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IN THE FAMILY COURT SITTING AT OXFORD

IN THE MATTER OF THE CHILDREN ACT 1989 AND IN THE MATTER OF R

Case No.: OX16P00703

3 December 2020

Before: HHJ Vincent

Between: -

A father

Applicant

AND

A mother

Respondent

The applicant father represented himself at the final hearing
Miss Naomi Scarano was instructed by Brethertons solicitors for the Respondent mother
Mr John Paul Cregan instructed by Sue Fletcher for the NYAS caseworker

Hearing dates: 3, 4, 5 November and 3 December 2020

JUDGMENT

Introduction

1. I am concerned with R, now seven years old, in private law proceedings that have taken an exceptionally long time to reach their conclusion.
2. A history of the parents' relationship and subsequent separation is set out in my fact-finding judgment dated 30 October 2018.
3. The parents met in October 2008 when the mother was travelling in South America. They continued a long-distance relationship for the next three years. In September 2010 the father came to England to live with the mother on a one-year student visa to complete a master's degree. The relationship had been characterised by high passion and intensity of feeling, but, as I found in my judgment, by June 2011 the mother was experiencing the intensity of the father's focus upon her as demanding and oppressive. She came to feel that she was responsible for his moods, which were changeable, he could be aggressive, particularly in their sexual relations, uncaring of her feelings, and she felt increasingly intimidated and at times scared by him. I found that her experience of the relationship between January and June 2011 was that it was abusive.
4. The father returned to South America in June 2011 and the parties separated.
5. Shortly after the father's departure in June 2011 the mother attended the police station and reported that she had been a victim of serious domestic abuse. She did not wish the father to be charged with offences, but wanted to ensure that if he were to return to England she would know about it. She was assured by the police office interviewing her that should the father return to England he would be arrested.
6. The parents were reconciled for a period in summer of 2012 when their daughter R was conceived. The mother returned to South America during her pregnancy in February 2013 and again when R was three months old, for seven weeks in September to October 2013. The parents finally separated in around December 2013.
7. The father relies on these periods of reconciliation as evidence that the mother's claim that she was and is now still frightened of him are a fabrication. The mother's case is that in 2011 she understood the father to be suffering from a mental health condition that explained his behaviour to her, that she understood him to have received treatment for this thereafter and that in 2012 and early 2013 she believed his condition to be under control. She says that part of the father's influence upon her was such that she felt responsible for his mental health well-being, that she felt he could not live without her and that she had invested so much of herself, and her life into the relationship that she could not simply extricate herself from it. However, she says that from the moment she arrived in [*country name redacted*] she realised that the relationship was not going to work. She says that the loving messages were sent out of a desire for the relationship to work and for her to rediscover the man that she had met and fallen in love with in 2008.

8. At the fact-finding hearing I preferred in general terms the mother's account of the relationship. It is right that she sent tender and loving messages to him but also that these messages are interspersed with others sent at other times revealing her pain and distress at the turn the relationship had taken. As I found in my earlier judgment:

I do not find that the excerpts from texts of emails upon which he relied did establish the uncomplicated and purely loving picture he wanted to suggest. The context was important, and in many of the messages the tender sentences were often wistful or reflecting on the past happier times of the relationship, or imagined a happier future, but were contained within much longer paragraphs in which the mother described her great unhappiness in response to the father's behaviour towards her during the first half of 2011 which she makes clear in the texts again and again that she found to be distressing and hurtful. The messages are raw and written with a great deal of heightened emotion and soul-searching, and are exposing of the mother's feelings at that time. The father's suggestion that all these messages were written with the intention of the mother being able to build a Court case against him at some unknown time in the future, and a long time before R had even been conceived, is wholly incredible.

9. Later in my judgment I said this:

The father suggested that all that the mother had said in the police interviews, and in her emails to him, to [his sister], were written with the express purpose of building a case against him in the future. In my judgment it is plain that all the mother's communications at the time were at a time when she was emotionally very raw and confused about her feelings for the father, but there is no evidence at all that she was confused about the basic elements of his actions towards her. There is consistency, over many years, from the mother in the way she describes the father's behaviour. Her complaint was made a couple of years before R's birth, it is hard to conceive what her motivation would be, and if seeking to exclude him from her life, why she at the same time persisted with declarations of love. Her actions are consistent with her belief that the father's behaviour towards her was explained by mental illness, and that with the right treatment, there remained a possibility of them having a future together.

10. Within the judgment I found that the father did at times find it difficult to control his temper and that he had lost his temper with the mother. I accepted her account of the change in his behaviour towards her, that he could be cold and unfeeling towards her and at times aggressive in their sexual relationship.

11. I found that the father had caused physical harm to the mother by insisting on practising on a daily basis Aikido moves on her. I accepted the mother's description of the pain this caused her as follows:

'Insisting on practising your Aikido moves on me [...] every damn day, you know that the holds and pushing on those points hurt me, they'd hurt anyone! I told you each time, you saw the water in my eyes, but 'one more' each time you'd say and so like a puppet I'd obey because to have you frown at me or say that I bored you was not how I wanted to start my day.'

12. I did not find that the father had made direct threats to the mother, however, his behaviour towards her has had a profound effect upon her. In my fact-finding judgment I wrote, *'It is clear that the mother was in a very agitated state by the time the father left the country on 11th June 2011 and that her anxiety was induced by the father's behaviour towards her. I find that he did try to persuade her to go for a long walk on 9th June 2011 and that the mother was made very anxious and unsettled by the suggestion and that she feared she would come to harm if she went.'*
13. In a text message exchange with the father's sister, in August 2015, having received an indication from the father that he intended to move to the UK, the mother wrote that *'the thought of him being near us really scares me until I feel cold.'* Later on in the same conversation she wrote, *'the way he said it ... my nerves are so fragile when he says these things. I just imagine him finding a way to just show up outside my door. I honestly can't determine whether my thoughts are rational or not but I do feel a great fear.'*
14. So far as the father's mental health was concerned, I found as follows:

I conclude that from January 2011 to June 2011 the father's behaviour towards the mother changed from what it had been previously in the relationship. I cannot say whether this was due to an underlying psychiatric condition. I conclude that in 2012 the father was suffering from a significant mental health condition which required clinical intervention including prescription medication. I find that the father has sought to mislead the Court about his mental health diagnosis. Without expert psychiatric evidence or review of his records, I am in no position to come to any conclusion about a formal diagnosis in respect of the father's mental health state, then, now or in the past.

