

IN THE STOKE-ON-TRENT FAMILY COURT

Case No: SQ17P50043

Chambers No. 1

Bethesda Street  
Hanley  
Stoke-on-Trent  
ST1 3BP

Tuesday, 18<sup>th</sup> December 2018

Before:  
DISTRICT JUDGE BAILEY

B E T W E E N:

[Father]  
[Grandfather]

and

[Mother]

MS HARRISON appeared on behalf of the First Applicant, [Father represented by David Blank Furniss]  
MR MANSFIELD appeared on behalf of the Second Applicant, [Grandfather represented by Slater & Gordon Lawyers]  
MR LYCETT appeared on behalf of the Respondent, [Mother represented by Lichfield Reynolds Solicitors LLP]

JUDGMENT  
(Redacted Approved)

*This version of the judgment may be published only on condition that the anonymity of the children and their family is preserved and that there is omitted any detail or information that may lead to their identification, whether on its own or in conjunction with other material in the judgment. This includes, but not exclusively, information of location, details of family members, organisations such as school or hospital, and unusual factual detail. All persons, including representatives of the media, must ensure that this condition is complied with. Failure to comply will be a contempt of court.*

DJ BAILEY:

1. This is the judgment arising out of proceedings brought by the Father, who is the first applicant, and shall hereafter be referred to as ‘the Father’, and the Grandfather, the second applicant, who hereafter shall be referred to as ‘the Grandfather’ in respect of the children [Child A (male) who was born in 2001] and who is therefore aged 17, Child B (female) who was born in 2003, she is therefore 15 years and two months old and Child C (male) who was born in 2005, he is therefore 13 years and four months old. The Father is the father of all three children. He was represented at the hearing of this matter by Ms Harrison. The Grandfather is the paternal grandfather who was represented by Mr Mansfield. The mother of the children was represented by Mr Lycett of Counsel who shall hereafter be referred to as “the Mother”.
2. The procedural history in relation to this application is that Father made an application to the court on 30 May last year for a Child Arrangements Order, shared care in relation to the three children, and he also applied to discharge a residence order dated 7 July 2010 which provided that the children lived with their mother. Father also applied, on the same date, to enforce the terms of a contact order dated 15 March 2013 to apply for compensation for financial loss. By the time of the final hearing before me the issues in the case had distilled, as Father and Grandfather were realistic about the court’s ability to make any effective orders in relation to Child A, now a 17-year-old young person and, having regard to Section 9(6) of the Children Act 1989 that is to say, ‘no court shall make a Section 8 order which is to have effect for a period which will end after the child has reached the age of 16 unless it is satisfied that the circumstances of the case are exceptional’. Further, Father did not seek to pursue his application to discharge the Residence Order. The applications to spend time with Child B and Child C remain live.
3. By way of procedural background, the matter was originally allocated to the lay justices. Matters were listed for a First Hearing Dispute Resolution Appointment on 12 July last year. The grandfather also made an application to the court for permission to make an application for a Child Arrangements Order to spend time with the children. That application is dated 6 July. It was listed to be heard alongside the First Hearing Dispute Resolution Appointment. Leave was granted to the grandfather to commence proceedings. He became the second applicant and those proceedings were consolidated with Father’s applications, those being the lead case.
4. At the FHDRA, the court gave consideration to case management directions. The safeguarding letter prepared for use at that hearing documents that this family were previously known to Cafcass. In 2008, the Mother issued proceedings for residence and contact orders and there were proceedings in 2010 when Mother applied for contact orders. Father had also applied for a prohibited steps order and a specific issue order within those proceedings and in October 2012 Father applied for a contact order. Recommendations were made by CAF/CASS for a clear, prescriptive order and for handovers to be arranged to minimise parental contact, together with a recommendation that the mother gave an undertaking to the court to promote contact, in light of the Family Court Advisor’s concerns that the Mother was not doing so.
5. One of the concerns that the Father raised with the author of the safeguarding document prepared in these proceedings was that Mother had consistently allowed the children to exercise choice about whether they attended contact or not, in a context when Mother had consistently exhibited opposition to the children spending time with him. Mother told Cafcass that she understood that the children were not comfortable in their father’s care as both parents have different parenting styles. She acknowledged in the past that she had slapped Child A. When analysing the issues arising from the safeguarding enquiries, the Cafcass officer highlighted that there was evidence to indicate that for a number of years

there had been significant involvement with the Family Court and that Cafcass had previously completed two welfare reports in respect of these children. It was noted that Mother needed to support the children's contact with their father. Case management directions were made at the hearing, including that Cafcass were to prepare a Section 7 welfare report addressing the wishes and feelings of the children, the reasons for the cessation of contact at Easter 2016 and to consider documentation provided by a contact centre, the Local Authority's Children's Services department, and the various academic institutions attended by the children. The case was re-allocated to the district bench or circuit bench on the grounds of complexity and the order at B11.10, paragraph 8, says this:

'The matter shall be re-allocated and be transferred to a district judge or circuit judge for the next hearing on the grounds of complexity. This matter being the fourth set of proceedings relating to these children since 2008 and all matters historically have been heard at district judge level. The case involves serious issues as to parental alienation, parental conflict and intractable contact'.

6. The Cafcass report was filed on 19 September 2017. The Father and Grandfather did not accept the recommendations of the Cafcass officer, and a Part 25 application was made to the court for there to be psychological assessment of the children to address the reasons behind the cessation of contact at Easter 2016. The case was further listed for a Dispute Resolution Appointment on 5 October 2017, when the court considered the application for expert assessment. The application was granted by a deputy district judge who was satisfied that the expert evidence was necessary to resolve the proceedings justly. A Child Psychologist, Ms. X was appointed as an expert witness to report in the case. Her CV is found at B130-133 of the bundle and I note at B132, she cites that her expertise includes, amongst other things: family assessments; dynamics; attachment and parental alienation. The report was due to be filed by 14 December 2017 with the court further directing an addendum to the Section 7 welfare report due by 11 January, to take into account the conclusions of the expert assessment. In the event, Miss X's report was not received by the parties or the court until 9 January 2018. The addendum Section 7 report was filed by the Cafcass officer on 11<sup>th</sup> January, as directed, and there was a further Dispute Resolution Appointment on 2 February when Father and paternal Grandfather indicated that they wanted to test the evidence.
7. The final hearing was listed to take place before District Judge McGinty on 1 and 2 May 2018. District Judge McGinty made some further case management directions taking matters to trial, as unfortunately the hearing was unable to proceed as a final hearing due to the ill health of the Grandfather. The case was re-listed to be heard before me on 12, 13 and 14 November. Therefore, these proceedings have been going on now for some 19 months at the date of this judgment. In the event the hearing before me went into a fourth day given that other matters were in my list on each day of the trial, despite District Judge McGinty's order expressing that no other matters should be listed in the trial judge's list due to the anticipated length of the live evidence. I should also observe that it was appropriate in this case in light of the health difficulties of the grandfather to allow for regular breaks. I heard some 12 hours of oral evidence over the course of the hearing, and so I reserved judgment in this matter so that I could reflect on the evidence heard and give a considered judgment in light of the importance of the issues raised during the trial.
8. As trial judge I am uniquely placed to assess the credibility of the witnesses who appeared before me. In terms of the law, so far as the burden and standard of proof is concerned, it is for a party who seeks a finding to prove it to the requisite standard. That is to say, on the simple balance of probabilities, is it more likely than not that something happened in one way rather than another. Findings of fact must be based on evidence, including inferences that can properly be drawn from the evidence and not mere speculation or suspicion. In terms of expert evidence, I have a duty to evaluate the totality of the evidence before me.

Expert evidence cannot stand in isolation and must be considered in the context of the case as a whole, and whilst appropriate attention must be paid by the court to the opinion of expert witnesses, it needs to be viewed in the round. Ultimately it is for me to determine, having considered all of the evidence before me, whether the party upon whom the burden of proof rests has discharged that burden.

9. There are factual issues which are disputed between the parties in this case. I remind myself, following the decision in *R v Lucas* that a conclusion that a person is lying or telling the truth about point A does not mean that he is lying or telling the truth about point B. I remind myself that people lie for many reasons, sometimes out of shame, guilt or fear and other reasons. Section 1(2A) of the Children Act 1989 says that ‘a court in the circumstances mentioned in subsection (4)(a) or (7), is as respects each parent within subsection (6)(a) to presume, unless the contrary is shown, that involvement of that parent in the life of the child concerned will further the child’s welfare’.
10. The first witness from who I heard evidence was Ms. X. Her report is found at D13-47 and is dated 29 December 2017 although it was evidently not received, for reasons that are not clear to me, until 9 January 2018. Ms. X is an independent chartered and registered practitioner psychologist, chartered scientist and associated Fellow of the British Psychological Society. She was instructed to undertake a psychological assessment of the children, and was asked to comment on the potential reasons behind the children’s wishes and feelings as expressed in the Cafcass reported dated 19 September 2017; to comment upon the reasons that contact stopped at Easter 2016, as much as she might be able to, and whether or not in her view the children were subject to influencing opinions and views expressed towards their father and paternal grandfather by their mother and her family or any of the other siblings. She was further asked to comment upon whether or not any form of family therapy may be of assistance to this family and was invited to make such further observations as she felt appropriate in the context of her assessments.
11. In the summary of her report Ms X says the assessment highlighted that all three children do not wish to have any contact with their father or their grandfather and ultimately perceive them in a negative light. She goes on to say that unfortunately for the children, this will have both short and long-term emotional impacts, as their paternal family is part of their identity. She goes on to say, ‘It is my opinion that the children’s wishes, and feelings are their own and do not reflect those of adults around them’. She considers that the parties would benefit from assistance from an organisation called Stand Alone which looks at family estrangement, and she says that she hoped that that could promote indirect contact with a view to this moving forward in the future to more direct contact. The psychometric testing of the children did not show any concern. The children were said to exhibit good levels of self-esteem, and there was an absence of any anxiety, low mood, anger or disruptive behaviour in their profiles. Ms X was not concerned, presently, about the children’s psychological profiles. She opined that the children were affected emotionally by their father’s response to them which at times unnerved them and caused them to feel anxious, as they do not know when to anticipate a negative response. She comments that there was an anxious and ambivalent attachment bond between the children and their father. She also observed that Father and Mother had very different parenting styles which, she says, is also a reason for their constant conflicts. She comments that as a result of the developing years of the children it would be difficult for them to have contact without any detrimental impact. She says at D40, paragraph 4, ‘I do not have any clear evidence that the mother is influencing the children to form a negative view of the father or paternal grandfather, but it may be that the children have overheard discussions or mention of things’. She goes on further to say, ‘I was not of the impression that a positive image is created of the father either, or that he is promoted in any positive light’. She further goes on to say that whilst the children do not presently appear to have difficulties and there are no psychological issues at present to warrant concern, she highlights the fact that they have

decided that they no longer wish to have contact with their father or paternal family members may become an issue for them in the future, for this forms part of their identity which they are attempting to erase completely from their lives. She also suggests that paternal family members who the children are not wholly opposed to such as [their] step-mother and paternal aunts and cousins could be used as intermediaries to build bridges so that contact may be re-established.

