Neutral Citation Number: **[2021] EWFC 100 (Fam)** Case No: ZW18P00161

IN THE FAMILY COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 06/09/2021

Before:

MR JUSTICE WILLIAMS

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Between:

A FATHER	**Applicant**
- and -	
A MOTHER	**Respondent**
-and-	
The Child	

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Ben Mansfield (Counsel) (instructed by **Delphine Philip Law Ltd** for the **Applicant**
Simon Miller (Counsel) (instructed by Simon Bruce (Solicitor)Dads House Family Law Clinic)
both acting Pro Bono for the **Respondent**
Maria Stanley (Solicitor at Cafcass Legal) on behalf of the child

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Approved Judgment

I direct that pursuant to FPR 27 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE WILLIAMS

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.

Williams J:

1. On 11 June 2021 I formally handed down my judgment in which I had concluded that the father was responsible for the fatal poisoning of the maternal grandfather and the non-fatal poisoning of the mother and maternal grandmother. A number of linked applications or issues could not be determined at that hearing and I adjourned them to be heard at a one-day hearing on 6 September 2021. I joined the child as a party in order to ensure that this perspective was considered independently of the mother and father who both have so much at stake and are so emotionally immersed in the events of 2012 and these proceedings as I felt that the child's welfare would best be served by having the objective independent views of a Guardian before the court.

2. Despite the passage of several weeks since my decision had been circulated in draft on 29 April 2021 the father said he was not in a position at the hearing on 11 June to indicate whether he intended to pursue his application for child arrangements orders or whether he intended to appeal against the judgment.

3. I listed the following matters for consideration at today's hearing;

a. The Father's application for a child arrangement order;

b. The Mother's applications for:

   i. Costs;

   ii. The discharge of the father's parental responsibility;

   iii. A s.91(14) order;

   iv. Permission to disclose case papers to various non-parties.

4. Subsequently it came to light that the mother had since 2014 caused the child to be known by the surname Z at school and so she also indicated that she would seek an order permitting her to formally change the child's name. Although it was notified to the father and the Guardian late in the day it seemed to me that in the almost unique circumstance of this case that the outcome is likely to be linked very closely to the application to discharge the father's parental responsibility and engages similar issues.

5. The father confirmed in his statement dated 22 June 2021 that he pursues his application for a child arrangement order and wishes to establish indirect and direct contact with the child. He also filed a notice of appeal with the Court of Appeal which was issued on 2 July 2021. Although the father's position statement asserted that the application had been listed for an oral application for permission to appeal this in fact turned out not to be the case and currently the application remains at the predetermination stage because the father has not yet submitted to the Court of Appeal transcripts which are said to be relevant.

Adjournment

6. The fact that the application for permission to appeal remains outstanding led to an application being made by the father to adjourn this hearing on the basis that none of the applications could properly or fairly be determined when it was known that the father challenged the findings that I had reached. The father also sought to adjourn the welfare-based issues on the basis that further input of the Guardian was required as she had not filed a full analysis or a risk assessment but had limited her input to position statements and that it would be inappropriate to hear evidence from her today given the limited nature of the written information that she had put before the court.

7. The mother opposed the application for an adjournment on the basis in part that the father had been dilatory in putting the necessary material before the Court of Appeal but also that the applications were properly capable of adjudication in any event and that further delay should be avoided given the impact on the child and the mother. The Guardian was also content for the hearing to proceed given the clear views that she had reached in respect of the seriousness of the findings made and the consequences in terms of orders. The Guardian was also very concerned about further delay and the impact that this had on the mother and her ability to provide the best quality parenting for the child.