15. I found that during the period of the relationship when the father was in England between January and June 2011 he did seek to influence her in ways that made the mother feel increasingly isolated, and to lose self-confidence and her sense of identity. As I found it, he did not issue direct instructions, but by making clear of her his expectations, by his responses to her friends and family, what she wore, her body shape, he did exert this influence over her which was unhealthy, and contributed to her experience of the relationship as abusive.
16. I have accepted that thereafter the mother was still heavily invested in the relationship, wanted it to work and felt responsible for the father's emotional well-being. I did not find any instances of controlling or abusive behaviours post June-2011. So far as the trip to [country name redacted] in September 2013 was concerned, I wrote the following:

Although not specifically pleaded, the mother gave evidence about her seven-week trip to [country name redacted] with R when she was a few months old. I do not underestimate the commitment of the mother to travel all that way alone with a small baby so as to introduce her to father and [his] relatives, and accept that the trip was exhausting and she felt lonely and unsupported. It is clear that the trip was bitterly disappointing and the relationship did not survive beyond it. While I do not doubt that the mother was disappointed in the father, I do not accept that the matters of

which she complains amount to abusive behaviour. I do accept that the relationship between January and June 2011 was abusive.

Parties' positions at the final hearing

17. The father seeks an order for him to spend time with his daughter and for a parental responsibility order. He does not accept that he represents any kind of risk to his daughter nor to her mother. However, he would accept in the first instance that this could be supervised by a professional, a member of the maternal family or other agreed third party. In time he would hope for his relationship with his daughter to develop such that she could spend regular time with him, his wife and their daughter, R's half-sister, including holidays abroad.
18. The mother opposes the application for direct contact but would support regular indirect contact between her daughter and the father in the form of the exchange of letters and cards. At the final hearing Miss Scarano orally made applications on her client's behalf for a prohibited steps order and non-molestation order.
19. The mother is supported by the NYAS guardian who identifies this as one of the exceptional cases where the risk to the child of direct contact with her father outweighs the potential benefits. He too would be supportive of indirect contact. He supports the mother's applications for prohibited steps and non-molestation orders.

The law

Application for child arrangements order

20. In determining Father's application, **s.1(1) Children Act 1989** applies: the children's welfare must be the court's paramount consideration and the court's welfare assessment must be informed by an analysis of the factors in the welfare checklist under s.1(3).
21. Further, s.1(2A) provides a presumption in favour of both parents being involved in a child's life unless that is proved to be contrary to the child's welfare. That involvement need not be equal and may be direct or indirect (s.1(2B)).
22. Pursuant to **Practice Direction 12J of the Family Procedure Rules 2010**, the court must take into account a number of factors when considering whether to make a child arrangements order when domestic abuse has occurred. Paragraphs 35- 37 provide as follows:

35

When deciding the issue of child arrangements the court should ensure that any order for contact will not expose the child to an unmanageable risk of harm and will be in the best interests of the child.

36

In the light of any findings of fact or admissions or where domestic abuse is otherwise established, the court should apply the individual matters in the welfare checklist with

reference to the domestic abuse which has occurred and any expert risk assessment obtained. In particular, the court should in every case consider any harm which the child and the parent with whom the child is living has suffered as a consequence of that domestic abuse, and any harm which the child and the parent with whom the child is living is at risk of suffering, if a child arrangements order is made. The court should make an order for contact only if it is satisfied that the physical and emotional safety of the child and the parent with whom the child is living can, as far as possible, be secured before during and after contact, and that the parent with whom the child is living will not be subjected to further domestic abuse by the other parent.

37

In every case where a finding or admission of domestic abuse is made, or where domestic abuse is otherwise established, the court should consider the conduct of both parents towards each other and towards the child and the impact of the same. In particular, the court should consider –

- (a) the effect of the domestic abuse on the child and on the arrangements for where the child is living;*
- (b) the effect of the domestic abuse on the child and its effect on the child's relationship with the parents;*
- (c) whether the parent is motivated by a desire to promote the best interests of the child or is using the process to continue a form of domestic abuse against the other parent;*
- (d) the likely behaviour during contact of the parent against whom findings are made and its effect on the child; and*
- (e) the capacity of the parents to appreciate the effect of past domestic abuse and the potential for future domestic abuse.*

23. An order which effectively prevents a father from seeing his child is one of the greatest significance and would have potentially serious and lifelong consequences. I remind myself of the case of *Re C (Direct Contact: Suspension)* [2011] EWCA Civ 521, para 47, in which the Court of Appeal summarised the approach to parental contact as follows:

- 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 when 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 to reconstitute the relationship between 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 the available alternatives before abandoning hope of achieving some contact. He must be careful not to come to a premature decision, for contact is to be stopped only as a last resort and only once it has become clear that the child will not benefit from continuing the attempt.

- The court should take both a medium-term and long-term view and not accord excessive weight to what appear likely 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 reasonably be demanded in the circumstances of the particular case.
 - All that said, at the end of the day the welfare of the child is paramount; 'the child's interest must have precedence over any other consideration.'
24. The father has referred me to *Re J (a minor)* [1994] 1 FLR 729-34, which echoes very much what is said above, in particular that '*contact with the parent with whom the child is not resident is the right of the child, and very cogent reasons are required for terminating such contact.*' In *Re M (a minor)(contact: conditions)* [1994] 1 FLR 272, it was said that '*no Court should deprive a child of contact to a natural parent, unless wholly satisfied that it is in the interest of the child that contact should cease, and it is a conclusion at which the Court should be extremely slow to arrive.*'
25. The father referred me to *Re O (contact: imposition of conditions)* [1995] 2 FLR 124 at 128 where Sir Thomas Bingham said:
- 'Where parents of a child are separated and the child is in the day care of one of them, it is always in the interest of a child that he or she should have contact with the other parent. The reasons for this scarcely need spelling out. It is, of course, that the separation of parents involves a loss to the child, and it is desirable that this loss should so far as possible be made good by contact with the non-custodial parent.'*
26. It should perhaps be noted that at paragraph 129 of the same judgment, he continues:
- '... cases do, unhappily and infrequently but occasionally, arise in which a court is compelled to conclude that in existing circumstances an order for immediate direct contact should not be ordered, because so to order would injure the welfare of the child.'*
27. The father referred me to the case of *Re L (contact: genuine fear)* [2002] 1 FLR 621, in which Bill Blair QC sitting as a Deputy High Court judge said of the mother:
- 'She needs to understand that this solution perpetuates a void in L's life which from his point of view is serious, and creates a strong probability of his upbringing with doubts and anxieties about his father, which may prejudice his prospects of a well balanced upbringing.'*
28. I note that in *Re L* the judge ultimately, albeit with reluctance, reached a decision that the mother's phobic disorder, not based on rational thinking, nevertheless was of such genuineness and intensity that to order contact could cause the child marked emotional harm. It was found that the child would be exposed to the emotional effect on the mother which would be profound and possibly de-stabilising.