12. It is right to observe that following receipt of this report, those representing the paternal grandfather wrote to Ms X setting out some concerns about her report. That letter can be found at D48 and the concerns involved the following observations: paternal grandfather had just 20 minutes direct contact with Ms X by virtue of her running late; that Ms X was also some two hours late for her meeting with the children leaving him with a concern at the likely negative impact this would have had upon them; that her report was filed late; his concern it was very rushed, also borne out by the numerous typographical errors within the report; factually incorrect information with the report; and seeking confirmation that Ms X had considered the letter from the contact centre given that it appeared to be at odds with the account of this incident given by the mother and the children. Ms X's response to these observations can be found at D50-D55 and, in summary, it could be said that she did not accept any of those concerns to any significant degree.
13. I heard oral evidence from Ms X. She was asked what work she has actually done in the field of parental alienation. She told me that she prepared reports for the court in the private and public law arena. She thought that she had done about 10-15 reports a year. She was asked if she had been given any of the documents from the previous sets of proceedings. She said that she had not, and she had received what she described as a 'smallish' bundle. She was aware that parents had been involved in litigation about their children since about 2008. She was asked if she was concerned at not having seen the previous documents. She told me that whilst it was a concern, at the same time she could have got bogged down and this "had to be about the situation now". She was asked about how she prepared for the meetings with the children, and how she decided where to see them. She told me that she had arranged to meet the children at Mother's solicitor's office; pointing out that she had not met them at their home or school. She confirmed that Mother attended with the children.
14. She was asked on behalf of Father, whether those appointments could have been made in a more neutral place. Ms X's response, somewhat unsatisfactorily to my mind, was that she did not **ask** Mother to bring them and that her interviews had been done privately with the children. She accepted that she could have considered seeing them at school. She was asked if she accepted that the appointments as arranged was perhaps not the best opportunity for the children to be free from potential influence. She observed it could have been 'disastrous' for her to see the children at home, and that sometimes seeing children in school could cut into class time and sometimes other students can ask questions of those that she is assessing. It was put to her, that from the father's perspective - given the issues in this case - that he would be worried about the mother being present at any such meeting. She agreed that she should, perhaps, have ensured that Mother did not bring the children to the appointment. However, her unsatisfactory response was, 'I just arranged the appointments'. It was put to her that this was an issue that really ought to have been given very careful thought, and that had clearly not happened here. Ms X defended her decision-making by saying that there was enough privacy and Mother was not within hearing distance, that nothing was discussed outside, and the children were able to express themselves to her.
15. Father's concerns that this mother overshares information with these children was put to Ms X and she was asked about what impact this would have if true. Ms X said that if a parent overshares, then this will influence a child, would be emotionally damaging, and that a child would not be about to speak about, or feel good about, the other parent. When asked what

impression she had gained of Mother's impression of the father, her response was that Mother mentioned difficulties within the marriage and that they had "not got along". She said that Mother had not called Father any names "... but there were not many positives either".

16. She met with Child C for between 40 minutes and one hour. He did not speak a lot; his sister was more vocal, but he was not as open as his sister. She said that Child C seemed nervous, and that he was filling up with tears. She was asked if she had the sense that this was a little boy who was, perhaps, being loyal to his siblings and mother and she said not, but perhaps he was feeling overwhelmed, and that no one was listening to him. Miss X had had sight of a video which had been prepared by the grandfather, which was seen by me, Mother, and the Cafcass officer prior to the commencement of this hearing. It was put to her that in the video she can see Child C having a lot of fun, just a matter of only a few short months before contact broke down. Ms X said that it appears that some of the footage was from a few years ago and, that this only reflected snapshots of certain elements of time. She opined that human behaviour can change. She conceded that she could see there were some lovely memories and that Grandfather had clearly made a huge effort. Given that Child C was only 13 she was asked what she might suggest to move matters forward. She observed that children of this age are difficult. Child C is not a child of two or three and that being made to forcibly have contact would be difficult. She reflected that the children were missing out on their father and grandfather, that children do not look ahead and that not to have a relationship with them is unfair, and that in the future the children may feel "I wish I had". She said that if there was an option to pursue indirect contact, then it should be taken. She said that the father's wife, [the children's step-mother], and paternal cousins were people who could possibly act as "middle men" to build bridges. She said children do change their minds, they may see things from another perspective and that it was something that should be pursued.
17. She was asked about her meeting with Child B who she described as "fed up". She said that the children want to be free of it, it was exhausting mentally, and she went on to say that it might be an easy option for these children to say "I do not want to see my father any more". When asked how this might be addressed, Ms X felt that it could be done through some therapy, although not direct work with the children. She thought art therapy would be a possibility which she said could bring out what is going on inside. She was asked for her opinion as to what the impact upon the children might be in the longer term if the court was not to order any contact with Father and paternal Grandfather. Ms X's opinion was that it could be "quite great as their father forms part of their identity, history and heritage. Her opinion was that the children may have difficulties forming friendships, with their relationships in the future and it also might make them be less likely to be able to deal with things in the future - this could have a lasting detrimental impact, as it is effectively the loss of a parent. She did feel that something could be done, and that work could be done in a different way. She observed she had last seen the children a year ago and they may have changed their views.
18. In cross-examination, Ms X conceded that she had not done any specific training regarding parental alienation. She said that she had probably done "the odd course here and there" and that she keeps up-to-date with literature, research and books and journals she was familiar with Dr Gardner's theories regarding alienation. I should say, at this stage, that the reference to the work of Dr Gardner, who is a proponent of parental alienation 'syndrome', is work that has subsequently been discredited by others. I do not subscribe to his theories, some of which involves suggestions that children and young people who refuse contact with a parent should be housed in youth detention centres. However, there clearly are those cases where high levels of conflict involve some form of alienation. Cafcass commissioned research headed by Julie Doughty, a well-known and well-respected academic. She has published a review of research and case law on parental alienation. Cafcass has, in the

spring of this year, published on its website a new assessment framework for private law cases, which has a section headed 'Typical behaviours exhibited where alienation may be a factor'. These include: the child's opinion of a parent is unjustifiably one-sided, all good or all bad; idealises one parent and de-values the other; vilification of the rejected parent can amount to a campaign against them; trivial, false, weak and/or irrational reasons to justify dislike or hatred; reactions and perceptions of unjustified or disproportionate to parent's behaviours; talks openly and without prompting about rejected parent's perceived shortcomings; revises history to eliminate or diminish the positive memories of the previously beneficial experiences with the rejected parents; may report events that they could not possibly remember; extends dislike or hatred to extended family or rejected parents; rejection by association; no guilt or ambivalence regarding their attitudes towards the rejected parent; speech about rejected parent appears scripted, it has an artificial quality, no conviction; uses adult language and has a rehearsed quality; claims to be fearful but is aggressive, confrontational and even belligerent.

19. It was put to Ms X that she had not properly examined whether this was a case which involved parental alienation. Ms X's evidence was that this was not mentioned in the letter of instruction to her. This is of some concern to this Court, as it must have been clear from the face of the papers - not least from the very first order in this case, made by the lay justices on 12 July 2017 – that it was that one of the key issues in this case. It was put to her that where there had been a breakdown in contact that should have triggered alarm bells regarding the role of the maternal grandmother, and, as it turned out, that during the two hour delay awaiting Ms X's arrival for her meeting with the children, they were in the care of maternal grandmother. She agreed that upon reflection, the circumstances surrounding the arrangements made to interview the children was far from optimal. She conceded that she should probably have elected to see the children at school. In my view, I agree with Mr Mansfield's observations, that the arrangements made to see these children could hardly, in the circumstances of this case, be any more unsatisfactory.
20. I next heard from Miss Z, who was the allocated Family Court Advisor. She has prepared two reports within these proceedings. The first dated 19 September 2017 found at C8-C25, and an addendum report dated 9 January 2018 at C26-C33. She qualified as a social worker in 2003 with the usual social work qualifications. She had worked in two different Local Authority areas and was acting team manager in one of them for the looked after children team, and had been a Child in Need practitioner. She had five years' experience as a social worker prior to going to work for Cafcass where she has worked for the last nine years. She notes at paragraph 5 of her original report that the contact arrangements have at times been difficult over the years, with the children meeting many professionals due to parents contacting the Local Authority. She observed that Cafcass had previously completed two Section 7 welfare reports. She highlights that the previous court advisor advised the family in 2012 that it was not in the best interests of the children to make repeated applications to court and that if any further applications were made, then Cafcass would request that the Local Authority undertake a report pursuant to Section 37 of the Children Act 1989 that, being on the basis that the court would be inviting the Local Authority to consider whether it was appropriate to issue public law proceedings, on the basis that the children were potentially suffering or, likely to suffer significant harm, that harm being attributable to the care being afforded them by a parent not being what it would be reasonable for a parent to give. She noted that the children had not seen their father since May 2016 and, at the time of her original report, contact had last taken place more than 16 months before. She notes that on 13 August 2012 the Local Authority had stated that there were difficulties regarding contact between Father and the children with all three children refusing to attend. I note that at that time Child A would have been 10, Child B 9 and Child C just 7. At that time the Local Authority completed an initial assessment and referred the children to Younger Minds. In September 2014 the Local Authority received a referral from the children's

school stating that Child A alleged that his mother had physically struck him and that his father manhandled him when he saw him for contact. Section 47 child protection enquiries were undertaken. Mother accepted that she had slapped Child A during a disagreement. Child A was made subject to child in need procedures but inexplicably the case was closed very shortly thereafter on 5 October 2014.

21. The Local Authority became involved with the children again in 2016 when the children were once again said to be refusing to see their father. The background to the referral was that the contact centre had been facilitating contact handovers due to parental conflict. A family engagement worker was assigned to work with the family and undertook a number of sessions with the children, whose focus was said to be the re-introduction of contact with Father including the facilitation of a direct contact session. The intervention is recorded as being unsuccessful with all three children refusing contact. The family engagement worker concluded that it was not in the children's interests to force them to see their father. I note at D8 that the family engagement worker is not a qualified social worker. Miss Z records that Mother told her that she will promote contact between the children and their father and grandfather, and that she will 'force' the children to go if the court orders this. Miss Z had individual meetings with the children. Child A told her that he was happy with his life, and when asked about his father he sighed loudly and stated, 'He won't give up easy, dad can be really demanding, and he used to send me to my room if I didn't do as he said. When I was 10, I said no to him, he picked me up and took me upstairs just because I didn't do as he said'. He went on to say:

'I don't want contact with my dad. We went on holiday to Tenerife, dad never gets involved and he just sat there for all of the holiday. I don't really know if I love my dad. I've felt like this for a while. I don't really talk to him about anything. I know he wants to see me, but I don't want to see him. He did send texts, you tube videos and I blocked him. I never respond, not for two years. He hasn't really been texting lately'.