8. Self-evidently clarity as to the factual matrix on which both welfare and the other applications are to be judged is the paradigm. However, where the alleged lack of clarity is a result of an outstanding appeal the position is very different from where the fact-finding remains outstanding in order to clarify the factual

landscape. In this case I conducted an extensive and lengthy fact-finding hearing in April 2021. I have not seen the grounds of appeal but understand from the father's statement (he drafted the grounds himself) and from what Mr Miller and Mr Mansfield were able to tell me that the appeal is based largely on a challenge to my factual evaluation; that I misinterpreted evidence, placed undue weight on particular aspects of the evidence or failed to give due weight to other aspects of the evidence. Whilst of course I would not seek to presume what the Court of Appeal will make of those arguments I have been unable to identify anything that has caused me to pause and question whether I might have granted permission to appeal had those arguments been made to me. A challenge to a factual evaluation of a trial judge is of course difficult but that does not mean the appeal is doomed to fail; in this case we already have an example of this sort of appeal succeeding. Although the timing of this hearing was essentially dictated by my availability and that of counsel, I was conscious that a near 12-week interval ought to have resulted in a decision by the time we reconvened. By way of example in a judgment that I delivered on 28 July 2021 the decision of the Court of Appeal in relation to permission was received on 6 September 2021. That hope has not been fulfilled.

9. The judgment in draft was circulated to the parties' Leading Counsel on 29 April 2021. Editorial corrections were submitted by them on 14 May and a finalised version was circulated to the parties on 17 May. Due to the intervention of the Whitsun vacation and the availability of the party's counsel it was not formally handed down until 11 June 2021. At that point Mr Tyler QC was unable to confirm whether his client intended to appeal or not. The application for permission to appeal appears to have been lodged with the Court of Appeal on 30 June 2021. A decision on permission has not been made as the Court of Appeal are awaiting transcripts which were not filed with the application for permission to appeal. I was told in the course of the hearing that the application for the transcripts was submitted at the end of June or the beginning of July and was not processed until 16 August. I note however that the mother herself requested a transcript of the father's evidence on 13 May which was received by her on 18 June 2021. The notice of appeal stated that the transcripts would be filed within 21 days but on 16 August the father's solicitors sought an extension

of time to file the transcripts. The mother's solicitors offered the transcripts that they had which was accepted on 24 August 2021 by the father's solicitors but on 27 August the father's solicitors sought a further extension of time for submission of transcripts.

10. As the appeal was based on issues which will rise from the transcripts I find it hard to understand how some 9 weeks after the draft judgement was circulated they had not been obtained, particularly those of the father and the mother which seem to be central to the appeal as it was described in the father's statement. During the course of the hearing there appeared to be some confusion as to whether the hearing was conducted by Zoom and whether that had resulted in difficulties I could not clarify. However, the evidence of the mother, maternal grandmother, two of the mothers supporting witnesses and the father was all heard in court 34 and should be available through CRATU. Two of the mother's other supporting witnesses were heard by Zoom; the recordings of which had been undertaken by the father's Leading Counsel's Chambers and subsequently provided to the court. The father's statements and the position statements filed on his behalf make clear his vehement rejection of the findings that I made and so given the previous appeal against the earlier findings the likelihood of an appeal being lodged by the father was high. The fact that it was not lodged until nearly the last day of the time limit for appealing rather than being ready for lodging immediately after formal hand down indicates a lack of urgency on the father's behalf. Thus, ultimately the reason why the appeal has not progressed as might reasonably have been expected lies primarily at the door of the father in his failure to apply for transcripts at the earliest possible moment as the mother did.

11. It is of course possible that the Court of Appeal will grant permission to appeal and allow the appeal in which case a different factual matrix will exist and result in a reappraisal of any decisions I make. Almost inevitably given the way the mother's case is presented which relies very heavily, albeit not exclusively, on the fact of the seriousness of the findings would mean that any orders that I make would fall to be discharged were the Court of Appeal to allow the appeal. Similarly, the Guardian's evaluation is, as Ms Stanley made clear in

submissions, premised on the overwhelming importance of the findings in any welfare evaluation.

