



Neutral Citation Number: [2024] EWHC 3141 (Admin)

Case No: AC-2024-000256

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**  
**LEEDS DISTRICT REGISTRY**

Leeds Combined Court Centre,  
The Courthouse,  
1 Oxford Row,  
Leeds,  
LS1 3BG

Date: 06/12/2024

**Before :**

**MRS JUSTICE HILL DBE**

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**Between:**

**THE KING**  
**(on the application of)**  
**A MOTHER**

**Claimant**

**-and-**

**THE FAMILY COURT AT YORK**

**Defendant**

**-and-**

**(1) A FATHER**  
**(2) CHILD A and CHILD B (though their Guardian)**  
**Interested Parties**

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**Gina Allwood** (Direct Access counsel) for the **Claimant**  
The **Defendant** and **Interested Parties** did not appear and were not represented

Hearing date: 25 November 2024  
Further written submissions: 29 November 2024

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**Approved Judgment**

This judgment was handed down remotely at 10.30am on 6<sup>th</sup> December 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MRS JUSTICE HILL

**Mrs Justice Hill:**

**Introduction**

1. This is a renewed application for permission to apply for judicial review.
  - (1) The Claimant is the mother of two children who have been the subject of proceedings before the Family Court at York. The Defendant is the Family Court at York. The children, represented by their Guardian, and their father, are the Interested Parties.
  - (1) Detailed anonymity orders have been made in this claim by HHJ Belcher sitting as a judge of the High Court on 15 February 2024 and Peel J on 28 May 2024, restricting the reporting of any information that may identify the children and members of their family. Although they have hitherto been referred to by way of ciphers those have been removed from his judgment. This judgment is being published on condition that 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.
2. The Claimant seeks judicial review of the order of the Family Court at York (“the Defendant”) as made by HHJ Troy (“the Circuit Judge”) dated 10 August 2023: which (1) refused the Claimant’s out of time application for permission to appeal the 21 January 2022 order made by District Judge Neaves (“the District Judge”), which effected a transfer of residence of the children to their father; and (2) refused the Claimant’s application for permission to appeal the District Judge’s 12 January 2023 child arrangements order, which dismissed the Claimant’s applications for increased and unsupervised contact with the children and made various other orders.
3. Due to the Claimant’s concerns about judges based in Leeds being biased in favour of judges in York, the case was referred to a judge based in Cardiff for a decision on whether to grant permission. By an order dated 25 September 2024, HHJ Jarman KC sitting as a judge of the High Court refused the Claimant permission.
4. The Claimant renewed her application for permission, as is her right. Her application was listed for oral hearing before me on 25 November 2024. Ms Allwood represented her on a pro bono basis, having been instructed in the later stages of the County Court proceedings on a Direct Access basis.

**Judgment Approved by the court for handing down.**

5. In light of the issues at [5] above I confirmed at the outset of the hearing that although born in Yorkshire I am based in London, and have had no prior dealings with the Defendant or the District Judge. The Claimant indicated that she was content for me to determine her application.
6. The Defendant and Interested Parties had been properly served with the claim but made no submissions on the issue of whether permission should be granted.
7. Given the complexity of the matter and the importance of the issues to the Claimant, Ms Allwood was permitted significantly longer than the usual time allowed for such hearings to make her oral submissions. I then reserved judgment. I invited further submissions from her on one legal issue which she promptly provided.
8. This is my judgment on the Claimant's application. As this case involves detailed consideration of the issues in the Family Court proceedings, I have followed the Practice Guidance issued by the President of the Family Division in December 2018 on the avoidance of the identification of children in judgments. The parties assisted in this task. By necessity, and because of the importance of the issues, this judgment is longer than that which would normally be given on a renewed application for permission.

**The factual background**

9. This case has a long and convoluted history. In order to understand the Circuit Judge's judgment it is necessary to set it out in a little detail.

*Background*

10. The Family Court proceedings commenced on 12 September 2019. The Claimant and the children's father had recently separated and the children were living with the Claimant. They were made the subject of child protection plans and were provided with support from social care services in the area in which they reside. The father sought a child arrangements order in respect of the children.
11. The Claimant invited the court to make certain findings about the father's conduct. A fact-finding hearing took place from 10-18 May 2021 to determine whether these findings were proved to the required standard. By a judgment handed down on 2 July 2021 the District Judge found that they were not, later describing the position thus:

“The fact-finding hearing dealt only with the [Claimant's] allegations. I found none of her allegations proved. I found her evidence to be unsafe and unreliable. I found her to have deliberately misled both the children and the NSPCC, and I found her evidence to be contradictory and illogical and in some respects dishonest”.
12. Directions were given providing for the children to have contact with their father pending the filing of further evidence in the proceedings, including a report to be prepared by a psychologist.
13. By appellant's notices dated 7 and 22 July 2021, the Claimant sought permission to appeal the parts of the District Judge's 2 July 2021 order which related to the contact the children were to have with their father and those which did not make the findings of fact

she had sought. The Claimants' applications for permission to appeal were listed for hearing on 17 August 2021 but because there was no approved transcript or agreed note of the District Judge's judgments, the Defendant directed that the applications should be re-listed on filing of the transcripts.

14. By a third appellant's notice the Claimant sought permission from the High Court to appeal against the Defendant's 17 August 2021 order. Her application was refused by Peel J on 5 October 2021 and certified as totally without merit. He observed that it was "an exercise in futility".
15. The first and second applications for permission to appeal were heard at an oral hearing on 27 October 2021 and were dismissed at the conclusion of that hearing.
16. In the meantime, on 31 August 2021 the District Judge had granted an application brought by the father to increase the level and duration of his contact with the children. The Claimant initially sought to appeal this decision but then, with permission, withdrew the application.
17. At a hearing on 15 December 2021, the District Judge made a further order relating to the children's contact with their father, including making provision for overnight staying contact.

*The District Judge's 21 January 2022 order*

18. This order was made after a hearing that took place before the District Judge from 12-18 January 2022. This hearing considered the father's allegations of "parental alienation" which were to this effect:

"(1) [The Claimant] has alienated [Child A and Child B] from their father as a result of having pursued a course of conduct and behaviour that has encouraged and placed emotional pressure on [Child A and Child B] to present as not wishing to have contact with their father. This has caused them significant emotional harm.

(2) [The Claimant] has an entrenched view of the father and paternal family. She has fostered a view in the children that has caused them to believe that; (a) their father's behaviour with them is potentially harmful and (b) his physical relationship with them has a sexual motivation.

[3] [The Claimant] has sought to frustrate contact by making unfounded complaints to professional agencies of alleged improper conduct".

19. The hearing also considered where the children should live. The District Judge heard oral evidence from the expert psychologist, ("Dr L"), the children's social workers, both parents and the children's Guardian. Dr L, the Guardian, the local authority and the father all considered that there should be an order providing that the children should move to live with their father. The Claimant opposed this course and contended that there should be a shared care agreement.
20. At the end of the hearing the District Judge ordered that the children should move to live with their father; and that they would have direct contact with the Claimant, supervised by their social workers.