Miss Z asked Child A how his mother feels about contact and he told her: 'mum is stressed. I just don't want to go, I don't want to see him'. Miss Z concluded that Child A does not have a relationship with his father and that he did not appear to be influenced as, in her judgement, he could clearly state the reasons he was refusing to see him. She went on to say that there was no evidence from her meeting with Child A to suggest that mother was denigrating the paternal family, but she felt that there was evidence from Child A that the paternal family were denigrating the mother. In Miss Z's meeting with Child B, he expressed, 'I feel fed up, doing it again and again, seeing social workers and other people. My dad keeps doing this. It keeps on happening. I am fed up of my dad keeping applying to the court. I've done wishes and feelings so many times and I have to keep on doing it'. This is an interesting comment by Child B, who appears to be blissfully unaware that it is, in fact, the mother who has made the majority of applications to the Family Court. Child B went on to say that she worked with a social worker, who had told her that she should not be forced to go to contact if she did not want to. She goes on to say that, 'He went to the courts to try and get us back. I'm fed up. I don't want it to happen. They should take my view. I don't feel my dad is a nice person to me or my brothers' and she continues: 'I don't love my dad. I changed a few years ago'. She also expressed, 'I don't want to see grandad. He gets angry all the time like my dad. They both get angry. I don't know what I do to make them angry'. Miss Z went on to say that, in her view, Child B does not have a relationship with her father and Miss Z did not think that Child B had been influenced in her discussions and found her to be open and communicative. Miss Z also met with Child C who at that time was aged 12. He told her: 'I have to keep on seeing people in different places to talk about dad all of the time. It has been going on for years'. Child C was asked about how his mother felt about him seeing his father and his response, in my judgment, is



very illuminating. He said, 'My mum doesn't say anything. I don't think she cares if we go or not'. Miss Z asked Child C how he felt about his dad. Child C said, 'Confused. I don't know how I feel. I don't know if I love him or not. I don't think I do'. When asked if he would see his father if the court made a further order, Child C's response was, 'I don't want to see my dad ever again or my grandad'. Miss Z took the view that Child C does not have a relationship with his father, that Child C presented as open and communicative and that he appears to have his own views on the reasoning behind that.

22. Miss Z goes on to reflect in the section of her report headed 'Professional Judgment' that her main concern is that these children have been subject to previous proceedings with applications made by their father over issues of contact, which have impacted upon the children. She fails to observe that Mother was the applicant in many of the applications made to this court. Paragraph 44 of Miss Z's report reflects that Mother assured her that she would promote contact "if required". This mainly reflects her focus in the proceedings on what is best for the children and that, ideally, the children would have a relationship with both of their parents as this forms their identity and development from child to adolescent and adult. However, she concludes that, having met with the children, in her view, it would be more harmful to force them to have contact against their wishes, as this would continue to enable them to build resentment towards their father and jeopardises any future relationships that they may have with him. She goes on to recommend that there is no direct contact between the children and their father or paternal grandfather. She does recommend indirect contact should be progressed to include letters and cards and, that in her view, bridges need to be built between Father and the children and Mother to promote the children to respond to their father and grandfather. She also goes on to recommend that an order be made pursuant to Section 91(14) of the Children Act 1989 which prohibits further applications being made to the court without the court's prior permission. Miss Z included Child C's letter to the judge. He said, 'I feel very confused in what relation my dad is to me. I don't know how I feel about him'. Child A also wrote a letter to the judge which is embodied within Miss Z's report. In that he sets out: 'he doesn't want to see his dad, he doesn't feel that good when dad tells him to do something and then he has to do something there and then because you don't you have to go to your room' and he did not want to see his grandad because 'he was like dad'. Child B reflects that she would not want to see her dad because she feels unhappy when she is with him, she does not want to see her grandad because he can be angry, and it makes her uncomfortable to be around him and her dad.
23. Miss Z filed an addendum report dated 9 January. She had received Ms X's report that day but assured the court that she had sufficient time to consider the expert report and its conclusions. At paragraph 19 of the addendum report she sets out that the psychological assessment clearly evidences that the children have very negative memories and feelings towards their father, and that they speak in their own words and describe their feelings. At paragraph 23 she says that she is concerned that further intervention will not be in the children's interest, that it may be emotionally damaging to them and that there is evidence of this in the way that Child A and Child C presented to Ms X and she once again urges the court to consider exercising its powers under Section 91(14) of the Children Act.
24. In her oral evidence Miss Z indicated she had not read the previous Cafcass reports prepared within previous proceedings, given that her involvement was in 2017. While she did speak to the previous Family Court Advisor, it was simply to observe to her colleague that she had been allocated to this case. They did not have a case discussion about this family or these children. When asked what she understood that she was coming to upon allocation of the case to her, she replied, 'It was just that there had been many other proceedings before in relation to these children'. She was asked if she was struck by similar reactions of the children when she met with them. She told me that these children are unique, and not this many children have been interviewed this many times by so many

people and that she took the children's feelings, by how they presented to her considering their body language and tone of voice. She was asked if she was concerned that all three children were saying the same things about their father. Miss Z's response was that they did not say exactly the same thing; Child C was more confused; Child A was defiant. She said that the Cafcass high conflict parental tool did not come out until May 2018, before she wrote her report, and was currently in the process of being rolled out across the country and that it was not a tool available to her in December 2016. She said that when she met with the mother, she did not feel that Mother presented as someone trying to restrict or withhold contact and that Mother was fearful of doing the wrong thing. Her view was that Father was focused on everything that had gone wrong, and that he held negative views of the process and of the system. It was put to Miss Z that in her report she seems to be of the understanding that the father had made all of the applications to the court, and she was asked if she was aware that Mother had made applications too. Miss Z said in her oral evidence that she was aware that Mother had, but this is not acknowledged in her written evidence. It was put to her that when Child C says in response to how his mum felt about him seeing his father: 'my mum doesn't say anything, I don't think she cares if we go or not', that this was not indicative of someone promoting contacts, Miss Z's response was only: 'I can only say what I've written'. She felt it could be seen either way.

25. When it was suggested that coupled with Mother's response that she would promote contact "if required" that this might suggest that Mother was paying lip service to the idea of the promotion of contact. Miss Z said it was not her view of this mother. She was asked what she thought might be possible to improve and build bridges between the children and their father and grandfather. She reflected that in this situation it was really difficult. There had been a large amount of work undertaken by the Local Authority with a negative conclusion and that she could not really see how to get these children in a place to accept contact with their father without damaging them, and that they were closed off to the idea of seeing him. When it was put to her that in circumstances where three children are saying the same thing, was it not damaging to them not to have a relationship with their father, she replied that she had recommended indirect contact, but that the children did not want any at all. She told me that she did not know if Father had followed the recommendations and acknowledged it would be difficult for Father if he did not think that the children were receiving that indirect contact. I asked Miss Z that in circumstances where this father was clearly sceptical about this mother promoting indirect contact in a positive way, whether she had given any thought, in her role as family court advisor, to being involved in meeting with the children and facilitating indirect contact, so that she could observe for herself how they were received by the children. She had not considered that, and would not do anything else unless further work was ordered by the court. She told this Court that she "did not think we have got the ability to be that creative". She was asked about Child C, the youngest child, and whether anything was worth trying insofar as he is concerned. Her response was, 'It's difficult to get a teenager to do something that they don't want to do'. She said she did feel sad and that she always promotes that children should have a relationship with both parents, but she did not think that there was anything Cafcass can do at this point to change things. She felt that there needs to be a period where these children are not asked questions because they are going to close down, and she would not recommend any further work.
26. On behalf of Grandfather it was suggested to Miss Z that the court could consider making a family assistance order. She repeated that she would not recommend any further work to be done with these children. It was put to her that a previous family court advisor, reporting to the court as far back as 2010, had said that although all of the children were at that time attending contact regularly, the Mother reported that it was because they knew they had to go, and that Mother did not appear to acknowledge that the children's contact with their father was important and pleasurable. That report, dated 23 December 2010, also reflects at paragraph 24 that "...although [the Mother] professes to support contact between the

*children and their father, it appears that both she and the maternal grandparents' feelings about [the Father] are very negative and that the children are clearly aware of this". She was directed to the two extracts from the welfare report dated 26 February 2013; - "Whilst reporting to me that she is fine with the current contact arrangements, Mother has also asked me if [Child A] chooses not to attend contact then does he have to be made to go. I have advised Mother, and all three children, that contact with their father is important and they all must attend. It is my view that attending contact with their father is not a decision that should be placed in the hands of the children as it puts them in a position of conflicting loyalties and of having to make adult decisions. Mother informed me that she also promotes contact between the children and their father, however the ongoing six-year continual disruption in contact meaning that the matter is frequently returned to court does not fully support her view". Unusually the family court advisor at that time made a specific recommendation as follows:*

*'to ensure that the message is clear and consistent for the children, it would be beneficial if Mother would make an undertaking to the court stating that she will not tell the children they have a choice to attend contact and that she will positively promote contact for the children with their father at all times'.*

Miss Z was asked, given this historical context, whether this gave her cause to reflect on her recommendations to this court in 2018. Her response was, 'I don't think I can use information from 2010'. She was asked whether the fact that the same message was being given by Mother on 26 February 2013 might also be a cause for concern. Her response was in a similar vein: 'this was a few years before I met her'. She could not recall whether she had had sight of the contact centre letter. She said it was not important for her analysis now and she was not going to change her recommendations.