12. I do not see an obviously arguable area on which I might for instance have granted permission to appeal had that application been made to me. I therefore consider that my judgment remains sound and of course unless and until it is disturbed by the Court of Appeal it remains binding on all concerned.

13. I think it likely that even if the Court of Appeal refuses the father's application for permission to appeal or even indeed if they were to dismiss an appeal if it proceeded to a substantive hearing, that the father would not accept the findings. Further appeals would probably be pursued until domestic remedies were exhausted, any other avenues would be considered and even if following all of that the father remained the subject of findings it seems to me given the track record, not simply in terms of his challenge to findings but rather his attitudes which underpin those challenges which are clear both in his statements within the fact-finding proceedings but also in his most recent statement that the prospect of the father accepting the findings is almost non-existent. To the extent therefore that the adjourning determination of these issues to await the outcome of the appeal because there might be a change in stance of the father if he is unsuccessful is it seems to me probably without purpose.

14. These proceedings have been ongoing now for a very long period of time. Delay is of course prejudicial to the welfare of the child. As I have set out in my judgment, I concluded that the father's delay in initiating proceedings was not founded on the welfare of the child but rather on tactical grounds. Likewise, his application to withdraw his applications. I do not consider that the appeal has been pursued with the expedition that it ought to have. The father has been aware of the draft judgment and save for some modest typographical amendments the judgement I handed down on 11 June was substantially that which was circulated in draft on 29 April. That the father has still not obtained transcripts some four months later when the mother obtained what she considered to be essential transcripts within weeks. How he will pursue the appeal and future I do not

know but indications are that it will not be with the rapidity that the child requires.

15. Applications for adjournments are case management decisions to be made having regard to the overriding objective to deal with the case justly. Bearing in mind in particular what I consider to be the robustness of the findings made, the delay that has already occurred in the father's pursuit of his appeal and the likely further extended delay were this hearing to be adjourned further with all of its consequential detriment to the child and to the mother I was satisfied that I should proceed to hear the parties submissions before determining the applications. An adjournment would lead to the setting aside of a further day of court time and additional expense or trespass upon the pro bono goodwill of legal professionals. The investment of time and money for today would be largely wasted. I made clear that I was not ruling out the possibility that some applications or parts thereof might ultimately need to be adjourned but that I needed to hear submissions before I could reach a concluded view on what could and could not justly be determined today.

16. I therefore heard oral submissions on behalf of the mother, the father and the child over the rest of 6 September 2021. I then reserved this judgment.

17. In considering these consequential applications I have had the benefits of the supplemental bundle. In that are contained position statements on behalf of the parties for this hearing, statements filed by the mother and father together with exhibits and two position statements from the child's Guardian which sets out both general information about her investigations and her conclusions.

18. In both Re B (Minors)(Contact) [1994] 2 FLR 1 & Re B(Contact: Stepfather's Opposition) [1997] 2 FLR 597 the Court of Appeal approved the proposition that a Court held a discretion to dismiss an application without a full hearing on the merits and that it was for the judge to decide on a spectrum of procedure what type of hearing was necessary to deal with the particular case. Factors which would be relevant would be the prospects of success, the effect of delay, the sufficiency of evidence and the possible impact of examination of witnesses. In

Re TG (Care Proceedings: Case Management: Expert Evidence) [2013] 1 FLR 1250 Munby P referred to the power to summarily dispose of matters. Of note is that the court must undertake its consideration in recognition that it is an exercise of a paramount welfare jurisdiction but that summary dismissal can be made in a case which is groundless or lacking enough merit to pursue the matter; as Munby P said is there a purpose to be served in the application proceeding further?

