

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

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved

IN THE FAMILY COURT

(Sitting at Cambridge)

No. PE19P01623

Neutral citation: [2023] EWFC 202 (B)

197 East Road  
Cambridge  
CB1 1BA

Thursday, 31 October 2023

Before:

HER HONOUR JUDGE GORDON-SAKER

**(In Private)**

B E T W E E N :

MR K

Applicant

- and -

(1) MRS K  
(2) THE CHILDREN  
(By their Children's Guardian)

Respondents

THE APPLICANT appeared in Person.

MS E. COLEBATCH (instructed by Irwin Mitchell LLP), both acting pro bono, appeared on behalf of the Respondent.

MS P. LOW (instructed by Futter Chapman) appeared on behalf of the Children's Guardian.

J U D G M E N T

JUDGE GORDON-SAKER:

- 1 These proceedings concern three children. They are A, who is fourteen and B and C, who are ten. These Children Act proceedings began in 2019; there have also been other proceedings between the parents. There is a very long history which I am not going to repeat here. This judgment should not be considered in isolation. It follows, in particular, the fact-finding which I heard last year, and in that judgment I set out the relevant history and gave a very lengthy judgment setting out my findings about Mr K's behaviour, in particular, and I dealt with the impact of that on his former wife and on the children. That judgment is reported as K v K (no.2) [2022] EWFC 171.
- 2 This hearing is about the children's welfare and what level of contact, direct or indirect, is in the children's interest going forward. The brief, but most relevant, parts of the history are these. A refused to go to contact in 2018 because of her father's treatment of her, B and C continued to have staying contact. Problems developed in 2019, and father made an application for contact. The tone of that application and the contents of it created problems going forward. Regrettably, Mr K still cannot see that.
- 3 The safeguarding letter from Cafcass contained serious allegations which were made by the children's mother. Domestic abuse was raised as an issue, directions were given for a fact-finding hearing and supported contact was recommended. There were delays in that contact starting, but eventually B and C saw their father at a contact centre, and it is right to say the reports of that are positive. That stopped in April 2021.
- 4 In terms of these proceedings, there was a fact-finding hearing before District Judge Capon, as he then was, that was appealed up to the Court of Appeal, and it was remitted to this court, the then designated family judge appointed a guardian. The rehearing came before me and I made a number of findings against Mr K. Re-reading that judgment, amongst the things I have said in that hearing were:

"Father sees nothing wrong with his position, and is incapable of seeing that if he listens to how his children feel and acts on it, they may have a better view of him. He relied on the positive summary from the contact centre, whilst ignoring C's comments about him. He persistently blamed mother for the children's views. The children were seen individually at school, and were able to explain the reasons for their feelings about contact with father. A, in particular, remembers what he was like."
- 5 Amongst my findings was that the father was coercive and controlling. He saw nothing wrong with his behaviour and was unlikely to change. I found that he had intimidated the children, I said that B suffered some physical harm, but all the

children had suffered emotional harm as a result of his treatment of them, and of their mother in and around contact. The children witnessed that. A also suffered emotional harm from his mistreatment of her mother when she was younger. The children had all been able to describe how they felt. In the fact-finding hearing, I also rejected the father's case that the mother had alienated him from the children.