27. My concern about Miss Z's approach to this case is this: in the knowledge that this father held concerns that the children's mother had failed to promote contact on a meaningful level; that the court had, at the first hearing, identified that one of the key issues in this case was the possibility of parental alienation and, working on the incorrect assumption that it was the Father that had continually exposed these children to litigation, I am particularly surprised that she did not feel that it was vital in terms of her assessment to consider any of the key documents from the previous proceedings involving the children and, in particular, the analyses of her predecessors who, as it turns out, had sounded clear warning bells to the Family Court about this mother's ability and willingness to allow these children to have a relationship with their father, and by extension, their paternal family. The historical context is of particular significance in cases such as this, where what has happened in the past is a key indicator of what may happen in the future. Miss Z appears, in my judgment, to have taken what the mother says at face value, and similarly, has taken what are said to be the children's expressed wishes and feelings at face value. I entirely accept that the Cafcass high conflict tool kit did not come into existence until several months after Miss Z had completed her addendum analysis, and it may be that the apparently strong feelings that these children have, combined with their ages, lent itself to an apparently hopeless situation where Miss Z was unable to see any prospect of reuniting these children with their father and paternal family, but by limiting herself to considering the situation on the ground in 2017 and the early part of 2018, and not considering the historical landscape means, in my judgment, that her analysis and professional judgment are equally of limited reliability.
28. I heard evidence from the paternal grandfather. He has filed one statement in these proceedings which can be found at E12-E22. I also had the opportunity, before the start of the hearing, to watch and consider a short video presentation that Grandfather had prepared, which was a collection of stills and footage of memories of himself, Father, and of the children. I found the video to be very powerful and instructive. I observed a warm, close, loving relationship between all of the children, their father and their grandfather. I equally

acknowledge its limitations and that it is a snapshot of moments in time. It is clear to me that Grandfather is a very “hands on”, dedicated and loving grandfather. He expresses concern in his written evidence that the expressed wishes and feelings of the children are not theirs, but those of their mother. He is critical of Cafcass at paragraph 9 of his statement, indicating that he does not consider that they have been open-minded towards the paternal family in these and past proceedings, and that the Family Court Advisor largely based her opinion of him and the father on what had been told to her by the mother. He highlights that Child A’s stated wishes and feelings were that he was concerned about the cost of the ongoing court proceedings. I agree with him that this is an unusual remark for a young person to make. Grandfather feels that this is evidence that the mother must have discussed these matters with the children. He expresses his concern in his written statement that Child A exerts influence over his younger siblings and that Child B in the past had told him that she was scared of Child A. He says that he had always had a very good relationship with his grandchildren, and he is devastated that they presently have no relationship. He is in very poor health and has a life limiting illness. He has no confidence that the mother encourages the children to have a relationship with him.

29. I heard oral evidence from Grandfather. He set out his various health difficulties. He says of everything in life, one thing he knows he has got right is that he is a very, very good grandfather. He told me that he misses hearing from the children, and he wants to do his best for them. He rubbished the suggestion that he had a rigid approach to parenting and described different activities that he would arrange for the children near to his home and that the children would have absolute choice in terms of which activities they undertook. He spoke of various activities he would arrange, such as wall climbing, dry ski slopes, skating, swimming, and trips to the cinema. He told me of trips to the British Museum and the Natural History Museum. It was put to him that some of the children reported being shouted at by him. He fairly acknowledged that he could not say he had never shouted at them, but it was a rare occurrence and he pointed me to the example in the video where he is dressed up as a panda, and how he defused conflict with Child A without resorting to shouting. In respect of Child A’s complaints of not being allowed to drink when he wanted to at Grandfather’s house, his response was that he accepted he did not allow the children to have drinks every time they asked for them, but usually it was because the request was being made before they were about to sit down for a meal and he wanted them to eat it rather than fill up on fizzy pop. He described Child B as a very loving little girl and that when he was seeing her, she was usually by his side. He described that she would write notes for him that he would find later from Child B telling him that she loved him. He told me of the time that she accompanied him to hospital, and she made little bows out of paper which when unwrapped read “I love you”. He described her as being keen on craftwork and painting and spoke of things that she would make for him, and described her as having a normal loving relationship with her father too. He described Child C as a loving boy who always wanted to come and see him, and he told me about a trip to Legoland where Child C enjoyed riding on his grandfather’s mobility scooter. He told me that when it was time to go home after contact, he would ask for Grandfather to travel back in the car but there wasn’t room for him, and Child C]would cry, and he described almost having to trick Child C]to get him to go back in the car to go home. He described Child C as being a boy that liked to play tricks, and told me with affection of such an occasion which took place at Halloween. When asked about his relationship with Child A, he told me that it had been good given that he felt Child A has a lot of problems. He described Child A as a very violent boy who could not help himself but to tell lies, although not malicious in nature, and he felt that Child A needed to improve his self-esteem. He gave me a couple of examples of when Child A had been caught out in lies and had involved Child B. When Grandfather asked Child B why she had joined in with the lie she said that she had to, or Child A would beat her up. He felt that the children had been coached to say negative things. He felt that

- the maternal grandmother was not supportive of promoting contact and deterred the children from coming to see him, and their father. He said that Child B told her their mother would reject some things made whilst with Father and that she had said that “she would not have rubbish from Father”. He said that Child A had remarked to him that his mum and nan hated him. He denies saying anything negative about the maternal family in front of the children. It is clear to me, however, that Grandfather does not have a positive view of them. He told me that there was a strong streak of violence in that side of the family, especially maternal grandfather who he described as ‘not all that bright’. He was very critical of the family engagement worker from the Local Authority, describing him as ‘the wrong person’. He went on to say, ‘He’s a bit like the Cafcass woman, he hindered not helped’ and that he was ‘totally useless’. Of Ms X he said that, ‘She had no common sense whatsoever’. He said he did not have a high regard for professionals: ‘look at the Cafcass officer, pathetic’.
30. He described the time when he had arranged for the children to see Chitty Chitty Bang Bang at the theatre. Child C got straight in the car, Child B eventually did and Child A did not. He described Mother standing at the doorway and Grandfather described trying to talk to Child A to coax him to come telling him about the flying car. Grandfather described mum as discouraging. He told me that he had said to the mother that she was supposed to encourage Child A to come and Mother’s response was that she was not sending the children “kicking and screaming”. Grandfather said that she should talk to somebody, and Mother’s response was to shout to her father saying, ‘Did you hear that, Dad?’ and that maternal grandfather appeared, clenching his fists at him. Grandfather confirmed to me he was happy to work with anything that the court might feel appropriate to order.
  31. In response to questions from Ms Harrison on behalf of Father, Grandfather told me that his observation of the time his son spent with the children was that of a normal, loving father who had a good relationship with them. He accepted that there was sometimes conflict with Child A, but they enjoyed outings as a family and would also spend time with extended family members including the other two grandchildren.
  32. On behalf of Mother it was put to Grandfather that he had criticised and complained in respect of a number of organisations and people, namely Mother, maternal grandparents, the family engagement worker, the Family Court Advisor, Cafcass, Children’s Services, Ms X and finally Child A. It was put to him that every time he was not happy, he would seek a second opinion and seek to control outcomes. Grandfather denied that and said he just wants to re-establish a relationship with his grandchildren and denied having a rigid and controlling approach.
  33. Mr Lycett suggested it was Grandfather who had been denigrating towards the mother within Child A’s hearing; for example, saying that Mother was going to be sent to prison. Grandfather told me that he had spoken to Child B and Child A after they had told a lot of lies and that he had had a discussion with them telling them it was important not to lie and, that if they were an adult, it was an offence punishable by court. He clarified in response to a question from me later that he had had this conversation with them at a time when there were no live court proceedings. His view was that “children need to tell the truth and you cannot whitewash over it”, as he put it. Nonetheless, I query the wisdom of Grandfather having this conversation with the children in the context of their experiences to date. However, my overall impression of the grandfather is that he was a straightforward, reliable and honest witness.
  34. Father has prepared one statement within these proceedings which can be found at E1-E11. In his statement he says that throughout 2015 and the beginning of 2016, save for the occasional hiccup, the time that he spent with the children was going well. In paragraph 6 of his statement he describes the wedding preparations which ensued after his engagement to his current wife in January 2015. He refers to Child A asking what type of shirts they would be wearing. He says that Child A reported that his mother had told him that if the shirt was red, he could wear it to school after the wedding. He says that when he told

Child A it would not be red the next time that he saw Child A, Child A told him that his mother had told him he could wear the shirt on the farm where he helped out. At paragraph 7 of his statement Father sets out that in March 2016 Child B told him that her mother had said that the child maintenance that he paid for the children was not enough to buy the weekly groceries and that this was a repeat of what Mother had done before.

35. He also sets out that in March 2016 he contacted the mother to discuss the application of the court order to the forthcoming school holidays. He describes the mother as refusing to compromise and also wanting to be with the children over New Year's Day. He says that he did try to compromise with Mother to improve the situation for the children, but she refused to be flexible and, that once again, she refused mediation as she had in the past. The email communication between the parents is annexed to Father's statement. His email to Mother can be found at E9 and is dated 6 March 2016. Within it he sets out that he needs to confirm his annual leave with work very soon and that they need to agree the calendar up to the end of September 2017. He says that he has looked at the various court orders that they have together with the school term dates and that he had spoken with the Assistant Head Teacher at [Child A's school and the Office Manager at Child B and Child C's school. He observed that the court orders apply very easily to the school calendars but that there was a slight snag with Child B's year 8 trip which was to take place between 17-21 October 2016 which overlapped with when Father was due to collect the children from the contact centre on 21 October. Father said that he discussed this with Child B, that there was a solution and he set out various options. He set them out in writing, and asked Mother to respond to him by 6pm on 13 April, some five weeks later, but did ask Mother if she had any counter-proposals and if she could let him know what they were by 30 March, some three weeks later, so that he had sufficient time to consider them and discuss any areas that might cause difficulties. Mother's response appears at E9 and is dated 20 March 2016. She suggests that to keep continuity with alternate weekends they would adopt option 1. She goes on to say, 'I have spoken with the children about the school trip, half-term holiday and Christmas holiday. They are also of the opinion that it is only fair that they see each other equally, alternatively over the festive period and meet with extended family on both sides, '. Father responded the following day, thanked Mother for her email and prompt reply and sets out that the option chosen did cause some headaches which he would try and address as best he could but that he felt it does not serve the best interests of the children because it caused some logistical problems. Father made some compromise suggestions which would have addressed the mother's desire to spend time with the children from New Year's Eve. Mother's reply can be found at E10 and is dated 28 March and says this:

'Hello , the children and I have had a family discussion and given thought to what you have expressed in your email. All the children have had time to consider their preferences. Our children wish to keep to alternate weekends, however your criteria of adherence to a particular option of spreadsheet without alteration is not agreeable. In adherence with the court order, Christmas when the children have Christmas at home your allocation of five days commences from Boxing Day (this is clearly stated in the order) in order for your family to celebrate Christmas with the children. The children are evidently aware of the duration of time and will have a week at home prior to having their five-day block of holiday with you, '.