29. The case is an example of a judge coming to a conclusion in accordance with a very specific set of facts. These cases are extremely helpful in reminding the Court of the care and scrutiny that should be taken when contemplating making orders which would have the effect of preventing a relationship between a child and her parent, but not a guide as to what decision a judge should take in any given situation. All of these cases were decided before Practice Direction 12J came into force, which is the tool I must apply in this case, having regard to its particular facts.

30. Miss Scarano referred me to the case of *MS v MN* [2017] EWHC 324 (Fam) per Moor J where an appeal was allowed against an order that a mother should make a child available for contact with a father who had been found to have perpetrated serious domestic violence upon the mother. In the course of his judgment, Moor J emphasises the need for the Court to consider Practice Direction 12J. He referred to comments of Wall J in the case of *Re M (contact: violent parent)* [1999] 2 FLR 321:

‘Often in these cases where domestic violence has been found too little weight ... is given to the need for the father to change. It is often said that, notwithstanding the violence, the mother must nonetheless bring up the children with full knowledge in a positive image of their natural father and arrange for the children to be available for contact. Too often it seems to me the courts neglect the other side of that equation, which is that a father, like this father must demonstrate that he is a fit person to exercise contact; that he is not going to destabilise the family; that he is not going to upset the children and harm them emotionally.’

31. Moor J then referred to the case of *Re L (A child)(Contact: Domestic Violence) & Ors* [2001] FLR 260. This is a well-known case. It was one of four joined cases all involving a background of domestic violence. The Court had the benefit of a psychiatric report from two consultant psychiatrists, Dr Sturge and Dr Glaser, together with a report from the Children Act Sub-Committee of the Advisory Board on Family Law. In her judgment Lady Justice Butler-Sloss, who was President of the Family Division at that time, gave guidance as to the approach that should be taken. The path from this case to Practice Direction 12J is evident. At pages 272-273 of her judgment, she said:

‘There is not, however, nor should there be, any presumption that on proof of domestic violence the offending parent has to surmount a prima facie barrier of no contact. As a matter of principle, domestic violence of itself cannot constitute a bar to contact. It is one factor in the difficult and delicate balancing exercise of discretion. The court deals with the facts of a specific case in which the degree of violence and the seriousness of the impact on the child and on the resident parent have to be taken into account. In cases of proved domestic violence, as in cases of other proved harm or risk of harm to the child, the court has the task of weighing in the balance the seriousness of the domestic violence, the risks involved and the impact on the child against the positive factors (if any), of contact between the parent found to have been violent and the child. In this context, the ability of the offending parent to recognise his past conduct, be aware of a need to change, and make genuine efforts to do so, will be likely to be an important consideration.’

Application for parental responsibility

32. An application for parental responsibility is made under section 4 of the Children Act 1989.
33. The application must be considered separately from any question about child arrangements although where a father is unable to exercise such responsibility his application will be refused (*M v M (parental responsibility)* [1999] 2 FLR 737).
34. Mr Cregan has referred me to paragraphs 13 to 17 of *Re M (Parental Responsibility Order)* [2013] EWCA Civ 969. The question concerns the upbringing of a child so in accordance with section 1 of the Children Act 1989 the child's welfare is the Court's paramount concern, but the Court does not apply the welfare checklist (because the application is not one of the circumstances envisaged in section 1(4)). In every case the Court must weigh in the balance the factors in favour of and against granting parental responsibility and deciding on the facts of the individual case whether an order for parental responsibility is in the interests of the child. The Court should take into account the degree of commitment the father has shown towards the child, the degree of attachment between him and the child and the reasons why he is applying for the order.

Evidence

35. I heard evidence from the father, mother and NYAS guardian.
36. The parents presented very much as they did at the fact-finding hearing back in September 2018.
37. The father is now married with a young daughter. He is a settled resident in this country and has a responsible job in which he is excelling. He fervently hopes that R could build a relationship with him, and in time come to see him regularly, including spending weekends and holidays with him and get to know her half-sister and the paternal side of her family. He does not accept that he presents any kind of risk to his daughter, nor to her mother. However, for the purposes of re-establishing contact, he said in submissions that he would accept much less; a meeting a couple of times a year for lunch, with a trusted third party there. If the Court does not accede to his application for direct contact he has made clear that he will not accept less. He does not consider that it would be sufficient that he or his daughter should know each other only by exchanging letters, and regards anything less than an order for direct contact as ostracising his daughter from her father and condemning her to the life of an orphan and an abandoned child.
38. The father has highlighted the allegations on the schedule that the Court did not find proved and suggests that as a result of the fact-finding judgment there are but two findings against him, that he intentionally caused pain to the mother when they practised Aikido together, and that '*while living in Oxford in 2011, I asked [the mother] to spend time with me her free time rather than with her friends. [The mother] claims that this request led her to feel isolated, even though we only saw each other during the weekends. The Court believes [her] claim.*'