*The District Judge's judgment giving reasons for the 21 January 2022 order*

21. The District Judge's reasons for making this order are set out in a judgment which, transcribed, runs to some 13 pages.
22. At the outset, he explained that given how critical he had been of the Claimant at the fact-finding hearing, he had actively looked for evidence at this hearing that she had taken on board his findings, accepted the judgment and moved on. The District Judge found that the Claimants evidence at this hearing served only to reinforce his earlier view: [5]-[38] of the judgment.
23. He noted that the task for the court in ascertaining the wishes and feelings of young children for the purposes of section 1(3)(a) of the Children Act 1989 ("the 1989 Act") is not as simple as looking at only at what they say. Rather, the court must be alive to the possibility that a child may have been influenced to express a particular view and must look at all the evidence in the round: [47]-[48].
24. Dr L had been "very clear" that the source of the children's emotional harm was the Claimant and possibly her mother, but the Claimant did not accept that and offered what the District Judge described as "a long list of other possibilities", while being highly critical of Dr L and the Guardian for failing to explore these. Dr L had not accepted the Claimant's alternative explanations for the conflict between what the children said and what had been observed. The District Judge accepted Dr L's evidence, saying "I do not accept that the true wishes and feelings of these conflicted children are to be found in what they have said but are more likely to be informed by the positive, relaxed and happy relationship with father which has been directly observed": [50]-[51] and [55].
25. The District Judge was critical of the Claimant for only advancing the idea of a shared care arrangement some two weeks before the hearing. Dr L, the Guardian and the District Judge considered that this was "strategic". As to the merits of the proposal, Dr L had expressed the view that while a more equitable sharing of care between the Claimant and the father would be in the children's best interests, like the father, he had "little confidence" that that could be achieved "in the current circumstances where the maternal narrative appears resistant to change": [64]. The District Judge agreed, holding that:

"63. The professionals agreed that if shared care could be achieved that would be the best outcome. However, I have no confidence that this would in practice be supported by [the Claimant]. I think it highly likely that she would actively seek to undermine any such order".
26. The District Judge's key reasons for making the order were as follows:

"74. The option of [Child A and Child B] remaining in the primary care of [the Claimant] I am afraid is untenable. Dr [L] makes it clear that [Child A and Child B] are being left deeply conflicted and with divided loyalties as a result of their experience in the aftermath of their parents' separation. His view was that their psychological health will continue to be deeply compromised if a significant change in their pattern of care is not put in place.

75. [Dr L] stated, "As long as Mother maintains her position of offering less than wholesome support for [Child A and Child B's] relationship with

their father, as long as [Child A and Child B] remain aware of this, as long as the dominant maternal narrative of father as a psychologically and emotionally flawed parent remains the case, I can identify little by way of potential for work to be undertaken that would improve the relationship between [Child A and Child B] and their father”.

76. He went on: “Any support that sought to work with [Child A and Child B] to address and challenge the maternal narrative would prove stressful and ultimately ineffective as the current arrangements of them living with [the Claimant] for most of the time, only seeing their father for restricted contact, continues the situation where [the Claimant] and her mother can exercise overwhelming influence over [Child A and Child B]. These children have already suffered significant emotional harm in [the Claimant]’s care. They are entitled to have a full and proper relationship with their father without the continuing pressures and distortions of reality resulting from the undue influence of the maternal family”.

77. I agree with the analysis of both [Dr L] and the Guardian. There is no good reason for me to depart from the recommendations made. There is undoubtedly considerable concern as to the emotional harm to the children of being moved from [the Claimant’s] care. They have a strong attachment to her and to maternal grandmother. The professionals all say, and I agree, that they will be extremely upset at moving from her care.

78. However, I agree with the Guardian that it is a balance between the no doubt very considerable short-term distress and the long-term immense emotional impact of remaining with [the Claimant]. The Guardian’s view was that their relationship with their father is the primary consideration, the alternative being that they do not have a relationship with him at all in the long run”.

*Events after the 21 January 2022 order*

27. The proceedings were listed for a series of review hearings to consider the details of the arrangements for contact between the children and the Claimant. The Claimant invited the court to make an order defining the time the children should spend with her and sought increased and unsupervised contact. This application was listed for final hearing commencing on 1 November 2022.
28. On 13 June 2022 the District Judge gave case management directions setting out that the issues for the 1 November 2022 hearing would be (i) the Claimant’s application for increased and unsupervised contact; (ii) the father’s application for permission for the children to undergo routine vaccinations; and (iii) the father’s application for an order pursuant to section 91(14) of the 1989 Act, which would restrict the Claimant’s ability to make further applications in respect of the children for a defined period of time. There was no appeal against the case management order and no further applications were issued prior to the hearing commencing on 1 November 2022.
29. On 31 October 2022, the day before the hearing, the Claimant filed a “C2” application for an order permitting one of the children, then aged 11, to give oral evidence at the hearing and for permission to rely on a supplementary bundle. This incorporated

evidence relating to work that the local authority had recently done with the children and evidence from the Claimant's mother.

*The District Judge's 12 January 2023 order*

30. This order was made after a hearing that took place before the District Judge from 1-2 November 2022, this being the first occasion on which Ms Allwood represented the Claimant.
31. At the outset of the hearing, the District Judge considered and dismissed the Claimant's C2 application, for reasons given in an ex tempore judgment. For the remainder of the first day and into the second day the District Judge heard evidence from Dr L and the father. Both were cross-examined at some length by Ms Allwood. The Claimant gave evidence and was cross-examined by counsel for the Guardian. Two social workers gave evidence and were cross-examined by Ms Allwood and counsel for the Guardian.
32. During the hearing, the Claimant applied for a child arrangements order to be made providing for the children to once again live with her or an order for shared care, although this had not been identified as one of the issues for the hearing.
33. At the end of the hearing on 2 November 2022 the District Judge reserved judgment and directed the provision of written submissions from counsel.
34. On 12 January 2023, the District Judge ordered that: (1) the children were to remain living with their father; (2) contact between the children and the Claimant was to remain supervised and be reduced, with the costs of supervision to be met by the Claimant; and (3) the children were to be given the vaccinations set out the UK National Vaccination Programme. He also made a section 91(14) order, requiring the Claimant to seek permission if she wished to make any further application in relation to the children for a period of 2 years.

*The District Judge's judgment giving reasons for the 12 January 2023 order*

35. The District Judge's reasons for the order are set out in a comprehensive judgment running to some 115 paragraphs. I summarise below the key aspects of it.

