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IN THE FAMILY COURT AT BIRMINGHAM

Priory Courts
33 Bull Street
Birmingham

Before DISTRICT JUDGE PARKER

IN THE MATTER OF

P **(Applicant)**

-v-

P
(2)-(4) THE CHILDREN (by their Children's Guardian) **(Respondents)**

MR S NUVOLONI KC appeared on behalf of the Applicant
MR B McALINDEN appeared on behalf of the First Respondent
MR M FIDDY appeared on behalf of the Respondent Children (by their Children's Guardian, Julie Lynex)

JUDGMENT
23 AUGUST 2024

WARNING: 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.

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JUDGE PARKER:

INTRODUCTION

1. I am concerned with S, who was born on 29/10/2009 - he is currently 14 but he will be 15 in a couple of months - D, who is 12, who was born on 22/01/2012, and M, who is eight, who was born on 02/04/2016.
2. Since 4 August 2023, this matter has been case managed by myself. All the children have additional needs to varying degrees. Sadly, the father has not spent any time with S or D since November 2022. However, he does spend time with, and continues to spend time with M, every other weekend overnight and in addition, Wednesday overnight. He also spends time with her during the school vacations.
3. I do not wish to repeat the full history with regard to this case but there has been a number of applications and cross-applications by the parents against one another and a number of allegations and cross-allegations.
4. This matter was initially listed for a combined finding of fact and welfare hearing before me over the course of three days which ended on 28 June 2024. Following a professionals meeting between an independent social worker and a psychologist, who were both appointed as single joint experts with them both giving oral evidence, a large measure of agreement was reached between the parties.
5. In particular, this related to the issue of S's education and D being allowed to change schools from her school in B to C, where the mother resides, along with the children, and an agreed narrative so that this can be shared to the elder children as a prelude to family therapy being undertaken, aimed at potentially re-establishing the relationship, if at all possible, between the father and the elder children, because at that time, and to be fair still to this day sadly, they are diametrically opposed to having any kind of contact and their reactions to the thought of any contact with the father has been sadly extreme. I have made no findings in relation to why that is so. Both parents will have different views in relation to that, but it was felt by all concerned that a formal finding, one way or the other, would not be helpful given the situation.
6. That predominantly therefore left the issue in relation to M, more particularly M's education. M is currently educated in B, but the mother wishes for her to be educated locally in C because that is where she and the other children live. Father opposes this on the basis that her current education meets all her needs and indeed she is flourishing there and therefore, that needs to be given weight over and above the

logistics of the travel arrangements which he would regard as inconvenient but not something that would justify a school move.

7. I have had the opportunity of reading all the case papers in this matter and had judicial continuity. I have had the opportunity of considering, which was extremely helpful, the evidence of the independent social worker who was appointed and that of the psychologist. I think it is fair to say that insofar as M is concerned. she currently attends W Primary School. It is a mainstream school with a resource-based setting for children with ASD. She is flourishing. There are no concerns. She previously had access to what is known as a 'Rainbow Room' which is a standalone provision separate from the school's mainstream setting. However, she has now started to integrate into the mainstream classes and is making positive progress and continues to thrive.

8. Early on in the proceedings I had determined that M should remain at that school. The issue for the mother is the journey time between C and B insofar as M is concerned which she says is simply not sustainable and extends the school day from 7.15 to 5.30/5.45. The mother puts forward S School, which is a local school, to enable the journey to be more practical. She also makes proposals in relation to the father's contact with regard to the change in the proposed arrangements, namely, the reduction in contact by the way of losing the midweek contact; alternate weekends would continue.

9. The father's position is that M is doing well in her current school and should remain there. It was a school which was recommended by her educational psychologist, school reports are positive, and she has been there since 8 September 2020. She is secure and flourishing there and it meets all her needs. W Primary School has a 'Good' Ofsted rating but so has S School.

10. I note from the report of the independent social worker, and this is backed up by more recent evidence, that in the view of the headteacher, that a change of school for M would be detrimental to her and he concludes that she should remain there.