39. He notes that these findings related to a period of time during the relationship over ten years ago and that subsequently the relationship was restored, and the child was conceived, and that the Court did not find any controlling or otherwise abusive behaviour after June 2011. He says but for these two findings, there is nothing against him.
40. I found him to be selective about the parts of the fact-finding judgment he chose to accept. As he had done at the fact-finding, he continued to rely upon the messages from the mother that he had selected as evidence of her love and affection for him and as inconsistent with her being frightened of him, then or now. He again relied upon the chronology of their reconciliation in 2012 as evidence that the mother must now be manufacturing for the benefit of the Court her continuing anxiety and fear relating to him.
41. These points were raised during the fact-finding hearing and dealt with. I accepted the mother's account of the relationship in general terms, I accepted that the tender messages were part of a more complex picture, and I found that the mother's anxiety had been caused by the father's behaviour towards her.
42. The mother gave very full answers in cross-examination. She sought to emphasise again her experiences in the relationship and her continuing and deep fear of the father, specifically her fear that he intends to cause her harm, and that if he were to spend time with her daughter she would be at risk of significant harm. Some of her fears did not seem to me to have a basis in the evidence, however, I am satisfied to the standard of a balance of probabilities that her anxiety is real, persistent and that it stems from the experiences of her relationship with the father.
43. This conclusion is based on my impression of her as a witness and is also supported by the expert evidence of Dr Rawala, consultant psychiatrist. He considered that the mother presented with anxiety and feelings of trauma when discussing her past relationship with the father. In his opinion these symptoms related to times when there was a chance of interaction with the father – consistent with the mother being prescribed medication for anxiety and not being able to sleep before Court hearings, and becoming tearful when discussing the relationship – but not otherwise impacting on her day to day functioning, so not suggestive to him of a generalised anxiety disorder.
44. Dr Rawala did not identify any psychiatric condition in the father, although noted that he had not had access to medical records. He identified in both parents a tendency of escalated emotions which led him to think that any contact between them should be mediated by a third party. He suggested that any contact between the father and R in the first instance should be supervised and thereafter any changes in supervision should be risk assessed by 'social services and medical opinion.'
45. Mr Kent has prepared three reports and gave evidence over the course of a day at the final hearing.
46. I do question some of the inferences that Mr Kent was prepared to draw in oral evidence when he was explaining his approach to the assessment of risk. In particular I question that he could have inferred that there may be elements of domestic abuse in

the father's current relationship. In respect of his assessment of the risk of physical violence to R, I thought Mr Kent may have strayed towards speculation or psychological assessment. I had made a finding that the father could lose control of his temper and had lost his temper with the mother in the past. Mr Kent identifies the father as a man who likes or needs to be in control or can be very oppositional. He therefore suggested that a contact centre situation would be risky because the father may not like the rules, would be oppositional to the contact centre supervisor and this could spill over to physical violence that his daughter would either be exposed to or become embroiled in. I would accept that the findings I made and the evidence in this case supports a finding that there is a risk of the father disagreeing with an approach that did not reflect his own view, this giving rise to difficulty for him to control his emotions and that this could present as oppositional, but I do not accept there is sufficient evidence to justify an inference that in this context there is a risk of this spilling over to physical violence.

47. I did accept Mr Kent's descriptions of his interactions with the father as fraught and combative. Mr Kent's experience of the father was that he was oppositional, reluctant to engage with him in the first instance and sought to direct and control the way he did his work. He described the father's initial refusal to meet with him and how he felt the father was telling him what he should be doing. Mr Kent's analysis of the father's correspondence with the mother is that it is similarly directive, and characterised by *'a sense that she has been wrong and that she should do as he says.'* I accept this assessment.
48. In his final report Mr Kent identifies that R has suffered from not having a meaningful relationship with her father, but does not really explore what the effect of that may be on her throughout her childhood and lifetime. It was difficult to see in either his written or oral evidence that he had identified any potential benefits to R of a relationship with her father and in particular her half-sister, or the risk of harm to her of being deprived of that relationship.
49. In general however, I considered that Mr Kent's three reports demonstrated that he had carried out a full investigation into the evidence, analysing the evidence and considering each piece of evidence in its own context and as part of a bigger picture.
50. Each of his reports sets out the evidence base upon which he relied to conduct his analysis. He explained clearly both in written and oral evidence the risks he identified, giving clear reasons for the conclusions he formed.
51. While he was ultimately very critical of the father, and it cannot have been easy for the father to listen to the evidence he gave, Mr Kent's conclusions about the father's presentation were in my judgement justified on the evidence, not just of his own interactions with the father, but having observed the father at a number of hearings in Court, read the fact-finding judgment, expert reports, statements and e-mails. Mr Kent described the father as *'quite a force to be reckoned with'*, *'amazingly adversarial without a hint of co-operation'* and at times intimidating.
52. In the position statement filed on his behalf Mr Kent's impressions of the father were that, *'the father has developed an innate facility to hear what he wants to hear, to rebuff, deny, or repudiate the less palatable, and most importantly to doggedly focus*

on certain parts of the professional evidence of his choosing. He also demonstrates to an alarming degree an aptitude to explain away, minimise, or simply deny the unassailable such as finding of hard facts made by the court – concentrating his energies on only two strands of those findings which he sought to retrospectively re-interpret.'

53. At root of Mr Kent's analysis is the dynamics of the parental relationship. In his view essentially the parents are stuck; the mother remains traumatised and emotionally fragile as a result of her experiences in the relationship, and the father is unable or unwilling to acknowledge responsibility for the harm he caused to her, regards it as historic and not relevant to present circumstances, and instead now blames her for failing to facilitate a relationship between daughter and father.

Analysis

54. I turn now to consider the applications before the Court with regard to the welfare checklist at section 1(3) of the Children Act 1989 and practice direction 12J of the Family Procedure Rules 2010.

(a) the ascertainable wishes and feelings of the child concerned (considered in the light of her age and understanding)

55. R has not seen her father since she was three months old. Until she was three she saw him regularly by Skype but she does not hold him in her mind as a father figure. With life story work she understands that the father who made her is from [country name redacted], when asked if she wanted to see him she expressed to Mr Kent that she would only want to see him once because he was horrible to her mother. In the same conversation she said that her step-brother (who she lives with) was horrible. Her mother's evidence was that she had not told her daughter that her father was a horrible man, or used that word at all, but that she had said that sometimes the father had been nice to her and sometimes not so nice.
56. I accept that R did use the word 'horrible' about her father when she was talking to Mr Kent, but I also accept her mother's evidence that this is a word she uses about other people in her life, for example her best friend or her step-brother, as a means to identifying when she feels someone has been unfair or unkind to her or to someone else. I do not regard this as evidence that the mother has tried to influence or manipulate her daughter.
57. R's expressed wishes about her father at this time cannot carry significant weight; she is too young to be able to make an informed decision about this and in any event she does not have sufficient knowledge of her father to do so. In general terms, it could be said that most children would wish to have a relationship with both their parents, and siblings with whom they don't live, provided those relationships were safe and rewarding to them. It can I think be assumed that children who do not see one of their parents would want to know that they were valued and loved and would not want to grow up with any sense either that they had been rejected, or that the parent had not been interested in them, nor that their other parent had prevented them from having a relationship with them. Above all children need to be able to trust the adults in their

lives. There needs to be a match between what they are told and their own experience and understanding of the world.