Father's response is dated the following day. He thanks Mother for her email and says that he respects her choice regarding October half-term but does not feel that she has given any child-centred reasons why they should keep the routine weekends and he saw no reason to make Christmas arrangements to the children's disadvantage. Mother's reply is dated the same day and reads thus:

'Hello , I have read your email to the children. We feel that you have not taken on board the previous email we sent. Child A, as you know, helps out on a local farm

which he enjoys and is gaining valuable work experience in a potential career avenue which he is considering long-term. Child C and Child B also wish to keep to alternate weekends. Both have commitments over the months with friends and hobbies. Regarding Christmas and the extended family gathering, the children informed me this actually entails paternal aunt, Grandfather, paternal uncle, Paternal Cousin B and occasions Paternal Cousin A the children feel that this is not fair. Regardless of their feelings they are not permitted to spend New Year with myself and extended family for a number of years. The children feel that they have sufficient time to enjoy their gifts on Christmas Day and wish to stick with the court order and stay with you from Boxing Day. The children would like to experience a New Year's gathering with my extended family, something which they have no recent memory of and enjoy the fun of having a timely celebration on alternate years which is only fair for everyone. Thank you for your agreement with our children's decision'.

There's a further email to be found at E10 which is one that is said to be sent by Child C to his father which reads thus:

'To Dad, Mum has read your email to me as I think it's unfair for us all to be at your house from New Year's Eve. Considering your opinion, I would like to have Christmas Day with mum and then be with you 26 December, having a New Year's Eve so that we can be with them for the first time in a long time. '.

36. The emails from Mother and the one said to be from Child C are concerning to me on a number of levels. Firstly, it evidences that this mother has actively involved the children in adult discussions which, in my judgment, is neither helpful nor in the best interests of these children who have been exposed to parental conflict for many years. Secondly, the words that she uses suggest that she and the children together have sat down and Mother's response has been used as their response. Mother seems to have a fixation on what might be in court orders rather than what might be in the best interests of the children themselves. Although Mother accuses this Father of being rigid and inflexible, her emails to the father are demonstrative of her being unable to consider flexibility in circumstances where that might better serve the needs of these children. It is further evidence of her actively sitting down and having conversations with the children about communications from their father. Whilst I entirely accept that children should have a voice, it was wrong, in my judgment, for this mother to involve these children in this way. The children were acutely aware of their mother's view of things and given that she is the parent with care it is hardly surprising then that the children closely aligned themselves with her own expressed wishes which she seeks to present as the children's. I refer, of course, to the email that is said to be sent by Child C to his father. I take the view that on balance it probably was sent by Child C but is deeply concerning to me that the contents of it virtually mirror the email to Father from Mother on the same date. It is highly suggestive to me that these children knew the intimate details of this mother's wish for the New Year period and arrangements and further they knew that this was a source of disagreement between their parents.
37. The father gave oral evidence to me and explained the delay between last seeing the children in May 2016 to the date of this court application in May 2017 as having been done on advice from the family engagement worker to give the children time to come around to allow the family engagement worker's work with the family to be completed. He eventually made the application as he felt that things were not progressing as he had hoped. He describes the Local Authority as walking away and that he decided to give the children some time and space. He had attended a MIAM (mediation, information and assessment meeting) before the issue of proceedings as indeed was mandatory, in the hopes that Mother would engage with this process to avoid litigation, but that his recollection was that she

- would feel it would not be productive.
38. He described his communication with the mother to normally be by way of text message and email. He said that communication from Mother was always difficult. She only responded to direct questions and many communications were not responded to at all. She did not involve him as a parent, and he has had to try to exercise parental responsibility by engaging with the children's schools who, he had found, generally tend to rely on the resident parent to share information with the non-resident parent. He had had to tell the schools of his problems in that regard, but it was not effective in this instance. He described to me his efforts at indirect contact with the children by various mediums including text message, WhatsApp, Messenger app, birthday cards, Christmas cards, exam congratulation cards and good luck cards. He told me with some sadness that the last time he had had a response from Child A and Child B was in 2016 and that he had received some text messages in 2017 from Child C. He had last sent text messages to Child B a couple of weeks before the trial of this matter regarding a German exchange trip that she had the opportunity to go on over the coming months. He heard nothing so sent a message to Mother asking Child B to reply. He said the mother took time to respond and confirmed that Child B had received the message and that Child B did not want to attend the trip or reply to her father.
  39. Father felt that his relationship with Child A was good but there were occasional hiccups in that Child A could be very defiant but that he was comfortable with him and his Step-Mother, and was able to do the things that he wanted to do. He described Child A as a playful character who liked to joke. He described his relationship with Child B as being very loving. He would watch her school netball matches and when she was with him, she would want to be physically close to him and he described her fantastic sense of humour. In terms of Child C, he told me they had a very loving relationship too. He described how Child A would often want to sit on his lap or next to him and that they would go on cycle rides together and play Lego.
  40. Father's opinion that the reason that contact stopped was due to the email sent by Mother in March 2016 describing the family meeting. He said that in the build-up to that period, from what the children had been telling him and their Step-Mother, there had been negative comments regarding clothes that the children were to wear to their wedding. He described that because of the very prescriptive nature of the contact order that was in existence the order required the application of school term dates and he had been attempting to agree with mum the arrangements for the following academic year. He indicated that Child B had told him she wanted to spend the first part of October half-term with her mother and that he supported her wishes in that regard in terms of trying to reach an agreement with the mother, but Mother was adamant her position would not change. He felt that his children had been put under pressure, had divided loyalties and had felt that they had to choose between their parents. It was put to Father that Mother's case was that the children were not comfortable about his care, partly due to their different parenting styles. Father accepted that they do have different parenting styles but did not agree that the children were uncomfortable. He described trying to give firm boundaries and he found that the children responded well to that. He described Mother's parenting style as being much more relaxed to the point where Child B described her mother as being weak, struggling to control the boys and having had to go to nanny to get her to tell them off. He said that this was one of the concerns of the social worker following the Local Authority intervention in 2014 and that both parents had agreed at that time to attend Triple P, a positive parenting programme.
  41. Father noted with some regret that he felt Child A was now beyond the assistance of the court and that Child B was very close to that. However, he felt that Child C was still of an age where the Family Court could be of great assistance to him. Father was clear that he did not feel that the expressed wishes and feelings of the children are their true wishes and feelings. He described constant bad-mouthing of him, little examples which taken together



he has no doubt have had a cumulative effect upon the children, for example, buying him Child A shoes only for Mother to tell Child A that they would rub. He bought mouthwash for the children which they were not allowed to use. He says that Child B spoke to her Step-Mother saying that 'mummy says you're old enough to be his mother'. Father explained to me that there is a 13-year age gap between him and his current wife. He also felt that there were occasions when Mother had deliberately set expectations up for the children which could then not be met, leading them to feel disappointed, for example, Mother had told them when they were on holiday with Father and Grandfather that they would be able to swim with dolphins when that was never going to be possible, and they were then disappointed when they could not, and the grandfather would buy Fast Pass Track for attractions when this was never promised. He felt that the cumulative effects of all of this was emotionally abusive behaviour towards the children which led them to the view that one of their parents was not of value. He spoke emotionally of what he would like to achieve and told me that he wants to be part of their lives, to support them, give them advice, somewhere safe to go or be there if they need help. He wants the opportunity to re-build the loving relationship he told me they once had. He is concerned that the emotional harm will have lifelong consequences if the court does not do what we can to mitigate the situation. He spoke eloquently and was keen to say that none of this was their fault, that they were the victims in this situation, and it was impossible for him to protect them from it. He told me tearfully that you do not get a second chance at childhood and that the children have two parents.

42. When cross-examined by Mr Mansfield, he told me of the time when he had been assaulted by maternal grandfather. It was the weekend following Child B's fourth birthday in 2007, when he was returning Child B to her maternal grandparents. They have a static caravan in Wales, and he described that there had been confusion about what the mother required him to do which led to the grandparents accusing the father of having delayed them setting off on that trip. He said that maternal grandfather assaulted him in front of Child A, that Child B was elsewhere in the house and that when Mother heard the commotion, she had Child C in her arms. The police were called, and Father told me that he sustained a bloodied nose and bruising. His glasses were broken, and he was unable to drive. The police interviewed the maternal grandfather who denied the allegations against him and the police felt there was insufficient evidence to press charges, so they were not brought.
43. There was a time when Father took Child B for a haircut. He said that she had been asking for some time for her hair to be cut short and he felt that it was in Child B's best interests for her wishes to be recognised. Her hair was long at the time and she was very keen to have her hair cut extremely short to the nape of her neck. He said about 10 centimetres was taken off the length and that her hair was touching her shoulders. He did not communicate with Mother prior to the haircut or seek her agreement. On returning Child B he described maternal grandmother coming out of the house shouting at her. He says that within a week of the haircut, Mother had made a without notice application to the court for a prohibited steps order and an order to stop all contact, citing her belief he was going to abduct the children. When contact ultimately resumed he told me that the children had asked him where he had been and said that they had been waiting by the window for him to collect them and he did not turn up. He said he received no communication from the mother. He said that he understood from what the children had said to him that things made at his home were rejected or thrown away, and they started leaving things they made when they were with him saying that Mother would only throw them in the bin.
44. In terms of the maternal grandmother, Father told me that in previous proceedings it had been accepted that the maternal grandparents were unhelpful in relation to contact and that the judge then gave advice to the mother about them not being present at handovers.
45. When asked about Grandfather's input with the children, Father described him as fantastic. He would enable the children to do fantastic things which Father's own finances could not