11. The independent social worker in his written evidence however states that M, although perhaps remaining where she is, should only do so until a new school is located in the local area which meets the same standards of her current school.

12. In the leadup to the hearing in June there was a professionals' meeting. At that professionals' meeting, for the purposes of my decision today, a number of observations are prudent.

13. Firstly, in relation to the fact that a change in the living arrangements, or the live-with arrangements with regard to mother, would be extremely high risk. However, it also records that neither expert could recommend that the children should remain in an environment where there was emotional harm. It also notes that there is no evidence that the elder children's negative views of the father appear to be exerting pressure on M. The recommendations were that a child-friendly outcome or judgment is required and an agreed shared narrative as was clear to all that the ongoing proceedings was fanning the flames.
14. The Guardian's position for the hearing was that there were no issues with M spending time with her father but she was concerned as to the length of the proceedings, and the litigation process itself was causing further harm to the children with the negative impact it was having on them.
15. In relation to any suggestion for change of carer, she would be extremely concerned if that were to materialise. The Guardian highlights that there are no concerns in relation to the school that M attends although noting the parents' respective positions. Indeed, I note from previous child and family assessments which have been filed as part of these proceedings from the local authority that M in particular appears to be happy in the care of either parent and it confirms settled within her current school.
16. With regard to the evidence of the school itself, S Primary, the proposed school, indicated that they regard themselves not suitable for M without additional resources. I understand that that is an issue which has now been resolved and nobody has sought to provide evidence to the contrary.
17. I therefore come to the hearing on 28 June 2024 which took place over the course of three days, following a professionals' meeting, and hearing the evidence from the independent social worker and psychologist.
18. The issue of M's education was not able to be resolved on that occasion and there were other matters as well in relation to the reservation of costs by way of an order of 20 October 2023 wherein District Judge Hadley reserved costs on mother's application to discharge the previous order appointing an independent social worker and the specific issue order and prohibited steps order in relation to schooling.
19. The background to this was that the nominated independent social worker had become unwell and was unable to undertake the work, and I understand the mother sought the local authority to undertake the work as an alternative to that which was

suggested by the father. That application was dismissed. The costs of that hearing being reserved and falling to be determined by myself.

20. Following on from my order of 28 June 2024, the parties were able to identify a therapist for the family. RJ has been identified. An agreed narrative was to be shared with the children and this falls on the back of the father - ultimately to his credit - acceding to D's request to change school from B to that of C.
21. Originally, the matter was timetabled to 19 July 2024. Sadly, that hearing had to be adjourned through the mother becoming unwell. Provision was made, however, for an agreed letter of instruction to the therapist and someone to undertake life story work to assist RJ. Various documents were agreed to be released and a summary of therapeutic intervention provided. All of that has been undertaken.
22. Following on from that order I determined that today's hearing would be dealt with on submissions. Today's hearing, in addition to the points that I have raised, has also had to deal with the fees for the experts' attendance at the hearing in June, the Guardian's application for a section 91(14) direction and other extraneous matters including the funding of therapy.
23. An appeal was lodged by way of an email (rather than a formal email seeking permission to appeal my case management order in relation to determining this matter on submissions) which I rejected for the reasons set out in that email and no further appeal in relation to that has been pursued.
24. In relation to further evidence, I have seen the video of M prepared at school which basically shows her and the other children having a whale of a time as all children do. I have also seen an email from the school referred to in father's statement reiterating that as far as the headteacher is concerned any move for M would be detrimental and that there appears to be no impact per se (or discernible impact) as to the distance in relation to the travel from C to B. The school have no concerns at all. The father reiterates in his statement that M's school was chosen specifically to meet her needs and is continuing to do so. He opposes any suggestion that she should move from that school, and certainly to a school which may not be equipped to meet her needs and is unfamiliar to her. The only reason for mother wishing for a move is due to location.
25. I think it is all agreed that M is thriving and happy at the school. She is fully supported there and has a good relationship with both peers and staff. She has access to relevant resources in relation to the Rainbow Room, although to a less extent, and

the father is concerned as to the impact on her emotionally and educationally of such a move. In his view, the journey time does not impact significantly on her.