58. There is a risk that the mother's strong feelings of fear and anxiety around the father could be communicated to her daughter and that this could be harmful to her. If R does not see her father and develops in her mind an image of him as a scary and dangerous person who wishes her harm, but then later comes to know him and does not see that in his behaviour towards her, then she would feel misled and lied to by her mother, confused and resentful.

(b) her physical, emotional and educational needs;

59. R is seven years old. She is dependent on the adult carers in her life to feed her, clothe her, keep her warm, manage all activities of her daily life, support and encourage her at school and to make friends, to learn how the world about her works and her place in it, by which I mean she is learning about rules and expectations of her behaviour towards others and how to manage her own emotions. She is at an age where she is developing a sense of her own identity, her place in a family network, and things that she likes to do or is interested in. She needs to be supported in all this. She needs to be safe and to feel safe, and to know that she has trusted adults to whom she can turn when she is in need of reassurance.
60. She is aware of her father's existence but has little or no understanding of him from personal experience, and is now aware of some of the difficulties between him and her mother. She has a strong attachment to her mother who at the moment meets all her emotional needs, but she has a need to understand who her father is, and why it is she has not seen him since she was a baby.

(c) the likely effect on her of any change in her circumstances;

61. Introducing R's father into her life in the first instance would represent a very significant change for her. In the short term she is likely to feel confusion and be unsettled and to need a great deal of support to understand the reality of a different family network than the one she has experienced so far in her life.
62. There is the potential for meetings with her father half-sister and step-mother to bring joy and opportunities for her to develop loving relationships with the paternal side of her family and to understand better her identity. She would be the focus of attention and potentially be excited to know another little sister and to have fun, go on adventures and experience the benefits of being a part of the family.
63. In evidence the mother told me that although she would comply with any Court order directing contact, she thought that quite simply it would break her. Her fears are both in respect of her own relationship with the father and the effect on her of having to interact with him whether directly or through a third party to make arrangements for R to see him, but also her fears for R's physical and emotional safety in her father's care. Her anxiety has been diagnosed as related directly to the impact of the father's behaviour towards her and manifests itself when she is talking about him or contemplating the possibility of having to encounter him. If her daughter were seeing

the father directly this would affect the mother adversely and in turn is likely to impair her ability to be available to her daughter and to provide her with the emotional security she needs.

(d) her age, sex, background and any characteristics of hers which the court considers relevant;

64. R is half [*country name redacted*] but does not speak [*language redacted*] nor has any interaction with her paternal family. If she were not to have a relationship with her father then she would be deprived of a direct connection to this part of her heritage.

65. Her mother is of British and [*redacted*] heritage and the mother's partner is [*redacted*] so the other children in the household in which she is living share the characteristic of being of dual heritage with her. Her mother took advice from Mr Kent about life story work and has taken time to prepare a large story board for R. Mr Kent described it as beautifully presented, very large, with a gold curved pathway with gold stars with pictures of her father, her mother, her mother's partner, starting in [*country name redacted*] and annotated with important stages of the journey of R's birth to the present day.

66. This story board was brought into Court to show me and the father at one case management hearing but the father chose not to look at it, because he said there was no point in the life story work as the mother had told R that he was a horrible man. He did not accept the mother's explanation that she had not said this to R, and relied on this as evidence of Mr Kent's bias and the mother's negativity against him. He returned to this point repeatedly during the final hearing, sometimes with a tone of real anger at both the mother and Mr Kent who he said had told R that the father was a horrible man.

67. The father had a very fixed view of what must have happened and was not prepared to entertain a different perspective. It is regrettable that he did not feel able to look at the story board which showed great attention to detail, contained a number of photographs of the father, and is evidence of the mother's commitment to ensuring that R does have an understanding of her origins and her identity.

68. Mr Kent expressed regret that the father had not been able to get past this, and as a consequence had not engaged with the mother in the life story work or expressed any support for her, but had sought only to criticise the mother and identify what she had done as an attack on him and an attempt to influence her daughter against him.

(e) any harm which she has suffered or is at risk of suffering; and

(f) how capable each of the parents are of meeting her needs

69. Domestic abuse is a serious and significant failure in parenting because it is a failure to protect the child's carer and, if the domestic abuse is not acknowledged and steps taken to repair the situation, it is a failure to protect the child emotionally.

70. The risk of harm to R arises in a number of different ways.

(i) Impact of parental conflict on R

71. The father subjected the mother to abusive behaviour which left her anxious for her and for her child's physical and emotional safety. I accept the analysis of Mr Kent and the opinion of Dr Rawala that the mother's feelings of anxiety and trauma related to the father, prevent her from co-parenting with him. The ongoing hostility from him towards her during these proceedings has only served to exacerbate her anxiety.
72. The impact of direct contact arrangements on the mother's emotional well-being and presentation is likely to be significant and is likely therefore to affect her ability to parent for her daughter and to reassure her that she can keep her safe.
73. While the father remains so hostile to the mother, she remains traumatised by her experiences and he does not acknowledge any need for change, in Mr Kent's words, they are stuck. He says the impact on R is that, *'there is no hope that, while R is a child, she will ever feel she can be supported simultaneously by both her parents. In fact, she is more likely to have to take sides and possibly witness conflict.'*
74. The mother finds any form of interaction with the father to be extremely stressful, and provoking of high levels of anxiety. This litigation has been protracted and needs to come to an end. Dr Rawala suggested supervised contact then a review, but it was not clear what needed to happen. An open-ended plan where the father is not intending to embark on any form of work or recognise any need to change means that the parents would be set up for a future conflict. The father suggests that after initial sessions of supervised contact it could move on to unsupervised then staying contact. The mother would have to negotiate with him. It is a lot to ask of her where his stance has been that he does not recognise any of her concerns about his behaviour to her and its continuing effect on her. It is a lot to ask of her where he has been dismissive of her concerns as absurd, fabricated and malicious, and where he does not accept there is any need for him to make changes in his approach, but is highly critical of her and considers all that is needed is for her to do as he asks.