*(i): The Claimant's applications and her position generally*

36. The District Judge referred back to the Claimant's application that one of the children give evidence, saying "[t]he fact that [the Claimant] thought it appropriate to make such an application provides a significant insight into her failure to recognise the extent to which the children are conflicted and the extent to which they have been emotionally harmed by her behaviour": [11].
37. He explained that in light of the 13 June 2022 case management order, he was not prepared to have evidence given or submissions made in relation to where the children lived or shared care. Those issues had been fully considered and dealt with at the January hearing. Rather, this hearing was to deal with the Claimant's application for increased and unsupervised contact: [13]-[15].
38. The District Judge noted that the Claimant's position remained that she did not accept any of the findings from the fact-finding hearing or those made against her in January

2022. He expressed surprise that a focus of the skeleton argument for the hearing had been “an attack on the whole concept of parental alienation”: [18]-[19].

*(ii): Earlier proposals for unsupervised contact between the Claimant and the children*

39. The District Judge recorded that on 22 February 2022 a hearing had taken place to review the contact arrangements. The Guardian and local authority had made a proposal for immediate progression to unsupervised contact with the Claimant, observing that no safeguarding concerns had arisen during the contact sessions since the January 2022 order. The District Judge noted that he had expressed the view that he was “extremely surprised” at this proposal and made clear that he disagreed with it, saying as follows:

“The reason for supervision needed to be borne in mind. This wasn’t supervision, as is sometimes the case, to test the water and reintroduce the children to a parent after a lengthy period of no contact. The order for contact to be supervised was to prevent [the Claimant] from continuing her emotional abuse of the children. It was completely illogical to conclude that in the absence of safeguarding concerns during supervised contact it was therefore safe to move to unsupervised contact”: [20].

*(iii): The parental alienation issue*

40. Having summarised his previous findings, the District Judge indicated that to regard them as “simply a single finding of parental alienation” was to fail to have regard to the fact that they consisted of three very specific findings of behaviour by the Claimant. He said that it was the detail of those findings rather than the label which he had borne in mind in the course of the judgment: [7].
41. At the hearing, in addressing the issue of parental alienation, the District Judge had drawn an analogy with the approach the court would take under the Family Procedure Rules Practice Direction 12J, which deals with child arrangements and contact orders in cases of domestic abuse and harm. He noted that in her closing submissions, Ms Allwood had been very critical of him for having done so. However he observed that none of the counsel had directed his attention to *F v M and X, Y and Z (Children) (Agreed Transfer of Residence)* [2021] EWFC 18 until a much later stage in the proceedings: [21].
42. The District Judge recognised that this was not a case involving domestic abuse but found that the underlying logic to the approach of the court remains the same whether the court is dealing with domestic abuse between the adult parties within PD12J or emotional abuse by a parent towards the children. In either case there has been adverse behaviour by a parent which has impacted on the welfare of the children. The court needs to consider the likelihood of that behaviour being repeated; and that is likely if the parent concerned does not accept, recognise or acknowledge that their behaviour has harmed the children. The correct approach was that set out in *X, Y and Z* at [65] (which quoted *Re H-B (Contact)* [2015] EWCA Civ 389 at [79], per Munby P (as he then was)): [22]-[23].

*(iv): The District Judge’s summary of the evidence*

43. The District Judge set out Dr L’s evidence in some detail, noting that the final position he reached in his oral evidence was that contact between the Claimant and the children



needed to remain supervised and should also be reduced, to less than once a week. The District Judge set out the various criticisms of Dr L's evidence that had been made by Ms Allwood and explained why he did not accept them: [25]-[34].

44. Reference was made to a letter from the local authority dated 5 September 2022, giving several examples of the Claimant's behaviour. There was no real disagreement as to the facts referred to in this letter: rather, it was how they should be interpreted that was in dispute. The District Judge explained which of the local authority's criticisms of the Claimant he accepted and which he did not. He concluded that "considering the evidence as a whole I agree with [the local authority's] assessment that [the Claimant] is attempting to undermine the children's placement with their father": [35]-[47].
45. The District Judge summarised the evidence given by the children's father and the criticisms of it made by Ms Allwood: [48]-[54]. He assessed the father's evidence in this way:

"55. Throughout his evidence he readily made concessions. He was not confrontational. He did not seek to downplay in difficulties in coping with the children and neither did he make any attempt to minimise the difficulties which the children were experiencing. I found his evidence child-focussed and I accept it".

46. He then set out the Claimant's evidence. He noted her position that she did not accept his earlier judgment but that this was different from saying that she would not "work with it". The District Judge observed that it was plain that she was not prepared to work with the judgment at all, as she entirely rejected the findings made in it. He rejected her assertions that she wanted nothing more than the children to have a relationship with both parents and that she had done everything she could to support the children's placement. He did so because he found that they were contradicted by the unfounded allegations the Claimant had made against the father, her efforts to restrict his time with the children and her attempt to argue that the children should be returned to her care: [56]-[59].
47. The District Judge then summarised the evidence from the local authority and from the Guardian, again recording the criticisms that Ms Allwood had advanced of this evidence, in particular that of the Guardian: [60]-[74].

*(v): Key conclusions*

48. The District Judge found that the Claimant's approach was one of "stubbornness and intransigence"; and that she continued to show a lack of acceptance of the findings that her conduct had harmed the children. He accepted Dr L's evidence to the effect that it was too soon in terms of the continuing intransigence of the Claimant position and the continuing vulnerability of the children to allow unsupervised contact to take place: [75]-[97].
49. The District Judge's key conclusions were as follows:

"98. At the same time as recognising the risk of harm to the children by contact becoming unsupervised, I have to take into account and have regard to the harm that they are suffering by not being able to have a more

natural relationship with [the Claimant] free from supervision of contact and more extended periods of time...

99... I need to choose the least worst outcome for the children. In my judgment the choice is not between supervised or unsupervised contact, but between supervised contact or no direct contact at all. In my view the harm caused to these children by their contact with [the Claimant] being restricted is far outweighed by the virtual inevitability of further emotional harm being caused to them by [the Claimant] if contact were to be unsupervised...

101. Contact also needs to be reduced. All the professionals involved – Dr [L], the Guardian and [the social worker] - agree on that. I accept their views. I do not find any good reason to depart from them. I accept father's evidence about the effect of the current contact regime is having upon him. That is a relevant consideration given his position as the children's primary carer."

50. The order records that the Claimant sought permission to appeal and that the District Judge refused this: see [20] of the order.

*The Claimant's applications for permission to appeal the District Judge's orders*

51. On 1 February 2023 the Claimant applied for permission to appeal the District Judge's 12 January 2023 order to a Circuit Judge, pursuing six grounds of appeal. They related to respectively: (1) parental alienation and PD12J; (2) bias by the District Judge; (3) the wishes and feelings of the children; (4) the United Nations Convention on the Rights of the Child and the Istanbul Convention on preventing and combating violence against women and domestic violence; case law on the issue of who should pay for the supervision of contact; (5) the weight given by the District Judge to certain factors in the evidence; and (6) the apparent lack of input from the police.
52. On 3 March 2023 she applied for permission to appeal the District Judge's 21 January 2022 order out of time. She sought an extension of time on the basis that she had been misled by the judge and the other professionals into thinking that supervised contact was only to be a temporary measure. She had thought it was understood by everybody that there would be a progression to shared care. She argued that the judge had: (1) given no weight to the improvements in contact in the lead up to the January 2022 hearing; (2) deviated from the evidence of Dr L, the social workers and the Guardian; (3) failed to take into account the positive aspects of her parenting and the children's Article 8 rights to have a relationship with their mother; and (4) failed to take into account the extreme harm that a transfer of residence would cause the children.
53. The Claimant provided a further witness statement dated 6 June 2023, with 21 exhibits, referring to events since the November 2022 hearing. The Claimant also sought to rely on a report of the United Nations Special Rapporteur on violence against women and girls dated 13 April 2023. A key conclusion of this report is that parental alienation is a "discredited and unscientific pseudo-concept" which is "used in family law proceedings by abusers as a tool to continue their abuse and coercion and to undermine and discredit allegations of domestic violence made by mothers who are trying to keep their children safe".