26. The father's concern is that the proposed school has no resource base, it is not as well-equipped as her current school to meet her needs, it is a larger school environment that would need increased funding to meet her needs, and there is a question as to whether space is available for her.
27. I understand that funding has now been obtained and a space is available for her.
28. It is father's view that the logistics of the travel arrangements seems to have taken precedence over everything else without proper consideration of the other factors and the effect that a move would have on her educational welfare and the friendships she has made.
29. In order to compensate for the travel, he proposes that a change should happen in relation to the spend time with arrangements so that week in 1 M spends time with him from Wednesday to Friday, and week 2, Wednesday to the Monday. He is concerned that the Guardian has not addressed that proposal or conducted an appropriate analysis in relation to the balancing exercise with regard to travel as against the detrimental effects of a move.
30. Insofar as a section 91(14) direction is sought, he is concerned particularly with regard to this as it removes any motivation on the mother to commit to the parents' agreed narrative and therapy.
31. With regard to mother, she accepts that W is a good match and meets M's educational needs, but it is the holistic welfare needs that she regards as important. The distance to the school, she says, inhibits the development of friendship groups outside of school, and the travel is not conducive or sustainable long-term, nor in her best interests. She regards this as something which will be of increasing importance as M gets older. In other words, M should be schooled nearer home at an educational institution which meets all of her needs, both educational and pastoral and so enable her to develop relationships outside of the school environment with her peers.
32. Due to M's health needs a local school is also important to reduce the long journey time in the event of an emergency. S, she says, is able to meet her needs, it has funding, and has space available. Father's proposal for contact, she says, effectively splits the children up which she maintains is not in their best interests. The proceedings have been high conflict. The emotional toll on her and the children, particularly the elder children, cannot be underestimated and the proceedings needs to

conclude. She therefore supports the Guardian's suggestion of a section 91(14) direction.

33. Therapy has commenced and introductory sessions have been planned. She maintains that she is unable to fund the costs of therapy and life story work, or indeed the costs of the experts attending the hearing. That is something, of course, that I will also need to deal with. She also states that she is unable to meet the costs in relation to any costs order, although the inability to meet a costs order is not a reason for me not making a costs order, that is a matter that goes to enforcement.
34. I have read the Children's Guardian's position statement. She reports, sadly, the reticence of S and D with regard to the meeting in relation to the agreed narrative, although notes that D was extremely happy now that is being allowed to attend her new school, as indeed was her brother.
35. Although the narrative was read to the children it appears that S seemed quite angry, particularly as to why the issue of the schooling was delayed so long. Subsequently, both children ripped the document up.
36. I pause there and wonder whether another copy is available and whether both parents should have an additional copy laminated for safekeeping because clearly the matter cannot just rest on that, albeit of course this will no doubt form part of the therapy process and certainly, this is a document that the therapist should have, if not already done so.
37. The Guardian reiterates their concern as to the negative effect the proceedings have had and the need for them to conclude. There needs to be a hiatus from these proceedings and a period of stability and breathing space for the narrative to sink in and be reinforced. It is therefore proposed that there should be a section 91(14) order for 12 months to allow the family therapy to commence. The elder children, it is pointed out, are litigation competent. They are sick of the court process and the impact of any future proceedings cannot be underestimated.
38. With regard to M, she is now in mainstream school for all her lessons and no longer receives one to one support, nor uses the Rainbow Room. Her progress has been excellent. It is beyond doubt that her current school meets her needs, and she is thriving there and she has good relations with both staff and peers. Although the school have not picked up on any detriment to M, it is observed that M does say that the travel is too long, which the Children's Guardian concurs with, the journey not being an easy one. There are other issues as well; lengthy delays on the route and a

high incident of traffic collisions. As far as the Guardian is concerned, there are other schools in C that can meet M's needs, albeit S is the only that anyone has put forward, that being from the mother. The Guardian therefore cannot support her continuance with regard to the daily commute.