(ii) Exposure of mother and daughter to the intensity of father's emotions

75. According to my findings the father is sometimes unable to regulate his emotions. He lost his temper after the application for a DNA test and even some hours later wished his displeasure at what he regarded as a ridiculous and perverse decision to be recorded on the order. Within the proceedings he has never lost his temper so that he has shouted or lost control, there are a number of times where he has visibly been controlling his anger and where his impulse has been that he no longer wishes to participate or co-operate.
76. It is the intensity of his emotion that presents a risk to his daughter. He is either oblivious or does not accept the impact that he can have. In his witness statement he said, *'I have not blamed [the mother] for nothing. I have not even criticised her once.'* This is not true. He has subjected her to a barrage of criticism throughout these proceedings. There is a risk that if R were to spend time with her father that he would communicate his highly negative views about the mother to her. The same risk could be said to exist so far as the mother is concerned, however, firstly, findings have been made about the father that connect her anxiety about him to his behaviour

towards her. Secondly, even so, in her engagement with the life story work, it would appear that she is willing to take advice from professionals and to do her best to give R as balanced a view as she can of the father.

77. Mr Kent has described feeling intimidated, the mother has described being in the sphere of this intensity and worries about the impact on his daughter. The mother worries not just about the father having a temper but about, as I have found, the impact of his moods on those around him, the way he exerted influence over her to the extent that it undermined her self-confidence and identity and that she came to feel responsible for his emotional well being. She is concerned that - as she felt she had to do in the past - her daughter would come to feel an emotional burden of having to manage her father's moods. The father may say that these concerns are not justified or relate to a period of time nearly ten years ago now, but because of the way he has expressed himself during these proceedings in evidence and Court hearings, he has not been able to give the mother any reassurance that he has changed the way he operates, and for this reason her anxiety has not lessened. I accept that her concern is justified and identify it as a risk for R.

78. Mr Kent's evidence was that *'this oppositional behaviour has not gone away, it is still very much present. At the last hearing it reared its head again and was very public. It worries me and concerns me.'*

79. I do not think there is evidence to support a finding that the father would present a direct risk of physical harm to R, or that she would be exposed to physical violence between him and another adult, for example in a contact centre. However, there is a risk of her being exposed to loss of temper, and the behaviour described by Mr Kent as oppositional. In my judgement there is also a real risk that in such an instance he could lose sight of R's needs. I also accept the risk of her being overwhelmed or feeling responsible for his mood or feeling unable to express her own opinions and feelings in the face of the intensity of his. This would be emotionally damaging for R.

(iii) **Inability to prioritise his daughter's needs before his own**

80. For a period of time the father did send to his daughter brightly coloured cards with photos and stickers and loving messages. It is very difficult to send letters to a very young child who you have not seen since they were a baby and to get the tone right, and in many respects there were positive elements. However, the evidence would suggest that these messages did have an emotional intensity to them that the mother identified as potentially overwhelming and confusing for R.

81. This was also one of the reasons that the mother said the skype calls could be difficult, the father would send video messages to his daughter who was three at the time repeatedly telling her he loved her, he wanted to kiss her, he loved her eyes, or asking her to imagine times in the future they would be together. Again, it is understandable that he would want to find a way to make a connection to his daughter. However, the father's approach is intense and potentially overwhelming for a child of R's age where she does not yet know him as someone she loves and as a person from whom she would derive emotional support and reassurance of being loved. Mr Kent considers they are evidence of the father's desire to express his emotions but perhaps did not show understanding of how they might be received by

R. Secondly, the intensity is consistent with the mother's experiences of the father in their relationship and triggers anxiety in her.

82. The father identifies the only issue in this case as being the mother's failure to manage her anxiety or her unwillingness to foster a relationship between R and her father. He is confident that once introduced to R again that their relationship will flourish and a loving and affectionate bond would grow. However, I am concerned that he has not been able to demonstrate an understanding of what it might be like for R and how he will need to reassure her, to understand things from her perspective. His last minute application for her to undergo a DNA test seemed to me to be an example of his putting his own needs before hers, and his suggestion that the mother should simply lie to her about the reason for the testing was not child-focused.

Can the risk of harm be managed?

83. The risk of harm will only be abated if there is a change from the present circumstances. The change must come from the father, who needs to acknowledge the harm that has been caused, find a way to reassure, to support the mother in her parenting and thereby to reduce the conflict and her anxiety. At the moment I do not see a prospect of that happening.

84. The father places the blame squarely at the mother's door and accuses her of parental alienation. I do not accept this analysis and do not consider he is right to say that all that needs to happen in this case is for her to overcome her anxieties and take steps to facilitate contact. He suggested to Mr Kent that he was the victim and powerless to do anything but *endure* the mother's position. Mr Kent responded that in his view the mother had acted protectively towards her daughter and to preserve her own mental well-being. I agree and find that the mother's actions have been a response to the father's behaviour towards her and not because she has actively been seeking to exclude him from his daughter's life for no good reason.

85. There is evidence that the mother has sought to promote the child's relationship with her father. She did try to make the relationship work and flew to [country name redacted] alone with a three month old baby to introduce her to her father and wider family. She maintained links with members of the paternal family even after separation and until the father requested her not to contact them. She supported video contact, making suggestions for ways in which the father could interact with his daughter online. I accept her evidence, which is consistent with evidence given at the fact find and borne out by the contemporaneous documents, in particular the father's initial application form to the Court, that these calls were stopped by her in response to her increasing concern about the calls and ultimately her fears triggered by the father saying to R that he was going to come to see her, play with the toys in her house and go out for a walk together. The father repeatedly suggested that the mother was voluntarily arranging skype calls at the time of his application, but this is not consistent with the weight of the evidence.

86. The mother has committed herself to the life story work and worked hard to support R at her own pace and in accordance with her levels of understanding.

