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Neutral Citation Number: [2024] EWFC 1 (B)

Case No: ZW22P01870

IN THE FAMILY COURT, WEST LONDON
SITTING AT THE ROYAL COURTS OF JUSTICE

Date: 4th January 2024

IN THE MATTER OF THE CHILDREN ACT 1989
AND IN THE MATTER OF CALA (BORN 2015)
AND IN THE MATTER OF DAIB (BORN 2017)

BETWEEN:

FTF

Applicant

And

MLM

Respondent

Before:

Mr Recorder Adrian Jack

- -

The Applicant Father in person, with him **Khalid Rashid**, McKenzie Friend of **Family Court Support,** and **Paul Chiy** of counsel, appearing as **Qualified Legal Representative**

Melissa Millin of counsel (instructed by **Goodman Ray Solicitors LLP**) for the Respondent Mother

Hearing dates: 20th and 21st December 2023

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Judgment

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved.

All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.
In the anonymised version, the children's names have been changed.

This judgment was handed down by the Judge remotely by circulation to the father and the mother's representatives by email and release in anonymised form to The National Archives. The date and time for hand-down is deemed to be 12 noon on 4th January 2023.

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Mr Recorder Adrian Jack

1. This is the final determination of an application issued by the father against the mother on 16th December 2022. The case concerns two children, Cala, a girl born in 2015 and now eight years old, and Daib, a boy born in 2017 and now six years old. The father seeks a child arrangement order to decide with whom the children should live and how much contact each parent should have with the children. In addition he seeks a specific issue determination as regards the religion of the children.

2. The mother opposes the application and submits that the father's direct contact should be ended with the children having indirect contact only with the father. Her position mirrors the advice of the Family Court Advisor, Ms Jennie Senior, who gave evidence in the case.

The background and procedural history

3. The parents were in a relationship which ended in 2017. The mother had three children from a previous relationship. They are significantly older than Cala and Daib and were still living at the mother's home for most of the relevant time. Those children are now adults. The father issued proceedings under case number ZW17P00359 seeking a child arrangement order that Cala and Daib live with him. This led to a fact-finding hearing to determine whether the father was guilty of serious domestic abuse against the mother. By a judgment of 20th December 2017 District Judge Tempia found that the father was guilty of that behaviour, which included sexual, physical and emotional abuse. The father did not attend the fact-finding hearing due, he claimed, to his mental health difficulties. Notwithstanding his non-attendance, the father thereafter fully accepted the learned district judge's findings of fact. That remained his position before me.

4. Subsequently, by Order of 14th August 2018, the father's application that the children live with him was refused. Instead he was given indirect contact. The father was directed to undertake a Domestic Abuse Perpetrators Programme ("DAPP") after which it was ordered that there should be direct contact between the father and the children.

5. There proved to be difficulties finding a DAPP which the father could attend. He began proceedings under case number ZW19P01090 seeking further directions. By order of 18th October 2019, the earlier provisions as regards indirect contact were continued. The parents were directed to attempt to agree a suitable DAPP after which direct contact could commence.

6. The father did then find a DAPP. He attended the course with perfect attendance until it went online during Covid. Thereafter he attended remote classes without a break. The final report of the provider dated 4th September 2020 noted the father's positive commitment and his expressions of remorse. It records that he accepted responsibility for his harmful behaviour.

7. Thereafter the father issued proceedings under case number ZW20P01695. Direct contact was introduced, beginning with two sessions of supervised contact. The reports on the two contact sessions were very positive, with both children enjoying seeing their father.

8. An Order was made on 6th April 2021 which directed that the children continue to live with the mother and spend time with the father on alternative Saturdays from 9am to 6pm. The mother stopped those arrangements on 23rd July 2021 after having the previous day filed a C2 application to suspend the child arrangements order. The father on 11th August filed a cross-application to enforce the April Order. By Order of 8th September 2021, contact was reinstated with effect from 18th September 2021 with the father having direct contact with the children on alternate weekends, Saturday from 9am to 6pm and Sunday from 1pm to 5pm. A report was directed from Cafcass. Pursuant to this order, the Family Court Advisor, Patrick Mamattah, in his report of 20th December 2021 advised that the then current arrangements should continue with contact being increased to overnight staying contact and shared holidays.

9. Mr Mamattah's advice was incorporated into an order dated 22nd February 2022. The recitals to the order recorded this:

> "2. The parties agree that they will not denigrate the other in front of the children.
>
> 3. The parties will ensure that the communications between them are child-focused and limited to issues concerning the children's spending time arrangements, wellbeing, and education.
>
> 4. The preferred method of communication between the parties is via What'sApp save as to emergencies.
>
> 5. Mr Mamattah confirmed that he had no concerns about neglect of the children by Mother.
>
> 6. Mother agrees, in principle that the children should learn about their Islamic faith.
>
> 7. Should the parties agree that the children attend Islamic classes, Mother will not be responsible for their attendance.
>
> 8. The parties understand that should the children wish to speak to the other parent they will be enabled to do so by phone.
>
> 9. Each parent agrees to embrace each other's role in the children lives in a positive way and not unnecessarily criticise the other.

> 10. The father's application for enforcement dated 11th August 2021 was listed for directions at the conclusion of the hearing; he confirmed that he did not wish to pursue it since contact had resumed, which was his purpose in making the application."

10. On 16th December 2022 the father made the current application. The main driver, he says, of his application is that the children appeared from October 2022 to be being alienated from him. In particular, they told him that the mother had shown them a video of a Muslim man stabbing a baby. The mother allegedly said that this is what Muslims did. He was afraid he would lose his children as a result of their alienation from him and his Muslim extended family due to the horrific content of the anti-Islamic video. The mother denies that the showing of such a video ever occurred. This is an important factual issue in the case.

11. By Order of 17th February 2023, Cafcass were directed by 19th June 2023 to make a section 7 report. Para 14 of the order reads as follows:

> "The Court requests that if possible, and if it will not cause undue delay, this report should be carried out by Mr Patrick Mamattah. If not available, the Court request the report is carried out by an officer with suitable experience of dealing issues of dual-heritage children and the cultural/religious issues."

12. The Order also noted that the Court might need to consider its powers under section 91(14) of the Children Act 1989 to restrict the bringing of further Family Court applications in the light of the number of applications made to the Court.

13. In fact, Mr Mamattah was unavailable. Instead Cafcass allocated Jenny Senior as the Family Court Advisor. So far as appears from her report she has no specialist experience of dealing with dual-heritage children and the cultural/religious issues.

Ms Senior's report of 10th July 2023

14. Ms Senior's report is dated 10th July 2023 and was served on the Court and the parties on 11th July 2023. This was the day before the next hearing on 12th July 2023. I shall return to the reasons for the late delivery of the report.

15. Ms Senior says:

> "34. …I am concerned that [the father] may be continuing to abuse [the mother] emotionally and verbally, and that he is using the children as a means to perpetrate this abuse, and thus harming them emotionally. Coercive behaviour can be very difficult to evidence, but I consider that there is an emerging picture of behaviour which raises significant worries about the children's safety in their father's care. For this reason, I recommend that they do not spend time directly with their father moving forward. Instead, I recommend that they are supported to have indirect communication via cards and photographs to support their identity needs. I recommend that the children's mother has oversight of this correspondence so as to ensure that it is appropriate and child-centred, and that this is sent once a month, as well as on the children's birthdays and at Eid.

35. I do not underestimate the significance of this recommendation on the children, especially on Cala who is expressing a desire to spend time with her father. However, I have utilised Cafcass's Spending Time Arrangements Safety Indicator to consider if this would be safe to continue and have concluded that overall it would not be safe for either Cala or Daib. This is due to the lack of insight, reflection and remorse from [the father], the high level of fear expressed by [the mother], and the concerns that Spending Time arrangements are being used to undermine the children's mother and continue abuse. The cumulative impact on the children's mother's wellbeing will have a significant impact on the children moving forward, and there is a high risk of parental alienation. Arrangements do appear to be consistent and contribute in some ways to a positive sense of identity for the children, but the wider negative impact is too great a concern to balance this.

36. This recommendation will inevitably afford the children some significant losses in respect to their relationship with their father and it is for this reason that I recommend indirect communication continues. I would also encourage Cala and Daib's mother to consider how they might be supported to maintain some of their existing relationships with their wider paternal family if this were to be able to be facilitated safely. I also recommend that if the Court were to agree to end the direct arrangements between Cala and Daib and their father, the children will benefit from their mother supporting them to attend Islamic classes so as to promote this important part of their identity. Cala and Daib will need to be supported around the change in arrangements with their father which they are very likely to experience as confusing and unsettling. I can make a referral to the Local Authority requesting support of this nature, if [the mother] consents to this.

37. There has been a high number of applications made to the Court in respect to the children, and they have been subject to a great deal of involvement from professionals as a result. I am concerned that court applications may be being used to undermine the children's mother and that Cala and Daib are being subjected to investigations which will further divide their loyalties and confuse them. Any further concerns about the children's welfare can be referred to the Local Authority to investigate as per their child protection procedures. As a result, I would invite the Court to consider making a Section 91(14) Order to prevent further applications being made to the Court.

38. I would encourage [the mother] to access therapeutic support, either via her local domestic abuse service or via her GP, to help her to process her own emotions around her experiences of domestic abuse. [The father] may also benefit from accessing therapeutic support via his GP to process his feelings around his experiences of social injustice, racism and cultural oppression. If he is able to gain an insight into how his experiences have translated into beliefs and behaviours that impact on others in ways he may not recognise or intend, this could open up the possibility of engaging meaningfully in some work to address domestic abuse and coercive controlling behaviours.

