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Neutral citation number: [2024] EWFC 259 (B)
Case No: BS24P70393

IN THE FAMILY COURT

Date: 14 August 2024

Before :

RECORDER REED KC

Between :

X (THE MOTHER)

Applicant

- and -

D (THE FATHER)

Respondent

Re Kate (Contact – history of non-return)

The **Applicant** appeared **in person**
Kate Pearson (counsel) for the **Respondent**

Hearing dates: 13 and 15 August 2024

JUDGMENT

Recorder REED KC :

1. By order of 24 May 2024 this matter was listed for final hearing of the mother’s deemed application to vary the final child arrangements order made by District Judge C in Town B on 2 November 2023. This is my judgment on that application.
2. The child at the centre of this case is Kate (not her real name). She will be four years old in a few weeks time. Proceedings concerning her living and contact arrangements have been pending since shortly after her first birthday, as sadly DJ C’s ‘final’ order subsisted for only a matter of days before being breached by the father, prompting a return to court by the mother.

3. The parties are the Kate's mother, X, who is in person, and her father D, who is today represented by Ms Pearson of counsel, though he has acted in person throughout much of the proceedings.
4. Ms Pearson on the father's behalf has ably represented her client's case in writing, through questioning and in submissions, and I am grateful for her assistance. X has presented her case with economy and skill.

The background

5. The parents' relationship ended in around August 2021. The parties each report domestic abuse by the other. Whilst it is accepted that there was some domestic abuse during the relationship, no specific findings as to who perpetrated that abuse have ever been made (each parent says the other assaulted them). On Kate's first birthday the father failed to return Kate to her mother's care and relocated with her to his mother's home in Town B (which is approximately 120 miles away from Town A where the family were living and the mother remains living). Proceedings commenced shortly thereafter when the mother sought a non-molestation order and the father applied for a child arrangements order providing that Kate should live with him. He cited domestic abuse and the mother's alleged poor mental health and drug use. In the months that followed, records show that the father told professionals that the mother was 'not involved' with Kate due to her mental health. The mother was in fact seeking contact with Kate, which the records suggest the father had not prioritised.
6. For a substantial period during the proceedings it appears that the mother's contact to Kate was restricted to contact centre contact for a couple of hours, and I am told that there were regular breaches of the orders by the father, though I do not have specific details. During the proceedings the court in Town B received two substantive reports from Cafcass (there may have been others but if there were I do not have them). The first, dated April 2023 recommended that the child should remain living with her father and should spend time with her mother every third week from Weds-Sun. The second, dated July 2023 recommended a

reversal of those arrangements. The two reports concluded, contrary to concerns raised by each parent about neglect and in particular the adequacy of care for Kate's skin condition, that both parents could meet Kate's basic care needs to a satisfactory standard and that they each had a good relationship with her. In large part it appears that the shift in recommendation was because there was emerging concern about the father's ability to permit Kate to have a relationship with her mother, and even if he allowed contact, about his ability to support that relationship. In the summer of 2023 there appears to have been a brief hiatus in the father's contact arising from bruises on Kate's ribs which was the subject of a safeguarding investigation, ultimately NFA'd. I do not know much about what happened in the proceedings in 2022, or why it took so long to reach final hearing, other than that there appear to have been some listing mix ups in 2023. On 2 November 2023 though, having heard evidence from the parents and the Cafcass officer and having considered the evidence within those proceedings, DJ C ordered that Kate should remain based with her mother (as had recently been the case), but should live with her father every third week from Weds-Sun plus half the holidays. The order was expressed in the shared 'live with' format, perhaps in the hope that the history of adult conflict would be quelled by a recognition of the importance of each parent.

7. Whilst unfortunately I do not have DJ C's judgment, it is apparent that he must have concluded, on the evidence, that there was no major safeguarding risk that precluded either parent from caring for Kate for long periods, and that it was in Kate's welfare interests to be based primarily with her mother, but to spend substantial amounts of time regularly with her father. It must be the case that DJ C concluded, as had all the professionals, that neither mental health nor drug or alcohol use represented a barrier to the mother continuing to meet Kate's care needs and from continuing as her primary carer, and nor was there any evidenced risk arising from the bruising investigation that precluded the father continuing to care for Kate unsupervised. Indeed, DJ C must have concluded that this arrangement met Kate's needs better than a return to the previous arrangement in Town B would do.

8. That order was not appealed. However, it is clear from his actions since and from his evidence to this court that the father did not and does not accept that decision, because he has regularly breached it and continues to maintain, through counsel and his own evidence, that the mother poses a risk. The professionals continue to hold different views and say that the mother is a safe parent.

9. Prior to my involvement other judges in this court have found as fact that the father has breached the order of DJ C as follows:
 - i) On 5 March 2024 District Judge Brown found as fact, after hearing both parents' oral evidence that D failed to return Kate to her mother on 12 November 2023 (only 10 days after the order was made), instead returning her 3 days late on 15 November. The father's explanation in his recent statement was that he was 'unable to book a train ticket' and, by way of attempted clarification in oral evidence, that he probably hadn't been able to afford a train ticket but couldn't remember why he had returned Kate late, as it was a long time ago.

 - ii) On 5 March 2024 District Judge Brown found as fact, after hearing both parents' oral evidence that D failed to return Kate on 3 December 2023, only returning her on 21 December when, at an urgently convened hearing in Town B that day, Recorder Stott ordered him to return Kate by 6pm. The father's explanation for this breach in his recent statement was that a welfare check on 3 December by a social worker meant that 'the contact schedule was disrupted' and he was 'unable to return Kate until 21 December'. In oral evidence when asked to expand the father told me that the welfare check was in fact by a police officer in uniform and that this distressed Kate so he was unable to return her. However, he had also told me that the officer arrived as he was putting Kate to bed on 3 December. Given that she was due for return to her mother earlier that day it appears he had decided not to return her on time before the police attended. The father told me that the following day, he discovered that the mother had

raised a concern about bruising sustained by Kate and that on realising that there was another live safeguarding investigation he ‘simply said [to himself] this is not gonna carry on its gonna stop. something needs to be done’, and he decided to take Kate into the police station to show them she was fine (as told both to the social worker and myself). When asked if he thought this was child focused given that he had earlier told me that Kate had been very distressed at seeing a police officer in uniform, he changed his evidence to suggest that he had ‘just remembered now’ that he had not taken her in to the station, leaving me unclear what to make of his suggestion that the purpose of the visit was to show Kate to the police.