87. I accept the analysis of Mr Kent that the father's behaviour towards the mother within these proceedings has had the effect on her of being a continuation of the dynamic of an abusive relationship. Instead of reflecting on his own behaviour towards her, about which findings have been made, the father has framed her as a bad mother for failing to make R available for contact with him:

- He has described her as reprehensible, motivated by spitefulness, resentment and hatred. He has called her a liar, a slanderer and an actress, and suggested her claim that she is afraid of him is absurd and false;
- he repeatedly accuses the mother of inflicting years of child abuse on her daughter, of inflicting psychological damage upon her, actively hurting her;
- He refused to see the positives in the life story work but used it as a means for further criticism, focusing only on his belief that the child had been told he was a horrible man;
- his application for a DNA test made only a month before the final hearing was filled with invective against the mother, made wild accusations unsupported by any evidential basis;
- he describes the mother as making an orphan out of her child, an abandoned and unwanted child;
- he describes the mother as the incarnation of 'the most reprehensible characteristics';
- he suggests the mother is mentally ill and requires psychological intervention in order to stop her from a course of parental alienation.

88. Change starts with acceptance of responsibility. The father has not demonstrated any real ability to accept the findings of the Court, to acknowledge that his behaviour towards the mother was experienced by her as abusive, and that her response to him is caused by the way that he behaved towards her. In particular:

- (i) He has reduced the fact-finding judgment to two stark findings which he has now put a gloss on – repeating to me that Aikido is a peaceful martial art and that if he caused any pain on occasion then it was unintentional, and that he never knew how the mother felt. Secondly he said that if the mother at times during their relationship felt isolated then she had never told him this but of course now understanding this, he is sorry if she felt that way. These explanations are not consistent with the findings of the Court and in their way seek to undermine the mother, doubting the veracity of her feelings, accusing her both for not telling him at the time and suggesting that she had not been truthful, as she told the Court something different than what she told him;
- (ii) He was offended by the idea that he had anything to apologise for. He said that if there was anything to apologise for in respect of his behaviour in 2011,

that apology had been implicitly accepted by the fact of the parties' reconciliation in 2012 and the subsequent conception of their daughter;

- (iii) He suggests these two episodes are now nearly a decade ago and of no relevance to his application;
- (iv) He said Mr Kent's suggestion that there is a need for him to acknowledge the pain and suffering caused, support rather than criticise the mother and complete a domestic abuse perpetrators course so as to show the risks of his behaviour are firmly in the past, was outrageous and absurd.

89. The father is unable to show any support to the mother as a parent, or make any attempt to work co-operatively with her. Instead he demands that she make change and she make recompense to him for depriving him of the relationship with his daughter.

90. I do not consider that the risks could successfully be managed with intervention from social services, supervised contact or other third party. The father asks me to endorse Dr Rawala's proposal of a social worker or third party supervising contact in the first instance. However, firstly, I doubt this would be an effective means of risk management because there is no evidence that the father would be able to establish a successful working relationship. He does not accept fundamentally that there is any need for supervision, he does not acknowledge the concerns, so it is questionable whether he would accept boundaries from a supervisor and this could lead to conflict. Mr Kent said in his oral evidence, *'he uses words like, 'you're in contempt of court' and uses threatening language. It is not simply him disagreeing and when he does disagree there is an element of anger in his voice. He has a tone of voice which is quite something.'* In his cross-examination of Mr Kent and in his statements and written submissions the father appears to have an expectation that Mr Kent should have taken action to facilitate a positive relationship between his daughter and him, and criticised him for not putting in sufficient effort. Secondly, it is difficult to see the path out of supervised contact in circumstances where the father is not willing to accept the idea that he needs to make changes, so the parties would be set up for a conflict at a later stage when the father sought to progress to unsupervised contact, but the dynamics of the parental relationship would be likely to remain as they are now.

[\(g\) the range of powers available to the court under the Act in the proceedings in question](#)

91. Any orders contemplated must be informed by application of paragraphs 35 to 37 of Practice Direction 12J.

92. For the reasons given above, I do not consider that the physical and emotional safety of the child and the parent with whom the child is living can be secured before during and after contact. If the mother is compelled to continue to be in contact with the father for the purpose of arranging and facilitating contact between him and R, I consider that she will remain subject to the barrage of negativity, demands and criticism that has characterised his interactions with her, and that she will continue to be significantly adversely affected as a result.

93. With regard to the specific matters at paragraph 37 of the practice direction, I have considered the impact of the continued parental conflict upon R and the risks that would pose to her relationship with each of her parents. Her mother's ability to care for her would be impaired and her feelings that in pursuing a relationship with her father may cause her mother unhappiness or anxiety are likely to be burdensome. Because of the father's personality, the intensity of his emotions, she may be subject to feeling overwhelmed, confused, constrained to follow his lead, or responsible for his emotions. She is at risk of being exposed to the high levels of negativity with which he sees the mother and her parenting could be undermined as a result or she could feel conflicted.
94. I accept that the father is motivated by a genuine desire to play a part in his daughter's life and to introduce her to her family, culture and heritage. However, in his pursuit of this goal I am concerned that he has sometimes lost sight of her needs, and that he does not recognise that he has also continued a form of domestic abuse against the mother in his interactions with her.
95. I have considered above the likely behaviour during contact of the parent against whom findings are made and its effect on the child.
96. I have considered the capacity of the father to appreciate the effect of past domestic abuse and found that he is resolute and has not taken responsibility for his actions in a meaningful way. At the moment that means that he is unlikely to be able to make changes at this time so that he could be in a position to co-parent in a positive way with the mother.
97. The recommendations of the NYAS caseworker are carefully formulated, well reasoned and in my judgement, justified by the evidence.
98. Case law suggests I should consider the severity of the domestic abuse. The father argues that it is minor and took place a long time ago, and after which the parties reconciled. The mother would say this was serious abuse and has had long-standing consequences. In my judgement the focus of the Court should be on the consequences of the abuse. The evidence is that the impact of the abusive relationship continues to impact the mother in a significant way and this is only exacerbated by the father's continuing attitude towards the mother. It is not an attractive argument to have caused harm to the mother in the way I have found the father did and then to criticise her for failing to be robust enough or failing to have found a way to recover herself so as to be in a position to deal with her abuser.
99. The previous section 7 reporter who suggested that contact might take place in a contact centre was engaged only for a short time, and was prepared before the Court had the benefit of Dr Rawala's report which makes clear the continuing impact of the relationship upon the mother. The section 7 reporter did not consider practice direction 12J. Mr Kent has spent significantly more time on the case and has had the benefit of meeting with both parents and R in person a number of times, and of hearing evidence from the parents.
100. While the father is so fixed in his perspective that he is the victim in the scenario and while he holds such a relentlessly negative view of the mother, and while

his interactions with her throughout these proceedings have been to seek to undermine her, accuse her, and belittle her experiences, there is no prospect of her anxiety being lessened and of feeling any reassurance that contact for her daughter will be safe. Her own emotional safety would continue to be adversely impacted, and this is likely to have an adverse effect on her capacity to parent her daughter and other children.

