the children *'had a wonderful time with him at the weekend, camping, swimming, cooking out, playing games and having normal happy family time'*. However, Ms C made a referral to CAMHS on 20 July reporting that A had night terrors which lasted until 3am, and that when he had returned from his father's house he was violently sick. She suggests that while there may be many factors, *'it seems possible with both myself and his sibling being diagnosed with PTSD/CPTSD following witnessing chronic domestic abuse that he may be suffering the same.'* Ms C has asked for specialist support.

26. In the judgment, I said this:

'The boys both need extra support at school to manage their behaviour and A has some additional support around his learning. I have seen a note within B's general practitioner records raising a query about a diagnosis of PTSD, and understand that CAMHS had raised it as a possibility, but I have not seen any other evidence to support that, and Dr Misch, the consultant child and adolescent psychiatric expert in this case has not made a diagnosis of that or any other psychiatric condition in either child.'

27. It is therefore not correct for the mother to report to CAMHS as fact that B has already received a diagnosis of post-traumatic stress disorder.
28. Some thought may need to be given to whether this short judgment and the judgment from the final hearing should be disclosed to professionals at CAMHS so that a fuller picture is given. That is not to minimise the fact of the accepted domestic abuse that took place during the relationship, nor that the boys were exposed to it. But, that in itself is not necessarily a bar to contact. Having considered all the circumstances, and carried out a welfare evaluation including consideration of the practice 12J factors, my conclusion has been that the children are not at risk of harm from their father, that it is in their welfare interests for their relationship with him to be maintained, and that their mother has undermined their father's parental responsibility by interfering with that relationship. I have accepted the guardian's recommendation, and found that their welfare requires that they see their father regularly, and the time they spend with him should be set out clearly in a child arrangements order with which both parties must comply.

HHJ Joanna Vincent
Family Court, Oxford
Sent by email: 26 July 2021
Formally handed down: 30 July 2021

Annex 2: Schedule of allegations and responses from 2018 proceedings

| <u>RESPONDENT MOTHER'S ALLEGATION</u> | <u>REFERENCE</u> | <u>APPLICANT FATHER'S RESPONSE</u> | <u>FINDING</u> |
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| <p>The parties had an argument. The Applicant got angry. The Respondent was trying to drive home to [redacted]. The Applicant opened the Respondent's door held the Respondent out of the way and smashed the Respondent's indicator stick with his fist</p> | <p>5.5.2006</p> | <p>I accept that I once grabbed the indicator stick from the Respondent's car and snapping it off but I don't recall when it happened. Due to the length of time that has passed since the alleged facts, I am unable to comment on the remainder of the allegation</p> | |
| <p>The Respondent put an entry in her diary saying she was worried about the Applicant becoming a violent monster</p> | <p>12.3.2006</p> | <p>I cannot comment on what the Respondent noted in her diary.</p> | |
| <p>The Applicant and Respondent had an argument. The Applicant pushed the Respondent out of the car door on to the side of a very busy road; the A40. The Respondent was not wearing a coat and did not have any money. The Applicant did not come back to get the Respondent who had to find her own way home. Fortunately a bus driver took pity on the Respondent and allowed her on the bus without paying a fare.</p> | <p>3.3.2008</p> | <p>Denied. I have no recollection of this incident.</p> | |
| <p>The Applicant told the Respondent that she was mad evil harsh and selfish.</p> | <p>4.4.2008</p> | <p>Denied. I have no recollection of this incident.</p> | |
| <p>The Applicant suggested to the Respondent that the issues in their relationship were because of her sister [redacted]. The Applicant suggested that the Respondent stop seeing her sister which she did.</p> | <p>24.10.2008</p> | <p>I accept that [name redacted] and I fell out about 10 years ago but I do not accept that I ever said to the Respondent that she could never see her sister again. I do not accept that the Respondent stopped seeing her sister; this is not true</p> | |