- 6 At the conclusion of that hearing, I asked the guardian to provide a welfare analysis in relation to contact. There is no dispute that the children live with their mother. Mr Rosenfeld has done that. He recommended an ICFA referral, we were all hopeful about that but it has not been successful. He now recommends indirect contact as being in the children's best interest. The children's mother agrees with that, their father would like direct contact. I am also asked by mother to make an order under section 91(14) preventing father from making any further applications for three years, the guardian agrees that that would be in the children's best interest. The father does not agree with that.
- 7 For this hearing, I have read the bundle, I have heard evidence from each parent and from the guardian. I have had helpful submissions from counsel for mother, counsel for the children and from father in person. I should perhaps add, although I think it is obvious from reading the statements, that Mr K is plainly an intelligent and articulate man and is well able to represent himself. He put his questions in writing because he is a litigant in person and these proceedings began some years ago. He also put some supplemental questions and I dealt with those in cross-examination of the mother.
- 8 There is no dispute in these proceedings about the legal framework. The children's welfare is the court's paramount consideration. Counsel for mother kindly set out the key cases in her position statement to assist the parties and the court. In their written evidence, which is in the bundle, the parties' positions have remained largely unchanged. The mother does not think the father has changed; she thinks contact would be harmful for the children and against their wishes and feelings. The father is still blaming mother. He sets out a proposal for a stepped order up to staying contact, beginning with the contact centre for the younger children, and he suggests meeting in a coffee shop or somewhere of her choosing with A, as a start.
- 9 Father says he has done the separated parenting information programme and the Triple P parenting course, and he tried to do UP2U, which is a domestic abuse programme in the area that he lives. He sees no reason for there not to be direct contact. The guardian in a very thoughtful and child-focussed analysis, recommends monthly indirect contact as being in the children's interest. He has plainly considered whether further referrals or some form of therapy would assist the children, and it seems to me he has reluctantly concluded that direct contact would not be in their interest, and that there is no further work that could be done involving them. In short, the person who needs to do work and needs to change is the children's father.

- 10 I do not think it would help to read out large parts of the written evidence. I prefer to focus on the parents and the guardian's oral evidence. I should say though that in my bundle at C103 in father's statement, I have his summary of the indirect contact, and also his criticisms of the mother in relation to that. From his own schedule, he has not committed to regular indirect contact with the children, and then he criticises the mother in relation to that.
- 11 In the guardian's report, he tells me how well the children are doing in other aspects of their lives, and I have heard a little of that in the evidence. They sound to me lovely children. A is very mature and her description of her father is, sadly, evidence-based from her own experiences. It makes rather sad reading. The guardian in his analysis refers to the years of conflict for these children. He analyses B's meetings with his father as part of the ICFA referral, and it was hoped that both children, C and B, would use that as a starter for contact. In fact, C did not attend, B went in rather excitedly, as I understand it, but very soon after he felt let down.
- 12 In the fact-finding, an Xbox which B wanted loomed rather largely, and father would not give it to him. For B, that Xbox while not perhaps being very serious for many of us, is still very important. He raised it in the meeting with father, and he is still not going to get the Xbox. The guardian who has met these children and has a good understanding of them, in his well-reasoned analysis, refers to the fact that B started the conversation. Mr K had relied on that as an excuse for the way he behaved. I remind him that he is the adult here, and he cannot keep blaming the child for what goes wrong. The guardian says this at paragraph 26:

"Even though B started the conversation, he was upset, confused or distressed by the way the conversation went, and this may have reinforced his view that his father could be mean, and was not focussed on him and his needs. I expect that B deliberately wanted his father to say yes, and then he would bring [the Xbox] for the next contact, which would have been a child-focussed response. B, as with C, is ten and it is unrealistic to expect that he can verbalise and understand all of his feelings. Of the three siblings, B appears to have had the most difficulty at school and in his relationship with peers. I imagine that being the one child who expressed a desire to spend time with their father was difficult, and I am in no doubt that he is aware of the feelings of his sisters and mother. However, he was capable of showing an independent view, and he did so confidently. I suspect that B had high hopes for the ICFA contact, and that he wanted more from his father and, very sadly, he did not get it."

We all had high hopes for the ICFA, but Mr K simply could not do what was needed.