- iii) On 5 March 2024 District Judge Brown found as fact, after hearing both parents oral evidence that D failed to return Kate when she was due for return on 11 February 2024 (pursuant to Recorder Stott’s revised interim order), and the court found that breach continued until 19 February (effectively the whole half term holiday). It is accepted that Kate had been delivered late to this contact (two days late on 9 February) as a result of her being unwell with a swollen arm following her MMR earlier that week, though D says that the mother’s concerns were exaggerated. Having read the GP records, and seen the pictures of the redness and marked swelling (which the father was sent at the time) I do not agree. The father’s explanations for this breach were variously
- a) he was making up the lost days resulting from Kate arriving late. This would explain two days of the breach, although it is not a good reason for it.
 - b) he was adding on his half of the half term. This would not explain the remainder of the breach.
 - c) he had been concerned about Kate’s eczema and had taken her to the GP. He ultimately accepted that the GP record he exhibited against this date in fact relates to April not February, so this explanation was abandoned.

- d) District Judge Brown also recorded that it was this breach which caused the mother not to comply with the order on 28 February, fearing that the father would once again retain her.
 - e) It is not recorded whether District Judge Brown's findings were made on the balance of probabilities or, given that she was dealing with an enforcement application, on the criminal standard. It makes little difference for my purposes, but I assume the findings were made on balance of probabilities.
 - f) District Judge Brown's findings have not been appealed and they still bind me.
- iv) On 9 May 2024 HHJ O'Neill recorded the father's admission relating to his non return of Kate as scheduled on 7 April 2024. Kate was not returned to her mother's care for over a month, and only then because, in the early hours of 9 May, the police attended his property to execute a recovery order, removed Kate and returned her to her mother's care. The admission was :

'the father told the court that he knew of the order made by HHJ Willsted and the penal notice dated 2nd May 2024 as it had been served on him, that he was visited by the police on 3rd May 2024 who advised him to comply with the penal notice on the order of 2nd May and that he deliberately breached the order for the reasons he set out in documents he sent to the court on 8th May

FOR THE AVOIDANCE OF DOUBT IT IS RECORDED THAT THE FATHER AGREED THAT AS A FACT IT WAS PROVEN THAT HE HAD BREACHED THE COURT ORDER AND PENAL NOTICE OF HHJ WILLSTEED DATED 2ND MAY'

10. The background to that last, prolonged breach, is

- i) on 27 March 2024, the mother delivered Kate to her father's care as per the order, on 1 April, he presented Kate to the GP where she was recorded to have an eczema flare up, a temperature and a urine infection. Although Kate had by this time been in his care for 5 days, the GP records and the father's evidence make clear that he gave the doctor the impression that Kate's presentation was a result of her mother's care or neglect of it. It is not clear that the father explained the (documented) history of chicken pox, consequential eczema flare ups and an adjusted regime of medication in response over the course of March, which the mother had overseen and informed the father of.
- ii) The father says that these concerns about neglect were the basis of his retention of Kate. He accepts that he did not contact Kate's mother to ask her about her skin, to alert her to his worries or the fact that he had sought medical attention, and states that he thought it was appropriate to notify social services so that they could tell her (which they did several days later), and to retain Kate until the issue was resolved. For the avoidance of doubt that is both inappropriate and unrealistic. Social services are not there to act as a postbox for parents who are unwilling to communicate.
- iii) As on each other occasion of breach, the father failed to make an application to the court to vary or suspend the order.
- iv) Kate was due back on 7 April. She was due to spend a further period of time with her father on 17-21 April, but was retained for the entire intervening period and beyond, and the mother reported no response to attempts at contact since 15 April. On around 27 April the mother issued a further C79 application in an attempt to secure her return, resulting in a hearing on 2 May. The court was satisfied that the father was aware of this hearing having been notified by email, though he tells me he was not. He was of course well aware he was in breach of the order of 5 March. A return order was made and a penal notice applied.

- v) The police attended the father's home on 3 May. The father told me that the account he is recorded as having given (above) of the advice from the police on 3 May was inaccurate and the police had neither shown him the order nor advised him he should comply. They had simply come to do a welfare check.
- vi) An extract of text message exchanges from the same day show the father confirming he knows what a penal notice is (having clearly been told there is an order requiring her immediate return), but that he is 'contacting the court. and will update when done so'. The father complains that the mother is harassing him (102). It is clear the father was aware by 3 May that there was a further order requiring Kate's immediate return either through the police or the mother and he must have known that was why the police attended.
- vii) The father was made aware of a further hearing on 8 May (convened because the police were unable to remove on 3 May without a recovery order), because he filed a statement for this hearing and requested its conversion to a remote hearing. HHJ O'Neill considered that statement and concluded (reasonably in my view) that it should proceed without hearing from the father, reciting in her order that she had:

'read the "statements" that he had emailed to the court which clearly evidenced no intention of compliance with the order to return the child made by HHJ Willsted on 2nd May'.
- viii) The father now says that he made no admission on 9 May, suggesting that HHJ O'Neill misunderstood him. He says he did not know about the order of 2 May until 9 May and had not seen the order of 8 May until he read it in the witness box, as the police did not serve a copy of it on him. He should have been provided with a copy of the 8 May order on execution. However, even if he was not, he plainly did know about the order of 5 March and the order of 2 May, and chose until forced to relinquish her, to retain Kate in knowing breach of both orders, for over a month. He

may think he was justified but he nonetheless knowingly breached the orders, as his evidence to me this week confirms, and as his statement of 8 May also indicated.

ix) There has been no request for rectification or amendment of the recitals to the order of 9 May. I take them as an accurate record of the father's admission. I am sure HHJ O'Neill recorded them with care precisely to ensure clarity for future judges.

11. That then is the forensic base for this final hearing. I am not going to go behind DJ C's order or the findings and admissions subsequently made. I indicated at the outset of the hearing that the primary task was to consider subsequent evidence and to consider what orders were now appropriate to meet Kate's welfare needs in light of that evidence. It was neither appropriate nor necessary at this juncture to seek to make findings of fact about domestic abuse during the relationship.

The parties' positions

12. The mother's position is as follows:

i) In light of the history of breaches, the mother asks me to make an order providing for no contact to the father at all. Asked when she first reached this conclusion the mother told me that she had formed this view after Kate's return on 9 May and had not come to it lightly. She had hoped that the father's oral evidence might reassure her and allow her to reconsider that conclusion, but sadly his attitude in evidence had caused her to reaffirm it.

ii) The mother clarified in evidence that she did not think that Kate should have any contact with her father for the entirety of the remainder of her childhood, but when explored it became clear that this was based upon an assumption that supervised contact would inevitably move on after six months or so to unsupervised contact. Were supervised contact to be ordered for the foreseeable future she would be somewhat reassured and less opposed.