19. I am also conscious of what the current President has said in the Way Ahead of the need for the court to focus very closely on the real issues and to dedicate an appropriate amount of court time to the parties to in their determination. Having spent some 10 days determining the fact-finding and a further day today I do not consider it proportionate to consider each and every point raised by the parties in their written submissions or in oral submissions. Notwithstanding the seriousness of the orders which are sought in terms of the attenuation or termination of the relationship between the father and the child which lend weight to the argument that the court should dedicate further time and careful consideration to them on the other side of the balance is the fact that I have made findings of the utmost seriousness against the father and that they have wide-ranging consequences in welfare and other terms. Whilst the seriousness of the findings made do not automatically determine the applications as perhaps became clearer during the course of oral submissions the result of the findings is such that almost all exploration of alternative ways ahead run into the dead-end that the egregious behaviour of the father represents. I therefore propose to deal with the applications in a more summary form then I might otherwise have been persuaded to in a case which was less stark in its appearance.

Child Arrangements Applications

20. The fact-finding hearing itself took place within the context of the father's application for child arrangements issued in February 2018. I set out in my judgment my concerns about the delay in the issue of that application and that I did not consider that the delay was justified and focused on the child's welfare. Following the successful appeal to the Court of Appeal the father applied to withdraw the application setting out a series of reasons (some welfare-based, others not) for so doing. Mr Justice Keehan refused that application. Given the

seriousness of the father's alleged conduct that was perhaps predictable. What is rather curious though is that the father now having been the subject of repeat findings by me now maintains that he wishes to pursue his application for child arrangements. However nowhere in his statements does he address how he sees child arrangements being developed or implemented. No proposal was put as to what might best meet the child's welfare needs in the light of the fact that the father has not seen the child for some eight years. Mr Mansfield in his submissions suggested some ways forward but that is a poor substitute for any welfare-based thought having been given to the issue by the father. Whilst the father may be entitled to say that he would welcome the input of the Guardian as to how that might be considered, the Guardian's considered opinion is that neither direct or indirect contact are in the child's best interests given the fact that the father has been found to have killed the paternal grandfather and attempted to kill the maternal grandmother and inadvertently could have killed the mother; of which acts he remains in denial.

21. Mr Mansfield urged me to consider also the fact that the child has a ½ sibling in the father's child with his new partner and that he has a paternal family in Bulgaria. He also emphasised that the father had had an attachment with the child when he was a toddler and that this could be reignited initially through indirect means but hopefully leading on to direct means.

22. The mother opposed any further consideration of contact whether direct or indirect. She relied on the fact that the father last saw the child in 2013 and that he did not seek orders in respect of the child until he issued proceedings in 2018. The child does not know his father and has no relationship with him. Dominating all on the landscape though is her continuing fear of what the father is capable of given his unpredictable poisoning of her parents and herself and the risk that he might pose to the child he is remaining in denial about his actions.

23. The Guardian adopted a similar approach. Ms Stanley emphasised that the Guardian could not contemplate indirect or direct contact when the father remained in denial about the findings made and when it was impossible given the seriousness of the findings and their nature to carry out any sort of risk

assessment of the father. She also relied on FPR PD 12 J which provides that where findings have been made against a parent each court should not contemplate contact unless it is satisfied that it is safe to do so. The Guardian was clear that no such conclusion could be reached in respect of safety in the circumstances that currently exist. She was also concerned that the pursuit of even further enquiries would give rise to issues which would be detrimental to the child's welfare. How could the question of indirect contact with his father be raised with him without discussing with him the findings that had been made against his father of which he happily remains unaware. What would the impact on the mother be of discussing such matters either with him or with the child still less the seeking to reintroduce some form of indirect contact with the man who the court has concluded killed her father and poisoned her and her mother? The mother had decided not to tell him until he is older and to burden him with that knowledge now will then place responsibility on him for decision-making at an age where he is not ready for it and it is not appropriate for that burden to lay on his shoulders. The Guardian was clear that given the severity of the findings and the potential further harm that would be engendered by the applications proceeding further that allowing them to progress was plainly contrary to the child's best interests.