101. I can accept that the father has a loving and fulfilling relationship with his wife, that he has a close and loving relationship with his younger daughter and that on a basic level, if R were to spend time with him and his family for a day or a weekend, that he could meet her basic needs, be affectionate, loving and kind towards her, so that she had a fun and enjoyable time.

102. At the moment, not seeing her father does not represent a significant loss for her as they do not have an established relationship. However, I accept that to be deprived of that relationship throughout her whole childhood is potentially a very significant loss, to miss the opportunity of sharing some of her childhood with her half-sibling and not to have the chance of exploring the [*South American*] side of her identity directly through knowledge and shared experiences with her extended family may also have a lasting impact on her throughout her life.

103. However, having had regard to all the evidence and for the reasons given above, I do consider that to require the mother to make R available for direct contact with her father would expose her to a risk of harm that cannot be managed. They cannot co-parent. The mother's anxieties around contact with him and submitting her daughter to spend time with him would sustain, and the father has done nothing to show her that he can support her, or reassure her so that her anxiety would lessen in the future. For reasons given, I do not consider that supervised contact would be an effective means of managing the risk and would not reduce the potential for conflict.

104. I have had regard to R's and her father's article 8 rights to family life, and acknowledge that this does expose her to the risk of harm as a consequence of not having a relationship with her father. However, I am satisfied that the harm that would come to her as a result of making the orders is far greater. Further, it may yet prove possible for the relationship to be re-established, but it must be after the father has been able to acknowledge the harm caused, demonstrate a willingness to change, in the first instance by showing understanding of the impact of his behaviour on the mother, and supporting rather than undermining her as a parent. Therapy or a domestic abuse perpetrators course as Mr Kent suggests might be a good start.

105. I am satisfied that there are cogent reasons in this case to make orders that for the moment provide that R should not have direct contact with her father. I do not think that there are any other options that could reasonably be pursued at this time and consider that it is in the interests of all parties that this long running litigation comes to an end.

106. I do consider that R would benefit from having indirect contact with her father in the form of letters, cards and gifts on Christmas and birthdays. To a certain extent I can understand why the father says that there is no point in indirect contact if there is no plan to move it to direct contact. However, it could also be argued that again this

is evidence of the father's position being that he wants contact with his daughter to be on his terms or not at all.

107. In my judgement there would be benefit in it as an opportunity for the father to build up an understanding of his daughter, her likes and dislikes, and to engage with her about her interests, and to share information about her culture and [*country name redacted*] heritage. It would be an opportunity for him to show the mother that he could have a place in his daughter's life, and to show her that as a co-parent he could be someone who listens, is supportive, and understanding of the impact of his behaviours on others, so that a pathway where her anxiety around him is lessened and the benefits of R seeking a relationship with him might outweigh the fears. R would be reassured of his interest in her and his commitment to her and may be able to envisage a situation where to spend time with her father would not be something that caused her to worry about the anxiety it brought to her mother.

108. Given the mother's commitment to the life story work and the way she described buying writing paper and encouraging her daughter to write to her father, I consider that she would do all she reasonably could to support this means of contact.

109. No party has seriously suggested the idea of skype contact. The mother gave reasons as to why she did not consider the previous remote contact worked. It would be a very direct intrusion into the mother's home, which would fuel her anxiety, either she or a family member would have to supervise, which she would not feel comfortable with, and it is not always an easy way for children to connect to someone with whom they do not have an established bond already. It could put pressure on R if she felt that there was information about her home and surroundings that she should not be sharing. It is harder to supervise and manage once children get to a stage where they have access to a smartphone or tablet or computer in the house.

Parental responsibility

110. I have found that direct contact between the father and R would entail a risk to her and to her mother which cannot be managed. The father does not at this time have an established relationship with his daughter and his attitude towards the mother is highly negative, and there is a significant risk that his having parental responsibility would undermine her ability to care for her child.

111. In all the circumstances, while I do not doubt his desire to play a part in his daughter's life, I do not consider it appropriate that he should exercise parental responsibility in circumstances where he does not have a relationship with her, is not going to be in a position to make informed decisions about what is in her welfare interest and where he has a very fixed view that the child's mother is wrong and that his perspective is right.

Non-molestation and prohibited steps orders

Non-molestation order

112. A non-molestation order is to protect a person or their child from conduct that is akin to pestering, to cause trouble, vex, to annoy, or put to inconvenience.

113. Mr Kent recalled that the father said to him he knew where R went to school but had not gone. The father said in fact he said anyone could find out where a child went to school but he had not done so. This point was not explored with sufficient detail for me to be able to decide on a balance of probabilities that Mr Kent's recollection is to be preferred. There is no evidence that the father has sought out the mother's address, nor R's school, nor made any threats to the mother of the same. He has not breached any Court orders. He has not sent letters or emails outside of the Court proceedings so far as I am aware, nor sought to revive the skype contact.

114. The father's attitude towards the mother has been highly negative, the tone of his correspondence and contents of his witness statements critical, undermining and at times offensive, but having regard to all the evidence, I am not satisfied that there is sufficient evidence that his conduct has been such that it can be regarded as 'such a degree of harassment as to call for the intervention of the court.'

Prohibited steps order

115. The no order principle applies. Having found that the father should not be granted parental responsibility, there is no need to make an order to put any restriction on the father's access to the child's school, as he does not have that entitlement in the first place. I am not satisfied that there is sufficient evidence in this case that the father would try to find his daughter's school and visit her there. The child arrangements order that I make will set out clearly that R will not be spending time with her father and I can give permission for the order to be disclosed to relevant schools, medical practitioners or other agencies.

116. This is my judgment.

HHJ Joanna Vincent
Family Court, Oxford

Draft judgment sent by email: 27th November 2020
Approved judgment handed down: 3 December 2020