54. Ms Allwood prepared detailed skeleton arguments in relation to both applications. She argued them on the Claimant's behalf at an oral hearing before the Defendant on 13 June 2023. The Defendant reserved judgment, in part to allow herself time to consider the 179 pages of transcripts from the 1-2 November 2022 hearing. She gave judgment on 10 August 2023.

*The Circuit Judge's judgment dated 10 August 2023*

55. The Circuit Judge concluded that there was no real prospect of either of the appeals succeeding or any other compelling reason why either appeal should be heard. On that basis she refused both of the Claimant's applications. Her reasons are set out in a comprehensive judgment, running to some 61 paragraphs.
56. The Circuit Judge began her judgment by setting out the legal framework applicable to applications for permission to appeal in this context, and applications to vary the time limit for appealing, as set out in Part 30.3, 30.7 and 30.12 of the Family Procedure Rules, Practice Direction 30A and the key case law: [3]-[13]. She provided a comprehensive summary of the background to both the orders of the District Judge which the Claimant sought to appeal: [15]-[29]. From [30]-[61], she addressed each of the submissions advanced by the Claimant. She did so "in the round", recognising that there was naturally an overlap between some of the points made. Her findings were as follows.
57. *First*, the District Judge had properly considered the application for one of the children to be permitted to give oral evidence. He had arrived at a conclusion that was in accordance with the case law which did not, contrary to the Claimant's submission, show that "invariably" children give evidence in proceedings such as these; and was clearly justified on the facts. The evidence of Dr L, the social workers and the Guardian addressed the difficulties faced by the child in being "asked about her wishes and feelings over the course of the protracted proceedings and the conflicted situation such requests caused for her". In light of this evidence the Circuit Judge concluded that there was "the clearest possible justification" for the decision not to grant the Claimant's application: [31]-[36].
58. *Second*, the District Judge had dealt appropriately with the allegations of parental alienation. This case was not identical to that of *Warwickshire County Council v The Mother and others* [2023] EWHC 399 (Fam) as the Claimant contended: rather, it turned on its own facts. The *Warwickshire* judgment was handed down on 24 February 2023 and so was not available to the District Judge. However, he had applied the principles in it, by considering whether a reduction in contact, contrary to the expressed wishes of the children, was a justified and proportionate order to make; giving reasons for his decision; and focussing on the factual findings he had made, rather than any "labels" on the findings: [37]-[41].
59. *Third*, the District Judge's analogy with PD12J was appropriate. The guidance in PD12J about the significance of findings of domestic abuse in making decisions about children's welfare was plainly of general application to cases in which findings of fact are made and the court must go on to determine welfare issues. Further, there was no basis upon which the analogy used could be said to have "tainted" any of the evidence or led the District Judge into failing to have the welfare of the children as his paramount concern: [42]-[43].

60. *Fourth*, the extent to which the Claimant accepted the findings of fact made earlier was a key issue in the November 2022 hearing; and this was properly explored by the District Judge in accordance with the relevant case law [44].
61. *Fifth*, the District Judge was justified in not considering the possibility of an alternative final order for the living arrangements for the children at the November 2022 hearing. This was because the issues had been defined by the 13 June 2022 case management order which had not been appealed, and because the Claimant had not issued an application for an order moving the children from the care of their father to her care. Further, the established principle in public law family cases that the court must look to see whether a child could be supported in being cared for within her family did not extend to requiring the court, when considering a case in which children are living with one parent, to look to see how they might be supported in moving to live with the other. A determination had been made in this case about which parent the children were to live with and there was no appeal against that decision at the time: [45]-[46].
62. *Sixth*, the District Judge had appropriately determined the Claimant's application to submit a supplementary bundle; the father's bundle had been admitted for different reasons; and this did not indicate bias on the part of the District Judge as the Claimant alleged. The District Judge was required to assess all the evidence before him and was entitled to be critical of the Claimant for having made the application in relation to one of the children giving evidence. This was not evidence of bias. The District Judge's observation that the Claimant's position was the same as it was at the earlier hearing was not evidence of bias but in fact, quite the reverse: it demonstrated a positive willingness to re-assess the Claimant on the basis of the evidence she gave at the hearing in November 2022: [47]-[52].
63. *Seventh*, contrary to what was claimed by the Claimant, the transcripts from the 1-2 November 2022 hearing made clear that there were remarkably few interruptions by the District Judge during witness testimony, and there were none during the Claimant's evidence in chief or in cross-examination: [53].
64. *Eighth*, the District Judge identified and directed himself to the core legal principles before making both his orders. There was nothing in his judgment to suggest that the contact he directed was "contrary to law". He had carefully considered the weight to be given to the evidence about the expressed wishes of the children and the factors set out in section 1(3) of the 1989 Act. There was ample evidence on which to conclude that it was justified and proportionate to make an order in respect of contact for the children with the Claimant which did not accord with their express wishes. There was no evidence he had given undue weight to any one factor or piece of evidence. All relevant factors, and no irrelevant factors, had been taken into account. The District Judge had conducted a careful balancing exercise in which the points in support of and against the application were weighed and a decision reached. The decision was well within the ambit of his discretion. There was no basis for finding that the proceedings had not been compliant within the rights set out in Articles 6 or 8 of the European Convention of Human Rights ("the ECHR"). Any difficulties that had in fact occurred in respect of contact since the order was made did not render the order wrong: [54]-[58].
65. *Ninth*, the order requiring the Claimant to pay the costs of the supervision of contact was made after hearing submissions from the parties and any changes in circumstances since the time the order was made did not amount to reasons for appeal: [56]-[57].

**Judgment Approved by the court for handing down.**

66. *Tenth*, this was not a case in which there had been a generalised finding of parental alienation and no novel point of law or principle arose that called for an appeal in the public interest: [59]-[60].

*The Claimant's application to the Court of Appeal (Civil Division)*

67. On 30 June 2023 the Claimant made an application for permission to appeal the District Judge's orders to the Court of Appeal (Civil Division). The application was referred to a jurisdictional lawyer at the court.
68. On 1 July 2023 Court staff advised the Claimant that the Court of Appeal has no jurisdiction to entertain an appeal against a decision of the District Judge sitting in the Family Court; or (if the Circuit Judge eventually refused permission) an appeal from a decision of an appeal court to refuse permission to appeal to that court.