39. I appreciate that this report and recommendations are going to be very difficult reading for [the father]. I am also concerned that this may escalate risk for Cala, Daib and their mother and so I will be sharing this report with

> the Local Authority. In light of previous findings, the Court may also wish to consider making a further Non-Molestation Order and Prohibited Steps Order to protect Cala and Daib and their mother from any escalating risk as a result of the outcome of the hearing."

The hearing

16. This final hearing was listed for two days over 20th and 21st December 2023. It started late due to other matters being listed before this case. At the Dispute Resolution Appointment on 4th September 2023, Ms Senior was given permission to attend the final hearing remotely. There were some technical difficulties establishing the link, but she was able to join the hearing on 20th December as the case was called on.

17. The mother gave evidence and was cross-examined by Dr Chiy of counsel who had been appointed as a Qualified Legal Representative for the father. The father then gave evidence and was cross-examined by Ms Millin of counsel on behalf of the mother. His evidence completed in the mid-afternoon of 20th December, the first day.

18. Ms Senior was then affirmed. I was aware that the father had served an extensive witness statement which appeared to have been prepared with some professional or semi-professional help. It made a large number of potentially significant points in respect of Ms Senior's report. It seemed to me that these should be put to Ms Senior so that she could answer them: see *Re W (A child)* [2016] EWCA Civ 1140, [2017] 1 WLR 2415 and most recently *TUI UK Ltd v Griffiths* [2023] UKSC 48, [2023] 3 WLR 1204. I discussed with the father whether it might be easier for me to put the points in his witness statement to Ms Senior, but he said he preferred to start his cross-examination in the way in which he had prepared for it. This did not appear to be a problem. We were making good time with the evidence. I would be able to put to her on the second day any matters from his witness statement which the father did not cover in his cross-examination.

19. In the event, the father's cross-examination showed some of features typical of litigants-in-person. He started with a reasonable point on the way in which his emails to Ms Senior in the run-up to 19th June 2023, when her report was initially due, had caused her to amend her report. (He had obtained an earlier version of her report by means of a subject access request and was thus able to show the changes.) However, he then became engaged on a discussion with Ms Senior about the difference between subconscious racism and internal bias. I did not find this a useful topic and directed him to move to more productive areas of cross-examination. He did then deal with various key topics, but not at the level of detail which he had set out in his witness statement. Further, despite my attempts to dissuade him, he had a tendency to make speeches commenting on the answers given him rather than asking further questions.

20. As four o'clock approached, I indicated that we would be looking to wind down and recommence the following day. At this point, Ms Senior said that she would be unable to attend the following day. She explained that she was due to commence her maternity leave. She would not be returning to work for a year. Both parents showed surprise at her saying this. (Neither Ms Millin nor Dr Chiy had been at the DRA, so could not comment.) Nor had Ms Senior communicated this to the Court at the start of the day, when it would have been a simple matter to have her give evidence as the first witness. She said that she had told the Court this at the DRA on 4th September,

but there is no record of this in the Order made that day. Quite the contrary. The Order recites that "upon this matter being listed in person for Final Hearing on the 20th and 21st December 2023 when the Applicant and the Respondent will attend in person and Ms Senior of Cafcass will attend remotely as at the time of the hearing she will be heavily pregnant and there being no objection to her remote attendance." This implies she would be present remotely on both days.

21. In the event we carried on sitting. The father completed his cross-examination (although he might have benefited from further preparation overnight) and Ms Millin cross-examined. Due to time constraints, it was not practical for me to take Ms Senior through the father's witness statement, so she could answer points which had not been put to her fully by the father. Thus although the father's case was put to her, it was not put to her in as full a form as I would have ensured that it would have been if her evidence had not been curtailed.

The issues

22. The Order of 4th September 2023 says that the issues to be determined at the final hearing were "whether [the children] should spend time with the other parent and, if so: i) how often; ii) whether there should be overnight stays and longer stays; iii) whether it should be supervised or supported; iv) whether it should be limited to indirect contact." The possibility was raised of the Court making an order under section 91(14) of the Children Act 1989 preventing the father from making further applications in respect of his children without leave of the Court.

23. Probably due to the late service of Ms Senior's report, the Order on the DRA does not set out any factual issues or any areas of disputed fact which might need to be determined at the final hearing. This is particularly problematic, because it is apparent that large areas of background which might potentially be relevant to the taking of a holistic view of the case have not been the subject of any inquiry by the Court. By way of example, during Dr Chiy's cross-examination of the mother she said that there had been public law proceedings taken with a view to putting the children into care, but there is no documentation at all relating to these proceedings in the bundle or what the concerns were which resulted in care proceedings being begun or when. Likewise, an issue considered by Ms Senior was whether the children were at risk at the mother's by reason of their having seen domestic violence inflicted by one of the mother's older sons on his girlfriend whilst they were living at the mother's. Ms Senior was unable to ascertain sufficient information to form a view on this issue and it was not investigated at the hearing.

24. In the event, the evidence adduced on behalf of the mother and the father largely followed the matters of concern raised by Ms Senior in her report. These were:

    (a) The father's response to the domestic abuse perpetrators programme which he attended;

    (b) Whether the mother showed the children a video of a Muslim stabbing a baby;

    (c) The father's differing treatment of Cala and Daib;

(d) The father's allegedly abusive communications to the mother and his aggressive style of litigation;

(e) The father's complaints to the local authority and the police.

Domestic abuse: the law

25. The Serious Crime Act 2015 has an offence of controlling or coercive behaviour in an intimate or family relationship. I shall call behaviour matching this provision as "2015 behaviour". Section 76 provides:

> "(1) A person (A) commits an offence if—
> (a) A repeatedly or continuously engages in behaviour towards another person (B) that is controlling or coercive,
> (b) at the time of the behaviour, A and B are personally connected,
> (c) the behaviour has a serious effect on B, and
> (d) A knows or ought to know that the behaviour will have a serious effect on B.
> …
> (4) A's behaviour has a "serious effect" on B if—
> (a) it causes B to fear, on at least two occasions, that violence will be used against B, or
> (b) it causes B serious alarm or distress which has a substantial adverse effect on B's usual day-to-day activities.
> (5) For the purposes of subsection (1)(d) A 'ought to know' that which a reasonable person in possession of the same information would know.
> …
> (8) In proceedings for an offence under this section it is a defence for A to show that—
> (a) in engaging in the behaviour in question, A believed that he or she was acting in B's best interests, and
> (b) the behaviour was in all the circumstances reasonable.
> (9) A is to be taken to have shown the facts mentioned in subsection (8) if —
> (a) sufficient evidence of the facts is adduced to raise an issue with respect to them, and
> (b) the contrary is not proved beyond reasonable doubt.
> (10) The defence in subsection (8) is not available to A in relation to behaviour that causes B to fear that violence will be used against B.
> (11) A person guilty of an offence under this section is liable—
> (a) on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both;
> (b) on summary conviction, to imprisonment for a term not exceeding 12 months, or a fine, or both."

26. Abusive behaviour is more widely defined in the Domestic Abuse Act 2021. I shall call this "2021 behaviour". Section 1, so far as material, provides:

> "(1) This section defines 'domestic abuse' for the purposes of this Act.
> (2) Behaviour of a person ('A') towards another person ('B') is 'domestic abuse' if—

> (a) A and B are each aged 16 or over and are personally connected to each other, and
> (b) the behaviour is abusive.
> (3) Behaviour is 'abusive' if it consists of any of the following—
> (a) physical or sexual abuse;
> (b) violent or threatening behaviour;
> (c) controlling or coercive behaviour;
> (d) economic abuse (see subsection (4));
> (e) psychological, emotional or other abuse;
> and it does not matter whether the behaviour consists of a single incident or a course of conduct.
> (4) 'Economic abuse' means any behaviour that has a substantial adverse effect on B's ability to—
> (a) acquire, use or maintain money or other property, or
> (b) obtain goods or services."
> (5) For the purposes of this Act A's behaviour may be behaviour 'towards' B despite the fact that it consists of conduct directed at another person (for example, B's child).
> (6) References in this Act to being abusive towards another person are to be read in accordance with this section."

27. Practice Direction 12J to the Family Procedure Rules has a different definition. I shall call this "12J behaviour". Para 3 provides, so far as material:

> "'coercive behaviour' means an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten the victim;
> 'controlling behaviour' means an act or pattern of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour;
> …
> 'harm' means ill-treatment or the impairment of health or development including, for example, impairment suffered from seeing or hearing the ill-treatment of another, by domestic abuse or otherwise;
> 'health' means physical or mental health;
> 'ill-treatment' includes sexual abuse and forms of ill-treatment which are not physical…"

28. Para 4 of the Practice Direction 12J notes:

> "Domestic abuse is harmful to children, and/or puts children at risk of harm, including where they are victims of domestic abuse for example by witnessing one of their parents being violent or abusive to the other parent, or living in a home in which domestic abuse is perpetrated (even if the child is too young to be conscious of the behaviour). Children may suffer direct physical, psychological and/or emotional harm from living with and being victims of domestic abuse, and may also suffer harm indirectly where the domestic abuse impairs the parenting capacity of either or both of their parents."