24. It is well established from a host of cases that applications by parents for orders in respect of their children engage fundamental rights of the child and of the parent. The possibility of a relationship between a child and a parent will only be brought to a close by the court when the court has reached the conclusion that no alternative exists and no further enquiries or attempts can properly be pursued having regard to the welfare of the child. In some cases, this may take the form of the court adopting a no stone has been left unturned approach in the pursuit of the child is paramount welfare. However, in others the factual matrix may be such that there are no realistic ways forward where the balance of risk and harm justifies the court in taking no further steps to promote the re-establishment of a relationship. The court has a positive obligation to promote the re-establishment of a relationship in furtherance of the child and the party's article 8 rights and in many cases, this will oblige the court to take measures to seek to reconstitute the relationship and to promote contact. The court must be careful not to reach a

premature decision and to take a medium to long-term view rather than describe excessive weight to short-term or transient problems. The court must take all necessary steps to facilitate a relationship. However, the cases also clearly identifies circumstances in which the child's paramount welfare will be met by the making of an order for no contact or a no contact order. In this case a no contact order will essentially be the same as an order for no contact as the mother will plainly not permit contact were there to be no order.

- *Re C (Direct Contact: Suspension)* [2011] EWCA Civ 521, [2011] 2 FLR 912, para 47
- *Re W (Direct Contact)* [2012] EWCA Civ 999, [2013] 1 FLR 494,
- *Re Q (Implacable Contact Dispute)* [2015] EWCA Civ 991, [2016] 2 FR 287,
- M (Children) [2017] EWCA Civ 2164

25. To make an order which will have the net effect of bringing an end to the relationship between the child and a parent there must be cogent reasons for concluding that course will best promote the child's welfare and essentially where there is no alternative available which might better meet the child's welfare needs.

26. When one places the application in this case into the practical realities of the child's life the difficulties in the application become self-evident. Direct contact at present and indeed for the foreseeable future would be contrary to the child's wishes as expressed to the Guardian. It would expose the child to the unquantifiable risk that the father represents; I having been unable to clearly discern why he poisoned the family and he denying that he did so notwithstanding my findings. Direct contact would also pose a real risk to the mother's emotional and psychological well-being. The father allowed his relationship with the child to diminish by his inactivity between 2013 and 2018 such that the re-establishment of the relationship presents many hurdles. It seems likely that the child has no real recollection of his father and his life over the last eight years has been lived without his father. The mother has chosen, in my view rightly, not to tell the child of the reasons for his father's absence from his life.

Her reason for changing his name for the purposes of his education and how he is known in the community was to protect him from being associated with the father's name which has been the subject of press reporting in Bulgaria in connection with the poisoning. The pursuit of indirect contact with the father would require the father's actions to be confronted and explained to the child. It would be unconscionable to seek to reintroduce the child to even an indirect relationship with his father as an essentially benign character who had been absent for unexplained reasons when the truth is so shockingly different. I cannot imagine that the child would forgive the mother or the court if we were to sanction the re-establishment of a relationship keeping the child in the dark only for him to learn the truth at a later stage when some sort of attachment had been re-established. It would be potentially harmful to his relationship with his mother, to his trust in authority and would be immensely confusing for him. Whilst of course having some relationship with his father might bring some benefits in terms of parental affection and support and indeed knowledge of his paternal family the potential benefits are less than they might be given the father's prioritisation of his own interests from 2013 to 2018 (at least) but most importantly his capability as a father is fundamentally undermined by his poisoning of the maternal family.

27. It is also the case of course that the father himself sought to withdraw his application in November 2020 following his successful appeal to the Court of Appeal. Had the application been withdrawn then no child arrangements orders would have been made but of course the father would as a result of our binary system have cleared his name. The father put forward a host of reasons as to why he sought to withdraw his application at that stage; he has not sought to address those reasons and explain why his position has changed. The reason why his application was refused I'm sure was that the allegations were so serious that it fell into the bracket of cases where it was considered essential that findings were made in case future applications were launched and it may have been that some of the father's points in seeking to withdraw had merit. The mother and, I think, the Guardian both contended that the withdrawal was tactical in order to seek to preserve his name rather than motivated by the child's welfare; why is he now pursuing it findings having been made they rhetorically ask if it were otherwise.