**The legal framework**

*(i): The test for permission*

69. Under CPR 54.4, the court's permission to proceed is required in a claim for judicial review. Permission will be refused unless the judge is satisfied that there is an arguable ground for judicial review which has a realistic prospect of success: see, for example, *Sharma v Brown-Antoine* [2006] UKPC 57, [2007] 1 WLR 780, at [14(4)] and the other cases cited in the Administrative Court Guide 2024, footnote 151.

*(ii): Claims for judicial review of the decisions of Circuit Judges*

70. The circumstances in which a claimant can seek judicial review of a decision of a Circuit Judge are very limited, as the following summary of the case law illustrates.

*(a): Sivasubramaniam*

71. In *Sivasubramaniam v Wandsworth County Court and ors* [2002] EWCA Civ 1738, [2003] WLR 475, the Court of Appeal held that claims for judicial review of the decisions of Circuit Judges would be summarily dismissed save in very exceptional circumstances. This was because: (i) if the claimant had failed to seek permission to appeal under the statutory system for appeals, there was an alternative remedy available; and (ii) if the claimant had sought such permission, but the appeal court had refused it, it was not appropriate that there should be a further review by the High Court, as Parliament had put in place a "fair, adequate and proportionate" appeals system [46]-[48] and [53]-[54].
72. The reasons why the judicial review jurisdiction remains available in a very limited class of case is that "as a matter of jurisprudential theory" Circuit Judges have a limited statutory jurisdiction and it must be open to the High Court to review whether that jurisdiction has been exceeded. However as Lord Phillips MR recognised, the possibility that a circuit judge might exceed their jurisdiction where that jurisdiction is the statutory power to determine an application for permission to appeal from the decision of a district judge is "patently unlikely." In such circumstances an application for judicial review is "likely to be founded on the assertion by the litigant

that the circuit judge was wrong to conclude that the attack on the decision of the district judge was without merit”. Such an attack is likely to be “misconceived”: [54].

73. Lord Phillips MR concluded the court’s judgment in *Sivasubramaniam* as follows:

**“Exceptional circumstances**

56. The possibility remains that there may be very rare cases where a litigant challenges the jurisdiction of a circuit judge giving or refusing permission to appeal on the ground of jurisdictional error in the narrow, pre-*Anisminic* sense, or procedural irregularity of such a kind as to constitute a denial of the applicant’s right to a fair hearing. If such grounds are made out we consider that a proper case for judicial review will have been established”.

74. *Anisminic v Foreign Compensation Commission and anor* [1969] 2 AC 147 was the seminal case in which the House of Lords held “very broadly - that any error of law by a tribunal, certainly an administrative tribunal, was an error of jurisdiction”: *R (Strickson) v Preston County Court and ors* [2007] EWCA Civ 1132, at [26], per Laws LJ.

(b): *The Claimant’s case on Sivasubramaniam*

75. Ms Allwood accepted during oral submissions that the Circuit Judge had jurisdiction to make the order she did. However, she argued that the Defendant’s order fell within the second limb of the test set out in *Sivasubramaniam* at [56]. She contended that the phrase “procedural irregularity of such a kind as to constitute a denial of the applicant’s right to a fair hearing” incorporated within it the full range of public law grounds. She therefore argued, for example, that various decisions of the Circuit Judge were unreasonable or irrational in the public law sense.

76. This appeared to be an unduly broad proper interpretation of the second limb of the *Sivasubramaniam* test. The phrase “procedural irregularity” is resonant of procedural unfairness or material irregularity in procedure, generally recognised as a discrete ground of judicial review (see, for example, Fordham, ‘Judicial Review Handbook’ (Seventh Edition) at P61). Moreover, the post-*Sivasubramaniam* case law confirms that this is the case.

(c): *Gregory*

77. In *Gregory v Turner* [2003] EWCA Civ 183, 1 WLR 1149, Brooke LJ reiterated that section 54(4) of the Access to Justice Act 1999 precludes any further right of appeal against a Circuit Judge’s refusal of permission to appeal a District Judge’s decision; and that the only possible alternative route to challenge such a decision was that left “marginally” open in *Sivasubramaniam*. He observed that the Court in *Sivasubramaniam* had been “at pains to emphasise the narrowness of the gap left open by its decision”: [37]-[39].

78. Referring to [56] of *Sivasubramaniam*, Brooke LJ observed that the pre-*Anisminic* cases do not provide clear guidance as to what constitutes a jurisdictional error. He considered that they could helpfully be described as cases where the court had no jurisdiction to make the determination it did because it acted “in complete disregard of its duties”,

meaning “some fundamental departure from the correct procedures”. He observed that the Court’s addition of the denial of a fair hearing to [56] of *Sivasubramaniam* was understandable, given that cases such as *Ridge v Baldwin* [1964] AC 40, where there had been a failure to hear from one party, fell within the pre-*Anisminic* group: [40]-[41].

79. Brooke LJ drew assistance from the House of Lords decision in *Re McC* [1985] AC 528, which had considered the circumstances in which an action for false imprisonment may lie against justices, as having acted “without jurisdiction or in excess of jurisdiction”. Cases that might fall within this category were those where there had been some “gross and obvious irregularity of procedure”, such as “if one justice absented himself for part of the hearing and relied on another to tell him what had happened during his absence” or “if the justices refused to allow the defendant to give evidence”. Lord Bridge had been clear in *Re McC* that an error (whether of law or fact) in deciding a collateral issue on which jurisdiction depended would not suffice, nor would an absence of any evidence to support a conviction, nor would an error of law committed in reaching a finding of guilt: [41]-[43].
80. On the facts of *Gregory*, the Court of Appeal expressed “serious concern that something may have gone wrong in connection with the District Judge’s handling of the case” and acknowledged that the Circuit Judge refusing permission had not had the “crucial errors” drawn to his attention. Notwithstanding these factors, the Court concluded that the case was not one in which judicial review was appropriate. This was the effect of the Circuit Judge’s decision and of Parliament’s decision not to permit further appeals from such decisions: [45]-[46].