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| <p>The Applicant locked the Respondent inside [redacted] Cottage. The Applicant smashed the Respondent's laptop, took her phone and then left in a car. The Respondent was forced to break out of the property and walk to a pay phone in the nearest village. The Respondent had to call her employers to say that she would not be able to get in to work. The Respondent phoned her mum and told her what happened and her sister came and collected her.</p> | <p>9.8.2009</p> | <p>[redacted] Cottage was a little cottage that the Respondent and I were renting just 10 minutes outside a village. I accept that there was an incident when the Respondent told me that she had been unfaithful to me with one of my best friends. She told me this during an argument. I accept that I took the Respondent's laptop. The remainder of the allegation is not accepted.</p> | |
| <p>The Respondent made a diary entry that the Applicant is always violent smoking and drinking around her and is always in the pub when she gets back from work. The Applicant is horrid with his words when he gets back.</p> | <p>16.10.2010</p> | <p>I cannot comment on the Respondent's entry in her diary.</p> | |
| <p>The Applicant made the Respondent who is pregnant at the time sleep on the floor.</p> | <p>17.11.2010</p> | <p>This is denied</p> | |
| <p>The Applicant had been drinking alcohol. He refused to stop although he was supposed to be driving the Respondent to hospital to give birth imminently, He told the Respondent that he drove better when he was drunk. The Respondent was concerned about her safety and asked a neighbour to be on standby to help her.</p> | <p>1.2.2011</p> | <p>This is denied. I would never drink and drive and if I had said what the Respondent suggests I said it would have been in jest.</p> | |
| <p>The Respondent asked the Applicant to do the washing up. The Applicant said "potentially now in a minute at some point I will if you stop nagging me like a fucking bitch</p> | <p>15.9.2011</p> | <p>I have no direct recollection of this incident. I am unable to comment..</p> | |
| <p>The Applicant tells the Respondent he is going to smash her over the head unless she sorts herself out</p> | <p>15.10.2011</p> | <p>Denied. I have no recollection of this incident.</p> | |

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| <p>The Respondent noted in her diary that she worried about the parties' baby going to bed hearing shouting and swearing and aggressive behaviour from the Applicant</p> | <p>12.2.2012</p> | <p>I cannot comment on what the Respondent noted in her diary.</p> | |
| <p>The Applicant and Respondent were on a working holiday in France. The Applicant hit the Respondent after drinking. The person who owned the house within which the parties were staying said that he had heard the commotion.</p> | <p>12.2.2013</p> | <p>I have no recollection of this incident.</p> | |
| <p>The Applicant got angry with the Respondent who left with the children. They spent the day with a male friend. Upon return the Applicant made the Respondent promise that she would never talk to the friend again. This conversation took place in front of the children,</p> | <p>6.6.2013</p> | <p>I accept this. The Respondent had spent the day with a person she had previously cheated on me with and upon her return I requested that she not continue to see this person again for the sake of our relationship.</p> | |
| <p>The Applicant said if the Respondent wanted him to babysit while the Respondent went out with her friend then they had to snog in front of him. The Applicant would not let the Respondent leave until she did. The Respondent thought that the Applicant was joking but the Applicant pushed the Respondent and her friend together</p> | <p>13.7.2013</p> | <p>This is Accepted in part- however the Respondent has attempted to twist the truth of the situation. The comment regarding her kissing her friend was said entirely in jest and light-heartedly. The Respondent and her friend did in fact kiss each other in front of me, giggling as they did so. It is not accepted that I physically pushed either the Respondent or her friend.</p> | |
| <p>The Applicant pushed the Respondent who fell in to some recycling bins. This was in front of the children The Respondent cut her hand and she cried.</p> | <p>3.3.2014</p> | <p>Denied. I have no recollection of this incident.</p> | |
| <p>The Applicant told the children that the Respondent was a rubbish driver and that he would never travel in the car if she was driving.</p> | <p>4.4.2014</p> | <p>Denied. I have no recollection of this incident.</p> | |
| <p>The Applicant called the Respondent a stupid fucking cunt in front of the children.</p> | <p>4.5.2014</p> | <p>Denied. I have no recollection of this incident.</p> | |

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| <p>The Applicant went through the Respondent's handbag and looked at her phone. The Applicant wrestled the Respondent to the floor and when the Respondent grabbed the Applicant's penis in self defence the Applicant thumped the Respondent on her head and pushed her again to the floor</p> | <p>21.5.2014</p> | <p>This is not Accepted. The Respondent and I had an argument which resulted in her grabbing me by the testicles and pushing me onto the floor. That was extremely painful. I had not wrestled her at that point; her actions were totally unprovoked during an argument. The Respondent was completely in a rage and, in an attempt to restrain her and free myself in self-defence, I held the Respondent down by her legs.</p> | |
| <p>The Applicant shouted at the children telling them they are fucking stupid.</p> | <p>29.5.2014</p> | <p>Denied. I have never shouted at the children in the terms the Respondent is describing.</p> | |
| <p>The Respondent was having a bath. The Applicant got angry with her and threw an object at the wall. This took a large chunk out of the wall. The children saw the damage to the wall in the morning and were upset by this</p> | <p>8.8.2014</p> | <p>Denied. I have no recollection of this incident.</p> | |
| <p>The parties were on the way to the circus. The Applicant became angry at the Respondent because she got the directions wrong. On the motorway the Applicant sped and tailgated other vehicles. This made the Respondent feel very scared. The children were in the car. The Applicant did calm down and apologised in front of the children but told the Respondent to explain to the children it was her fault Daddy got crazy because she was so shit at giving directions.</p> | <p>29.3.2015</p> | <p>I have no recollection of speaking to the Respondent in the way she alleges. This is denied. I did not say to the children what the Respondent states I did.</p> | |
| <p>The Applicant grabbed the Respondent and threw her across the room in his horse box. This took place in front of the children at a music festival. The Respondent was left with bruising. The children witnessed this and were screaming for the Applicant to stop hurting mummy.</p> | <p>17.6.2015</p> | <p>I have no recollection of this incident and I therefore cannot comment.</p> | |
| <p>Whilst at [redacted] Camp the Applicant raped the Respondent in a tent. The children were in the tent at the same time. The Applicant tried to stop the Respondent from leaving the tent to socialise with other people.</p> | <p>29.7.2015</p> | <p>Denied</p> | |