29. It can be seen that there is a great difference between 2015 behaviour and 2021 behaviour. 2015 behaviour must be repeated or continuous behaviour, whereas 2021 behaviour can be a single incident. 2015 behaviour must have a serious effect on the complainant, whereas there is no minimum threshold for 2021 behaviour to constitute abuse. 2015 behaviour requires a statutory *mens rea* on the part of the perpetrator, albeit one which is largely objective; 2021 behaviour contains no express requirement that the perpetrator have a particular state of mind. As Peel J held in *A v B (Appeal: Domestic Abuse)* [2023] EWHC 1499 (Fam), "abuse can occur without an intent to abuse."

30. 12J behaviour is different again, but in terms of the seriousness of the abuse, it is nearer the 2015 standard. Although the definition of "coercive behaviour" includes "other abuse", the seriousness of such "other abuse" must in my judgment be on a similar level to the preceding four examples of "assault, threats, humiliation and intimidation".

31. Controlling and coercive behaviour covers a large spectrum of behaviour, with various shades of grey. At the darkest end is 2015 behaviour. 12J behaviour is near that end of the spectrum. 2021 behaviour can be at the much lighter end of the spectrum.

32. The Court of Appeal dealt with the elements of domestic abuse prior to the coming into force of the 2021 Act in the combined appeals *Re H-N* [2021] EWCA Civ 448, [2022] 1 WLR 2681. Sir Andrew McFarlane P held that:

> "29. …central to the modern definitions of domestic abuse is the concept of coercive and/or controlling behaviour. Shortly before the hearing of these appeals, Hayden J handed down judgment in *F v M* [2021] EWFC 4... It is helpful to set out one of the central paragraphs from Hayden J's judgment here:
>
> > '4. In November 2017, M [the mother] applied for and was granted a non-molestation order against F [the father]. That order has been renewed and remains effective. The nature of the allegations included in support of the application can succinctly and accurately be summarised as involving complaints of "coercive and controlling behaviour" on F's part. In the Family Court, that expression is given no legal definition. In my judgement, it requires none. The term is unambiguous and needs no embellishment. Understanding the scope and ambit of the behaviour however, requires a recognition that "coercion" will usually involve a pattern of acts encompassing, for example, assault, intimidation, humiliation and threats. "Controlling behaviour" really involves a range of acts designed to render an individual subordinate and to corrode their sense of personal autonomy. Key to both behaviours is an appreciation of a "pattern" or "a series of acts", the impact of which must be assessed cumulatively and rarely in isolation. There has been very little reported case law in the Family Court considering coercive and controlling behaviour. I have taken the opportunity below, to highlight the insidious reach of this facet of domestic abuse. My strong impression, having heard the

> disturbing evidence in this case, is that it requires greater awareness and, I strongly suspect, more focused training for the relevant professionals.'

30. Whilst the facts found in *F v M* may be towards the higher end of the spectrum of coercive or controlling behaviour, their essential character is not, and will be all too familiar to those who have been the victim of this form of domestic abuse, albeit to a lesser degree or for a shorter time. The judgment of Hayden J in *F v M* (which should be essential reading for the Family judiciary) is of value both because of the illustration that its facts provide of what is meant by coercive and controlling behaviour, but also because of the valuable exercise that the judge has undertaken in highlighting at paragraph 60 the statutory guidance published by the Home Office pursuant to Section 77 (1) of the Serious Crime Act 2015 which identified paradigm behaviours of controlling and coercive behaviour. That guidance is relevant to the evaluation of evidence in the Family Court.

31. The circumstances encompassed by the definition of 'domestic abuse' in PD12J fully recognise that coercive and/or controlling behaviour by one party may cause serious emotional and psychological harm to the other members of the family unit, whether or not there has been any actual episode of violence or sexual abuse. In short, a pattern of coercive and/or controlling behaviour can be as abusive as or more abusive than any particular factual incident that might be written down and included in a schedule in court proceedings... It follows that the harm to a child in an abusive household is not limited to cases of actual violence to the child or to the parent. A pattern of abusive behaviour is as relevant to the child as to the adult victim. The child can be harmed in any one or a combination of ways for example where the abusive behaviour:

> i) Is directed against, or witnessed by, the child;
>
> ii) Causes the victim of the abuse to be so frightened of provoking an outburst or reaction from the perpetrator that she/he is unable to give priority to the needs of her/his child;
>
> iii) Creates an atmosphere of fear and anxiety in the home which is inimical to the welfare of the child;
>
> iv) Risks inculcating, particularly in boys, a set of values which involve treating women as being inferior to men.

32. It is equally important to be clear that not all directive, assertive, stubborn or selfish behaviour, will be 'abuse' in the context of proceedings concerning the welfare of a child; much will turn on the intention of the perpetrator of the alleged abuse and on the harmful impact of the behaviour. We would endorse the approach taken by Peter Jackson LJ in *Re L (Relocation: Second Appeal)* [2017] EWCA Civ 2121 [2018] 4 WLR 141 at para [61]:

> 'Few relationships lack instances of bad behaviour on the part of one or both parties at some time and it is a rare family case that does not

> contain complaints by one party against the other, and often complaints are made by both. Yet not all such behaviour will amount to "domestic abuse", where "coercive behaviour" is defined as behaviour that is "used to harm, punish, or frighten the victim…" and "controlling behaviour" as behaviour "designed to make a person subordinate…" In cases where the alleged behaviour does not have this character it is likely to be unnecessary and disproportionate for detailed findings of fact to be made about the complaints; indeed, in such cases it will not be in the interests of the child or of justice for the court to allow itself to become another battleground for adult conflict.'"

33. The Court of Appeal also rejected the applicability of criminal principles in construing domestic abuse for the purposes of family proceedings:

> "62 In *In re R (Children) (Care Proceedings: Fact-finding Hearing)* [2018] EWCA Civ 198, [2018] 1 WLR 1821, this court (Gloster, McFarlane and Hickinbottom LJJ, Gloster LJ dissenting), having considered this issue, held that, as a matter of principle, it was fundamentally wrong for the Family Court to be drawn into an analysis of factual evidence in proceedings relating to the welfare of children based upon criminal law principles and concepts. At para 62, McFarlane LJ said:
>
> > 'The focus and purpose of a fact-finding investigation in the context of a case concerning the future welfare of children in the Family Court are wholly different to those applicable to the prosecution by the state of an individual before a criminal court. The latter is concerned with the culpability and, if guilty, punishment for a specific criminal offence, whereas the former involves the determination facts, across a wide canvas, relating to past events in order to evaluate which of a range of options for the future care of a child best meets the requirements of his or her welfare. Similarly, where facts fall to be determined in the course of ordinary civil litigation, the purpose of the exercise, which is to establish liability, operates in a wholly different context to a fact-finding process in family proceedings. Reduced to simple basics, in both criminal and civil proceedings the ultimate outcome of the litigation will be binary, either "guilty" or "not guilty", or "liable" or "not liable". In family proceedings, the outcome of a fact-finding hearing will normally be a narrative account of what the court has determined (on the balance of probabilities) has happened in the lives of a number of people and, often, over a significant period of time. The primary purpose of the family process is to determine, as best that may be done, what has gone on in the past, so that that knowledge may inform the ultimate welfare evaluation where the court will choose which option is best for a child with the court's eyes open to such risks as the factual determination may have established…
> >
> > 67. …[A]s a matter of principle, it is fundamentally wrong for the Family Court to be drawn into an analysis of factual evidence in proceedings relating to the welfare of children based upon criminal law principles and concepts. As Hickinbottom LJ observed during submissions, 'what matters in a fact-finding hearing are the findings of

> fact'. Whilst it may not infrequently be the case that the Family Court may be called upon to re-hear evidence that has already been considered in the different context of a criminal prosecution, that evidence comes to the court simply as evidence and it falls to be evaluated, in accordance with the civil standard of proof, and set against whatever other evidence there may be (whether heard by the criminal court or not) for the sole purpose of determining the relevant facts."

34. Thus, it is not necessary for the Family Court to determine whether (in this case) a father demonstrates 2015 behaviour. Nonetheless, if the Court is satisfied on balance of probabilities that the father has behaved that way, the Court will necessarily consider that that behaviour is very serious. Although a finding of 2015 behaviour will not inevitably result in a refusal of contact, it may well be that, unless remedied, 2015 behaviour will be such that the risk to the children is so serious that direct contract is contra-indicated. A similar conclusion is likely in relation to 12J behaviour, unless the perpetrator can show significant improvement in his or her behaviour.

35. By contrast, 2021 behaviour, which is neither 2015 behaviour nor 12J behaviour, may not be such a high bar to the perpetrator having contact with their children. It may do, or it may not do.

36. In my judgment Her Honour Judge Vincent in *Re R (A child)* [2020] EWFC B57 accurately summarised the law when she held:

> "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." (The judge's emphasis.)

37. In the current case, the father's behaviour as found in the fact-finding judgment of District Judge Tempia in my judgment constituted both 2015 and 12J behaviour. A key issue is whether the father's subsequent steps to remediate himself are sufficient. This is particularly so, because Ms Senior in cross-examination by Ms Millin for the mother said that the current coercion and control which she considered existed was "covert". Later she referred to the "subtlety" of her concerns. This is much more the language of 2021 behaviour than of 2015 or 12J behaviour.