39. The Guardian says M is unable to continue with her friendships made within school or indeed outside of school due to the distance and she needs a local school, and the siblings need to remain together with the mother in their home in C where they can make friends and settle. It is better to make that decision at primary school age than later as, in the Guardian's view, this is putting off the inevitable.
40. I have also had the opportunity of reading the advocates' meeting minutes. It confirms the father's opposition to a section 91(14) direction and his view the proceedings themselves should not be concluded because there will be no motivation for the mother to make the changes required, in his words, 'a change of residence is still on the table'. He opposes M changing school. He opposes any suggestion of a reduction in contact. In fact, he wishes for an increase. He also raised the issues in relation to the pursuit of costs.

SUBMISSIONS

THE FATHER

41. With regard to the school the submissions are that M is thriving in her current school, there is no doubt of that, with little indication that she is affected by the travel, and her attendance is excellent. Therefore, the arguments put forward by both the mother and the Guardian in relation to the effects of travel fall by the wayside. The move itself will be detrimental and will be further exacerbated if there was no support or indeed inadequate support. The track record of her current school is proven.
42. The father's proposals in relation to the child arrangements order would mitigate those travel arrangements. The court cannot view M in isolation. One must look at the path that sadly D and S have travelled. The father has a concern that if M was allowed to move school and contact reduced, then M may well end up not having a relationship with the father in the same way as D and S have chosen not to. The Guardian has formed a view of the sibling attachment, but there is no analysis in relation to that and no automatic assumption that the siblings have a significant attachment.

43. With regard to the section 91(14) order and the conclusion of the proceedings, it is pointed out that there is a balance of harm that needs to be equated into balancing the continuance of the proceedings and the harm caused by the proceedings continuing. Whilst the proceedings have been in flow there have been positive benefits in relation to the maintaining of the schooling and for M to spend time with the father. Therefore, the father says that the proceedings should not be concluded. In certain cases, it is right for the court to maintain a tight grip to ensure steps are taken to re-establish a child's relationship with their parent.
44. A section 91(14) direction would also allow mother to continue, the father says, with the alienation of the children. The therapy at the moment shows no green shoots and he is concerned as to mother's ability and willingness to fund it in any event. It is in its infancy. He is concerned at the elder children's reaction to the narrative and that no attempt has been made to revisit that, or mother's role within it, or indeed whether or not the children themselves will engage with the therapy. Ending the proceedings will lose the Guardian and leaves the parties to their own devices.
45. Even if I were minded to conclude the proceedings and impose such a direction, I should do so for the shortest period of time. It is suggested that that should be for three months.
46. His comments that a change of residence is still on the table is not wholly discouraged by the experts, and in certain cases one must not see a change of residence as out of the question. If the children were not encouraged to engage with therapy, then other options clearly must be explored as otherwise it is tantamount to giving up.
47. With regard to the funding of the therapy and life story work and indeed the experts' attendance at court, both parties have had financial proceedings concluded by myself. Both have received a lump sum in which to re-house themselves, albeit I would imagine that a good proportion of that have been spent on these Children Act proceedings. Funding of therapy and life story work in relation to the mother and the father on a 50/50 basis should not be an issue. Mother's reticence will be viewed as yet another obstacle being put in the way.
48. With regard to reserved costs as provided in the order of 20 October 2023, it is contended that mother should have never brought the application - I believe she was unrepresented at the time.