- permit. He described the children as having been doting of their Grandfather, Child B wanting one on one time with him and that she would use her pocket money to buy special gifts for him as well as the notes that she wrote that I heard about from Grandfather.
46. It was put to Father by Mr Lycett that when Father does not get something that he wants to, his natural reaction is to criticise or blame others, that he has got a controlling approach to parenting and that Father's been angry in the past when the children have not done what he has wanted. All of this was disputed by Father. He accepted that there had been an occasion when he had had to physically intervene with Child A. Father was clear that he did not feel that any of the children, including Child A, have any responsibility for what they have had to endure. He did feel that Child A influences his siblings but gave me a positive example of when Father was encouraging the children to write thank you letters, Child C was refusing, and Child A supported his father in suggesting it was a good idea. When it was put to him that it was Father who was talking negatively about the mother and the maternal family, Father's response was that "we are here because of Mother's negative influence". He recognises that all of the children love their mother and the maternal family, and that is not something that he has ever sought to discourage. He described encouraging the children to choose gifts for the mother at holiday times, for example. He denied having spoken about having Mother sent to prison and denied having been the aggressor at handovers. He said he had never in any of the previous proceedings sought to contest the living arrangements for the children. He accepted that Mother was the main carer and that she always had been. It was put to him that the children have expressed their wishes and Father's response was that he feels that their determinable wishes have not been obtained. When it was put to him that he was wanting to prolong these proceedings, Father's response was that he felt conflicted and it was a fine dividing line between allowing the children to be subjected to continual emotional abuse as against their right to a family life with both of their parents.
47. He told me that in November of last year Mother had told him that she had taken Child C to the hospital after he had experienced difficulties in passing urine. Father contacted the hospital and told them that he wanted to be fully involved, as Mother had refused to provide any further information. Father said that he felt forced into giving consent to a medical procedure when he had relevant and pertinent questions to ask of the treating doctor. Child C had evidently been told by his Mother that Father was stopping him from having a procedure. This was not the case, Father told me, and he wanted to know what other, non-surgical interventions might be possible.
48. Father reflected that it might have been better for the children if, back in October 2007, he had contested the living arrangements for the children and then maybe the children would have been able to have a meaningful relationship with both of their parents, but at that time he had no apprehension of how malicious the mother and maternal grandparents could be. I have found, on balance, that Father gave his evidence to me honestly and whilst, for reasons that I understand, he was very keen to give me as much information as possible and this led him at times to answer questions that were not asked of him, I found him to be a credible and honest witness in all respects. He was reflective and child-centred in his evidence although he has clearly acted unwisely at times, for example, with respect to the haircut incident when he could - and should - have consulted with the mother.
49. There is one witness statement from the mother which is found at E23-E26 and it is dated 15 March 2018. She says that since she and Father separated, she has encouraged and supported the children to spend time and have a relationship with Father and the wider paternal family. She says that it is the father and grandfather's attitude towards the children and their need to control situations which has led to contact breaking down. She says that the children have felt for almost two years, that they do not wish to spend time with, or have a relationship with their father or grandfather. She says that since the children made this decision she has attempted to encourage and support them to spend time with Father and

Grandfather and that she has attended meetings with the contact centre and social workers. Perhaps, unsurprisingly, she agrees with the conclusions of the psychological assessment and the addendum section 7 report. She agrees with the Cafcass recommendation that there should be indirect contact and that an order should be made pursuant to section 91(14) of the Children Act 1989. She invites the court to discharge the orders dated 7 June 2010 and 2 February 2011 and invites the court to make child arrangement orders confirming the children live with her. She also seeks orders from this court in respect of the children's passports to be returned to her in respect of Child B and Child C and directly to Child A in respect of his. In terms of indirect contact, she asks the court to consider not including the provision that the children have to respond as she says, taking into account their ages, they will respond when they are ready. She asks the court to dismiss Father's application for enforcement.

50. Mother also gave extensive oral evidence to the court. In examination-in-chief she gave her recollection of the events set out in the contact centre letter which can be found at D11. She denied being vocal or shouting at any time and said she was tearful and upset. In terms of the email where she described the family discussion, her account to me was that the children and she spoke with regards to what things they had arranged. She said that the eldest two children, in particular, had arranged things with their peer groups and that she had discussed the email with the children to find out what their plans were so she could respond. Mother gave me her account of the Child B hair cut incident. She said that when Child B returned, Child B was wearing a hoodie. Child B came in last and appeared to be quite nervous and sheepish and then started to cry. She said that she had had her hair cut. Mother described being shocked considering the length taken off and she described feeling numb. She told me that she saw Father proceeding to the end of the street, that her mother went to take matters up with Father and that all that she recalled was her mother saying: 'what have you done?' She described Father looking over his shoulder and laughing. She denied disposing of any artwork done whilst in the father's care and she denied Father's account of Child B's birthday weekend in 2007 to be true. She said Father was very, very late. She did acknowledge that Father had sent her a message to tell her he was running late and stuck in traffic. She did not recall being asked by Father if she would like him to take Child B directly to the caravan. The rest of her response was instructive. She told me that she knew that her parents would not like that at all. She told me of the time that she was unaware of Father coming swiftly behind her when she returned into the house. Her mother was in the porch area stood in the doorframe when Father approached. She described her mother saying to the father: 'you're not welcome in here'. The children were in the house at the time albeit in another area. She told me that her father was upstairs. She confirmed that words were spoken and told me that she could hear screaming. She said that she understood her mother was pushed up against the wall and described her dad coming down to see what was going on and her father shouting: 'get out of my house' at least three times. I note Mother's evidence was that the commotion was loud enough for a neighbour from three houses away to run down to check that everyone was okay. It is inconceivable then, in my judgment, that these children were not acutely aware of the adult disagreement. She denied ever having badmouthing Father. Mother was asked if, for example, she had ever driven down to paternal aunt's house to support contact. Mother explained to me that she had not done that because of her work commitments. She works shifts, and very rarely gets time off. Mother accepted she does get five weeks holiday per annum.
51. When asked what positive action she had taken to promote contact she told me that she had encouraged emails and she told me it was difficult for her because both of her parents have health needs. She was asked if she picked the phone up to any members of the paternal family and she said for a long time she had certainly not been encouraged to speak on the phone. She accepted that her parents did not hold Father in high regard. She was asked then, knowing that to be the case, why had she brought her mother along on 1 April 2016.

Mother's response was that it was for comfort for her, and that her mother had always supported her. It was put to her that as a judge had told her, as long as eight years ago, that the influence of her parents in the context of contact was unhelpful and that she should not involve them in it that, perhaps that was unwise. She was asked why then she had done that against the advice of the court. Mother's response was to say only that she took this on board. It was put to the mother that it was always possible that her mother and this father might come into contact with each other and it was not the best thing in reality. Mother's response was that it was done for her to feel comfortable and it was important that she was not feeling anxious and it was to calm her anxiety and she did not feel it was detrimental to the children's welfare. It was put to her that in so doing she put her own needs first and disregarded what might be best for the children. Mother did not feel that to be correct.

52. Mother was challenged about her evidence to me that she had had discussions with the children about Father's email from March 2016 and that the children would have made arrangements. It was pointed out that it was seven months hence and improbable that children had made arrangements to spend time with their friends so very far in advance. Mother described being unable to agree Father's compromise suggestion because it would have meant two consecutive weekends that the children spent time with their father. I asked the mother at this point what the problem with that would have been. Mother said there was not a particular problem but when it had happened once, the children had expressed being upset at having to see him two weekends on the trot, as she put it, but that she, herself, was not against it. It was the children themselves, she said, from a long time ago and she referred to that being in 2010 or 2011. Father's counsel pointed out that back then Child A would have been nine, Child B seven, and Child C five, and Mother was asked why it was that she was not able to exert parental control over children of those ages. Mother's response was that she did encourage and that her mother had supported and encouraged her in getting them to go.
53. Mother was asked about maternal grandmother's dim view of the father and that mother responded that she could not speak for someone else's view, but she conceded that she did not think her mother had always had positive thoughts about Father. It was put to her that there was no love lost and Mother said that she was aware that her parents did not have a good opinion of Father.
54. When Child C's email was read to the mother, she denied having read out Father's emails to the children and she was asked if Child C, at the age of 10, said that. She told me that she could vouch for what he had written. She said that it would make her life considerably less stressful if the children happily went for contact and were not upset, if they were comfortable and enjoyed themselves.
55. She was asked what she had specifically done to affect contact in 2016 in a positive way and she told me that she had promoted text messages. She was asked if she had sat with the children and encouraged them to see their father and her rather curious response was that "they were aware of the court orders". In response to that she was asked if she just saw this as an order of the court, rather than any positives that Father could bring. Again, this response was illuminating. She said that the children had other positive role models in their lives. She was asked what Father positively brought and Mother said that he interacts, but she did not pry.
56. She confirmed that she is willing to take part in any work that the court thought might be helpful. She did not think she had given a negative message to the children and she said that her mother was there to support her to feel calm and less stressed and she felt that she had been encouraging of the children. When asked why she did not attend the mediation information and assessment meeting, her response was that she could not afford it. I can only imagine that it has cost a great deal more for these proceedings to be litigated over the last 17 months than the cost of such a meeting. It was put to Mother that she has no intention of trying to improve her relationship with Father for the benefit of the children.

- She said that she had communicated with him via text and when asked what message that gives to the children the mother said she had not deeply reflected. She described an incident at Child A's parenting evening when she became aware of Father's presence and she said "Child A froze and I froze". She was asked if she accepted that the children picked up on cues from her. Mother conceded that was a possibility and told me that she tried to be relaxed but she took on board that the children may pick up on the stress that she feels. It was put to her that together with the views of her parents and Mother's anxiety there was a lot going on in the maternal family in the household for the children to pick up on. Mother was taken to the excerpt in the Cafcass report when Child A talks about mum feeling stressed. Mother's response was only that she "took it on board".
57. She was asked if she accepted, having seen Grandfather's video, that it showed the children to be very comfortable in the care of Father and Grandfather and that they were tactile. Mother's response was that she did not know about them being tactile, but they did appear comfortable. Mother said she had heard the children express things, for example, at her house she told me: 'the children can get themselves a drink when they want to and from what the children express, they are not allowed to do so at Father or Grandfather's home'. She described the different parenting styles and that the children did not feel able to chill or relax or freely move about. She denied having said to Child A that the wedding shirt could be used for him to wear on the farm and that the reason that Child B never wore the school shoes that her father bought for her again was because they were snug. She did not contact Father to mention this so that he could perhaps try and exchange them and left that with Child B to discuss with her father.
58. She denied having shared information with the children or speaking negatively about Father. She did say that she lived in a small terraced house so they may have overheard things but that she was not shouting or talking loudly. It was put to Mother that since 2008 she had not actively and positively promoted contact. Mother says that she takes this on board and could have done more. She was asked what she could have done more of but was not able to say. She then told me that from the onset of their separation she had had to go to court to get back in the house, Father had left a mattress on the floor, four plastic bowls and the fridge, and she said it was hard at that point and difficult from the outset so the starting point for the situation was a negative catalyst for the relationship between the two. She describes nothing being easy and not even having enough money to put fuel in the tank to get back to her parents' home. She said that there were silly things too which upset her such as Father left the DVD player but took all of the children's DVDs. She thought, maybe, Father had done these things to wind her up.
59. She was asked if she agreed that this was a highly complex situation and she did. She was asked did she not think it strange for the children to say that they did not love their father. She told me that she felt it was immensely sad. It was put to Mother that she had not been effective and had left others to deal with the problem of the children saying they did not want to attend contact. She accepted in evidence, that she had not done enough. Mother was asked what could be done now. Mother said to build from indirect contact. She told me that the children have their own boxes. Mother quite remarkably then produced something from Child B's box which she told me that she had asked Child B if it was okay to take and share with me. She was then asked about what the children knew about where she was that day and Mother said that the children knew that she was in court.
60. Mother was cross-examined by Mr Mansfield and was taken back to her evidence about things being very difficult when the parties first separated. Mr Mansfield asked if she could recollect that there was a period of time when the parties first separated that it was necessary for Father to hire a car on repeated occasions to attend contact and Mother confirmed she did. Mr Mansfield asked the mother to confirm that when that was to happen that Mother would go to the front of the car and take a photograph of the licence plate. To my astonishment, Mother's response was, 'not every time'. When asked why she would

have done this, Mother said there was such animosity, and that she never received any reassurance from Father so she never knew when they were coming back and that “things had been done” behind her back. It was put to the mother that the implication of her doing this that the children would have picked up on was that she was worried that Father would abduct them. Mother denied saying this and said she did it, so she knew what type of car to look for when Father returned. I will say this now and clearly, I entirely reject the mother’s explanation for her actions in taking a photograph of the hire cars in this way and, in my judgment, this likely set the scene for future contact. Mother’s evidence changed when she realised the implications of this evidence and she then said to me that it had happened on one odd occasion. Mr Mansfield put to the mother that she had quite deliberately set about trying to create an impression that contact with paternal grandfather or father was not safe and that this is something that the children must have picked up on. Mother’s response was that she wanted to know where the children were.