- iii) The mother was clear that she would continue to comply with any orders I made, accepting that she had to have trust in the process and the professionals to assess and to consider the risk and make good decisions. She told me she had done this after the bruising worries, and would continue with the same approach.
- iv) The mother seeks a s91(14) order for 'at least a couple of years'.

13. The father's position:

- i) The father seeks a return to the arrangement where Kate is based with him and spends Weds-Sun in her mother's care in every third week (plus half the holidays). In oral evidence he departed from this to suggest, apparently 'on the hoof' that there should be a shared care 50:50 week on week off arrangement, although he could not tell me what should happen in a year's time when Kate starts school, or where she would go to nursery in the meantime. In closing submissions when I asked for clarification I was told that he was simply 'trying to propose something realistic' which he had recognised his primary proposal was not.
- ii) He maintains that he will not breach orders again, and will deal with things differently. He will however take what action is necessary to protect his daughter.
- iii) The father does not see a need for supervised contact. In oral evidence he proposed his mother as a third party to facilitate handover. In the event that I consider supervised contact is necessary the father tells me he has made some enquiries of contact centres but each has a waiting list. No application has yet been made and no details were provided in his statement. He tells me he has limited funds to meet the costs of supervision. He does not make specific proposals for supervised contact in the event I deem this necessary.
- iv) The father does not see a need for a DAPP and does not agree he has behaved abusively. He does not think it is realistic to expect the parties will be able to reach

agreement about moving contact forward from supervised contact, given the very poor state of their relationship.

- v) He suggests the mother is implacably hostile, and has tried to stop his contact – as such, I was surprised to hear his oral evidence that he does not criticise the mother for raising concern about the bruising, as he would have done exactly the same in her shoes.
- vi) He opposes the making of a s91(14) order.
- vii) He does not feel listened to and does not think the assessments have been thorough.

14. Town A Local Authority have prepared two reports – a s37 report in February 2024, and an addendum in July 2024. Their recommendations are as follows:

- i) In February, Ms Smith’s recommendation was for the father’s contact to resume as per the order of 2 November 2023. At that time they did not appear to agree that the mother’s (then) request for supervised contact for 3 months was warranted.
- ii) By July 2024, following the breach in April / May, and the marked negative impact the repeated disruption has had upon Kate’s wellbeing, Ms P’s recommendation was different. Ms P accepted Kate had been observed previously to have a good relationship with her dad and she thought the relationship was important, but now recommends supervised contact for the foreseeable future, once a month for two hours in a contact centre.
- iii) She did not think there was any less restrictive way of protecting Kate from the harm consequential on further breaches than professional supervision, but did accept that supervised contact could be for up to a day at a frequency of once a fortnight and in the community if funding allows, her recommendation of once a month for two hours in a contact centre having been based upon what she expected would be practically

achievable if supervision was necessary). She did not think that supervision by a non-professional third party was adequate.

- iv) Ms P also recommends that the father should undertake a DAPP, expressing the opinion that the pattern of breaches amounts to coercive or controlling behaviour.
- v) Ms P recommends that the mother should undertake a course like the freedom programme and that if and when both those pieces of work have been done and the father shows insight into the harm he has caused Kate by his actions there could be consideration of progression of contact.
- vi) Ms P agreed with the idea of a cessation of proceedings for at least a year in any event.
- vii) There are no safeguarding concerns about the mother. She is not considered implacably hostile.

Participation directions and vulnerability

- 15. Although no fact finding hearing has ever been convened in this case, there are allegations of domestic abuse highlighted in the papers, including the suggestion that the father's conduct during proceedings has been coercive or controlling. The mother is in person.
- 16. Although the statutory prohibition on questioning did not apply to this case (as it is a variation of a 2023 order made on a 2021 application), I considered my duties under PD3AA were triggered nonetheless. In the absence of any prior ground rules or participation directions I established that neither party required a screen or other special arrangements.
- 17. I considered asking questions on behalf of the mother, but having heard her skilfully ask questions of the social worker and in light of her clear preference to ask questions directly of the father as well (with no objection raised on behalf of the father), I allowed her to ask questions of the father directly. Whilst this required some management, as the parties had a

tendency at times to devolve into private exchanges which were difficult for the court to understand or keep up with, I am satisfied that overall the process was fair to both parties.

The law

18. I am bound by the findings of fact already made in these proceedings. I may make such child arrangements order as I consider, in light of those findings and the current evidence, best meets the welfare needs of the child, which are my paramount consideration.
19. Any further findings I make must be made on the balance of probabilities and I must make those findings based on the evidence, and properly drawn inference, rather than speculation.
20. In finding the order which best meets the child's overall welfare needs I must have regard to the welfare checklist, and I must also have regard to the parties' Article 6 rights, and to the whole families' Article 8 rights to private and family life. Any order which interferes with the family life of the child or her parents must go no further than is necessary and proportionate to meet the welfare need.
21. Where relevant allegations of domestic abuse are raised I must consider whether I should make findings as to that behaviour, but I should not do so unless a determination will sound in the order I make. Here, an issue is at large as to whether the father's post separation conduct in the form of repeated breaches of orders, amounts to coercive or controlling behaviour, and is thus a form of domestic abuse.
22. As defined in PD12J:

‘coercive behaviour’ means an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten the victim;

‘controlling behaviour’ means an act or pattern of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting

their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour;

23. If I conclude that there has been domestic abuse to which the child has been exposed she is to be treated as a matter of law as the victim of it.
24. Guidance regarding the costs of contact in cases of domestic abuse suggests I should be slow to order the victim of abuse to pay the costs of supervision of contact (*Griffiths v Griffiths* (Guidance on Contact Costs) [2022] EWHC 113 (Fam)).
25. Contrary to submissions on behalf of the father a s91(14) order is no longer a rarity. Pursuant to PD12Q, I have a discretion to make an order where appropriate and the circumstances may be many and varied. The welfare of the child is paramount. Such orders are now to be actively considered in cases of domestic abuse or in other circumstances where a restriction on applications is likely to reduce harm to a child or their caring parent.
26. Nor are such applications only to be considered in the case of repeat unmeritorious applications. It was quite wrong for the father to complain of the mother's repeat applications, praying in aid the fact he has only made one, when that is because of his preference for ignoring court orders, and forcing the mother to apply back to court when he has failed to do so.
27. A s91(14) order is a filter not a complete bar. The duration of such an order must nonetheless be proportionate.