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| <p>The Applicant told the Respondent if she returned to the house in [redacted] where she fled after violence he would do something he regretted. The Applicant said that if the Respondent did not have a relationship with him he would never talk to the children again and would leave the Country. The Applicant asked for his passport.</p> | <p>13.08.2015</p> | <p>Denied. I recall that there was a particularly bad argument after which the Respondent and the children went back to the house in [redacted] while I stayed in the house in [redacted]. It is not correct that the Respondent "fled" due to domestic abuse. I believe this was due to me finding out that the Respondent had been unfaithful again.</p> | |
| <p>The Applicant was refusing to let the Respondent go to sleep. He woke the children up by shouting. The Respondent comforted the children back to sleep. The Respondent asked the Applicant to sleep in the spare room and he refused. The Applicant shouted at the Respondent that he knew everything she did. The Respondent reported the Applicant to the Police.</p> | <p>20.11.2015</p> | <p>This is accepted in part, I recall that I had found out that the Respondent had been sleeping with someone else. I confronted her. I do not recall the police attending but I cannot comment on whether the Respondent reported me to the police at the time.</p> | |
| <p>The Applicant threatened suicide unless the Respondent came over to see him and be with him. The Respondent was worried and went to see the Applicant with the children. The Applicant was angry and shouted at the Respondent. The children stirred, The Respondent was concerned about the children and went to sleep in with them</p> | <p>06.12.2015.</p> | <p>Denied.</p> | |
| <p>The Applicant pushed the Respondent and called her a stupid cunt and a fucking liar. The Applicant was in the Respondent's face shouting at her and pushed her. The Respondent called her mum as she was frightened. The Respondent went next door without any shoes or jumper to wait to be rescued.</p> | <p>25.12.2015</p> | <p>This is accepted in part. I accept that there was an argument after I had found out the Respondent had been unfaithful once again and that the Respondent went next door. It is denied that this argument became physical.</p> | |
| <p>The Applicant swore at the Respondent in front of the children telling her she was a stupid bitch and then left the Respondent without transport in a busy street. The parties were on holiday in Thailand at the time with the children.</p> | <p>25.1.2016</p> | <p>I have no recollection of this incident and I therefore cannot comment. It is denied that I left the Respondent and the children without transport</p> | |
| <p>Every time the Respondent fell asleep the Applicant woke her up and interrogated her in an aggressive manner.</p> | <p>26.1.2016</p> | <p>This does not make sense. Either it happened "Every time" or it took place on 26.02.2016. It is accepted that there were a few occasions in which I wanted to discuss the Respondent's infidelity and she would pretend to sleep to avoid the discussion.</p> | |
| <p>The Applicant tried to rape the Respondent. The Applicant threw a glass at the Respondent when she tried to leave. The Applicant forced the Respondent on to her knees to pick up the</p> | <p>26.1.2016</p> | <p>Denied</p> | |