(d): *Strickson*

81. In *Strickson* a District Judge had struck out the claimant’s claim and a Circuit Judge had refused him permission to appeal. He sought judicial review of that decision. Goldring J (as he then was) held that both the District Judge and Circuit Judge had reached the wrong conclusion but declined to grant relief by way of judicial review. He granted the claimant permission to appeal.
82. The Court of Appeal took the opportunity to re-visit the interpretation of [56] of *Sivasubramaniam* in *Gregory*. Laws LJ, with whom Rimer and Gage LJ agreed, observed that a case where a court had acted in complete disregard of its duties was “only doubtfully an instance of pre-*Anisminic* jurisdictional error”. Further, a case (such as had occurred in *R (Sinclair Gardens Investments (Kensington) Ltd v Lands Tribunal* [2006] 3 All ER 650) where an appeal tribunal declined to grant permission in order to decide a point of law, where there was an imperative need for decision in the public interest, could not be so categorised. However, each of these cases exemplified “a defect much more fundamental than an error of law in the particular case”: [31].
83. At [32], he questioned how such a defect should be described in principle. He answered it as follows:

“...a distinction may be drawn between a case where the judge simply gets it wrong, even extremely wrong (and wrong on the law, or the facts, or both), and a case where, as I would venture to put it, the judicial process itself has been frustrated or corrupted. This, I think, marks the truly exceptional case. It will or may include the case of pre-Anisminic jurisdictional error, where the court embarks upon an

enquiry which it lacks all power to deal with, or fails altogether to enquire or adjudicate upon a matter which it was its unequivocal duty to address. It would include substantial denial of the right to a fair hearing, and it may include cases where the lower court has indeed acted “in complete disregard of its duties” (Gregory), and cases where the court has declined to go into a point of law in a particular area which, against a background of conflicting decisions of a lower tribunal, the public interest obviously requires to be decided (Sinclair). The Sinclair type of case is perhaps a sub-class of the Gregory case. Both, in any event, may be less hard-edged than the pure pre-Anisminic jurisdictional error case. The courts will have to be vigilant to see that only truly exceptional cases -- where there has indeed, as I have put it, been a frustration or corruption of the very judicial process -- are allowed to proceed to judicial review in cases where further appeal rights are barred by section 54(4)”.

84. On the facts of *Strickson*, Laws LJ held as follows:

“34...first, this is plainly not a case of pre-Anisminic jurisdictional error. The district judge and the circuit judge embarked upon an enquiry which it was their duty to undertake. They were not in territory that was barred to them -- quite the contrary. Nor is there any error of law on the face of the record, if, which I do not necessarily accept, that would suffice as an exceptional circumstance. [Counsel for the Claimant] says the judicial errors here are so gross or plain or stark that the case becomes an exceptional case. But the nature of the errors does not turn the case into one of pre-Anisminic jurisdictional mistake. He submitted also...that the circuit judge indeed exceeded his pre-Anisminic jurisdiction by reason of the fact that he failed to apply CPR Part 11 which governs the whole procedure for the conduct and trial of cases. I do not agree that in this sense the circuit judge exceeded his jurisdiction...he simply misapplied the rules.

35...Secondly, there were no gross procedural failures. There was no question of real or apparent bias. The parties were properly heard by the district judge and the circuit judge. It is [submitted] that the court process here undertaken to strike out the claim was draconian. So be it. That does not turn the case into one of procedural failure, any more than it turns it into one of pre- Anisminic jurisdictional error. Thirdly, any want of reasons in the lower court...cannot, as I see it, begin to amount to the kind of frustration or corruption of the judicial process which I envisage as being required...

36. Fourthly, the fact that the case touches (or arguably touches) Article 2 of the European Convention on Human Rights cannot in my judgment carry the day either...

37. In this case, in my judgment there is no viable complaint of want of a proper system. It cannot be suggested that Article 2 of the European Convention itself requires a second tier of appeal in civil proceedings such as these...on the Strasbourg case law article 6 does



not require there to be an appeal process at all for the determination of civil rights or liabilities. The failure in this case has not been in the nature of the system...

39...the judicial review court traditionally adopts a flexible and pragmatic approach to the exercise of its jurisdiction...but that does not warrant any abandonment of principle where the court's task is to see whether an exceptional case has been made out for judicial review against a background in which statutory appellate remedies have been advisedly curtailed by Parliament.

40. I have considered whether, in some sense not yet examined, there may have been a failure here which ought to attract judicial review. It would not be right to deal with the case simply by listing categories of possible error, and holding that the case does not belong in any of them. But, applying the approach which I have ventured to suggest, I cannot see that there was a failure or frustration of the judicial process in this case. The case is a sad one. Its importance to the family, no doubt, cannot be exaggerated. But I have concluded that the proper application of principle requires that the appeal should be dismissed".

(e): *Wiles*

85. *Sivasubramaniam* was distinguished by the Court of Appeal in the context of refusals of permission to appeal by social security commissioners in *R (Wiles) v Social Security Commissioners* [2010] EWCA Civ 258, where the Court held that judicial review is available on conventional grounds, albeit that the court should not be astute to find such error. This underscores the limited remit of the second limb of the test set out in *Sivasubramaniam* at [56], as considered in *Gregory* and *Strickson* ("the *Sivasubramaniam* test").

(f): *The Claimant's post-hearing submissions*

86. Ms Allwood only referred to *Sivasubramaniam* in her submissions. I drew her attention to what I considered to be the key further authority of *Strickson*, which refers to *Gregory*, after the hearing; and invited her response. I address her submissions at [126]-[133] below.

### **Submissions and analysis**

87. In light of the pertinent legal principles and the way the Claimant put her application for permission, the overarching issue for me to determine is whether the Claimant has a realistic prospect of success in showing that the Circuit Judge's order constituted a procedural irregularity of such a kind as to constitute a denial of the applicant's right to a fair hearing.
88. In support of her case that this test was met, the Claimant advanced four grounds, and amplified these in further written and oral submissions.

*Ground 1*

89. Ground 1 related to both the transfer of residence and the final contact order. Its heading in the Claimant's statement of facts and grounds referred to the international conventions but the content of it was much more wide-ranging.

*(i): Alleged errors of law*

90. The Claimant alleged that the Circuit Judge had erroneously found that the District Judge had correctly identified and directed himself to the correct legal principles. In fact, he had failed to take into account the rights under the ECHR and other international conventions; and had failed to apply domestic legal provisions in relation to immediate and suspended transfers of residence and the need to consider the risk of emotional or psychological harm to children.

91. Having read the relevant judgments of the District Judge, and that of the Circuit Judge, I do not consider it arguable that this criticism is justified. However, an error of law of this kind, even if made out, is not sufficient to fall within the *Sivasubramaniam* test.

*(ii): Alleged errors of fact*

92. The Claimant contended that the Circuit Judge's decision that the transfer of residence to the father was disproportionate and irrational, given the ongoing police investigation, the improvements in contact in the lead up to the January 2022 hearing, Dr L's findings that there were some factors not consistent with parental alienation and the children's wishes and feelings.

93. The Claimant also relied on a comparison table of other cases from different family courts where parents who had engaged in behaviour that she contended was much more serious than hers had been permitted more extensive contact with their children. She argued that this illustrated the irrationality of the Circuit Judge's approach. She referred to the recent cases of *J, K and L (Children: interim removal)* [2023] EWCA Civ 1266 and *TM and TF* [2024] EWHC 2786 (Fam) for the same purpose. Family law cases such as this inevitably turn on a close analysis of their own facts. Comparison with the orders made in other cases, especially those at first instance, can therefore only be of very limited assistance.