Contact: the law

38. The law on contact is helpfully set out in Ms Millin's position statement for the mother and was not in dispute:

> "22. The Court's consideration is drawn, firstly, to the presumption of parental involvement contained within section 11 of the Children and Families Act 2014, and secondly, to the high threshold needed for orders for no direct contact to be made, complemented by the wording of PD12J. Munby LJ (as he then was) summarised the law on orders for no contact between parent and child in *Re C (Direct Contact: Suspension)* [2011] 2 FLR 912, [47]:
>
> > i. Contact between parent and child is a fundamental element of family life and is almost always in the interests of the child.
> >
> > ii. 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.
> >
> > iii. 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.
> >
> > iv. 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.
> >
> > v. 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.
>
> 23. This summary of the applicable principles was adopted and applied in the further Court of Appeal decisions of *Re W (Direct Contact)* [2013] 1 FLR 494, [42] and *Re Q (Implacable Contact Dispute)* [2016] 2 FLR 287, [19]. 24. The Court of Appeal has further emphasised the extremely high bar for making an order for no direct contact in *Re R (A Child: Appeal: Termination of Contact)* [2019] 2 FLR 162. The court should only proceed to a final determination that there should be no contact if there are no potential steps that could be taken to promote contact: 'the end of the road' must have been reached. The Court therefore has to have explored all possible options and none of them have worked out."

The father's attendance on the domestic abuse perpetrator programme

39. Ms Senior did not consider that the father's attendance on the DAPP showed he had made sufficient relevant change in his views on domestic violence. In her report she said:

> "23. [The father] does not deny [the 2017 and pre-2017] violence, however his reflections on this were fairly superficial and his learning from the domestic

> abuse perpetrator programme (DAPP) centred largely around emotional regulation and safe relationship choices. Research around domestic abuse has found that most of those that perpetrate violence and abuse, do so as a result of a personal value base that subjugates women and there was a notable absence of reflection from [the father] around how his values and experiences may have shaped past behaviour. Indeed, he minimised this behaviour as being as a result of a period of stress and grief at the time. This raises concern about how far [the father] may be able to address his abusive behaviour. It also raises some concern about whether he may have used learning from the DAPP programme as a means to secure time with the children, rather than to reflect in depth on his behaviours."

40. This contrasts with the assessment of the DAPP provider, dated 15th September 2020, which concluded:

> "During Assessment
>
> [The father] engaged well in his assessment and recognised the benefit of programme work to assist him in maintaining being a non-abusive man. [The father] was able to recognise the strategies he uses now to be a rational man and hopes the programme will expand on this for him. [The father] explained that he wanted to gain more awareness of how to appropriately deal with reactions and confrontations.
>
> Midway
>
> [The father] had excellent attendance, engaged fully in sessions and was often reflective of his own behaviours. [The father] showed he had accepted responsibility for his abusive behaviour and demonstrated remorse, empathy and an internal motivation to change. [The father] identified key factors that he felt he needed to improve on such as Communication and listening skills. [The father] has now completed the DVVP programme. From the midway point [the father] has attended all the sessions. He shows a clear understanding of Triggers and Signals. He explained that he dealt with an incident in a different way by ensuring that his voice, posture and actions were not threatening. 'I can see how the course has started to change the way I think about myself and how others may see me.'
>
> Throughout the last few weeks [the father] has continued to show remorse, empathy and reflection. 'At the time I didn't care how she was feeling, but now I understand how it must have affected her.' [The father] realises what his faults were in the relationship and understands that in order to better himself as a person he needs to be able to reflect and challenge these behaviours. 'I didn't give her enough support, I didn't listen or understand her anger or choices.' [The father] has also shown improvement in his communication and listening skills, stating 'I understand how my thoughts, feelings and behaviour, effect decisions in every aspect of my life. I know that I need to listen to the choices of other people to ensure compromise.' [The father] has recognised that although when he started the course he had accepted responsibility of his actions, it's only by completing the programme that he fully understands them, not just within relationships but with his

> children as well. 'I have learned that my abuse came from my own thoughts and feelings and how I reacted to them. I need to tell the children that it wasn't their fault.' [The father] has continued to show a high level of engagement to the programme actively participating during group discussions, supporting others and opening up discussions relevant to the subject.
>
> Owing to COVID 19 restrictions, to his credit, [the father] adapted to the changes from group work, to virtual sessions and ultimately 1 to 1 work, showing a keenness throughout.
>
> Final summary
>
> [The father] appears to have made further positive changes. He has shown an understanding and acceptance of his abusive behaviours and how they have impacted of his ex-partner and children. If [the father] continues to use the tools taught on the Domestic Violence Prevention programme such as triggers and signals and time-out techniques, alongside his own research into the effects of abuse his risk of further abuse may substantially reduce. [The father's] ability to self-reflect and aim to better himself as a person will help him to progress further to manage future situations in relationships and as a parent. [The father] has also shown commitment to the programme and productive use of time, demonstrating a high level of motivation to change which if he carries on this way may also contribute to a reduction in further risk of abuse."

41. Likewise, Mr Mamattah in his report of 20th December 2021 says:

> "47. Past consideration must be given to the historical domestic abuse. However, [the father] has completed a DAPP and the final report is positive. In speaking with him I found he remains remorseful about the abuse and what this said about his parenting capacity at the time. However, an aspect where he may require some further support relates to his understanding of how his communication can be perceived and felt by the victim of his past abuse."

42. Ms Senior interviewed the father by Teams on 7th June 2023 once in the course of her investigations. The father obtained a printout of her notes through a subject access request. The notes are not verbatim, but they are clearly a fairly full record of her interviews. The relevant part of the interview with the father is surprisingly short (I have tidied the grammar):

> "How would you describe your previous relationship with the children's mother and the reasons for separation?
>
> At times it was really good and at times it wasn't. For the first few years it was good. We had known each other from childhood and got together later on in life — relationship became toxic and abusive. Ended it after the incident with Cala. The behaviours of both individuals made it toxic and abusive. Toxic on both sides and I did become abusive and I've admitted that. When Cala was ill, we were both sleep deprived. We both were abusive towards each other — verbally abusive, emotionally abusive and physically abusive. Because of what we were going through at that time, emotional turmoil, I

> wasn't behaving in the best of ways. Was impacted by growing up in a racist environment, or certainly for a little while. I never behaved like that before and not after. I lost my brother 9 months before I got with my children's mother — going through a lot of change. People are in abusive relationships tend to be across their whole life and I haven't been before or since.
>
> What are your reflections on this relationship? Are there things you would do differently? What did you learn from the DAPP programme?
>
> I learnt a lot about myself in terms of triggers and signals. To recognise that if I was getting to know someone and things weren't right then I wouldn't pursue it. I learnt about emotional control, taking time out etc.
>
> I would be more understanding of the impact certain things had on the mother, in terms of her own life and the impact it has on her emotional state. Be more understanding and be more caring and patient and be more supporting."

43. It is unclear if Ms Senior saw the DAPP assessment (or a later DAPP assessment from November 2020, which was not included in the Court bundle and which I have not seen). Her report says she saw the Cafcass electronic file in respect of Cala and Daib and this may have included the DAPP report, but, if she did see it, she does not engage with the DAPP assessment in her report. She presumably did see Mr Mattamah's report, because it would have been in the Cafcass file, but again she does not mention Mr Mattamah's involvement or his conclusions in her report. Due to the deficiencies in the way her evidence had to be adduced, these matters were not explored in cross-examination, nor were her views tested against these other assessments.

The video of a Muslim stabbing a baby

44. It will be recalled that a key issue, and the alleged prompt for the father to bring the current proceedings, was the mother allegedly showing Cala and Daib a video of a Muslim stabbing a baby and then telling the children that this is what Muslims did.

45. The mother denied showing any such video to the two children. In her witness statement she said:

> "11. The Applicant has made ongoing allegations about my parenting to Social Services and the Police which is having a great impact on my mental health. He alleges that I am exposing the children to inappropriate material and denying them access to the Applicant's religion. I have never shown any inappropriate videos to the children nor have I prevented the children from attending the Mosque. I have given my permission for the children to attend with the Applicant. However, as raised in the report, the Applicant has failed to take the children to the Mosque during his contact."

46. In cross-examination she said that there had been three different descriptions of what the video showed. The social worker describes the video as a Muslim stabbing a baby; the police a Muslim stabbing a baby's head; and the school a Muslim cutting a baby's head, although she was less sure about whether this last description was in fact that of the school. The first description matches that in Ms Senior's report. There is

no documentary evidence (or evidence other than from the mother) about the police description. The description ascribed to the school does not match the incident report set out below.

47. There is no independent evidence as to the mother's mental health. I deal with the father's complaints to social services and the police below, but the complaints are reasonably limited and were resolved quickly. Overall, I treat the mother's evidence with circumspection.

48. Ms Senior records the following in her report:

> "27. During direct work, I asked Cala about whether she had seen a 'not very nice video.' She told me she had watched a video which she thought was of a Muslim man stabbing a baby. Cala said she had watched this with her mother and brother, when she was about five years of age. When asked if this had definitely happened, Cala told me 'I'm not sure, but I think it did.' If Cala and Daib were shown such a video, it will have been hugely traumatic and frightening for them. However, Cala's account contained elements of doubt and when this was discussed with [the mother], her mother evidenced good insight into why this would be very inappropriate and what the impact would be on the children. [The mother's] insight into the children's needs and emotions was a real strength during her interview and as a result, it is difficult to imagine that she would expose the children to something so harmful. It is not uncommon for children who are being exposed to alienating behaviours by one parent to begin to make allegations about their experiences in the other parent's care. This is a symptom of their confusion, feelings of divided loyalties and ultimately emotional harm. It is possible that this may be at play here though both possibilities should be held."