THE MOTHER

49. With regard to the school, it is maintained that M is a resilient young lady. She is able to cope with change, as indeed evidenced within these hotly contested proceedings. The Rainbow Room is being used less and less as a resource. The parents with regard to M have been able to work together in relation to contact, particularly with regard to holidays. There are no issues as there are with the other children. As far as the change of school is concerned the matter is clearly just one of logistics and organisation of the household. The current schooling situation and travel arrangements cannot last for an indeterminate period, it has a shelf life. The balance clearly points to a local school.
50. With regard to concluding proceedings it is the court's role to make decisions and not act as a review body. The parents, it is contended, both decided the way forward which is therapy, not litigation, and keeping the proceedings open is contra intuitive to that. It is beyond question that the proceedings have clearly had a detrimental impact on both the parents and the children, hence the request for a section 91(14) direction. The children need breathing space. Proceedings have been high conflict. A break is required so that the family can take stock.
51. There is no question as to M's future relationship with her father wherever she lives or goes to school, and although not agreeing to the same, counsel for the mother accepts the logic in this case of there being a shared lives with order setting out those arrangements.
52. With regard to the cost order in relation to 20 October 2023, none of the advocates were there. I am invited to look at that hearing through the prism of where we are now within the proceedings.
53. With regard to the costs of therapy and life story work, during the submissions I indicated a clear expectation in my view that those should be shared 50/50.
54. Finally, it is contended that the parents should be looking forward as opposed to backwards. Whilst we are on the subject, I also indicated that in relation to the costs of the experts attending the June hearing, that their involvement was critical in achieving a substantial degree of consent as to a way forward, and again, their fees for attending court at the hearing should be shared.

CHILDRENS GUARDIAN

55. In relation to the need for a final order, the Guardian is of the view that it is imperative that these proceedings conclude due to the impact on both the children and the parents. From the parents' perspective, emotionally as well as financially. This is an experienced Guardian who has met the children on numerous occasions and has made a number of enquiries and therefore he rejects the criticisms made of her by the father.
56. The history in this case needs to be put to one side. The court has to deal with the children's welfare as it is at this moment in time. It is a sad reflection that the parents still seem to hold on to the historic narrative rather than moving forward. The children are becoming exhausted by this litigation. The fact is that all the children live with the mother in C. M going to school to B each day is clearly not sustainable. It is to mother's credit, and in the school's credit, that at the moment the effects are negligible, but that is not to say that cracks will appear. It clearly cannot go on.
57. The Guardian reiterates the need for a shared lives with order with regard to M and reinforces the importance of both parents in her life, and she proposes that the arrangements with regard to the midweek overnight contact and the alternate weekend contact with the father continues together with shared holidays. She reiterates a section 91(14) order is necessary in this case. It is still important insofar as therapy is concerned that both parties should 'buy into it', and indeed fund it.

JUDGEMENT

58. The only live evidence I have heard is that of the independent social worker and the psychologist. I think it is important for me to summarise the relevant aspects of their evidence in respect of the decisions that I have to make today.
59. Within that evidence, insofar as the independent social worker was concerned, the he commented that it appeared that the father had overlooked the impact on D and to an extent on M on them having to commute from C to B to attend school and expresses concern as to why father finds the decision so difficult. Whatever the rights and wrongs of mother's choices in moving to C, the current situation is clearly not in the children's best interests and concern was expressed that the father did not seem to appreciate that.
60. In relation to a change of live with arrangements, the independent social worker accepts that it would be emotionally harmful to remain in an alienating environment,

but similarly, a removal from such an environment would equally be harmful and a careful balancing exercise would be required.

61. I have to say that on my perspective and after considering all the evidence in this case, particularly given the fact that S and D are litigation competent and indeed S is 15 in October, I feel that he massively underplays that.
62. I accept that the father is of the view that a change in living arrangements is not off the table, but on the basis of where we are now, particularly with the elder children, I think that would do nothing but serious harm to the children and if there was any potential for re-establishing a relationship I think that would irreparably destroy it.
63. With regard to the Psychologist. Again, picking only on the relevant aspects of what he has to say insofar as today's decision is concerned, he accepts that children should not be travelling long distances but would need to see that the proposed schools in the locality can meet their needs. There are two questions which flow from that; firstly, they need to be educated locally, and secondly, is the school proposed adequate? The current locality is where the mother lives.
64. In relation to the suggestion that there might be a potential option of placement elsewhere (a neutral environment) should therapy flounder (as proposed by the father) and that would effectively result in potentially another school move, in my view, was highly speculative.
65. I have determined that a decision in relation to schooling needs to be made now prior to the start of the new school term in September and nobody seeks to persuade me from that.
66. The Psychologist also highlights that the father seems less able to realise the emotional impact of social situations he is involved in, the issue of M's schooling being a case in point. He too expresses concern that the father's inability to accept the distance involved, initially with D but more particularly now M, is puzzling.
67. Insofar as the potential sword of Damocles is concerned with regards to a change of living arrangements, I do not accept that such a potential threat of removing these children from the care of their mother would be conducive to ensuring engagement, and in my view would send out the wholly wrong message.
68. All agree that removal is a high-risk option. I would say in the circumstances of this case it is untenable at this moment in time and indeed for the foreseeable future, and on a balancing exercise, the harm that that would do to these children and the relationship with their father if he continued to pursue that would be immeasurable.