Evidence considered

28. I have been provided with a bundle of 181 pages. Notwithstanding a direction that the previous papers should be made available to the court, the bundle contains very little from the previous proceedings, save DJ C's order, two Cafcass reports and safeguarding letters.
29. I obtained, read and provided to the parties the following additional pertinent documents:

- i) orders of 5 March, 2 May, 8 May and 9 May 2024,
- ii) s47 report of December 2023 considered by Recorder Stott on 21 December 2023,
- iii) the father's statement of 8 May 2024.

30. I was told by Ms Pearson that the reason none of these highly relevant documents were in the bundle was because the father's solicitors had only recently come on board and they had been unable to get a response from the court. If there were documents needed, a proper application should have been made by C2. It should not be for the judge to track down core documents in order to ensure that a hearing is effective.

31. It was particularly important that the parties and the court were able to consider the 2024 orders, because they set out findings of fact which bind this court, and a history of events which is quite at odds with parts of the father's recent witness statement.

32. There were a number of other documents referred to by Ms Pearson in her position statement produced for this hearing (following a conference the day prior), which are not in the bundle and which were not produced. Since those documents predate the decision of DJ C I considered that I can proceed without them because they were available to DJ C and were factored them into his decision. For instance, the suggestion in the position statement that the mother had pursued 'false allegations of sexual abuse' by means of a C2 at some unspecified point in the previous proceedings was wisely not pursued. There is no trace of it in the Cafcass reports, and in any event it did not give DJ C sufficient concern to prevent him making the order he did. It would clearly have been impossible for me to consider making findings that 'false' allegations were made when no notice has been given and I have no evidence at all (even in the father's statement) of what those allegations were let alone to conclude that they were false. What is apparent from the older papers is that the mother at one point used the term 'grooming' to refer to alleged manipulation of her older daughters by the father during the relationship and post-separation, that she had not intended to imply sexual

misconduct, and that it took some time to unpick this crossed wire; and that a social worker raised concerns about the inappropriateness of the father sending naked pictures of Kate to her (to show the issues regarding her skin condition), and about boundaries in the household. Those matters are not current and are not relevant to my determination.

33. I have heard oral evidence from Ms P, from the father and the mother.
34. Ms P was reluctant to give her opinion on some matters, tending to say 'you'd have to ask them'. I thought her suggestions about the potential for the parents to begin to co-parent in the future were more aspirational than realistic. When pressed on her professional opinion as to the likelihood of the father agreeing to do a DAPP, being accepted on a DAPP and completing it (precursors for the move to co-parenting and a possible move to unsupervised contact), she was not optimistic. She didn't know what courses were available.
35. Her evidence was that Kate had suffered significant harm as a result of the disruption in her care arrangements. In particular, this had disrupted her ability to engage at nursery, and had left her with pronounced separation anxiety. Those issues were continuing to have an impact on Kate's development and wellbeing, as per the evidence of the mother, the nursery and Ms P's own observations. Ms P agreed as a general proposition that the fact that the nursery's referral to CAMHS relating to the separation anxiety had been recently accepted was an indication that the very high threshold for CAMHS service had been met.
36. Ms P's report is clear that repeated retentions have had a profound impact on Kate – by disrupting not only her nursery but her stability overall. Her professional recommendation is that Kate needs a period of stability when she will be reliably collected by her Mother and will feel able to settle into her education in readiness for starting reception next September. She has missed a lot of nursery and her place was at risk of being lost due to absence.
37. Ms L (social worker) explained that in her view the father's persistent behaviour in breaching the order since November 2023 amounted to coercive or controlling behaviour, and that was

the basis of her DAPP recommendation rather than any assumption about the abuse which had taken place during the relationship. In her report and oral evidence she made clear that the father had poor insight into the effect of his behaviour on Kate, her mother and the whole household. Though he had expressed remorse for the circumstances of her removal from her bed in the middle of the night on 8/9 May, her view was that he is unlikely to change his attitude of continuing justification of his actions, and as such there was a risk of further breach and harm.

38. Ms P told me that

‘he needs to demonstrate he can follow what is ordered. that previous recommendations of her being in her mother’s care have been made and orders granted and that in the assessments we’ve done and previously there has not been found any neglect or concerns. We have not found she is scared of her mum, which he has alleged. She needs to know what will happen when, to have certainty and stability, which she has not had because of the disruption. He has been proactive in trying to raise concerns, but from my conversations with him and the previous social worker, he finds it difficult to accept when professionals are not agreeing with his concerns.’

39. That sums up a thread which runs throughout the assessments before the court, and which is entirely consistent with the father’s own evidence and his case as presented, on instruction, by Ms Pearson.

40. Ms P told me she had considered whether there was an alternative to professionally supervised contact that would not reduce contact so much, but she couldn’t formulate such a recommendation in light of the risks. She does think the relationship between Kate and her father is important and so doesn’t support a position of no contact at all. I thought her recommendations in this respect were evidence based, balanced and measured.

41. The father’s evidence was often contradictory. Overall I formed the view he was not a reliable witness and was prepared to alter his account in order to achieve the desired result.

i) His statement was prepared with no regard to the findings or admissions, was inconsistent with his oral evidence and those findings, and did not in my view

represent a serious attempt to explain the reason for the breaches or to persuade me that the risk of further breaches was low.

- ii) The father's oral evidence did not provide reassurance to the court.
 - a) The father was cavalier in his accounts about breach.
 - b) His account of why he breached on 3 December and following was thin and contradictory. Having inadvertently revealed that he had no intention of returning on 3 December by telling me he had been putting Kate to bed that night, the father tried to suggest that in fact he had been unable to return Kate because she had been upset by the police uniform. When it was pointed out his statement referred to a social worker he said that was an error. When challenged on the impromptu account of taking Kate to the police station the next day, given Kate had been 'very distressed' by the mere sight of police the night before, he changed his account and said she hadn't gone in. I'm afraid the reality is that the father had no excuse for his breach. He had simply decided not to return Kate because he didn't agree with the order. His various explanations are smoke and mirrors.
 - c) D fell back on not knowing about the 8 May hearing until 7 May or not receiving the 8 May order before removal on 9th, as somehow excusing or explaining a breach that had persisted for a month by the time that order was made, and which he knew was a breach. His later suggestion that he was unaware of the order of 2 May is nothing to the point. He knew he was in breach from 7 April onwards, and in any event I find (supplemental to the recorded recital of 9 May) that he did know about that order because a) the mother told him about it (evidenced by text messages), b) he told me he was aware he had missed a hearing on 2 May because the court called him, c) the

police told him about it the next day (recital to order 9 May), and d) he told the judge on 9 May that they had done so.

- d) Implicit in the father's complaints about lack of knowledge of various orders made in May is the suggestion that the circumstances of Kate's removal by police in the middle of the night cannot really be laid at his door. In fact all the evidence is quite clear that police action was absolutely necessary to secure Kate's return in circumstances where the father had unilaterally decided not to return her.