28. I am therefore satisfied that it is not in the child's interests to take further steps to pursue the possibility of an indirect relationship leading potentially to a direct relationship with his father. I do not consider this case to fall into the category where no stone should be left unturned. I've considered carefully whether I ought to adjourn the decision on this aspect in order to enable the Guardian to give further consideration to the issue of indirect contact and how that might lead onto a resumption of a relationship and also the potential benefits to the the child of the possibility of a relationship with the paternal family. I'm also conscious that the father has not been able to question the Guardian, and this also has a facet of his article 6 right to due process. However, the mother and the child also have article 6 rights to a decision being given in a timely way and following a process which does not expose them to stress. Ultimately given the dominant presence of the findings I made I do not consider that anything found under a turned stone would alter the ultimate trajectory of the welfare evaluation nor that dealing with the case in a summary way is unfair to the father in the conduct of the article 6 balance. I do not consider that there is any purpose to be served in the application proceeding further and I'm therefore satisfied that the correct order is that the child should have no contact with his father until further order.

Termination of PR

29. The mother seeks an order terminating the father's parental responsibility for the child. Her essential case is that an individual who has committed poisoning of the maternal family, who has played no role in the child's life for eight years and who has prioritised his own self-interest at the expense of the child and of her is not somebody who it is in the child's welfare to have as an individual holding rights and responsibilities in respect of him. She submits that there is a sufficiently clear evidential basis upon which the court can do this; namely the findings made and the other evidence before the court. As a fallback position the mother invites the court to restrict the father's ability to exercise parental responsibility.

30. On behalf of the father Mr Mansfield says that the father is committed to the child and has demonstrated this by his engagement with the proceedings over the years and that he can bring benefits to the child in relation to important decisions

of parental responsibility; particularly in relation to medical treatment if such an issue arises. He also points out that in terms of identity there are benefits to the child in knowing that his father has rights and responsibilities in respect of him. The father submits that the removal of parental responsibility is a disproportionate response to the welfare concerns. He points out that he has not sought to interfere in the mother's decision-making down the years and has not sought to be a disruptive presence in the child's life but rather has been a distant but interested observer. This is not a case where the father represents a clear and present danger to the mother and to the child and where there is a track record of him seeking them out and seeking to harm them.

31. The Guardian does not support the removal of parental responsibility although does support the mother being able to take all decisions in relation to the child unilaterally save for permanent relocation from England and Wales and to life or death medical decisions. The essential reasons for the Guardian's position are that the complete extinction of the father's parental responsibility is disproportionate and that there is some vestigial benefit to the child in his father maintaining parental rights and responsibility in relation to him. It is a facet of his identity that his father is his father.

32. An unmarried father who acquires parental responsibility by operation of section 4(1) Children Act 1989 is subject to the power of the court under section 4 (2A) which provides that "*A person who has acquired parental responsibility under subsection (1) shall cease to have that responsibility only if the court so orders*." The court can make an order on application of any person with parental responsibility or the child himself. The effect of the jurisprudence on the area distilled by Mr Justice Cobb in *B and Another (Change of Names: Parental Responsibility: Evidence)* [*2017] EWHC 3250 (Fam), [2018] 1 FLR 1471* in which he drew upon the Court of Appeal's decision in *Re D (Withdrawal of Parental Responsibility)* [*2014] EWCA Civ 315, [2015] 1 FLR 166*, would appear to be as follows:

    a. Such orders are far-reaching and exceptional.

b. Such orders seek to disenfranchise the father.

c. Orders of this gravity should plainly only be made by the court if there was a solid and secure evidential and factual basis for doing so and such orders were palpably in the best interests of the child.