- 13 I turn now to the oral evidence of the parties, rather than spend too long on the written evidence, which is plainly there for everybody to read. By agreement, Mrs K gave evidence first, as she is opposing contact. She began by explaining about the school choices, because Mr K says he was not included in that. She had told him there were three possible schools. She was going to the open days. She sent him her view which was that they were three good schools, but she had gone in the order the children wanted, which was SB, Ch, and P. I know from other cases that they are all well thought of schools. That has led on to criticism by Mr K, which I will come back to.
- 14 She also brought the court up to date on the indirect contact. The children were reading it, which was positive. She said they all got identical letters, and they found that a bit difficult, and also she referred to the inconsistency, when they should have been coming monthly. In terms of an updated pen picture of the children, she said that C is very unsettled and wants to have a break, and she says that A has a lot of fear and a lot of reassurance is needed.
- 15 The first question in cross-examination, which I put for Mr K, was why 'in her own words' she does not want the children to spend time with him. I really do not know why he needed to ask this again. She explained that the first time she saw the children experiencing the fear of him that she had felt, it was quite upsetting and, as a mother, it is difficult not to want to protect them. She said she does not think Mr K sees or understands how he makes people feel, and that is quite dangerous. I would agree with that analysis from Mrs K; I think it would be fair to say it took her some years to work that out, looking back on matters. She said that if he cannot see what he has done to hurt her or how he is hurting them (meaning the children), then he is potentially going to hurt them more. I would agree with that.
- 16 She was asked about whether or not she has read the reports and, of course, she says she had. She was asked if she knows why B did not want to go again after the first ICFA session. She said that B came excited and hyped up, but then he started to question things, and he wanted to speak about it. He was talking to C and saying to her things like, "I don't know why dad had to go on about Portsmouth and having a spare room there."
- 17 Although B knows his mother's views of his father, she plainly had been sufficiently supportive that he felt able in front of her to be excited about going to the contact. She said she was encouraging, and I accept that. She said she has tried not to question the children. She said that she did have concerns about the contact centre and they were dealt with as well at the previous hearing. She is concerned about the children not seeing their father, but she also wants there to be a safe environment, and she is now relying on the experts to guide her. She said B has said that he knows his mother hates his father, and she says he is rather binary, and that is how he expressed it, but she accepted that the children would know about that.

- 18 There was then some cross-examination about financing, things like a dyslexia test contributing to the D of E trip for A, and even the dentist. Mr K's position seems to be that he wanted all the details of everything before he would be willing to pay, including about where the D of E trip was, including about whom the dentist was. I am afraid I see that still as part of his attempt to control what goes on within the family. When he simply bought A some things for the D of E trip, he got a nice reply saying, "thank you" and he sent a nice reply back. If he were able to focus on that, the outcome in the future might be more what he is seeking.
- 19 There is an issue about Mrs K wanting to disclose the order from these proceedings in the financial proceedings in which there is a variation application. It seems to me that this order can be disclosed within the financial proceedings. There was a time they would all have been in the same suit, in any event. She accepted some of her feelings, as I have said, about the father were there, but she does try to hide them. She does not accept that Mr K has acknowledged his failings, because he only acknowledges the two or three incidents he has always admitted to. She thinks the children were not fully safeguarded in the contact centre.
- 20 The problem is the contact centre do not know and understand the entire background and therefore, when they see positivity, they do not know all the other matters. In relation to the ICFA referral, they would not have understood from B's point of view, the significance of going to Portsmouth or the Xbox, they would just have heard it as a conversation.
- 21 She was cross-examined about the school choices, and I have the WhatsApp messages between the parents about that. Superficially, it looks as though Mrs K did not provide very much information to Mr K, but having heard their evidence about this, he did not make any effort to find out much about the schools himself. He just wanted to know her view, so that he could criticise it. She kept saying to him, "There's three excellent schools, I'm letting the children choose" and then he sent back a long screed of why the children should not be allowed their say. As soon as she engages in a conversation with Mrs K, she gets criticised. In an ideal world, she should provide more information, but in an ideal world he would respond better than the way he does.
- 22 In relation to the provision of photographs, I think Mr K does have a valid point there. Everybody in this day and age seems to me to take lots of pictures on their phones, and Mrs K could make an effort to take some better pictures and send them to Mr K, and I ask her to do that in the future.
- 23 When she was cross-examined on behalf of the children about what Mr K wants, which is the direct contact in a contact centre to start with, Mrs K says she thinks it would be disruptive. B has a lot of anger at the moment, and it would push him further away. She explained that C gets abdominal migraines, and very upset about

the thought of contact, and A is a very strong-minded young lady, and it would be highly unlikely she could be made to go to a suggested meeting in a coffee shop. She thinks their reaction would be negative, and she thinks it should go much more slowly than that, and just be indirect contact. She cannot see that even telephone contact would work.