49. Although parts of Ms Senior's interview with the mother were produced pursuant to a subject access request, the parts referring to the video incident were not produced. Ms Senior's report does not record what Daib said about the video during what, she said, was a forty-five minute interview.

50. The school recorded an incident on 2nd February 2023, which reads as follows:

> "While [redacted] was working with Cala, she that disclosed that [redacted] had indeed showed her a video of men cutting babies. '[Redacted] was putting me and Daib to bed, we asked [redacted] why is daddy a muslim and you are a christian? [Redacted] showed us a video man cutting a baby.' [Redacted] asked 'How do you feel about that?' 'I didn't like it, [redacted] showed it to me just before bed and it scared me.'
>
> [Redacted] reported that dad rewards the children with a point system for toys if they give Dad information about [redacted]. [Redacted] was heard at MARAC for the level of concern regarding dad's behaviour, he has said 'I would rather the children die than live with you.'
>
> [Redacted] will make a referral to social care."

51. Despite the redactions in the first paragraph, the reference to Daddy being a Muslim and "you… a Christian" indicates that Cala was referring to her mother having shown her the video. This record of Cala's disclosure contains no suggestion of doubts on her part.

The father's differing treatment of Cala and Daib

52. There was a measure of agreement about the father's treatment of his two children. It was common ground between the parties and Ms Senior that as between Cala and Daib, she was the dominant sibling. Daib is not just younger, he also has some slight delay in speech development. This may be a symptom of glue ear, from which Daib regularly suffers and which causes intermittent deafness. Further, whereas Cala specifically tries to be the "good" child, Daib tends to be naughtier. Ms Senior commented that the two children were "fairly different in character."

53. The father had a system whereby he would give the children points and prizes for good behaviour. Now in principle this is a good system for ensuring children are well disciplined. However, it becomes problematic when one child is the consistent winner. The father said that Daib did win some points and prizes, however, it seems clear that Cala did do better under the system.

54. Further, Daib complained to Ms Senior that his father shouted at him. In evidence, the father accepted that he had shouted at him on occasions. He gave an example of Daib having dropped a glass on the floor and he (the father) being concerned that he might cut himself on it with his bare feet. He denied shouting at Daib in an abusive way and said that Daib's glue ear sometimes meant shouting was necessary. He said that he had completed a positive parenting course shortly before the hearing in order to improve his parenting and had modified his behaviour with Daib.

Father's abusive communications to the mother and aggressive litigation style

55. Ms Senior says in her report:

> "24. It is apparent from speaking with both parents, that a dynamic exists whereby [the father] feels unhappy about how [the mother] has approached a particular situation for the children and [the father] raises this with her. [The mother] experiences this as aggressive and interrogating in manner and therefore does not respond as [the father] would like. When discussing this dynamic, [the father] was very focused on the behaviour of [the mother], rather than reflecting upon what he might do differently to create more positive communication. His responses appeared focused on telling [the mother] what she was doing wrong, and then seeking support from Children's Services if, in his view, she did not listen, rather than hearing from [the mother] about why she had approached a situation in a particular way, reflecting upon this, and seeking to come together in a more aligned way. [The mother] reports a high level of communication of this nature from [the father], which she experiences as harassment.
>
> 25. [The mother] reports that [the father's] manner is aggressive and interrogatory, and this perspective resonated with my own interactions with [the father]. [The father] spoke quickly and animatedly during his interview

> and was visibly angry in his manner at times. Since then, [the father] has sent me a high level of emails, asking interrogative questions about my enquiries and whether I have completed tasks he believes are pertinent to my assessment. He has made comments about what he hopes and expects to have been included in the report. He has made a Subject Access Request as he wishes to compare the questions asked of him, to those asked of the children's mother, as he suspects racial bias. Cala and Daib's school and the [relevant London Borough] also report a high level of email correspondence from [the father], Subject Access Requests and a similar dynamic in his interactions. These observations of the way in which [the father] relates to others, adds weight to [the mother's] allegations of harassment and intimidating behaviour."

56. Mr Mamattah's report on the father's interactions with the mother was more nuanced. He said:

> 38. In considering [the father's] conduct I have found this complex. It is [the mother's] position that arrangements were reduced in November 2020 (to fortnightly) due to controlling text messages she received. Showing me examples where [the father] was asking if and when they had gone to the park and telling [the mother] how to dress Cala and requesting her coat is kept at his home.
>
> 39. It is the case that none of the messages [the mother] showed me displayed overt abuse. I did not consider his messages to be rude and, on the face of it see no issue with the way in which he asked for a coat to be kept at his house. However, considering these messages and ones provided by [the father] there is a persistence to some of [the father's] communication that could be perceived by [the mother] as attempts to control. In making this comment I must consider the history of this case and the findings that have been made against [the father] via the Judgement of 2017. As a victim of significant domestic abuse patterns of communication could trigger emotions and feelings in [the mother] which are reminiscent of the control she experienced when in a relationship with [the father].
>
> 40. There is a particular message trail that whilst not overtly abusive shows [the father] persistently asking [the mother] to qualify a statement she has made even when she has asked him to move on. In my opinion, [the father's] past abusive behaviour still resonates and impacts on [the mother]. Whilst I acknowledge that [the mother] may be equally responsible for instigating communication, that asking for additional contact during Eid and the content of his messages should not be considered abusive, [the father] must attempt to get to a point where he maintains communication in a measured way and recognises that as a perpetrator of abuse, he cannot communicate with the victim in a manner he may normally do with others."

57. In cross-examination of the father, no emails or text messages were put to him as being abusive of the mother. The only reference to communications was a somewhat elusive reference to his having sent the mother a text during dinner, but that in itself is hardly abusive.

58. It was put to the father in cross-examination that the inclusion in his evidence of a number of sexually explicit text messages from the mother to him in July and August 2020 was intended to denigrate the mother. The father's explanation for putting these messages in evidence was this. In the summer of 2020 the mother wanted to rekindle a physical relationship between them, as shown by the text messages inviting him to engage in intimate relations with her. He had rebuffed her. As revenge she had refused him contact with the children resulting in his issuing the proceedings ZW20P01695.

Father's complaints to public authorities

59. The father has in the past complained about various issues concerning the children both to the local authority and to the police. The significance of his having made these complaints were given more prominence by Mr Mamattah than by Ms Senior. Mr Mamattah said:

> "41. I am concerned by [the father's] reporting issues of neglect to Children's Services on 23/03/2021 and 31/03/2021. [The father] has provided me with pictures of the children's clothes which prompted these concerns, and in my opinion, they are not indicative of neglect or the level of concern he stated prior to sending the pictures.
>
> 42. That being said, [the father's] reports to children's services seem to be initially prompted by his concerns around 'emotional manipulation' of the children. [The father] alleges that Cala would insist on being taken home as soon as it approached darkness, resulting in almost panic attack like displays. This is a different matter and, if accurate, I sympathise with a parent who reports being genuinely worried and *stuck* as to what to do next.
>
> 43. I am therefore inclined to view [the father's] actions in relation to reporting neglect as being influenced by what he felt was a lack of action by children's services. Potentially believing that raising additional concerns around basic care may result in the action he felt necessary being taken.
>
> 44. Due to the history of domestic abuse and prior allegations he has made, some concern must be held as to if [the father] is motivated by a desire to promote the best interests of the children or is using the process to continue a form of domestic abuse, alongside his ability to fully appreciate the effect of past domestic abuse on [the mother].
>
> 45. This point may also tie into allegations of sexual abuse [the father] has made relating to the maternal step-father. This is referred to in the Section 7 report dated 02/03/2018 which references checks with the relevant Local Authority and police at the time confirming no involvement with [the mother] as a child or information that supported the allegations. Leading the social worker at the time to note that '[the father] is unable to accept professional opinion despite evidence and directs the allocated social worker how she should manage the case, showing his controlling behaviour'." (Mr Mamattah's emphasis.)

60. Ms Senior updates the picture as follows:

> "9. The family is known to [a London borough's] Children's Social Care. In May 2022 a referral was received from [the father] stating that Cala and Daib had disclosed being assaulted by their older sister and that Daib had a significant scratch. He also reported his concerns about the children being exposed to domestic abuse perpetrated by their brother. He sought advice because he was reluctant to return the children to their mother until this matter had been investigated and was advised to contact the police.
>
> 10. The family is known to [another London borough's] Children's Social Care. Since proceedings ended in February 2022, there have been four referrals. In February 2022 Cafcass made a referral via the Court. [The mother] refused Early Help intervention and no further action was taken. In April 2022 [the mother] did however seek support around domestic abuse which she reports was in respect to her ongoing co-parenting relationship with [the father]. In June 2022 a referral was received via police after [the father] reported Daib being assaulted by his older sister. Police made a welfare visit. The family said the injury was caused accidentally during a playfight and the children corroborated this account. A child and family assessment was completed in September 2022 which concluded the children were safe and their needs were being met despite the counter allegations made by both parents. In January 2023 a referral was received from police following a verbal dispute between the parents about child contact. A safety plan was in place and no further action taken.
>
> 11. There is no new Police information for either [the father] or [the mother] since the last proceedings ended."

61. At para 32 she says:

> "The allegation about the children being assaulted by their sister has been investigated by Police and Children's Services and the children's elder brother has now moved out of the family home. As a result, I do not consider that there is sufficiently robust evidence to suggest that the children are at risk of harm in their mother's care."