69. I also do not accept that it is in these children's best interests to keep these proceedings open for a period of many months just to keep track of how things progress. These proceedings need to conclude. The children and the parents have been exhausted by the process which has been ongoing since 2022. Continued litigation is not in these children's best interests. The children and the parties need a break to receive the appropriate therapy. To build in a review process within these proceedings is contrary, in my view, to the principle of delay which is inimical to the welfare of the children. It is moreover contrary to the child arrangements programme.
70. In relation to the position with regard to schooling, whilst I accept that M is thriving at her current school, it is my determination that the arrangements cannot continue. It is storing up problems for the future. I do not accept that this signals the potential for a reduction or the erasing of the father in the positive relationship which he has with M. Although it is contended that there is little evidence as to the strength of sibling attachment, there is no contrary indication either that the children do not share a positive relationship with one another. The only difference being is the relationship that M has with her father is extremely positive as opposed to her siblings being extremely negative. I believe it is pure speculation to say that M will go down the same path. There has been no evidence in these proceedings to date that such an eventuality will transpire.
71. Therefore, my decision in relation to schooling is that M should be allowed to change school to the nominated school in C for the commencement of the new school term in September and the prohibited steps order is discharged.
72. I will now deal with the issue of section 91(14).
73. On disposing of any application for an order, the court may order that no application for an order as contained within the Act may be made with respect to a child/children without permission of the court. The seminal case with regard to that is *Re P (Section 91 (14) Guidelines) (Residence and Religious Heritage)* [1999] 2 FLR 573:

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

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

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

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

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

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

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

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

(9) The degree of restriction should be proportionate to the harm it is intended to avoid.".

74. Therefore, the court imposing the restriction should carefully consider the extent of the restriction to be imposed and specify, where appropriate, the type of application to be restrained and the duration of the order.

75. The case of *Re A (A Child)* [2021] EWCA 1179 said that there was considerable scope for the greater use of these orders to protect children's interests and that the court's jurisdiction to make them is not limited to cases where a party has made excessive applications, but extended to situations where a party's overall conduct merited intervention. The guidelines in making such orders are not that it should only be made in exceptional circumstances:

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

76. Of importance when considering the effect of an order under section 91(14) is the need to have in mind that it is only a filter. The Domestic Abuse Act 2021, section 67, supports the approach and gives statutory effect to permitting an order to be made

where an application under the Children Act would place a parent or child at risk of physical or emotional harm. As set out in the case of *F v M* [2023] EWFC 5:

"The provisions within Section 91A are transformative. The section provides a powerful tool with which Judges can protect both children and the parent with whom they live, from corrosive, demoralising and controlling applications which have an insidious impact on their general welfare and wellbeing and can cause real emotional harm. This amended provision strikes me as properly recognising the very significant toll protracted litigation can take on children and individuals who may already have become vulnerable, for a variety of reasons. It also dovetails with our enhanced understanding of the nature of controlling and coercive behaviour. When all other avenues are lost, too often the Court process becomes the only weapon available. Lawyers and Judges must be assiduous to identify when this occurs, in order to ensure that the Court is not manipulated into becoming a source of harm but a guarantee of protection.".