- 24 Mr K gave his evidence next. On the school choices, he said he does agree with the choices, but there was limited information; he could have obtained more information himself. He could not see a problem with his inconsistency in the indirect contact. He said, "Sometimes things get on top of you", and he obviously does find it hard. On the other hand, if you know it is due on the same day once a month, as a parent you really have to make the effort for your children to do it.
- 25 There was a problem with the 3 June letter. I make no findings about that because it was a very difficult situation. He thought B was going to go for the contact and B did not. What father could not do though is see that from the children's point of view, regular monthly contact, knowing when it is going to come was what they needed.
- 26 There were problems over the Christmas presents and rectifying that he seemed to think counted as the contact. Then there was nothing between the Easter eggs brought to court on 31 March and the end of May, apart from A's birthday. After the problem with the letter of 3 June, he did not get in contact again until 28 July, and then there was another long gap. Going back in time there was a big gap between Christmas and February. The children were told it would be once a month so from their point of view, it looks as though he is not interested.
- 27 I take father's point about not getting feedback and being disappointed, but as the adult you really have to make the effort, and as I have said, his effort with A over the D of E did get a reply. When he was asked in cross-examination about the UP2U, which was the domestic abuse service that he was sign-posted to where he lives by the guardian, first of all he was a bit vague about who had signposted it to him, I am not sure why. He said that he could not do it to start with because of Christmas, then he was dealing with the financial proceedings.
- 28 Again, you really need to get on and do it, because Mr K said he was motivated to do anything he could to see the children, yet he went into the UP2U with a closed mind, and refers to it as being "court bribed". He said he was going to do anything to make seeing the children possible, but he obviously has not taken on board the judgment. He said he struggled with it. He recognises now that going to court was going about it in the wrong way, it has taken him a long while to accept that. It also took him a long time to concede that the way he went about seeing the children back in 2019 could also be seen as coercive and controlling. He accepts very, very little of the past, except what he has always been willing to accept and even then, he blames B for the incident in the car when he slapped him.

- 29 He was asked to look at UP2U's table, which I have in the bundle at D90-odd onwards, about how little he accepted. The reality is, he was disagreeing and disagreeing strongly with most of the things which would have opened up getting somewhere with UP2U. Yet, he thinks he was not suitable for the programme, because he has been a victim of domestic abuse from a recent partner, he says, and because it was a long while ago since this relationship broke down. That is not the way I see it, nor is it the way anybody else sees it. He was not suitable because of his lack of acceptance. I have the 4 October 2023 letter about the second attempt at getting him onto their programme. Even at this one, he said he was doing it because he would not be able to see his children otherwise. He says he is willing to learn and engage with any programme to increase the chances of him being able to have contact with his children. He was provided with all the details of the courses but he did not accept that he had been abusive and therefore they could not take him on the course.
- 30 He does not accept even now, that he was bullying of A. He does not accept that he frequently chastised the children in an inappropriate manner. He says there were two or three occasions but even then, it was because he had no other option. He still sees it as Mrs K dictating when he can see the children. I have read all those messages, and I have already dealt with that at the previous hearing. He cannot accept, even now, how he has harmed the children. He accepts very, very limited examples of any poor parenting. Indeed, whatever he does accept, Mr K considers it was four years ago, so it is unreasonable to hold it against him. However, from a child's point of view, the impact can be long-lasting, whether something is last week or several years ago, and Mr K does not see that.
- 31 Having considered the guardian's report, father's position is still that the children are influenced by their mother. In relation to B he rather thinks he should have got over what happened in the past, and he blames Mrs K for B not wanting to go to the second session in June of this year. I have no evidence that B was put off by his mother. I have a mother to whom a child was willing to say, "I'm excited about going, and I want to go", but then it went wrong. The note I have from the ICFA report at D104 is:

"B said he hadn't seen his father for so long, like four years. His father corrected him that it was two, but still a long time. B asked his father if he still lived in Portsmouth and about his partner. He told him he wasn't with her anymore, he had his own flat, and there was room if they wanted to visit like before. B said he didn't think he would be going to visit his father in his new flat and he said Portsmouth is too far, it's like four hours. That's long. His father said it wasn't that far, and they used to do it okay."