Demeanour and the assessment of witnesses

62. When I come to assess the witnesses I remind myself what I said at paras [75] to [79] of *IsZo Capital LP v Nam Tai Property Inc* [2021] ECSCJ No 478, BVIHC (COM) 2020/0165) (3rd March 2021) https://www.eccourts.org/judgment/iszo-capital-lp-v-nam-tai-property-inc-et-al (appeal dismissed [2021] ECSCJ No 714, BVIHCMAP 2021/0010, 4th October 2021; stay pending appeal to the Privy Council refused 8th November 2021 [2021] ECSCJ No 754). In particular I remind myself of the fallibility of reliance on evidence of demeanour.

63. I also remind myself that I must take a holistic view of all the evidence in the case. Although I shall consider each of the areas of factual dispute separately, I have taken care to test my conclusions in respect of each area against the evidence as a whole.

Discussion of father's response to the DAPP

64. It will be recalled that Ms Senior's view was that the father's learning from the DAPP was "fairly superficial… and centred largely around emotional regulation and safe relationship choices." She considered that he may have attended the DAPP "as a means to secure time with the children, rather than to reflect in depth on his behaviours." As such he continued to represent a danger to his children.

65. I have to reach my own view on whether Ms Senior is right. I must of course take her opinion into account, but I am not bound by it.

66. I am well aware of the dangers of abusers undertaking courses, not in order to make any real underlying behavioural change, but instead merely to "tick a box" so as to obtain contact. It has also long been recognised that "the devil himself knoweth not the thought of man": (1468) YB 7 Ed IV fo. 2, pl. 2 *per* Brian CJ.

67. The providers of DAPPs are equally aware of these issues. However, a programme provider has an opportunity over many months to assess a participant and to reach a view on the genuineness of the participant's response. The amount of interaction with the participant is much greater than the single interview a Family Court Advisor will typically hold. It is significant in my judgment that the DAPP report is extremely positive of the father's response to the programme. This is reinforced by the father's perfect attendance record, which is some evidence of his commitment to the course.

68. Ms Senior's opinion seems to be founded on the father's answers to the two questions posed by her, which I have set out above. The questions and answers in her notes together amount to 293 words. In my judgment it is not fair to describe the father's response as "fairly superficial", when he is only asked two questions. If she wanted greater depth, then it was for her to ask more questions. Further the real issue is not whether the father can provide an academically sound analysis of domestic abuse, but rather whether he understands the impact of his behaviour and shows remorse. Ms Senior does not discuss remorse at all.

69. Likewise in my judgment, she is unfair in criticising him for mentioning the personal issues he had when he entered the relationship with the mother. The father explained to her that he had lost his brother shortly before. There is nothing in the notes to suggest that "he minimised [his abusive] behaviour as being a result of a period of stress and grief." Rather the father was explaining the background. Indeed his account tends to show some reflectiveness on the part of the father as to the way in which and the reasons why the relationship with the mother developed as it did.

70. The father fully accepts (and has throughout accepted) the findings of abuse made by District Judge Tempia, but Ms Senior does not seem to consider this is material to a consideration of whether the father is facing up to his earlier behaviour.

71. Mr Mamattah's view was that the father had shown remorse. He had some concerns about his on-going communications with the mother (and I discuss these below), but he considered that the father's response to the DAPP was genuine.

72. I saw the father give evidence. He was cross-examined by Ms Millin on behalf of the mother. I repeat the warning I gave myself about demeanour evidence, however, in my judgment the father was a candid witness. He made concessions, for example, about having shouted at his son. He appeared to show genuine remorse about his

abuse of the mother during their relationship. He accepted that he was not a perfect father and that he made mistakes. He said, however, that he had undertaken a further course in parenting in order to try and improve himself.

73. Another relevant consideration in my judgment is the fact that the father back in 2020 refused to restart his relationship with the mother. Her sexually explicit texts showed that she was keen to get back together with the father. If the father was an unreformed domestic abuser, then he might have welcomed this opportunity to be able to abuse his victim once again.

74. I have to stand back and consider whether I accept the father's case that he is no longer the serious domestic abuser he was until his relationship with the mother ended in 2017. In making this decision, I have taken into account the findings I make on the other factual disputes in this matter. In my judgment, the father has learnt from the DAPP and is genuinely remorseful of his behaviour during the relationship. I reject Ms Senior's conclusion that there is "limited evidence of meaningful learning and reflection from [the father]."

Discussion of the video

75. There are really only four explanations for the children's account of the video. One is that the children simply invented the story. Another is that the father put the children up to telling the story. A third possibility is that some stranger or maybe another child had shown Cala and Daib the video. The last possibility is that the mother did in fact show them the video.

76. There is no evidence that the father put the children up to telling the story. Indeed the suggestion was not put to him when he was giving evidence. Likewise there is no evidence of a third party showing the video to the children. The likelihood is low in my judgment of (a) a third party showing the video and (b) the children then concealing that fact.

77. The main evidence relied on by Ms Senior for her conclusion that the mother did not show the video is firstly her view of the mother's character and demeanour and secondly the doubts which she considered Cala showed when Ms Senior questioned her.

78. As regards this second matter, it is unfortunate that Ms Senior's questioning of Cala in respect of this important issue appears to breach the guidance given for achieving best evidence ("ABE") from vulnerable witnesses. A Family Court Advisor will be seen by a young child as an authority figure: see the Home Office Guidance *Achieving Best Evidence in Criminal Proceedings* at paras 3.74ff https://assets.publishing.service.gov.uk/media/6492e26c103ca6001303a331/achieving-best-evidence-criminal-proceedings-2023.pdf. As such it is important not to ask "tag questions", in other words questions which suggest the answer which the questioner seeks: *The Advocates' Gateway Toolkit 1* at para 6.2 https://www.theadvocatesgateway.org/_files/ugd/1074f0_846f9ab1f1e94dd7bd58bcc62f76ddb8.pdf. Although these sources are directed at criminal proceedings, the principles apply equally to civil proceedings: *The Advocates' Gateway Toolkit 17* https://www.theadvocatesgateway.org/_files/ugd/1074f0_095d4a26cf2b4300bcd421894c78c96f.pdf.

79. In the current case, asking Cala: "Did that definitely happen?" will suggest to the then seven-year-old child that the questioner has doubts about the child's account. There is in my judgment a substantial risk that the vulnerable child will then tailor her answer to conform to what she perceives as the preferences of the authority figure. The failure to follow the ABE guidelines in my judgment substantially weakens Ms Senior's conclusion that Cala showed uncertainty. Further Cala's report of the matter to the school (which Ms Senior had not seen when she prepared her report) does not contain these doubts.

80. As to the mother's presentation when interviewed by Ms Senior, the considerations about the dangers of overreliance on demeanour apply equally to Ms Senior. I agree that a parent who has good insight into why showing a traumatising video to her children is less likely to do so than a parent who lacks such insight. However, it is a sad fact that even insightful parents do do bad things.

81. When cross-examined by Dr Chiy, the mother said that she had told the school about the video. She said that she would not know herself where to find such a video. She said that the father was making the story of the video up. There are difficulties about this evidence. It seems to have been Cala who told the school about the video and it is not apparent why the mother would independently be telling the school about it. Whilst abhorrent videos are undoubtedly banned, people do nonetheless manage to find them. The allegation that the father was making the story up lacks a factual basis and in my judgment shows ill-will on the mother's part.

82. Ms Millin in her oral closing submitted that there was not sufficient evidence in relation to the video for the Court to reach a 51 per cent conclusion and that I should simply say that the allegation against the mother was not proven.

83. Standing back and looking at matters in the round, in my judgment the allegation that the mother showed the video to her children is made out on balance of probabilities. Cala's account to the school was clear. It would be strange story for Cala to invent. The doubts which Ms Senior ascribed to Cala's account to her can in my judgment be discounted by reason of Ms Senior's failure to follow the relevant ABE guidance.

84. This finding is consistent with the father's case that the two children started to be estranged from him in the latter part of 2022 as a result of being shown the anti-Islamic video. It was his fear that they were being alienated from him which prompted him to start the current proceedings.

Discussion of the differing treatment of Cala and Daib

85. There was no real dispute that the father's method of giving points and prizes to his children for good behaviour resulted in Daib receiving fewer rewards. Whilst such a system of rewards may often be a satisfactory means of encouraging good behaviour, in the current case it has not done so. The father, however, has recognised this and taken a course to improve his parenting skills. In my judgment, the issue of the differing treatment of the two children has been satisfactorily dealt with.

86. The father's shouting at Daib is potentially more serious. However, it has to be remembered that Daib suffers from glue ear which causes some deafness. Further the father gave an example where Daib was at risk of cutting his feet on glass. Shouting

would be justified in such a case. In my judgment, the father has engaged with the criticisms of his parenting style. Shouting at a naughty child is not good parenting, but the father is aware of his imperfections and endeavouring to remedy them.

87. In my judgment, these are comparatively minor matters, which do not affect the ultimate welfare assessment.

Discussion of aggressive behaviour to the mother and in litigating

88. So far as abusive behaviour to the mother is concerned, I have given details of what Ms Senior and Mr Mamattah have said on this topic. As noted, however, no specific allegations of abusive communications were put to the father in cross-examination. In consequence, it is not open to me to make findings about these: *TUI UK Ltd v Griffiths* [2023] UKSC 48, [2023] 3 WLR 1204.