77. A helpful summary was provided in *Re F* [2023] EWFC 212:

"b. While such an order is 'the exception and not the rule', it does not follow that the case or its circumstances must somehow be adjudged to be 'exceptional' before such an order could be made.

c. The court should bear in mind that such orders represent a protective filter - not a bar on applications - and that there is considerable scope for their use in appropriate cases.

d. Whether the court makes an order is a matter for the court's discretion. There are many and varied circumstances in which it may be appropriate to make such an order. These may include cases in which there have been multiple applications … but that is not a necessary prerequisite. They may also include cases in which the court considers that an application would put the child concerned, or another individual, at risk of harm (without the need to find the 'risk' to be 'serious' or the likely 'harm' to be 'significant' or 'serious') …

f. If the court decides to make an order, it must consider:

(i) its duration, as to which, any term imposed should be proportionate to the harm the court is seeking to avoid, and in relation to which decision the court must explain its reasons;

(ii) whether the order should apply to all or only certain types of application under the Children Act 1989;

(iii) whether service of any subsequent application for leave should be prohibited pending initial judicial determination of that application.

g. In all of this, the welfare of the child is paramount. That said, any interference with a parent's otherwise unfettered right of access to the court, including the duration of any such prohibition pending permission, must be proportionate to the harm the court is seeking to avoid.".

78. And as said recently in the case of *Griffiths v Knighton and XX* [2024] EWHC 199:

"… a section 91(14) order is a filter and not a bar. If a party can show the Judge that there is a real change of circumstances, then they will be permitted to make a fresh application.".

79. In relation to that position, the father is concerned that the mother will continue to engage in what he describes as alienating behaviour. As I have indicated in this case, I have made no findings against either party with regard to that.
80. In relation to the issue of therapy, I expect the parents to sign up to that and to fund it. Of course I cannot compel the children who, are litigation competent to engage with it.
81. It is contended that if I make a section 91(14) order it is tantamount to giving up. It is not. It is merely a bar and a filter rather than a prohibition and it merely provides a breathing space for these children.
82. Accordingly, on considering the facts in this case I will make a section 91(14) bar. For D until 19 September 2025, approximately 12 months. For S, this will be until 31 October 2025. By that stage he will be 16 years of age and will of course fall within the provisions of section 9 of the Children Act. As I have indicated, that is not a bar, it is a filter, and I am of the view that this case cries out for a cessation of proceedings and to move forward. Nothing can be gained by proceeding with a further application. In my view, it will provide further alienation of the children from the father via the court process which cannot be right.
83. The issue that I next turn to is with regard to the costs of the order made in relation to that of 20 October 2023. It is extremely unusual for the court to make costs orders against a party in Children Act proceedings. As long as *Re G (Official Solicitors' costs)* [1982] 3 FLR 340, it was said:

"Where the proceedings are between parents, both of them are acting bona fide in the interests of the child, it is not uncommon to make no order as to costs in the proceedings.".

84. In *Re R (A Minor)* [1996] EWCA 1120 it was continued:

"… the parties should not be deterred, by the prospect of having to pay costs, from putting before the court that which they genuinely think to be in the best interests of the child, but there have to be limits. Children should not be put through the strain of being subject to claims that have very little real prospect of success … in other words, there

was conduct in relation to the litigation which goes way beyond the usual sort of attitude which a concerned parent shows in relation to the future of their child".