94. In further submissions drafted by the Claimant herself she referred to the Judicial Protocol for Referrals of Children and Families to Child Contact Centres in Family Proceedings (November 2023), which, she argued, indicates that child contact centres are regarded by the court as a temporary solution to difficulties in contact and not a permanent arrangement. She submitted that this further illustrated the irrational and disproportionate nature of the contact order, which lacked progression or an exit plan.

95. I note that the protocol in fact says in section 1.1 that a supervised child contact centre will "usually" expect that their service is used as a "short-term stepping stone"; that contact "may" progress to a supported contact centre or community contact via a supported handover; and that in "some" cases supervised contact may be required for longer. The position does not therefore appear to be as absolute as the Claimant contended. Further, these statements of general principle do not appear to have been relied on before the Circuit Judge, but in any event do not in themselves show that her decision was irrational.

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96. In refusing permission on the papers, HHJ Jarman KC observed that the Claimant's grounds "amounted to no more than a disagreement with judgments of the family court which were based on expert and professional evidence". In my judgment this is an entirely appropriate description of these aspects of ground 1. Such a factual disagreement would not generally justify a grant of permission to appeal, nor make out *Wednesbury* irrationality for the purposes of a conventional judicial review claim.
97. However, for the purposes of this application the case law is clear that errors of fact, even if serious, do not in themselves arguably come within the *Sivasubramaniam* test.

(iii): *Bias*

98. The Claimant also made an assertion of bias under Ground 1. She contended that the Circuit Judge unreasonably criticised her for the number of appeals she had filed (which were her right) but then later criticised her for not having appealed certain points. The Claimant contended that this was evidence of bias and that it was clear that the Circuit Judge intended to criticise her whatever she did.
99. The Circuit Judge merely narrated the procedural history, which did involve a significant number of appeals by the Claimant, but observed that her failure to appeal the 13 June 2022 case management order was one of the reasons that justified the District Judge in limiting the scope of the November 2022 hearing: see [30], [39] and [63] above.
100. In my judgment these assertions do not come close to a credible case of bias by the Circuit Judge. Even if it did, that would not of itself arguably satisfy the *Sivasubramaniam* test.

*Ground 2*

101. Under this ground, the Claimant advanced various complaints related to the parental alienation issue.

(i): *The "label", Warwickshire and PD12J issues*

102. The Claimant contended that the Circuit Judge had irrationally concluded that this was not a parental alienation case when that phrase had been used many times in the proceedings. She provided a table illustrating that the phrase had been used 646 times in the final hearing bundle.
103. In my judgment this submission results from a misinterpretation of the Circuit Judge's judgment. All the Circuit Judge did was record the fact that the District Judge had made certain findings of fact, and had properly taken them into account in deciding whether to reduce contact rather than focussing on any "label" alone. She correctly identified that he had not made a generalised, overarching finding of parental alienation.
104. The Claimant also criticised the Circuit Judge's approach to the *Warwickshire* case and argued that the Circuit Judge wrongly concluded that the District Judge's analogy with PD12J was appropriate. I can discern no errors of law in the Circuit Judge's approach to the either of these issues as set out at [60] and [61] above.
105. Again, though, even if there were such errors of fact or law, these are not arguably sufficient to meet the *Sivasubramaniam* test.

(ii): *The role of Dr L on the parental alienation issue*

106. The Claimant argued that the District Judge had wrongly directed Dr L to consider the issue of parental alienation when that is a question for a judge not an expert: see *Re GB (Part 25 application: Parental Alienation)* [2023] EWFC 150 citing *Re C ('Parental Alienation'; Instruction of Expert)* [2023] EWHC 345 (Fam) at [103].
107. In *Re GB* the judge had ordered the expert to determine each parent's ability to promote a healthy relationship between the children and the other parent. The expert was also asked if they believed that either parent had tried to alienate the children from the other parent, or has exhibited alienating behaviours, either deliberately or unintentionally, to comment on the impact upon the children, what work the parent or parents would need to undertake to remedy any such negative influence, the timescales and cost for the same: [21]. It was held on appeal that the expert was being expressly invited to provide an opinion about parental alienation, which was outside the expert's remit: [22].
108. The evidence of Dr L did appear to focus on "the particular *behaviour* that is found to have taken place within the individual family...and the *impact* that that behaviour may have had *on the relationship* of a child with either or both of his/her parents", rather than "any quest to determine whether the label 'parental alienation' can be applied", in accordance with *Re C* at [103] [italics in the original].
109. I say this based on, for example, the fact that Dr L's evidence on this issue – as with that of the Guardian and the two social workers – emerged from the discrepancy he had observed between the children's behaviour with their father and their comments when they were not with him, as the District Judge explained in his judgment giving reasons for the 21 January 2022 order at [39]-[45].
110. Further, Dr L opined that the "major concern from a psychological perspective" about the children was that they were "deeply conflicted", in terms of the reality of the time spent with their father and the negative narrative they received about him from the Claimant and her mother. He was "in no doubt" that the children had been "unduly influenced to effectively deny their actual reality, their experiences with their father, to have to fall in line with their maternal narrative that has been imposed upon them". He concluded that this "will have and will continue to have a deeply emotional harmful impact on them consistent with them currently being on the child protection register for risk of emotional harm": [46].
111. The District Judge specifically observed that parental alienation is "not a single thing [but] a label which covers a broad spectrum of behaviours" and that there was no "legal definition in this country...of what amounts to parental alienation": [67]. He had "no hesitation" in finding all three of the father's allegations of parental alienation proved: [65]-[72].
112. I am not therefore persuaded that there was anything inappropriate in the way in which the District Judge or Dr L addressed this issue. However, even if there was, as *Re GB* illustrates, the primary remedy is that of appeal to a Circuit Judge. For the purposes of this application for judicial review, I do not consider it arguable that the matters relied on by the Claimant show anything exceptional, or show the District Judge or the Circuit Judge acting in complete disregard of their duties, or engaging in procedural irregularity amounting to denial of the right to a fair hearing, such as might satisfy the *Sivasubramaniam* test.

*(iii): The Circuit Judge's approach to the "no novel point of law or principle" issue*

113. The Claimant argued that the Circuit Judge had wrongly failed to grant permission to appeal because this case did in fact involve a novel point of law or principle.
114. In her grounds this was described as flowing from the direction from the District Judge that "all professionals should use PD12J when considering parental alienation theory". With all due respect to the District Judge, even if his direction to the experts in this case was incorrect, that would not bind other judges. The guidance on the proper instruction of experts on this issue has, understandably, come from the Court of Appeal: see *Re C* above.
115. The Claimant also contended, insofar as I understood the argument, that the use of PD12J in this way was contrary to the various international conventions referred to. If that is right, the Court of Appeal will no doubt address it further if the same is necessary.
116. The Circuit Judge took into account written and oral submissions as to whether there was any novel point of law or principle arising out of these issues. She concluded that there was not. Her failure to accept the Claimant's arguments on this issue does not arguably meet the *Sivasubramaniam* test.