- iii) It was clear overall that the father considers that safeguarding grounds are a complete answer to his regular and persistent breaches, and that he would – if he felt necessary – do exactly the same again if he considered there was a similar safeguarding risk. Given that the father clearly holds the view that he is right and all the social workers (and DJ C) are wrong about the mother, and given that Kate will inevitably attend contact in future with some evidence of eczema on her skin, the probability of this happening is high.

- iv) In any event, even on the father's own case, neither the November nor the February breaches were anything to do with safeguarding. They were about the father acting unilaterally and taking the time he felt he was entitled to. On his evidence he had been simply unable to accept that Kate was not fit to travel in February, even though he had been sent photographs and explanations from the mother. His statement told me that he had spoken to the GP who had confirmed that the mother had exaggerated how poorly Kate was. In fact, Kate's GP records (and the GPs later explanation to the social worker) confirm the mother appropriately sought medical attention for what is obvious from the photographs was a quite significant reaction to her jab. It was striking that the father did not seem to accept that the mother was right to delay the long drive to Town B until she was feeling better, and that he suggested to me she had

been withheld for five days, before being reminded of the dates and the court's findings, when he accepted in fact that Kate had been brought only 2 days late. And yet he had kept her for 10 days.

- v) The father in his evidence seemed quite unable to distinguish between taking action in response to genuine safeguarding concerns, and justification for breaching the order. Even if the father had genuine safeguarding concerns in April (and he cannot have been that concerned because he didn't present Kate to a medical professional for five days), some low level illness or poor skin care patently did not necessitate retaining a child in breach of an order, even less keeping her away from her mother with no contact at all for over a month. There was absolutely no excuse for not at least telling the mother of his concerns, or his intentions, even if communication was difficult.
- vi) When the mother held safeguarding concerns about bruising, coupled with reported remarks from the child that suggested that her father had caused them, she did not stop contact unilaterally or without reference to the court. She notified professionals, allowed safeguarding processes to take their course, and contact only stopped when the court authorised its suspension. Against that backdrop, for the father to suggest that he didn't know he ought to have made an application to the court to suspend contact instead of unilaterally retaining Kate and waiting for the mother to bring the matter back to court to enforce is simply not plausible.
- vii) His criticism of her for bringing repeat applications (to enforce and secure contact in light of his breaches) is ill judged and demonstrates a profound lack of insight and an inability to accept responsibility.
- viii) Moreover, I have real doubts about how genuine the safeguarding concerns were in April. I have seen the medical records of the attendance in April. I have seen the medical records relating to the preceding chicken pox and medical attendances by the mother. I have read the social work reports which, following liaison with the GP

confirmed the mother's actions in seeking medical attention (about the arm) were appropriate. I have seen the photographs of Kate's skin in April, which are far from evidencing serious neglect or a medical emergency. I have formed the view in light of this specific evidence and the tenor of the father's evidence overall, that 'safeguarding' was a pretext for keeping Kate, simply because he wanted to keep Kate.

42. Asked about whether he appreciated the harm he had caused by retaining Kate, he said
- 'I hold my hands up and say its not ideal but I'm putting across why it happens. I'm here to give an explanation for it. I'm not just keeping her at home, I am justified every time. Whether the law goes with that or not. But in any instance where she comes and is not in the correct state I will get the help I require. That is why I contacted social services.'
43. Asked about how the court could be reassured there would not be repeat breaches if he had unsupervised contact again, he said:
- 'I always stuck to it every time. I'm not just gonna get there and go 'how can I get her longer'. So no. A couple of times I felt justified in trying to get help. Will it be every time? No. if I have a major concern there are different ways how to go about it'.
44. However, the father was unable to tell me what those different ways were, or how he would respond if Kate came to him with eczema again, saying he still needed 'help to navigate these things'. The clear tenor of his evidence was that he would alert social services, but not the mother and wait. When eventually I prompted him to consider applying to the court he initially told me he hadn't known he could / should do that before saying
- 'well I knew already, obviously. But something happened, I tried to get help and call people and I tried and tried and tried. I can say yes it was wrong to keep her but I made mistakes. I admit I did in my head what I felt was right.'

45. The father told me that he had not understood at the hearing on 24 May that he was being offered supervised contact or no contact, and had misunderstood. I do not accept that. I have considered the mother's clear and detailed account of the judge's 'credit score' analogy in trying to help the father to accept supervised contact in the short term, and have concluded that the judge's recital recording that the father was unwilling to consider contact centre contact was accurate. The father told me that he thought he was unable to make proposals for supervised contact in his witness statement for this hearing because of the provision in that order requiring him to make an application if he changed his mind about supervised contact. I do not understand that at all.
46. I have concluded the father is simply unable at this time to take responsibility for his own actions and I cannot rely on him to behave differently in future. The father's impromptu suggestion of week on week off care was but one of several illustrations of the father's tendency to say whatever he thinks is expedient, without thinking through the consequences. The fact that the father's response to my query about his plans for nursery met with a baffled shrug and a 'I dunno', illustrate that it was not seriously or genuinely meant, and was in my view a means to an end - this makes it even harder to rely on his promises that he will not breach orders in future.
47. The mother's evidence was clear. I thought she was a straightforward witness who was able to articulate the reasons behind her position.
48. The mother told me she had already carried out the Freedom Programme and the Recovery Toolkit, which she found helpful. She had spent four months volunteering and training to be a co facilitator before taking a step back because she found that too triggering in light of the ongoing proceedings, She told me in September she is starting a peer support group for women who experienced domestic abuse.
49. The mother asked pertinent, insightful and effective questions of the social worker and father, and was articulate and child focused. She was able to challenge the father when he said

something that made no sense or which she knew to be untrue.