85. Such an order would only be made against a party who has behaved unreasonably in the litigation as opposed to unreasonably with regard to the child's welfare. If conduct is found to be unreasonable then the question that has to be asked is, is it a proper exercise of discretion in the circumstances of the case bearing in mind the exceptional nature of the award to make a costs order? In doing so, the Judge must set out in the order or judgment as to why they are departing from the normal practice as to no order as to costs bearing in mind that an order for costs may simply make the prospect of the parents cooperating for the welfare of the child all the more remote and merely add insult to injury by engendering a feeling that they are being punished by the other party.
86. In essence costs between the parties will diminish the funds available to meet the needs of the family. The court's concern is to discover what will be best for the child. Parties should have a reasonable opportunity to put forward their case as to what will be in the child's best interests and should not be deterred from doing so by a threat of a costs order against them if they are unsuccessful. Costs are always likely to exacerbate, not calm down the existing tension, and this will not be in the child's best interests. It should be assumed that all parties are motivated by a concern for the child's welfare. However, an order for costs may be justified if it is demonstrated that a party's conduct has been reprehensible or unreasonable. In such circumstance, a party who is seen to have acted so, the court does have jurisdiction to make such an order.
87. The court, of course, retains a wide discretion as to an award for costs and in deciding what, if any, order to make, the court has to have regard to all the circumstances including the conduct of all the parties and whether a party has succeeded in part of their case, even if they have not been wholly successful. This may include conduct before as well as during the proceedings and whether it was reasonable for a party to raise, pursue, or contest a particular allegation or issue and the manner in which a party has pursued or defended a case or particular allegation and issue.
88. In the circumstances of this case, I am not satisfied that the bar in relation to the making of a costs order has been met. Accordingly, in relation to the reserved costs order made on 20 October 2023, having regard to the overall context of this litigation, I make no order as to costs.

89. I turn now to the child arrangements order. Of course, it is already agreed that in light of the narrative statement with regard to the elder children, that contact will remain indirect. I am satisfied that on the facts of this case that that is an appropriate outcome having regard to balancing the risks of forcing a relationship with the father with the impact of not having a relationship with the father. I say no more about that but of course I am fully aware of the principles in relation to the court taking all steps to ensure that the father has a relationship with the children as set out in *Re P* [1996] 2 FLR 314, as enumerated again in *Re C* [2011] EWCA Civ 521, and more particularised in *Re T* [2002] EWCA Civ 1736:

"… the court should consider whether the fundamental need of every child to have an enduring relationship with both parents is outweighed by the depth of harm to the particular child that might thereby be caused by the contact order" (now termed child arrangements (spend time with) order."

90. However, this is a case in relation to M which justifies a shared live with order. And I quote from the recent judgment of *AZ v BX (Child Arrangements order) (Appeal)* [2024] EWHC 1528 as to the principles that apply to a decision whether or not to make a shared lives with order:

"The choice of whether to make a shared lives with order or a lives with/spend time with order is not merely a question of labelling - it is likely to be relevant to the welfare of the subject children and must be made by applying the principles of section 1 of the Children Act 1989. In some cases where, for example, an unmarried father does not have parental responsibility, a shared lives with order will result in him having parental responsibility whereas a lives with/spend time with order (the children living with the mother) will not. That is a material difference to take into account … In every case the appropriate choice of order depends on a full evaluation of all the circumstances with the child's welfare being the court's paramount consideration.

The choice of the form of any lives with order should be considered alongside the division of time and any other parts of the proposed child arrangements order.

A shared lives with order may be suitable not only when there is to be an equal division of time with each parent but also when there is to be an unequal division of time.

It does not necessarily follow from the fact that the parents are antagonistic or unsupportive of each other that a shared lives with order will be unsuitable.".

91. In my view, I accept in this case and the history of this matter that a shared lives with order would be of benefit to M on the basis that it expresses the importance of both

parents in M's life going forward and the positive relationship she has with her father which will, in my view, need to continue and flourish.

92. Accordingly, I will make a shared lives with order between the parties but in relation to the father this will be on the basis of the current arrangements that M such that she will live with the father on alternate weekends, and in the week, and shared holidays.
93. Mother shall be responsible equally with the father for the costs of the attendance of the experts at the hearing in June.
94. There is an expectation of the parties both funding the therapy and life story work which is required and, in my view as I have already indicated, there needs to be a laminated copy of the narrative for the children to be kept by both parents and an expectation that that narrative, at a chosen opportunity, needs to be reinforced and disclosure of that agreed narrative to the therapist as part of their work if not already done so. This is my judgment and the reasons for it.