- 32 They did not used to do it okay, and I know that from the incident in the car. "B asked if he could have some devices at his father's. Mr K said there won't be anything there for when you do come to visit again", meaning if he had the devices. Mr K had obviously not planned for what was going to happen at this contact. He still did not seem to understand how important the Xbox was for B. He relies on the fact that B brought up Portsmouth, but B wanted to see his father's reaction, and it was quite plain his father had not changed. He wants contact in Portsmouth on his terms, and he has to have the last word, and B still is not going to get this Xbox.
- 33 The guardian has addressed the children not wanting to see him and says that Mrs K has told them they can see their dad; he does not accept that though. Mr K was asked about A in cross-examination, and he does not think it is good for her not to see him. He was taken to what she has said about not wanting to see him, and he still thinks she should be encouraged to go.
- 34 I do not want to read out large parts of her letter, it is very articulate and well thought out, she says she can recall being frightened of her father, and looking back, she did not realise how stressful it was all the time. She says she knows he frightened B, and C was also really upset. They told her as soon as they got home. She said:
- "My dad isn't like other dads. He only laughs when other people are around so he looks good, or to humiliate people. He gets angry, very, very quickly. Sometimes shouting, but scarier when he just goes moody and stares at you. Whenever I try to negotiate with my dad, he always wants more and more, and won't bother to even try to work with me."
- 35 She then gives an example and, having seen the messages that we had at the fact-finding between Mr and Mrs K, that is exactly how he was. In the contact centre, C reported that he was nice at the contact centre, and not like he is when he is on his own. I therefore have all of that picture from both of these children, but he still says he wants something to be tried, for him to sit down with A. What he needs to do is he needs to change, and then she might sit down with him.
- 36 Father said towards the end of his evidence that the children are at zero risk of harm from him, physical, emotional, or psychological. I am afraid he just does not see it. He agrees that these proceedings have been going on for too long, but obviously he would not want a section 91(14) order.
- 37 He was cross-examined on behalf of the guardian about the ICFA, which was such an important meeting. He said that he knew bringing up Portsmouth was a bone of contention, but he tried to answer B when he brought it up. With hindsight, he should not have said that B was welcome to come to Portsmouth. Asked if with the benefit of hindsight he perhaps should not have contradicted B on the length of the journey,

he said he could have done. He also knows that the devices were a big issue for B, but he cannot see why. He had to look at it from a child's point of view, and Mr K just cannot do that. He still wants to put the blame for everything on Mrs K and accepts no responsibility for his conduct. I have already referred to the description of the guardian about B' feelings about that. It was not anything Mrs K did, it was B' own experience which is what put him off going.

38 One of the things Mr K said in answering questions on behalf of the children through their guardian, was that he wants A to be made to see him. "If only so she can tell him to his face why she doesn't want to see him", which seems to be a particularly unkind thing to want to do to a child, and I cannot see how that is going to help her. What she actually needs is a break from these proceedings, and I think that is what all of these children need. Like asking mother to say again why she does not think contact is good for the children, he seems to want A to have to say to him what she has set out in her letter. That would be further abuse.

39 Lastly, the guardian, Mr Mark Rosenfeld gave evidence. By coincidence, he had written the initial safeguarding letter back in 2019. He is now recommending no contact or no direct contact, and he said in his evidence that there has not been any acceptance of responsibility from Mr K for the views of the children, or their experiences of him. He referred to his first report, where he described the impact on the children. He had obviously considered carefully the views presented by the children, within the child impact assessment framework. He referred to the court finding that A has been emotionally harmed by his experience. She is at an age where she can begin to make informed choices of what she does and does not want to happen. He says:

"I believe A's perspective is based on her own experience and interpretation of her father's behaviour and thus, that her rejection of a relationship with him is justified. C seems to be worried about seeing her father again, and reluctant to try this. She believes that his positive behaviours were not really him. As with A and B, C has been emotionally harmed, however, she does have some positive memories, and is not wholly dismissive of the idea. B who has experienced both physical and emotional harm seems keen to want to spend time with his father again. He has ideas of how this could work and what he would like to happen, he does not want his father to be mean. When referring to the child impact assessment framework, it is relevant to note that some of Mr K's behaviour, such as authoritarian parenting strategy, loss of temper, upset at a challenge to his authority, contribute to a dynamic when a child does not wish to spend time with that parent."