*Ground 3*

117. The Claimant asserted that the Circuit Judge gave such scant consideration to the allegations of bias by the District Judge raised in her applications for permission that there had been an unfair process.
118. I do not consider this arguable, as is apparent from the careful way in which the District Judge addressed the various points made, having reviewed the full transcripts of the hearing: see [64] and [65] above.
119. Again, though, this was a situation where the Circuit Judge heard the arguments on bias and found against the Claimant. I can find nothing arguably exceptional about the issues raised under this head so as to engage the *Sivasubramaniam* test.

*Ground 4*

120. The Claimant asserted that the District Judge did not consider the legal framework relevant to the costs order properly. She contended that no judgment had been given and the District Judge solely determined that she should pay the costs of supervision because the need for it was attributable to her behaviour and this was irrational.
121. Again, this ground involves at its highest an alleged error of law and a factual determination with which the Claimant disagrees, neither of which arguably meets the *Sivasubramaniam* test. Even if the District Judge had given no reasons at all for the costs order, that would not necessarily do so: see *Strickson* at [35], [85] above. However, it is clear that the District Judge did provide sufficient reasoning for the Claimant to understand the key reasons why the order was made.
122. To the extent that the arguments before the Circuit Judge focused on the difficulties that had emerged since the District Judge's order was made, the Circuit Judge was plainly entitled to consider that they did not vitiate the order itself.

123. Again, therefore, I see nothing in this ground that arguably meets the *Sivasubramaniam* test.

*The Claimant's submissions on Strickson, 29 November 2024*

124. Ms Allwood accepted that in *Strickson* the Court of Appeal reaffirmed the limited circumstances in which judicial review of the decisions of County Court judges can lie, namely in truly exceptional circumstances, such as where there have been jurisdictional errors or grave procedural failures. In my judgment, *Strickson* goes slightly further than simply restating the test set out in *Sivasubramaniam* at [56]: rather, Laws LJ's judgment provides valuable further guidance on the sort of situations that will, and will not, fall within the *Sivasubramaniam* test.

125. She submitted that the claimant's failure to comply with the procedural rules in *Strickson* were significant factors that led to the Court of Appeal dismissing the appeal and concluding that judicial review was not appropriate in this case. I respectfully disagree. The Court of Appeal did not appear to disagree with Goldring J's analysis that the District Judge and Circuit Judge had erred. Rather, they concluded that judicial review was not appropriate because of their conclusion that the case did not fall within the very narrow remit of the *Sivasubramaniam* test. Any failings by the Claimant in the earlier stages of the litigation were not material to the Court of Appeal's judgment.

126. Ms Allwood also contended that this case could be distinguished from *Strickson* on its facts. Even if that were correct, that does not diminish the relevance of *Strickson* to this case, because of the appellate level guidance it gives on the meaning of the *Sivasubramaniam* test.

127. In any event, I am not persuaded that any of the points of difference between the two cases which counsel identified either exist at all, or help bring the case within the test.

128. *First*, she contended that the claimant's claim in *Strickson* was significantly undermined by the procedural irregularities on his side, which contributed to the court's refusal to intervene. I do not accept that this was part of the Court's reasoning: see [127] above.

129. *Second*, she argued that one of the key reasons why the Court of Appeal concluded that the claim for judicial review should not be allowed to proceed was that there were other alternative remedies, such as criminal proceedings and the inquest process.

130. Again, I do not consider that this is an accurate reading of the judgment in *Strickson*. Laws LJ held in terms that the fact that ECHR rights were engaged did not change the nature of the *Sivasubramaniam* test. The policy which underpins the narrow remit of the test is the fact that there is an alternative remedy in the form of the statutory system of appeals from the decisions of District and Circuit Judges. The existence of any other alternative remedies is not relevant to whether the *Sivasubramaniam* test is met.

131. *Finally*, Ms Allwood contended that the failings in this case amounted to judicial errors that affected the fairness of the process resulting in breaches of the rights in Articles, 3, 6, 8 and 10 of the ECHR. This case could be distinguished from *Strickson* on the basis of the gravity of the consequences, namely the District

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Judge's order which was inhumane, and effectively severed the children from the maternal family, with no further domestic recourse. I cannot accept this proposition, for the reasons given at [91]-[125] above and [134]-[141] below.

*My overall assessment*

132. Overall, standing back, I conclude that this case is different to *Strickson* in that, unlike Goldring J, I do not consider that the decisions of the District Judge or the Circuit Judge were wrong. However, beyond that, I find myself in the same position as the Court of Appeal in *Strickson* in many respects.
133. As in *Strickson*, this is a sad case. Its importance to the Claimant is apparent.
134. However, I do not consider that there were any errors of law in the Circuit Judge's approach for the reasons given above (noting, as Laws LJ did, that this would not necessarily suffice as an exceptional circumstance).
135. There were no gross procedural failures. There is no credible suggestion of real or apparent bias. The Claimant was properly heard, indeed forcefully represented, before the District Judge and the Circuit Judge.
136. A lack of reasons does not, as Laws LJ held, constitute the kind of frustration or corruption of the judicial process required, but there was no lack of reasons: on the contrary, the District Judge and the Circuit Judge both gave very comprehensive judgments, which were manifestly the product of careful consideration.
137. The fact that the case engages rights protected by the ECHR or other international conventions does not alter the above analysis. There is no viable complaint of want of a proper system.
138. It is very clear that the Claimant's overall position is that this was not a case which merited such draconian restrictions being placed on her contact with the children. However, even if the final orders can be described as draconian, that does not convert the case into one of procedural failure (or pre-*Anisminic* jurisdictional error), for the same reasons as were given in *Strickson*.
139. I can identify no other failure here which justifies a grant of permission. There was no arguable failure or frustration of the judicial process in this case.

Delay

140. One of the reasons that permission had been refused on the papers was that of delay. HHJ Jarman KC observed that challenges by way of judicial review must be made promptly and here it was not: rather, the claim was filed a couple of days before the expiry of the three month "long stop" deadline and no good reason was given for that delay.
141. In her grounds for renewing the application for permission Ms Allwood highlighted paragraph 3 of the claim form where it was explained that the Claimant's funds were significantly depleted by the litigation; that she was acting as pro bono counsel; and that this was the reason for the delay. She was also critical of the delays in the proceedings

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caused by the court; and submitted that criticising the Claimant in this way was indicative of bias against her.

142. In my judgment HHJ Jarman KC was quite right to highlight the issue of the delay in lodging the claim form, bearing in mind that claims for judicial review must be brought “promptly...and in any event” within three months: see CPR 54.5(1). This is not a three months “deadline”. Moreover, many of the Claimant’s own submissions focused on the fact that childhood is finite. She had also applied for the claim to be expedited for that reason. It is unsustainable to say that the comments made by the judge are evidence of bias.
143. That said, if I considered that the claim was otherwise arguable, I would not have refused permission on the ground of delay alone.

**Conclusion**

144. Accordingly, for all these reasons, the Claimant’s application for permission is refused.