d. Parental responsibility is an important status which is an incident of the family and private lives of the adults and child concerned and which is reflected in the way in which parents should exercise their responsibilities for their child. It should be rare for a father not to be afforded this status.

e. Parental responsibility describes an adult's responsibility to secure the welfare of their child which is to be exercised for the benefit of the child not the adult.

f. When considering whether to limit or restrict parental responsibility, the court is considering a question with respect to the upbringing of a child, and the paramountcy principle in s1 Children Act 1989.

g. By s 1(4), there is no requirement upon the court to consider the factors set out in s 1(3) (the 'welfare checklist'), but the court is not prevented from doing so and may find it helpful to use an analytical framework not least because welfare has to be considered and reasoned.

h. The 'no order' principle in s 1(5) of the 1989 Act applies.

i. The factors relevant to the court's consideration of the grant of parental responsibility (the degree of commitment which the father has shown to the child, the degree of attachment which exists between the father and the child and the reasons of the father for applying for the order) may be relevant at the point of considering whether to revoke or limit the exercise of parental responsibility.

j. A child will ordinarily benefit from a relationship with both parents; the significance of parenthood of a married or an unmarried father should not be underestimated.

k. The parental responsibility which attaches to parenthood may bring added commitment to the child which would be likely to be to the child's benefit. Children have a right to the benefit of a father exercising PR.

l. A significant matter of status as between parent and child and, just as important, as between each of the parents. By stressing the 'responsibility' which is so clearly given prominence in s3 of the 1989 Act and the likely circumstance that that responsibility is shared with the other parent, it is hoped

that some parents may be encouraged more readily to engage with the difficulties that undoubtedly arise when contemplating post-separation contact than may hitherto been the case.

m. Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (the European Convention) is engaged here in respect of all of the family members, and interference with these rights needs to be justified. The child's rights under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 to respect for their private and family life must take precedence over those held by his father: Yousef v The Netherlands (Application No 33711/96) [2003] 1 FLR 210 (paragraphs [49] & [51]).

33. Mr Mansfield drew my attention to Two Cases where PR has been terminated such as *AA v BB & Ors [2014] 1 FLR 178* *Re: A and B (Children: Restrictions on Parental Responsibility: Radicalisation and Extremism) [2016] 2 FLR 977 PD* which involved serious domestic abuse where there was a risk to the mother and children if their whereabouts were located. He submitted that this case is not one in which the father clearly poses an ongoing and a direct risk to the mother or to the child. The poisoning of the mother was accidental. However, the person capable of poisoning family members clearly poses an unquantifiable risk. However, in this case it is the nature of the deed that the father perpetrated and what that tells one about his nature as well as the impact on the mother and on the child of the truth about his father which begs the question.

34. There of course exists an alternative to terminating the father's parental responsibility for the child which is to make specific issue orders which allow the mother to make decisions in relation to significant matters rather than requiring that there be cooperation between the parties. However arguably making the sort of extensive orders that would be necessary to avoid the need for cooperation between the parents on matters such as choice of schools, religious matters, serious health issues, country of residence et cetera may be so extensive as to nullify the father's parental responsibility in any event.

35. If one answers it in reverse and that poses the question of whether one would have granted the father parental responsibility on his application against this background, in the face of his ongoing denial and where he has had no relationship with the child for eight years the answer almost certainly must be yes. However, whilst those factors may be of some relevance to the termination of parental responsibility, I do not think they provide an automatic answer.