40 He goes on to analyse why the children might not want to see him, but there was a window for C and B to try. The guardian said in his evidence, referring to the

communication between the parents, he could see that there was a problem, and Mrs K could have given fuller replies, but that Mr K could have found out some of the school information for himself. I have already agreed with that. He said with the UP2U programmes, there was no acceptance by Mr K of the findings or any insight, and he cannot see that he needs to do the work.

- 41 He was asked by Mr K about the 2019 recommendation for a contact centre, and Mr Rosenfeld tried to explain that that was in the context of the safeguarding letter. It was put to him that this was a ten-year-old who should not be making important decisions, and Mr Rosenfeld said that a ten-year-old child is capable of sharing their experiences and their views, and he made his recommendation based on all the information. That includes Mr K's ability to take on board the issues and make meaningful change. The children are not making the decision.
- 42 I have to say, Mr K's questions, and putting it purely on the basis of the children making a choice, is rather ignoring the wider picture. Mr Rosenfeld reminded the court and Mr K of the meeting with B. B had a clear view of what he wants, he wanted to try things, but then it did not work out. He originally wanted to see his father maybe every term for half to two hours, but then after that first meeting he did not want to go again. He found his dad had not changed and from a nine-year-old's perspective, he was very disappointed. For B, there was a feeling of not being listened to, and that is exactly the same feeling that A had had.
- 43 It was a simple thing that B wanted, there was a simple way of managing it, but for Mr K there was a lack of insight and a lack of thought. I have to say, I do not think even now Mr K would give B this Xbox. All he had to do was say, "I'll bring it next time."
- 44 I have taken into account that B knows how his mother feels about his father, but he was quite clearly about to tell her he wanted to go and to be excited, and the only thing that has changed since then is his father's behaviour to him. Mr K is still putting all the blame on mother, and that is the way cross-examination was put as well. I am afraid that is all part of Mr K's lack of insight. Mr Rosenfeld said that although Mrs K said she does not want contact, that did not stop her trying to ensure that the children had a relationship, and she did support the ICFA referral.
- 45 Mr Rosenfeld said that there were risks to the children in having contact they do not want. He said the relationship must be a positive experience for the children. C is clear in her facial expressions and her behaviour when she is talking about her father, that she is anxious and holds her stomach. That contrasts with her in other settings. B had difficulties at school. He agreed that in principle, contact would add to the children's lives, but in the light of their experience and feelings, it would be harmful. C has been saying for years what she experienced in the contact centre was not how

their father was out of the centre, so father's heavy reliance on that being positive, does not help me a great deal.

- 46 In terms of the rest of her life, C gives it nine out of ten, which I think is quite good. It was put to Mr Rosenfeld by Mr K that the children's stress and anxiety was because they know their mother does not want contact. Mr Rosenfeld acknowledged that possibility, but he also said that his experience and that of the ICFA worker were that she was supporting the arrangements. I dealt with the fact-finding and I did not accept or make findings that Mrs K was alienating Mr K.
- 47 The guardian was asked about the indirect contact, and he referred to the lack of consistency from the children's perspective and that yesterday, when Mr K gave evidence, other things were his priority. Mr Rosenfeld rightly said that that is harmful to the children. They know they are not important enough to be a priority. That is very sad. He thinks that Mrs K could have provided more information about the school. I do not think it is an example though of Mrs K wanting to exclude Mr K, I think it comes against a long background of the way he behaved. She said there are three excellent schools. She said she was happy to go along with the children's wishes and, of course, he came back and challenged that.
- 48 He said in relation to A, Mr K should demonstrate that he would respect her wishes and acknowledge her feelings and respond consistently. At the moment, she has the relationship she wants with her father. For B and C, Mr K wants to reinstate it at the contact centre, to remind the children that dad is all right, and give contact a chance. We have given it a chance and, I am afraid, it has not worked. B seems to be held responsible in part for that, Mrs K is held responsible. Neither of them is responsible.
- 49 Mr K put to the guardian that he has done the SPIP and the Triple P, he has tried to do the UP2U and the guardian, in my view, thoughtfully and insightfully said that what Mr K has not done is take responsibility for any action of his. He defects the blame onto other people such as ICFA, Mrs K, regrettably even the children. He still cannot see why he was not accepted onto the UP2U. The biggest barrier here to contact is Mr K.
- 50 There has not been any meaningful change in his understanding of the children's experiences. He thinks the children should have a chance to show them what he has learnt from the programmes, but he has had that chance, and he did not manage to prove it to B. He has not shown this court either that he has changed. Mr Rosenfeld thinks that indirect contact will keep the door open. Mr K needs to write to the children about the things they are interested in, and show that he has changed. He needs to make an effort, and I am afraid he does not get that.
- 51 When he was cross-examined on behalf of the mother, Mr Rosenfeld agreed that the gap before the children saw the previous Cafcass officer and contact coming to an end