50. She told me that she had found the proceedings, and having to repeatedly ask the court to make return orders (and wait with no contact whilst the court set up hearings), exhausting. She has done this largely as a litigant in person. She told me that she could not trust the father's promises he would not breach again because she had heard him give many judges the same promise, both before the 2 November 2023 order and since.
51. The mother gave me an account of Kate's poor physical condition on her return from her father and why she had formed the view she could not let things continue, and of the marked impact on Kate that she has seen since, with Kate following her to the toilet or to take the rubbish out.
52. Her rationale for adopting the position of no contact was clear and child focused. Even though she was clearly ground down and disappointed by the father's repeated retention of Kate, and had reached the conclusion she should seek a no contact order, she did not strike me as implacably opposed to contact, but having reached the end of the road. In view of the father's evidence, it was hardly surprising that the mother was not persuaded to shift from her position of no contact and in my view her expression of regret that he hadn't was articulate and genuine.
53. The mother was cross examined on her own allegations against the father. It was not suggested there were no bruises, or that the child had not made remarks of concern, and the father had conceded that the mother's response in alerting authorities was appropriate. I therefore limited this line of questioning as unlikely to assist me. It was suggested that since the matters were NFA'd the allegations were 'false'. The mother clearly explained that she had not 'made an allegation', but had simply alerted authorities to the marks and what Kate had said (which on its face would legitimately give rise to concern), that she allowed that process to take its course, and accepted the outcome, that the matter could not proceed because Kate was too young to interview. I accept that account. In any event a matter that is

brought to the attention of authorities but not pursued due to lack of evidence is not necessarily 'false'. It appears that the mother may well hold concern about why her daughter said to her that daddy hit her or that she 'ran out of breath', but it has not stopped her complying with the court's orders in line with her daughter's welfare.

54. The mother was cross examined on whether she could contribute to the costs of supervised contact. She pointed out that the father had still not paid his share of the costs of her supervised contact from several years ago. It later became apparent that the mother still continues to pay the father maintenance, notwithstanding that the child is in her care. The mother calmly explained that she could see no good reason why she, as the single parent of three daughters with a large mortgage and care of the child in question, should be expected to pay the costs of supervision which was necessary entirely because of the father's breaches of orders.
55. Overall, I prefer the mother's evidence to that of the father. It is consistent, clear and broadly consistent with the other contextual evidence.

Analysis

56. I have woven elements of my analysis into the preceding sections of this judgment, but set out here in somewhat more structured form some additional elements. My primary conclusions are:
- i) there is a clear pattern of persistent wilful breaches of the child arrangements order, which has led to sustained periods when Kate has had no contact with her mother and has been out of nursery,
 - ii) The father fundamentally does not accept the basis of the order of 2 November 2023,
 - iii) In his conduct by breaching the order the father has little regard or insight into the impact on Kate or the mother of sudden cessation in contact, not apparently

recognising that this is harmful for Kate, quite apart from being upsetting for her mother,

- iv) Nothing in the evidence makes me confident that this pattern will not continue if he is permitted unsupervised contact – he doesn't see he did anything wrong. He continues to maintain he was justified in his actions and that the mother is a significant risk. He knew he should have applied back to the court but inexplicably did not,
- v) Although the recommendations have shifted over time, there is a consistency in the professional evidence and I consider that the recommendations are evidence based and soundly made, and there is no basis for me to materially depart from them,
- vi) I accept the professional evidence that the breaches have had a profound impact on Kate, on her mother and in fact the whole household, including her sibling Q who has needed her mother's attention, which has been sucked away by this litigation and having to return to court repeatedly,
- vii) I accept the evidence that further disruption i.e. repeat breaches would cause significant harm and I must strive through my order to find a way to prevent that whilst also maintaining Kate's relationships with both parents,
- viii) I accept the professional evidence that in the coming year or so the priority must be stability and calm for Kate, further disruption of her care and living arrangements would be contrary to her welfare interests,
- ix) In light of the above, any contact Kate has with her father can only be supervised until there is some evidenced change, which is unlikely to be swift, if it comes at all,
- x) That supervision will need to be professional,
- xi) There is a pressing need to conclude these proceedings and to give the family a break,

- xii) The duration and frequency of contact is likely to be restricted by virtue of any supervision and the cost of it,
 - xiii) For the time being any contact should in any event be in the local area to promote the current priority Kate's continuing to settle in her home, nursery and locality.
57. I have considered the history of breach and the father's evidence about it, in part because I am invited to direct or suggest that the father should complete a DAPP, which would only be appropriate in circumstances where there is proven domestic abuse.
58. On the father's behalf it is said that the breaches do not amount to domestic abuse because the motivation is lacking – the breaches were for genuine welfare reasons and not done to harm or punish the mother. However, what is required in the case of coercive behaviour is an act or pattern of acts that are '*used to*' harm, punish or frighten the victim. In the case of 'controlling behaviour' the slightly different formulation is an act or pattern of acts '*designed to make*' a person 'subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour'.
59. In my view, the father's pattern of unilateral action in the form of retention of the child in knowing breach of orders, the cutting off of all communication and contact with the mother, exclusive communication with professionals, deliberate decision not to apply back to court and forcing the mother to make the running, had a series of obvious impacts which the father will have known about even if those impacts were not his specific and direct motivation. He acted knowing he was breaching the orders, and did so purposefully. In my judgment he will have known that his actions would leave the mother fearful as to when she would see her daughter again, that his actions in retention (and inaction in not communicating with her or applying to the court) would compel her to expend time and energy trying to recover Kate's care through court applications, thus forcing her to expend her own resources for his own gain, and heavily impacting her everyday activities: she has been criticised at every turn for

her care of Kate and forced into jumping through hoops in order to secure contact with her child, even though she already has orders to that effect. Even if it was not his intention or specific motivation, he acted knowing that the order prohibited his actions (these were not inadvertent breaches), and he knew or ought to have known that those actions would have these consequences for the mother (if not the first time, on all subsequent occasions).

60. On the father's own evidence, on some occasions the decision to retain was prompted or cemented by the father's own grievance against the mother (for failing to bring her on time in February after the MMR, for raising another allegation about bruising in December) and as such have a punitive element. The father must have known that his actions would have had that effect on the mother and it seems to me that in the simple meaning of the words he has used Kate to both punish and frighten her mother. Even if it was not his intention, he acted knowingly and knew or ought to have known that it would have such an impact.
61. Whilst in some cases an abusive parent will use litigation as a means of control or harassment, here the father has adopted a position of blatant disregard for the authority of the court in order to control the arrangements and the mother. When he is engaged in the court process, he adopts an approach of criticising the mother and feigning ignorance. I am bound to say that it appears with the benefit of hindsight that this has been a pattern of behaviour that probably goes back as far as the initial removal to Town B on Kate's first birthday. For the father to say he didn't know how else he could deal with his concerns is flippant and, in my judgment, untrue.
62. In my judgment it is plain and obvious that the behaviour in question amounts to abusive behaviour in the form of coercive and controlling behaviour, and it is quite entrenched. In any event leaving aside the technical definition of coercive and controlling behaviour I am quite satisfied that on its own terms this pattern of behaviour is *abusive* of the mother, and by its direct *and* indirect impacts upon Kate, is abusive of and harmful to her.