89. In any event, there is no real dispute that relations between the parents are poor. This is not simply the father's fault. At para 17 of her report Ms Senior records Cala saying that she wished that her mother "would stop fighting with my dad." Both parents are trying to minimise contact with each other to prevent such incidents. The father also appears to have recognised the criticisms made by Mr Mamattah of his style of communication.

90. In my judgment these matters should be taken into account in assessing the overall welfare assessment, but do not reach the threshold for 12J behaviour.

91. Ms Senior put weight on what she considered was the father's improper use of subject access requests and his sending emails to herself and other professionals. In my judgment, these criticisms are misplaced. Anyone is entitled to make subject access requests to public authorities and there is an intricate body of law on how a public body should respond. Making such a request cannot impact on the children at all, because they will not know such a request has been made. Indeed the other parent is unlikely to learn that a request has been made, unless the results of the request are used in the litigation.

92. A litigant such as the father is entitled to do what he lawfully can to bolster his case. Although there are procedures for third party disclosure in the Family Court (see FPR rule 21.2), these are not necessarily straightforward, particularly for a litigant-in-person. A subject access request might reasonably be described as a "poor man's third party disclosure order". In the current case, the father's requests have produced at least two significant documents: Cala's disclosure to the school of having seen the video and Ms Senior's notes of her interviews with the father and the mother. These have materially assisted in my reaching the conclusions I have.

93. Likewise sending emails to her and other professionals cannot impact on the children. I regret to say that Ms Senior's comments on the father's interactions with her can be interpreted as an unwillingness on her part to have her views challenged. In my judgment her criticisms of the father are unfair, since by comparing Ms Senior's draft report (obtained by the father via a subject access request) with that which was finally served, it can be seen that she did make some changes prompted by the father's comments in his emails.

Discussion of the father's complaints to public bodies

94. As set out in both Mr Mamattah's and Ms Senior's reports the father has made a number of complaints both to the police and to the local authority. These complaints have been investigated and in the event no action has been taken. This does not, however, in my judgment necessarily mean the complaints were made improperly or maliciously. Neither Mr Mamattah nor Ms Senior make such a finding.

95. I agree with Mr Mamattah that the father finds himself in a difficult position if he is told something by his children which gives rise to concern. On the one hand, if he ignores the issue, then he potentially exposes the children to harm at the mother's house. On the other hand, if he reports the matter to the police or social services, he may be treated as carrying out a covert campaign of abuse against the mother.

96. There is not sufficient evidence adduced before me to reach a conclusion as to whether the father did or did not act reasonably in making the referrals. In these circumstances, I find the assertion that the father acted improperly in making referrals to public bodies is not proven.

The welfare checklist — harm

97. I turn then to the welfare checklist in section 1(3) of the Children Act 1989 and commence with section 1(3)(e), any harm which the children have suffered or at risk of suffering.

98. My finding that the father has responded well to the DAPP means that Ms Senior's view that there is an ongoing risk of serious domestic abuse needs to be reconsidered.

99. I note, however, that Ms Senior may in any event not have been considering properly what constitutes 12J behaviour and whether the father's current presentation was itself 12J behaviour. In para 34 of her report she says that "coercive behaviour can be very difficult to evidence." Yet (as cited above) Hayden J in *M v F* at para [4] in the passage approved by the Court of Appeal in *Re H-N* at para [29] held that '"coercion" will usually involve a pattern of acts encompassing, for example, assault, intimidation, humiliation and threats." Those forms of behaviour are not usually "very difficult to evidence." This may suggest that Ms Senior considered that lesser forms of domestic abuse (such as 2021 behaviour which does not amount to 2015 or 12J behaviour) entail the serious consequences on contact often entailed by 12J behaviour. In the light of my findings, I do not need to consider this point further.

100. In my judgment, the father's positive response to the DAPP reduces very significantly the risk to the children of exposure to serious domestic abuse. There is admittedly an ongoing risk to the children from exposure to the poor relations which continue to exist between the parents, but in my judgment it is not such as of itself to mean that contact between the children and their father should be stopped on the grounds that the relationship between the parents is so toxic that the benefit to the children of contact with their father is outweighed by the harm.

The welfare checklist — other matters

101. I turn first to section 1(3)(a), the ascertainable wishes and feelings of the children. Cala was very positive about her enjoyment of contact with her father. She told Ms Senior that "she wanted to spend seven days at her mother's house and then seven days at her father's house." The worst thing she found about contact with her father was that he shouted at Daib.

102. As to Daib, Ms Senior says:

> "When asked what his father liked, Daib said 'buying us teddies, giving us points to buy teddies when we do good listening' and when asked what he hated, he said 'hurting people and he never tells my sister off.' Daib felt the best things about his father was he 'buys us toys when we have points' and the worst things is 'him shouting at me.' Daib said he wished his father would 'be good to me' and clarified that this meant 'not shouting.' When asked what he wanted to happen, Daib said he wanted to see his father for ten minutes once a week on a Thursday. Daib was unable to articulate why this was. He was clear that he did not wish to go to his father's home or see him at the weekends."

103. I have dealt with the father's different treatment of the two children and how he has recognised the need for change. Since the Order of 12th July 2023, contact has continued under the supervision of the paternal uncle. Although there has been no formal assessment of the contact, it appears both children have gone to it and enjoyed it. I also note that Daib's desire "to see his father for ten minutes once a week on a Thursday" is a very odd statement from a six-year-old child.

104. In my judgment Daib's age is such that only limited weight can be put on his expression of wishes. His main complaint is in relation to shouting, but the father has addressed this issue. In my judgment it is in Daib's best interests to continue to have contact with his father.

105. I turn to section 1(3)(b), (c) and (f). The children are well provided for at the mother's. Any change is likely to be undesirable. The current contact between the children on the one hand and the father and the father's extended family on the other is working well and in my judgment is of benefit to the children.

106. As to section 1(3)(d), the only relevant consideration is that the children are of mixed race with a Christian (albeit non-practising) mother and a practising Muslim father. The question of religion is the subject of an application for the determination of a specific issue. In fact, however, the issue between the parents is quite a narrow one relating essentially to practicalities. Neither parent wants the Court to determine the faith in which the children should be brought up. Both agree that that is a matter for the children themselves to determine as they grow up. (At present, Cala says she wants to be both Christian and Muslim, but this may present theological difficulties.)

107. The practical issue is how to introduce the children to the Muslim faith. The father and the mother live over thirty miles away from each other. The father's mosque is near his home, but does not provide classes for children at the weekend, only on Tuesdays and Thursdays. The children would thus need to be transported across London mid-week if they were to attend classes there. The parties agree that transport is a matter for the father to arrange. The mother, however, considers that the father

should take the children to the mosque at the weekend rather than disrupting them during the week.

108. The father, until the Order of 12th July 2023 changed the contact arrangements, had supper contact on Wednesdays with the children. An obvious possibility would be for that day to be changed, so that the children could go to the mosque before eating with the father. It might also be possible to find a mosque nearer the mother's home. (The father has family members who live in that part of London, so this may not be too difficult to arrange.) I will hear the parties on these matters when I come to make the Order consequential on this judgment.

Conclusion

109. In my judgment, having regard to the welfare checklist, it is appropriate to reinstate unsupervised contact between the father and the children as it was before the Order of 12th July 2023.

110. Ms Senior in her report invites the Court to make of its own motion a non-molestation order and a prohibited steps order against the father. The mother supports the making of such orders. In the light of my findings I decline to do so.

Section 91(14) of the Children Act 1989

111. Ms Senior suggested in her report that it might be appropriate for the Court to make an order under section 91(14) of the Children Act 1989 to prevent the father from making further applications to the Family Court regarding his children without the leave of the Court. The mother supported this proposal. The Court in its Order of 4th September 2023 gave directions for the determination of this issue.

112. The basis for making a section 91(14) order was (a) the number of applications already made by the father and (b) the danger that the father's applications could amount to further coercive behaviour.

113. I discussed the legal requirements for a section 91(14) order whilst sitting as a section 9(1) High Court judge in *Re Fatima; Leicester City Council v Mother and others* [2023] EWFC 212:

> "24. The test for the making of a section 91(14) order was originally very strenuous, requiring in effect repeated unmeritorious applications. The sub-section is, however, now to very different effect after section 91A of the 1989 Act was inserted by the Domestic Abuse Act 2021 with effect from 19th May 2022: see The Domestic Abuse Act 2021 (Commencement No 4) Regulation 2021 reg 2(1)(b).
>
> 25. The relevant statutory provisions now provide:
>
> > '91(14) On disposing of any application for an order under this Act, the court may (whether or not it makes any other order in response to the application) order that no application for an order under this Act of any specified kind may be made with respect to the child concerned by any person named in the order without leave of the court. For further

> provision about orders under this subsection, see section 91A (section 91(14) orders: further provision).
> …
> 91A(1) This section makes further provision about orders under section 91(14) (referred to in this section as 'section 91(14) orders').
> (2) The circumstances in which the court may make a section 91(14) order include, among others, where the court is satisfied that the making of an application for an order under this Act of a specified kind by any person who is to be named in the section 91(14) order would put—
> (a) the child concerned, or
> (b) another individual ("the relevant individual"),
> at risk of harm.
> (3) In the case of a child or other individual who has reached the age of eighteen, the reference in subsection (2) to "harm" is to be read as a reference to ill-treatment or the impairment of physical or mental health.
> (4) Where a person who is named in a section 91(14) order applies for leave to make an application of a specified kind, the court must, in determining whether to grant leave, consider whether there has been a material change of circumstances since the order was made.'