61. It was put to Mother that neither maternal grandmother and grandfather had a positive view of the paternal family. Mother said she could not speak for other people’s views. She was pressed and responded she was aware that her parents were not happy with how Father and Grandfather spoke about maternal family. She was aware that the professional view of her in her earlier proceedings was that she was not remotely supportive of contact. When Mr Mansfield raised the contact handover for the Chitty Chitty Bang Bang theatre trip, and it was put to the mother that grandfather had suggested to her that she needed to speak to someone Mother said that she had encouraged Child A but that she had also said she was not physically manhandling him and forcing him to come. She denied that her father came out with his fists up and suggested that if that happened there would be a police log. Mother was asked if it was right that her own mother had been so concerned that she called her husband to stop. Mother said that she did not recall and now said her father was not there, contrary to her earlier evidence.
62. Mother was asked by Mr Mansfield if she was aware that the professional view of her in earlier proceedings was that she was not remotely supportive of contact which was borne out by the fact that she applied for a prohibited steps order in January 2010 when she invited the court to make an order to prevent contact. She was referred to B29 when a family assistance order was made by District Judge Chapman. Mother stressed to me that she was aware of the importance of court orders. What she did not say is that she is aware that it is important for the children to spend time with their father. Mr Mansfield highlighted that even after the making of a family assistance order the view of Cafcass was that Mother and maternal grandparents had very negative feelings about Father and, by extension, the paternal family and that the children were aware of that. Mother conceded that she would not say they held positive views of Father but contended that she and maternal family members did not speak about those matters in front of the children but that she took on board what professionals were saying. By way of justification she told me that she receives no assurance from Father, that the children are not allowed to text her, and she wanted to know that they are alright. I am still unclear as to why the mother would not think that the children were alright, when they were being cared for by one of their two parents.
63. Mr Mansfield took Mother to B35 in the bundle which was at a time when the mother made serious allegations against the father. Mother maintains she had always encouraged the children and told me that they must go, there is a court order, and that the children would say to her, they knew they were under a court order. It is a concern to me that children would think of matters in those terms, which sounds entirely punitive, rather than reflective of being able to spend time with one of their parents which ought to be positive, beneficial and a natural experience. It was put to the mother that what Mother says in evidence to me now about what she feels about contact flies in the face of what she was saying to Cafcass in February 2013 which is this:

‘However, whilst reporting to me that she’s fine with current contact arrangements Mother has asked me if Child A chooses not to attend contact then does he have to be made to go. I’ve advised Mother and all three children that contact with Father is important and they must attend’.

Mr Mansfield put to the mother that, in fact, her attitude has been the same throughout the years and can be seen again more recently with the latest Cafcass involvement where she told the Family Court Advisor that she would promote contact “if required”. Mother contended that she had never stood in the way of contact and was asked if she could see a difference between not standing in the way of it and actively and positively promoting it. Mr Mansfield reminded the mother that she had told me that she had felt stressed and uncomfortable and that in responding to observations about Father speaking to the head teacher that she had remarked that she did not want to put herself in an environment that causes stress. He reminded Mother that she has got to prioritise the children and suggested to her that it suits her for there not to be direct contact between this father and these children because it means that Mother does not have to experience the kind of discomfort that she is talking about.

64. Mr Mansfield asked Mother if she agrees that the reasons that the children were putting forward such as feeling uncomfortable, contact being boring and that they could not get a drink were very weak reasons for a court to consider severing a relationship between children and one of their parents. Mother’s response was that she took on board what the children said, and it was possible that the children had been guarded in expressing their reasons more fully, although she did appreciate that the children saying they were bored is a weak reason. Mother was asked about whether she had seen the list of activities that Grandfather had undertaken with the children. Mother could not recall having seen this before and she was asked if it was not of concern to her that none of the children had been able to freely mention positive time spent with Father and Grandfather. She was asked if it caused her concern at all that all of the children expressed in one way or another that they do not love their father or paternal grandfather. In the response, whilst Mother said it was very concerning, she went on to tell me about how the children just felt that Father sat and had drinks when they were on holiday to Tenerife which was a very odd response for her to give me in relation to this very important question. Mother was asked if she accepted that any child not being emotionally harmed will have a loving concept of a relationship with both of their parents and she conceded that to be true. Mother was asked what she did with the children when she read for the first time that the children had told the Cafcass officer that they did not love their father or grandfather and she said that she did not discuss these matters with them, and it had been a private assessment for them.
65. It was put to the mother that she has said, and the children have said, that they do not like contact because it is not comfortable, essentially, that there has been an adoption of the mother’s language and feelings about contact by the children. It was clear to me, in Mother’s responses to questions and that having seen the recommendations in December 2017 as to how to possibly move matters forward she has, in reality, done little or nothing to communicate with the extended paternal family. All that Mother could say was that the children had been encouraged but was unable to give me any detail at all about how she had done that and when she was asked if she would be prepared to work with professionals, under a family assistance order, or whether she was prepared to engage in indirect contact using skype or meet with paternal family members to try and progress contact she did confirm she would work with professionals and that she would agree to skype contact, although she did not know how it worked, and whilst she would find it difficult to be in the same room with Father she would work towards that, accepting it was part of her role as a mother to meet with members of the paternal family to try and resolve things in the interests of the children. Subject to legal advice she would agree in principle

to an undertaking of the kind previously recommended by Cafcass, that she would positively promote and encourage contact. She further agreed, in principle, to a further period of court review. She also agreed, in principle, that she would undergo any therapy that she might need and that the children might need.

66. I asked the mother in conclusion if she could tell me three positive things about the father. She replied, 'He is good at maths, is organised, and quite good at public speaking'. The fact that this mother was unable to think of the man that she shared her life with for a number of years, had three children with, in anything other than those terms spoke powerfully to me. She did not refer to any of his attributes or acknowledge any positives that he may have as a father. I found the mother to be an unimpressive witness who at times provided contradictory evidence to me. I was left with a very strong impression, having heard the mother's evidence over a number of hours, that she has not on any meaningful basis positively promoted or encouraged these children to spend time with their father or paternal family as she ought to have done. I accept entirely that there has been little or no attempt by this mother to actively promote the children's relationship with their father. Her inaction is best characterised by Child C's observation to Cafcass: 'I don't think she cares whether we see him or not'. A theme in Mother's evidence to me was that she knew that contact should take place because there is a court order, not because she was supporting a valuable relationship between the father and the children. It is extraordinary, in my view, that this mother has not taken time to reflect on any aspects of the assessments which were undertaken in the (almost) 12 months since they were received. I cannot conceive that any reasonable parent would not have been desperately concerned to read that their child would say that they do not know if they love their other parent and do anything that they could to make that situation better for that child.
67. There has been, I am satisfied, to the relevant standard, things said and done over the course of a decade which have diminished this father in the eyes of his children, from taking photographs of the father's hire car, leading in my judgment to an inescapable conclusion on the part of three young children that they are not safe in the care of their father and that he is not to be trusted, to Child B choosing not to wear her school shoes again, to Child A being told that he can wear his wedding clothes on the farm, and the children being told that the maintenance that Father pays for their upkeep does not cover the groceries. It goes further than that - she has, whether purposefully or otherwise, exposed the children to negatively held views about Father and the paternal family which the children have picked up on. The children are only too aware, in my judgment, that Mother feels uncomfortable about contact to the extent that they now have a shared use of language with the mother. They describe contact in the same words that she does. This mother has, in my judgement, inappropriately shared information with the children to negative effect. I have no doubt that Mother read the father's emails from March 2016 to the children and that she made her own views about Father's suggestions, and her preferences, all too clear to Child A, Child B and Child C. Child C adopts similar language in his email to Father that Mother uses in hers to Father on the same day.
68. It is little wonder that these three children feel worn out and disenfranchised with the whole idea of spending time with their father, when it has been a constant source of upset, angst and conflict for some 12 years. They do not, and have not, in my judgement, had emotional permission from this mother to have a loving relationship with their father and paternal family. This is evidenced, in my view, by the fact that none of these children were able to speak to any of the professionals who interviewed them about any positive memories or happy times spent with either their father or their grandfather. I have clear evidence in the form of a video recording that there were very many happy times spent by the children in the company of both. I accept entirely, of course, the limitations of the video recording which is a selected snapshot of brief moments in time but, nonetheless, it was illustrative and powerful. It is likely, in my judgment, that Child A, Child B and Child C are children



who have simply found the path of least resistance to be that they do not see or spend time with one of their parents, rather than continually be exposed to high conflict that exists between the mother and father in this case, and they have elected, unsurprisingly, to take the side of their resident parent against their father. This is neither healthy nor, in my judgment, in their best interests. Whilst I accept that they may have told professionals what their views are, I am of the view that they have said things which do not necessarily reflect their true feelings about their father or grandfather. I am concerned about the use of shared language between the siblings, its similarity to views expressed by the mother, which appear not to have been picked up on by either Cafcass or the court appointed expert when reaching their conclusions about whether parental alienation has been a feature of this very sad case. I take into account that neither the Family Court Advisor nor Ms X had the opportunity, as did I, to observe the parents and, indeed, grandfather give their evidence to me over several hours and thus they did not hear for themselves some of the concerning evidence of the mother which has taken me in large part to the conclusions that I have reached. They both did not consider this case in its proper historical context as cases of this kind should be, and as a result, their findings can only be afforded limited weight and I cannot rely on them in their entirety.