had only been about nine weeks or so. The children were, in fact, able to say how they felt about their father and why.

52 Mr Rosenfeld was also asked about Mr K saying that A had not seen him for years and been able to see how he has changed but Mr Rosenfeld said, she has seen him collecting the siblings and, of course, she hears things from them. He thinks that even his statement prepared a few weeks ago for this hearing, shows that Mr K has not been accepting of responsibility and that is at C102. There is not any change for A to see. It is relevant, because this is the statement Mr K had time to think about and write, and he says:

"I fully accepted responsibility for how I could have parented our children better, by having dealt with B beating up his sister, and causing disruption in the back of the car in better ways, as well as telling A to tell me what she had overheard. These were isolated instances."

53 Those are two relatively minor parts of a much bigger picture and he seems to be giving B the blame for hitting his sister in the back of the car on a very long car journey that these two very young children were being subjected to by their father. There is not any real acceptance, there is not any insight.

54 In relation to the section 91(14), Mr Rosenfeld was asked about that in his evidence, and he thinks it will provide reassurance to the children that someone is not coming in and asking them questions. A has shared her views, C is anxious, B needs to know what is going to happen, and he thinks the break in proceedings would benefit them all. Three years is an appropriate period, because it ties in with their adolescence, and he hopes the indirect contact will continue, and that there will be some responses.

55 That concluded the evidence. Having heard all the evidence freshly over a day and a half and seen and heard everything, I curtailed everybody's submissions. Mr K in his submissions told me he had learnt so much, and then he said the children are not at risk of any harm. He said he has 100% recognised what he has done wrong. I am afraid those simple sentences shows his lack of insight. He does not accept what he has done wrong. He has not shown any ability to change or focus on his children's welfare. He is still blaming everybody else, but himself.

56 I have to decide what is in the children's best interest. Their welfare is this court's paramount consideration. I have regard to all the factors in the welfare checklist. I very much have in mind the presumption that it would benefit the children to have a relationship with their father. The children's guardian plainly had all of that at the heart of his analysis, and he has tried very hard to see ways to make the contact work for the children. In his analysis, and I am looking at D73, he set out the summary of the background of harm from my judgment, and following on from that he was trying

to see of ways that the children could have a relationship with their father safely. He plainly wanted to make contact work.