26. Practice Direction 12Q gives examples of circumstance in which a section 91(14) order might be appropriate:

> '2.2 The court has a discretion to determine the circumstances in which an order would be appropriate. These circumstances may be many and varied. They include circumstances where an application would put the child concerned, or another individual, at risk of harm (as provided in section 91A), such as psychological or emotional harm. The welfare of the child is paramount.
>
> 2.3 These circumstances can also include where one party has made repeated and unreasonable applications; where a period of respite is needed following litigation; where a period of time is needed for certain actions to be taken for the protection of the child or other person; or where a person's conduct overall is such that an order is merited to protect the welfare of the child directly, or indirectly due to damaging effects on a parent carer. Such conduct could include harassment, or other oppressive or distressing behaviour beyond or within the proceedings including via social media and e-mail, and via third parties. Such conduct might also constitute domestic abuse. A future application could also be part of a pattern of coercive or controlling behaviour or other domestic abuse toward the victim, such that a section 91(14) order is also merited due to the risk of harm to the child or other individual.'

27. Para 4.1 deals with the duration of a section 91(14) order, but gives little concrete guidance. The matter is left to the discretion of the Court, although the Court must give reasons…

32. The law on the new section 91(14) was conveniently summarised by Her Honour Judge Vincent in *Re S and T (Care — fact finding — FII — emotional abuse)* [2023] EWFC 195, where she said:

> '65. I have been referred to the cases of *Re A (A child) (Supervised contact)* [2021] EWCA Civ 1749, [2022] 1 FLR 1019, and *A Local Authority v F and others* [2022] EWFC 127, in which Gwynneth Knowles J considered sections 91(14) and 91A, summarised the relevant parts of Black LJ's leading judgment in *Re A*, and directed herself that section 91A(2) gives greater latitude to the Court to make section 91(14) orders than the previous guidance from Butler-Sloss LJ, in the case of *Re P (Section 91(14)) (Guidelines) (Residence and Religious Heritage) sub nom: In Re P (A Minor) (Residence Order: Child's Welfare)* [2000] Fam 15:
>
> > "Section 91A(2) provides that an order may be appropriate if the child is at risk of harm, harm being defined in accordance with section 31(9) of the Children Act 1989 to mean 'the ill-treatment or the impairment of health or development including, for example, impairment suffered from seeing or hearing the ill-treatment of another'. The risk that harm may arise to a child under the age of 18 unless the making of applications is restrained is not qualified by words such as 'serious' or 'significant' and neither is the degree of harm that a child may experience. I observe that, insofar as the risk that harm may arise to a child is concerned, section 91A(2) sits a little uneasily alongside guideline 7 of the *Re P* guidelines which states that there must be a '*serious* risk' [the judge's emphasis] 'that, without the imposition of the restriction, the child or primary carers will be subject to unacceptable strain'. Correctly applied to a child's circumstances, section 91A(2) gives a court greater latitude to make section 91(14) orders than the *Re P* guidelines do. Thus, in coming to my decision in this case, I have applied the new statutory approach to harm set out in s.91A(2) rather than guideline 7 of the *Re P* guidelines and, in so doing, I have adopted the ordinary civil standard of proof. That course is consistent with the modern approach of the Court of Appeal in *Re A* as outlined above." …
>
> 67. In his note, [counsel for the applicant mother] has helpfully drawn together from all this source material the following formulation, setting out what he (with agreement of the other parties) contends should be the Court's approach to an application for a section 91(14) order:
>
> > a. If findings of domestic abuse are made, even if the victim did not apply for this relief, the court is now bound to consider whether or not to make a section 91(14) order.
> >
> > b. While such an order is "the exception and not the rule", it does not follow that the case or its circumstances must

somehow be adjudged to be "exceptional" before such an order could be made.

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

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

e. Subject to any inconsistency with the above, the *Re P* guidelines continue to apply.

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

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

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

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

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

33. I agree that the risk of harm identified in section 91A(2) need not be serious harm, so that the Court has jurisdiction to make a section 91(14) order as soon as a risk, however slight, of harm is shown. Nonetheless, in my judgment the risk of the harm occurring is a very material consideration when the Court comes to exercise its discretion as to whether to make an order and, if so, for how long. If the Court were to make indefinite section 91(14) orders based on small risks, section 91(14) would very soon cease to be the exception and become a standard order in many care proceedings."

114. To this summary of the law, I should add that access to the Courts is a constitutional right: *Raymond v Honey* [1983] 1 AC 1 and *R (on the application of UNISON) v Lord Chancellor* [2017] UKSC 51, [2020] AC 869. Although a requirement of leave does not prevent access to the Courts, it does raise a hurdle to a litigant seeking to apply for relief.

115. The second ground for making the order is said to be the risk of the father using any application as a form of coercion against the mother. Care needs in my judgment to be taken with this way of putting the case for a section 91(14) order. It occasionally happens that parties to Court proceedings conduct "friendly litigation". This, however, is rare. The usual purpose of litigation is to coerce the other side. A creditor wants to use the power of the state to coerce the debtor into payment of his debt, if necessary by levying execution. A father wants contact with his children, to be enforced if necessary by the state punishing the mother for not allowing contact.

116. As a result, the new section 91A does not refer to coercion. Rather section 91A(2) requires the Court to be satisfied that an application would put "the child concerned… at risk of harm." Now in some cases it will be obvious that the number of applications to the Court is having a harmful effect on the children. This, however, will be fact-sensitive. It cannot be assumed that litigation will always harm children. In particular, where an application has resulted in contact arrangements being made which are to the benefit of the children, it will not in general be possible to say that the application has harmed the child. To the contrary, the application will have benefited the children.

117. The typical case in which section 91A(2) will bite is where repeated or hopeless applications have been made which have been intrusive and therefore detrimental in the children's lives. The Court will often be able to say that the children need a break from litigation for at least a couple of years. However, before making such an order, it does need evidence that the children have been or will be harmed.

118. In the current case, Ms Senior recommends that a section 91(14) order "be made to prevent further applications being made to the Court and the impact of this on Cala and Daib's wellbeing and interactions." However, she gives no evidence that the previous applications have had a negative impact on the children. The previous applications resulted in the children having direct contact with their father, which was to their benefit. The risk of harm occurring in the future seems to be posited on the father constituting an ongoing risk to the children, but I have refused to make such a finding.

119. In my judgment, there is no sufficient evidence that a further application by the father will put the children or either of them at a risk of harm. In these circumstances, I have no jurisdiction to make a section 91(14) order. This is not to encourage the father to make further applications. On the contrary, he should make every effort to agree contract arrangements voluntarily with the mother. If he makes unreasonable applications the Court can revisit the section 91(14) question.

120. I should add that, even if I am wrong in my conclusion that I have no jurisdiction to make a section 91(14) order, I would still in my discretion refuse to make such an order. An important consideration in my judgment is that the father has had a reasonable degree of success in the applications he has brought. The first application established that he needed successfully to complete a DAPP in order to have direct access to the children. The second application gave effect to the earlier order once the father completed the DAPP. In 2021 he obtained further contact. His application for enforcement of the contact arrangements against the mother was not proceeded with, but this is usual and proper when contact arrangements have been restored. His current application was prompted by the children's reaction to him after they saw (as I

have found they did see) the abhorrent anti-Islamic video. Again he has in these current proceedings obtained the relief he has been seeking.

121. Accordingly I refuse to make a section 91(14) order.

The late service of Ms Senior's report

122. By Order of 12th February 2023, the Court ordered Cafcass to serve a section 7 report by 4pm on 19th June 2023. This was in good time for the hearing listed for 12th July 2023. The Order also provided for the parties to provide position statements by 5th July 2023.

123. On 22nd June 2023 Cafcass wrote to the Court with copies to each side requesting a short extension. This request was legitimate. Ms Senior had completed her report in draft for service on 19th June 2023, but the father had sent her emails raising various matters. As I have noted above, it was legitimate for him to do so. Ms Senior quite properly considered his points and revised her report to reflect them.

124. What then occurred is not in my judgment legitimate. Cafcass took the view that it would be too dangerous to allow the father to see the report in late June. This is because he would have direct unsupervised contact, as previously ordered, on 8th and 9th July 2023. They were fearful as to how he might behave. Ms Senior's report is dated 10th July 2023 (although it was completed earlier), but it was served only on 11th July 2023.

125. Cafcass did not contact the Court to seek permission to adopt this strategy. The deliberate late service of the report was in my judgment a direct interference with the course of justice. Firstly, it meant that the parties could not provide position statements as ordered in February. Secondly, it necessitated the mother's legal representatives making an application dated 8th July 2023 to adjourn the hearing on 12th July 2023, thus wasting costs and legal resources. Thirdly, it meant that the father, a litigant-in-person, was hampered in obtaining advice prior to the hearing. Fourthly, it may have contributed to the Order made on 12th July 2023 containing no recital of the issues of fact which were in dispute.

126. There was a foreseeable risk that the short service might mean that the Court might not be able properly to consider what steps it should take in response to Ms Senior's report. In the event, that risk did not eventuate. The order that contact continue, but with supervision by the paternal uncle, was appropriate and was not affected by Cafcass's behaviour. But it might very easily have been different. For example, the father was lucky that he was able overnight to obtain the uncle's agreement to supervise contact.

127. I propose to refer this judgment to the designated family judge, so that these issues can be raised with Cafcass.