69. I know that it is very likely that Child A, Child B and Child C will all think that I have simply ignored what they have said to various professionals for a long time now. I have not, and I do understand that the children simply want this all to be over. Their welfare is my paramount concern and I have to consider that any delay in reaching a resolution is likely to be contrary to their best interests. However, I also have to weigh into the balance that in cases such as this, where there is intractable opposition by children to spending time with their parent, their welfare, rather than their expressed wishes and feelings should be determinative of the court's decisions in balancing harm to the children of not seeing a relative, against the harm of enforcing direct contact upon them against their wishes. I am not satisfied that the expressed wishes and feelings of the children can safely be relied upon in the context of all of the other evidence that I have heard. I am concerned too that the children, or at least Child B and Child C, are not psychologically mature enough to understand that a decision now not to spend time with their father and grandfather will likely have lifelong consequences upon them that they can have neither conceive of nor comprehend.
70. The term intractable tends to be applied to cases where no contact has taken place as a result of resistance without objective justification on the part of the child or resident parent. The court should be very reluctant to allow the implacable hostility of one parent to deter it from making an order making provision for contact where the child's welfare otherwise requires it and should normally only do so if satisfied of a serious risk of harm if contact were ordered. The court should not abdicate its duty to make an order on the basis that a parent with care would not obey the order. Where there are no rational grounds for hostility to contact the court will refuse contact only when satisfied that to do otherwise would create a serious risk of emotional harm to the child. Where the hostility is based on strong ground, which themselves justify refusing contact, the hostility itself is largely irrelevant. Where the hostility is based upon rational but not decisive grounds the hostility may be an important factor and the court should measure the effect of hostility upon the child. In this case none of the children have, in my judgment, given any cogent or justifiable reason for refusing to spend time with their father. It is a state of affairs which has been allowed to develop with encouragement, in my view, from the mother whose purpose it suited because the prospect of the children spending time with Father (and by extension paternal family) was uncomfortable for her.
71. Whilst I have no doubt that life is very difficult for her when she and Father separated, she has, in my judgement, allowed the strong negative feelings that she holds for the father to spill over into the arrangements for their children. Despite the fact that these parties

separated some 11 years ago it was clear to me that those events still affect her now strongly in a negative way and that she holds resentment towards the father because of it. The children cannot help but be acutely aware of how their mother, and indeed their maternal grandparents, feel about their father. That in my view is a very uncomfortable place for these children to be.

72. *Re M (Intractable Contact Dispute: Care orders)* [2003] is authority for the proposition that children should be separately represented in private law proceedings where all contact has ceased, and the issue of contact has become intractable. Sadly, despite the fact that the lay justices identified at the very first hearing that there were issues of intractable opposition to contact, this proposition appears not to have been considered or, indeed, at any subsequent case management hearing. It has identified too that judicial continuity is important in such cases and, sadly, that has not featured in this case where several judges have dealt with these children. Cases involving older children, such as in the instant case, cause particular difficulties for Family Court judges.
73. The immediate past president Munby in *Re H-B (Contact)* [2015] EWCA Civ 389 says this:  
‘What one can reasonably demand - not merely as a matter of law but also and much more fundamentally as a matter of natural parental obligation - is that the parent, by argument, persuasion, cajolement, blandishments, inducement, sanctions (for example, ‘grounding’ or the confiscation of mobile phones, computers or other electronic equipment) or threats falling short of brute force, or by a combination of them, does their level best to ensure compliance. That is what one would expect of a parent whose rebellious teenage child is foolishly refusing to do GCSEs or A-levels or ‘dropping-out’ into a life of drug-fuelled crime. Why should we expect any less of a parent whose rebellious teenage child is refusing to see her father?’
74. In *Re W (Children) (Contact Dispute)* the Court of Appeal confirmed that there are limits to the attempts that can be undertaken to establish contact with unwilling children, particularly in cases where it is contrary to the child’s welfare to continue with attempts to establish direct contact. If all possible avenues have been explored appropriately then the court is entitled to order that such efforts should no longer be pursued.
75. In *Re J.A. (Children)* [2017], the now President of the Family Division, McFarlane LJ, underlined the importance of dealing with issues of fact quickly but also the exceptionality of coming to a conclusion that a parent should not have contact with his child. He referred to the case of *Re M* and that in the course of that court’s judgment consideration was given to the approach that a Family Court must adopt to the issue of continued contact in difficult circumstances. The judgement of that court delivered in that case by the immediate past President of the Family Division stated at paragraphs 56 and 57:  
‘So much for the general principles by reference to which we have to determine the three grounds of appeal. In relation to ground three there was common ground between the parties as to the governing principles. After a detailed analysis of both the Strasbourg and domestic jurisprudence this court in *Re C (Contact Suspension)* [2011] summarised matters as follows: ‘the contact between parent and child is a fundamental element of family life and is almost always in the interests of the child. Contact between parent and child is to be terminated only in exceptional circumstances where there are cogent reasons for doing so and where there is no alternative. Contact is to be terminated only if it will be detrimental to the child’s welfare. There is a positive obligation on the state, and therefore on the judge, to take measures to maintain and re-constitute the relationship between the parent and child. In short, to maintain or restore contact. The judge has a positive duty to attempt to promote contact. The judge must grapple with all of the available alternatives before abandoning hope of achieving some contact. He must be careful not to come to a premature decision. Contact is to be stopped only as last resort and

only once it has become clear that the child will not benefit from continuing the attempt. The court should take a medium-term and long-term view and not accord excessive weight to what appear to be short-term or transient problems. The key question which requires stricter scrutiny is whether the judge has taken all necessary steps to facilitate contact as can be reasonably demanded in the circumstances of a particular case. All that said, at the end of the day, the welfare of the child is paramount, and the child's interests must have precedence over any other consideration'.

76. It was said on behalf of Grandfather that one of his very real concerns was that these children, when they reach adulthood, may very well be affected by feelings of guilt, shame and loss in the event that there has been no effort at reparation of their relationship before he dies. Bearing in mind his life-limiting illnesses I share this concern.
77. Applying the Cafcass new assessment framework it would appear, on the evidence I have read and heard, that there are several features in this case which resonate. None of the children had anything positive to say about their father. In fact, all of them went so far as to say that they did not love him or think that they loved him. The reasons that the children put forward for not wanting to spend time with their father or grandfather are trivial, weak and irrational. A child saying that they are bored, that they cannot get a drink when they want to are not good enough reasons for them wanting to sever a relationship with one of their parents. The children's perception of what happened at that last fateful handover at the contact centre has been, in my judgement, a revision of history. I do not accept Mother's account of what she says happened. I find that Mother was vocal in front of the children about why they did not want to attend and that she was saying these things in front of the children. I am satisfied to the requisite standard that Mother spoke loudly enough for the children to hear and that the children are more than aware of Mother's negative feelings towards them spending time with their father. It is a feature of this case that the children's dislike has extended to other members of the paternal family and in the instant case, their grandfather. None of these children seem to feel guilt or remorse about their attitudes towards their father, all saying that they hate him. There is a use of shared language between the children as well as mirroring Mother's feelings about Father and contact. During Mother's evidence she used the word 'uncomfortable' on more than one occasion, and this is a description that the children have themselves used and given to professionals. In addition, I have observed earlier in this judgment that Child C's email to his father almost mirrored the mother's email to Father of the same day. The children have also indicated that they have been scared of their father but Child B was described as being angry.
78. In light of these behaviours displayed by the children I am satisfied on the simple balance of probabilities that these children have become alienated from their father and their grandfather. I am also satisfied that this has occurred as a result of the mother's behaviour and attitude which I am satisfied the children are well aware of and which has placed them in an invidious position. It is likely that the maternal grandparents' negative feelings towards the father has also impacted on the situation, but I am mindful that having neither seen nor heard evidence from them it is not possible for me to make such a finding. I am not satisfied that everything that could have been done has been done to see if any kind of relationship between the children and their father and grandfather can be salvaged.
79. I have been concerned, however, that I might not have adequate resources in my judicial toolkit; bearing in mind the ages of these children, to effect any meaningful change. I note that a previous family assistance order was not effective in supporting positive contact arrangements for the children and I have my doubts as to whether the making of a further family assistance order would achieve any meaningful change for the children. I could have taken the view that it is too late, but I am not prepared to give up for these children. I do not

consider that it can be said to be in their best interests for them to effectively wave goodbye to a relationship with one of their parents and their grandfather which would be, in my judgment, an almost inevitable consequence of acceding to the mother's request for the discharge of the child arrangement order and substituting instead indirect contact only.

80. I have decided then not to conclude these proceedings at this time and I have decided to appoint separate representation for the children. This ought, in my judgment, to have been done in July 2017. I would usually appoint Cafcass as the rule 16.4 guardian for the children but that would not be appropriate in light of the concerns that I hold about the efficacy of their intervention in this case. I have therefore contacted NYAS who have agreed to accept a referral to represent Child B and Child C, subject to receipt of public funding. I have considered whether it might be appropriate to direct the Local Authority to prepare a report pursuant to Section 37 of the Children Act 1989, that is to say:

‘Where, in any family proceedings in which a question arises with respect to the welfare of any child, it appears to the court that it might be appropriate for a care or supervision order to be made with respect to him, the court may direct the appropriate authority to undertake an investigation of the child's circumstances’.

81. This is an order which empowers the court, of its own motion, to direct the Local Authority to look into the circumstances of a child or children with a view to then taking action in terms of care proceedings and to report to the court about what, if any, action it intends to take. Consequent upon the making of the direction for Section 37 report it is possible for the court to make interim care orders of its own motion if the court is satisfied that there are reasonable grounds to believe that a child is suffering, or likely to suffer, significant harm and that the harm, or likelihood of harm, is attributable to the care to be given to the child, or likely to be given to him, if the order were not made not being what it would be reasonable to expect a parent to give to him. I have decided not to take that step at this time, but would welcome input from the allocated worker at NYAS once they have had the opportunity of considering the papers, meeting the parties, including the children. The mother has confirmed in evidence to me that she would be willing to embark upon such therapy that she and the children may be identified as needing.

82. Having observed the mother, it is clear to me that she would benefit from therapeutic intervention and strategies to enable her to better deal with her antipathy towards the father. I am satisfied that the children have been placed in such an invidious position so as to feel that they have had to take sides with one parent against another which has led them to say that they do not love their father. They are bound to be apprehensive, nervous and resistant to the prospect of rebuilding a relationship with their father and grandfather. They will benefit, in my judgment, from therapeutic intervention and support but this must be underpinned by a clear message from their mother and, indeed, the maternal family, that it is important that they see and spend time with their father and grandfather and that this is what should and must happen in their best interests. NYAS have indicated to me that they will require a period of time to enable them to obtain public funding and have suggested that an appropriate period of time for an adjournment would be eight weeks.

**End of Judgment**

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This redacted transcript has been approved by the judge.