63. Moreover, it is also clear from the records of the father's communication with professionals that he has a tendency to provide partial or misleading information to professionals in an attempt to undermine the mother's care of Kate. None of his complaints about her care of Kate have been made out. He persists in making them even though there is a paucity of any recent evidence to justify such complaints. That pattern of behaviour is also abusive.
64. As regards the welfare checklist:
- i) the ascertainable wishes and feelings of Kate (considered in the light of her age and understanding);
 - a) Kate is not yet 4 and cannot clearly express her wishes and feelings.
 - b) The evidence is clear that Kate has been seen in the care of both parents and presents generally as comfortable and happy in their care. she is thought to have a good relationship with them.
 - c) The father reports Kate to have said she is frightened of her mother but that is not borne out by the observations of professionals, and she is considered to be happy in her mother's care since her return in May, albeit that she continues to feel unsettled.
 - d) I consider that Kate would want to spend time with each of her parents, but the evidence is clear that she also wants and needs to know who is going to be looking after her.
 - ii) Kate's physical, emotional and educational needs;
 - a) Kate will have a need for her carer to manage her eczema which is a chronic condition. It will inevitably flare up from time to time, even though her parents manage it appropriately. Kate does not need her care and living

arrangements to be disrupted because one parent does not trust the other is properly managing her skin care.

- b) Kate's emotional and educational needs are of material importance to my decision. She has an urgent need for stability in her nursery placement and her home base, so that she can make an emotional recovery and can prepare herself for school next year.
 - c) She will in my view benefit from seeing her father regularly, but not at the expense of that base stability. It is regrettable that Kate has been unable to see her father for the last few months, but in the circumstances that was inevitable.
 - d) The evidence is that Kate was significantly emotionally affected by, in particular, her removal in the middle of the night by police, and that the after effects are still being felt. For the avoidance of doubt, I do not consider that the fact CAMHS have accepted a referral in light of her increased separation anxiety to reflect badly on the mother's care, as the father at one point in his evidence appeared to imply it did.
 - e) Further unplanned retentions or breaks in nursery attendance or contact with her mother will be significantly harmful to Kate's emotional wellbeing.
- iii) the likely effect on Kate of any change in her circumstances;
- a) A change of living arrangements at this time given the recent history could only be justified on serious and urgent safeguarding or welfare grounds. In my judgment there are no such grounds. Kate is well cared for, is beginning a process of re-establishing herself, and to move her as the father suggests (whether to his home as a main home or to a week on week off arrangement) would be profoundly unsettling.

- b) Kate needs to spend time regularly at her established nursery placement where she is not yet engaging as well as she might due to her anxiety about leaving her mother.
 - c) Any change in the current arrangements for Kate's contact need to be such that they do not undermine the core stability she is building.
- iv) Kate's age, sex, background and any characteristics of his which the court considers relevant;
- a) Kate isn't yet 4. The majority of her life has been spent in litigation. The last 9 months have, as a result of the father's choices, been confusing and unsettling for her and have caused her harm which she will take time to recover from. The proceedings began when the father unilaterally removed Kate from her mother's care and he continues to act unilaterally almost three years later. Kate needs her life, and her mother's life not to be consumed by these disruptions.
 - b) Kate lives with her half sibling Q, who is 14. Kate's mother needs to be able to spread her time between her children and not spend it on these proceedings. She needs to give both girls attention so that their relationship as sisters can flourish (I am told it is under strain as a result of the court case and the mother being unable to prioritise Q).
 - c) Kate's eczema may well be exacerbated by stress. It seems reasonable to assume that if Kate is living in a state of uncertainty or in a household full of stress this may well be expressed in her eczema from time to time, causing her discomfort.
 - d) Kate needs her carer to be able to focus on her. At present that means her mother, who she follows around from room to room. Kate will be affected if

her mother is distracted by the court case or social workers or is bombarded with messages from the father as she told me she was.

- v) any harm which Kate has suffered or is at risk of suffering;
 - a) the social workers tell me, and I accept, that Kate has suffered significant harm as a result of her father's choices in retaining her in breach of the order. None of the reason she gave justifies his actions or prioritises her welfare.
 - b) Kate has been harmed by the impromptu change in circumstance, she has been harmed by the repeated loss of contact with her mother, and she will have been harmed by the continual undermining of her mother by her father.
- vi) how capable each of Kate's parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting her needs;
 - a) I don't doubt both parents can meet Kate's basic needs.
 - b) I have real concerns as to whether the father is able to meet Kate's emotional needs, in particular her need for a relationship with her mother and for stability. This has been a concern since prior to DJ C's order, and underpinned the changed recommendation of Cafcass, which ultimately DJ C adopted.
 - c) Although at times the mother raising concerns has caused contact to be suspended, she has generally adhered to orders, and I am satisfied she would continue to do so even if I make orders that are not in line with her first request. Even though she is asking the court to make an order for no contact I did not detect any outright hostility and I accept that the underlying rationale is child focused and borne of many years of acts of control by the father which she has seen have caused significant harm to her daughter and have

affected her relationship with her. I accept as genuine the mother's expression of hope that the father would show some insight in evidence. In my view she is not hostile to the father per se, but is at a loss to know how else to protect Kate from his persistent actions.

- vii) the range of powers available to the court
 - a) I clearly must make an order regulating arrangements. No order will not meet the needs of this case at all.
 - b) I must consider whether a s91(14) order will benefit Kate.

Conclusions

- 65. In my view Kate's welfare interests obviously demand that I should make a child arrangements order providing for her to live with her mother. I do not think a child arrangements order for shared live with is either a reflection of the reality of the situation or that it sends a sufficiently clear signal that the mother is the parent with care.
- 66. Kate does have a need for a relationship with her father, but not at the expense of her overall stability. I think sadly that any testing out of unsupervised contact in the absence of evidenced change would be exposing Kate to a high risk of further harm which the court cannot sanction.
- 67. I have reached the conclusion that contact can safely be achieved with supervision, and that no contact would therefore not be proportionate in this case, even though I understand the mother's reason for her request. In the short term, Kate needs to be reintroduced to her father at a sensible pace and in the local area without the burden of long journey, and without being away from her mother for long periods (given her separation anxiety).
- 68. I have considered whether I can find a way of allowing Kate's relationship with her father to resume in a relatively unfettered format, but in my judgment professional supervision is

regrettably essential for the foreseeable future. I know precious little about the paternal grandmother, save that the mother considers her instrumental in the father's relocation of Kate to her home in 2021, and as a member of the household who has retained her repeatedly since, (and I note the record of her supporting the father at meetings in the course of the s47 enquiry relating to the bruises, when she told the social workers that the mother had 'munchausens by proxy'). The social worker did not consider she could supervise contact and I agree. Any supervisor must be independent, and to be able to be relied upon to challenge and enforce the rules, and to report breaches. Without making any findings against the grandmother, who I have not heard from, such a close family member is patently not suitable for this role. That necessarily will restrict Kate's contact with her father, but it is in my view unavoidable. It may be that funding will further limit that contact, but I cannot be dissuaded from my conclusion as a result of cost alone.