- 57 A has been able to describe the impact on her of her father's behaviour and at her age, and given that background of harm, the guardian did not recommend direct contact for her. In my judgment, he was right in that regard. He recommended the ICFA service. Mrs K, despite her reservations, agreed to that, and I am satisfied, having seen and heard her and the references to her behaviour, that she did support it. She did her part in all of this. What Mr K had to do, was write to the children monthly, take on board the findings and try to make the ICFA contact work. Mr K could not do any of that. B then did not want to go again, and he said his father had not changed. Mr K cannot see that, he still blames Mrs K. He even said that the ICFA provider could have used more encouragement or persuasion. Everyone else seems to bear the responsibility for making contact work.
- 58 The Xbox has featured hugely in this case. It is such a small thing for an adult to give to a child, their own Xbox that they want, but even now, Mr K seems determined to me not to let B have it. I am afraid this is still about him being in control of this family. He still wants the children to go to Portsmouth, and that is all part of the same approach he has. He wants everything on his terms, and A was right about that. He does not see the harm he causes the children. They remember what he was like. Mrs K for her part began to see that the same harm she had been suffering was now being suffered by the children. He still talks about the contact centre being positive, without considering the background and the analysis of that, and that that was a very small part of it from the children's point of view. The guardian has tried very hard to help him to see it. He has been able to read how the children felt, but he just has not taken it on board.
- 59 The statute says when considering the wishes and feelings of the children, that it is to be done in the light of their age and understanding. I am not looking at a ten-year-old saying "I don't want to see dad", just like "I don't want to go to school because it is maths on Tuesday". What I have here is children who have wishes and feelings, set in the context of being with a controlling, abusive, emotionally harmful father, and they have an understanding of the whole background, and B now has a clear understanding of the fact that his father has not changed. It is in that context that I look at the children's wishes and feelings not to have contact. Their wishes and feelings fit in with all the other evidence I have. There is no evidence of change. B thought there might be, but he was let down.
- 60 These children have a background of suffering harm, as a result of their father's treatment of them and, in my judgment, he bears responsibility for almost all the harm that these children have suffered over the years. Mr K shows a lack of insight. He shows that he does not have the ability to meet his children's emotional needs and, in

my judgment, they would suffer further harm through direct contact. Those are the most important factors in the welfare checklist.

- 61 Children do have an emotional need for a relationship with an absent parent. In this particular case, that could be met through indirect contact. The risks from direct contact or further harm are too great for these children. If he remains committed to the indirect contact monthly, then the children will see that. If he demonstrates change through that indirect contact, they are likely to want to see him in the future. My view of Mrs K is that whatever she thinks about Mr K and his treatment of her and the children in the past, if she felt contact could be managed safely, she would support it.
- 62 I do have some criticism of her in relation to the indirect contact. She should send a good selection of good quality pictures. I do not think that this WhatsApp is working for the benefit of the children. There are odd little messages and then it gets difficult between the parents. I take the view that rather than having this messaging system, the date should be fixed for the indirect contact from Mr K to be, for example on the first of the month and Mrs K should, a week before, send Mr K longer information about the children, so that he has something as the foundation for his indirect contact. He obviously is entitled to school reports as well. If the children are seriously unwell, and I do not mean the odd cough or cold, then plainly he should be told about that. He has parental responsibility in relation to schooling decisions, if they are important decisions, he should be consulted about those. I think being expected, as Mrs K has been to send him odd updates quite regularly and then to be met with responses from Mr K is not helping and, perhaps, indirectly is then not helping the children.
- 63 The order I make in relation to contact will be that there is no order for direct contact. In relation to the children, there will be the monthly indirect contact by way of letters and cards, and also gifts on their birthdays and at Christmas, and Mrs K will write in between.
- 64 The last matter I have to deal with is the application under section 91(14), that I specify that applications may not be made without the leave of the court. I have been reminded of the amendments to that Act, in particular, section 91A(2) and counsel provided that in writing for everybody, and Practice Direction 12Q. When I considered those, in my judgment, this case does need an order under section 91(14).
- 65 The children have been harmed by the length of this litigation, they would be harmed by further applications, particularly if there has been no change by their father. A period of respite is needed and Mr K's conduct overall merits an order. In my judgment, it needs to be for three years. That protects A through the rest of her minority, and that protects B and C as they move on and settle in secondary school and the early years of their adolescence.

66 I will make a section 91(14) order that Mr K cannot make any applications for child arrangements order without the leave of the court for three years. Any application should be referred to me in the first instance, or another Circuit Judge if I am not available.

67 I thank everybody for their help in this case. I thank Mr Rosenfeld in particular. They are very helpful, very insightful, very comprehensive reports, and they have greatly assisted my decision. My decision is that indirect contact only is in these children's best interests going forward. An anonymised judgment will be published.

---