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| glass. The Applicant pushed the Respondent out of the door. The Respondent was forced to sleep on a sun lounger. | | | |
| The Applicant said the parties had no money but the Respondent found a large amount of cash. The Applicant would not let the Respondent work, saying it was better she was a full time mum, and he could earn far more than she ever would. | 3.3.2016 | This is accepted in part. The Respondent did find some cash (a couple of thousand pounds) which I had in the house to pay the wages for my staff. That was all the money we had at the time, It is entirely denied that I ever told the Respondent that she could not work and that she was better being a stay at home mum. I never stopped her from training, working and earning money. It is true that we agreed throughout our relationship that she would remain at home with the children and look after them because I was the higher earner, but I always encouraged her to be out of the house and work and train in particular to become a Montessori teacher. | |
| The Applicant threw a metal watering can and heavy recipe book at the Respondent. This was witnessed by the children. | 4.4.2016 | I accept that this happened in the way that the Respondent describes and I deeply regret that it was witnessed by the children. | |
| The parties were at a party. The Applicant told the Respondent that she should not talk to anybody except for him, The Respondent was not allowed to sit down as it was a party, Later that night the Applicant raped the Respondent and assaulted and injured her. | 31.7.2016 | This is denied. I recall being at the party with friends. Both the Respondent and I were drinking. I recall that the Respondent was falling asleep on the sofa outside and I encouraged her to go back to the caravan where we were staying. It is denied that I would not allow her to sit down at the party and the Respondent was talking to anybody she wanted to talk to. Later on we went back to the caravan and the Respondent said she had a headache. I wanted to have sex with her and asked her to do so. She did not want to have sex. I asked her if she would change her mind. She agreed to oral sex. Due to the situation unfortunately I could not get an erection. We had an argument. The Respondent became very angry and aggressive and she dug her teeth into my thumb. I was physically bleeding from it. The Respondent said that she "fucking hated me". I completely lost my temper, grabbed her by the hair and threw her out of the caravan. The commotion woke up the children who were sleeping in the next room. I went to comfort them. They absolutely did not see the two of us having this argument but they may have heard it. | |
| The Applicant drove by the Respondent's home and videoed the Respondent leaving with the children. The Applicant aggressively communicated with the Respondent and threatened her because he incorrectly thought that she had denied him contact. | 16.12.2017 | This is accepted in part. The Respondent had breached the contact Order the previous week and I mistakenly believed that I was to spend time with the children on this date. To protect myself I made a decision to go and video the Respondent to prove she was not allowing contact for no good reason. I accept this was inappropriate and should not have happened. I | |

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| | | was upset at not having been able to the children. I deny that I was aggressive however. | |
| On a weekly basis the Applicant would complain that the Respondent did not keep the house tidy enough and would say the house was a shit tip. The Applicant would say this in front of the children. There were regular arguments in the middle of the night and they would often wake the children up | Various dates | This is accepted in part. This did happen but not on a weekly basis. The house was often a complete mess and the children were allowed to run riot, drawing on the walls and doing whatever they wanted. We would argue a lot about the state of the house. | |
| The Applicant would regularly wait until the Respondent was asleep and he would then penetrate the Respondent. This was something that the Respondent had asked the Applicant not to do as she did not want him to. The Applicant would tell the Respondent it was like having sex with a corpse having sex with her. The Applicant would tell the Respondent she was shit in bed. If the Respondent said she did not want to have sex the Applicant would say it did not matter what she wanted it was what people did. It was called being in a relationship | Various dates | This has happened, but very rarely and always on occasions in which I did not know that the Respondent was asleep. As soon as the Respondent asked me not to do so I stopped. It is possible that I would have said to the Respondent that having sex with her was like having sex with a corpse. This is because it often felt as if the Respondent was considering our physical relationship a chore and was not emotionally involved in it. I recall saying to the Respondent that she was "shit in bed". I may have said to the Respondent that having sex was a big part of being in a relationship but I never said to her that it did not matter whether she wanted it or not. | |
| The Applicant promised not to be violent again. This always continued. | Various dates | I accept that I said so as a way to say sorry after two-way arguments. | |
| The Applicant stopped the Respondent from seeing her sister. The Applicant also tried to estrange the Respondent from her parents. The Applicant would not let the Respondent have any male friends | Various dates | Denied. This is absolute not true. I never stopped the Respondent from seeing her sister or trying to estrange her from her parents with whom I got on really well. What I asked of the Respondent was that she would stop seeing male "friends" with whom she had slept and had affairs during our relationship, | |
| On or around 1 July 2010 the Applicant tells the Respondent if she is not careful he will kill her and their unborn child in the churchyard. This was just after the Respondent's sister had died | | Denied. I recall having a very bad argument in the graveyard opposite our house in [redacted] and I recall saying to the Respondent that I wished I "did not fucking know (her)". It is denied that I threatened to kill her or our unborn child | |
| The Applicant would always say to the Respondent that she was slow and was always making him late | Various dates | This is accepted. | |
| The Applicant would regularly take the Respondent's car keys preventing her from leaving the house; leaving her without transportation | | I accept that this has happened on occasions but certainly not regularly. | |

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| <p>The Respondent was shouted at by the Applicant telling her that she is was a fucking Muppet and to fuck off and would talk in a derogatory manner to her. The Applicant would make threats to leave the Country</p> | <p>Various dates</p> | <p>I accept this however the Respondent was just as accountable and would speak in a similar manner, It was both ways.</p> | |
| <p>The Applicant would wait for the Respondent to drift off to sleep and then wake her up interrogating her with questions. He would demand information.</p> | <p>Various dates</p> | <p>I have dealt with this allegation earlier.</p> | |
| <p>The Applicant would belittle the Respondent in front of the children.</p> | <p>Various dates</p> | <p>This is denied.</p> | |