69. In the first instance contact should be regular and relatively brief, but the duration may be extended and may move out of the contact centre into the local area (if funds permit) if Kate has settled well.
70. In my view contact should in any event be in the Town A area to reduce the risk, temptation or anxiety about retention by the father.
71. Supported contact is not sufficient. Any supervisor must ensure that the father does not speak negatively to Kate about her mother, and he should not be permitted to intrusively examine, photograph or quiz her about her skin condition or health.
72. As no serious efforts have been made by the father to progress an application, there will inevitably be some delay as a contact centre is identified and a place awaited.
73. In the longer term the contact may be for up to a day in length, again in the local area. I leave these modest progressions of contact duration to the mother's discretion, trusting her to agree a longer duration if Kate is well settled and enjoying contact. She is best placed to judge that.

74. In view of the mother's financial circumstances and the reasons for supervision it would be quite wrong to direct her to make a contribution to the costs of contact. Whilst the father appears to have limited income, he lives with his mother and thus has limited outgoings, is apparently in receipt of child maintenance (for the time being at least) and has been able to afford representation for this hearing at least.
75. It will be the father's responsibility to identify contact centres within the Town A area, to provide details to the mother via the app so that she can elect an appropriate centre within a reasonable distance of her home, and then to make the necessary application. Contact will be fortnightly if funds permit, monthly if not. The father must notify the mother of the proposed arrangements at least a month in advance so she can ensure there are no diary clashes.
76. There will be an order for Kate's prompt return at the end of contact. A penal notice will be endorsed. In the event of any breach the court will list the matter on short notice and the father will be at risk of an application for his committal to prison for contempt of course. In addition, it seems to me that for the avoidance of doubt I should make a prohibited steps order making it absolutely clear that the father must not take matters into his own hands by removing Kate from her nursery or school or from any other person or place in whose care she is entrusted, without the mother's written agreement.
77. If the father has any genuine safeguarding concerns he must raise them with the mother, and with the local authority or police as appropriate – it is not acceptable to cut her out save in a case of true emergency or on specific advice from the police. If he wishes to be relieved of the obligation to return the child he must apply for a variation of the order, urgently if that is justified.
78. All communication must be via the parenting app.
79. The mother must send the father a monthly update and progress report on Kate, including pictures. She must keep the father apprised of significant medical developments, and must

consult the father regarding school applications or other major decisions as they arise. I do not understand there to be any current issue about schooling and Kate may already have a place, but in the event that the parents cannot agree a school it will be for the mother to apply to the school of her choice in the local area, taking into account the father's preference. There is no reason why the father should not be able to contact the nursery or in due course the school for progress reports. The school and nursery and Kate's GP should however have a copy of my order.

80. I have considered whether there will come a point at which supervision can be lifted. Regrettably, I do not think I can predict that. Kate will need a period of time before she is ready for a major change in contact in any event, the DAPP programme takes 6 months even if the father can find, fund and be accepted on it, and in my view regardless of the DAPP programme the father needs to seriously reflect on his behaviour, accept responsibility for his own actions, and to appreciate the causal relation between his need to be in control, the harm his daughter has suffered and the consequent restriction on his contact. That will take time.
81. I do not think it is appropriate (or even possible in light of the current lack of DAPP provision) to direct the father to attend a DAPP. I agree that if he developed sufficient insight and acceptance of my findings to be accepted on such a course, and if he could find the funds to attend such a course privately, that would probably be beneficial. But I have no doubt that at present he would not qualify for a DAPP, since he is absolutely clear he is not a perpetrator of domestic abuse. In any event my order is not necessary in order for him to privately fund a DAPP should he wish to.
82. What is clear is that if the father is to seek unsupervised contact at any stage in the future he must be able to evidence a development in his thinking and to reassure the mother that he will adhere to orders or agreements. Whether that is through (in part) successful completion of a DAPP, counselling or some other work I know not. What I am clear about is that I cannot now plot a chart through to unsupervised contact, I am not able to assume there will be a

material change of circumstances, and I cannot let the tail wag the dog. Kate's needs now and for the foreseeable future are for supervised contact. If and when that changes the matter will have to be considered on its merits at the time. If the parents can agree a move forwards I will not prevent that, but any changes must be agreed clearly in writing before being implemented. In the event that the parents cannot agree between themselves or with the help of a mediator or arbitrator, the father must apply back to the court with such supporting evidence as he can provide.

83. In my view on any basis supervised contact should continue for a year, and there can be no proper basis for applications from the father to progress or vary contact in this period. In view of the litigation fatigue that it is clear the mother is suffering from, and remote prospect of sufficient change, it seems to me that I should make a s91(14) order against the father for a period of two years. A s91(14) order will not prevent an application in the case of genuine safeguarding concern, or evidenced material change of circumstances, but my order does mark the importance of a period of stability and calm without litigation until Kate is well established in her school life. In my view that is a proportionate order to make.
84. Any future application should be dealt with by a judge of Circuit Judge or Recorder level if possible. Regrettably a large number of judges have dealt with this case and it has not benefited from judicial continuity but it need not return before me in view of my part time status, as that is likely to cause undue delay. A copy of this judgment must be appended to any future application.
85. The mother may share a copy of this judgment and my order with any professional working with Kate, including CAMHS or her GP.

Publication

86. In accordance with the Open Justice Principle, I propose to publish an anonymised version of this judgment on the National Archives. Neither the parents nor Kate will be identified, and I

will remove reference to Town B, stating only that it is a town approximately 120 miles from Kate's home with her mother. My provisional view, subject to representations is that these arrangements will reflect an appropriate balance between the parties Article 8 rights and the countervailing 'open justice' factors. Any objections to publication or representations about the specifics of anonymisation can be made at the hand down hearing or, if further time is required by email to the court, copied to the other party, by 4pm on 23 August.

87. I will deal with any typographical amendments on hand down.
88. I would be grateful if Ms Pearson could draw up an order which reflects the terms of this judgment, and circulate it to the mother before lodging it with the court by not later than 4pm on 23 August. For the avoidance of doubt my order is effective immediately and any breach of it will be a potential contempt of court punishable by fine or imprisonment, whether or not the father considers it to be justified.
89. That is my judgment.

Recorder Reed KC

14 August 2024

Post script – I deal with the submissions regarding publication in a separate short judgment, the neutral citation for which is [2024] EWFC 258 (B).