36. In this case the father was named on the birth certificate and has acquired parental responsibility and that parental responsibility has been in place for 11 odd years. The father's commitment to the child, or at least his commitment to the child's interest in preference to his own is questionable. When the child was a baby and a toddler his father played a role in his life. He has maintained some level of financial commitment through his child support payments. The relationship is now non-existent and the responsibility for that lies with the father. As I concluded in my judgement the delay in issuing proceedings in relation to the child was not for the reasons the father gives. Had proceedings been issued in 2014 who knows what the position would now have been but the reality is that the father has through a combination of his own active choices and the passage of time in these proceedings become nothing more than an identity without real meaning to the child and who has played no real role in the child's life or decisions concerning him for many years. My conclusions as to his personality and his prioritisation of his own self-interest together with the harm he has caused through his actions do not provide any confidence that he would exercise any form of day-to-day parental responsibility in a way which placed the child's rather than his own interests at the heart of the decision. The consequence of him exercising parental responsibility would be to force the mother to have dealings with an individual who she is fearful of (for good reason) and who has subjected her family to the most serious damage. In contrast she has shown herself to be largely child-centred in her decision-making; the most obvious example being that the child has not been poisoned against his father by knowledge of what he did. Her decision to change his name by deed poll to protect him from association with the father and any publicity linked to him has been validated retrospectively by the findings that the court has made.

The father's criticism of her and his suggestion that she should file evidence explaining why she took that step again suggest he is more focused on how matters impact on him rather than what is the reality for the child.

37. I do not consider it to be in the child's best interests to either allow his father to exercise any day-to-day form of parental responsibility or to create a situation in which the mother is obliged to consult with the father. The child's circumstances at the current time and looking forward into the future on the basis of the father's current attitude to the findings do not suggest that it will ever be in the child's best interests for the parents to share decision-making. However, I think there is some force in the status and proportionality arguments, particularly given how long the father has had parental responsibility for and his providing financial support that just tip the balance in favour of his retaining parental responsibility. However, I'm satisfied that it is in the child's welfare interests that that parental responsibility is almost entirely titular or status in nature and that all decisions relating to the child save for permanent relocation should be taken unilaterally by the mother. Although I have considered whether life-and-death medical decisions should also attract the father's input ultimately, I've concluded that it would be inappropriate. I reach this conclusion particularly because the father's behaviour during the critical period of the mother and grandmother's illness demonstrated that his self-interest supersedes the welfare interests of the mother and the child and that his medical expertise is redundant in those circumstances. Furthermore, a life-and-death decision would then expose the child and the mother to potential conflict with the father at the most sensitive moment and that I'm satisfied would be wholly counter-productive.

38. I will therefore maintain the father's parental responsibility but will direct that the mother shall be entitled to take all decisions relating to the child on her own save for permanent relocation to another country.

Change of Name

39. Such an application usually takes the form of an application for a specific issue order. Such orders engage the paramount welfare principle and the welfare checklist. The mother changed the child's name by deed poll on 28 October 2014

to [The Child] and that is how he has been known at school and in the community since. The change of name would on the mother's submission bring the child's formal identification into line with that which is used in day-to-day life and would align his name with her including for the purposes of official documentation such as passports. The mother submits that the situation now is fundamentally different to that which existed when his birth was registered [the findings been made prior to his registration there is no question that she would have registered him with the father's name].

40. The father opposes the application for largely the same reasons that he opposes the termination or restriction of his parental responsibility. The child's name is that which the parties chose for him and which was formally registered creating his status within the public record.

41. The Guardian also opposes the change of name on the basis that it is a disproportionate response to the problem that arises.

42. Cobb J considered the issues relating to changes of names in *B and Another* (above) in which he drew on earlier guidance from the Court of Appeal. He distilled the principles as follows:
    a. Among the factors to which the court should have regard is the registered surname of the child and the reasons for the registration, for instance recognition of the biological link with the child's father. Registration is always a relevant and an important consideration, but it is not in itself decisive. The weight to be given to it by the court will depend upon the other relevant factors or valid countervailing reasons which may tip the balance the other way.
    b. The relevant considerations should include factors which may arise in the future as well as the present situation.
    c. Reasons given for changing or seeking to change a child's name based on the fact that the child's name is or is not the same as the parent making the application do not generally carry much weight.

d. The reasons for an earlier unilateral decision to change a child's name may be relevant.
e. Any changes of circumstances of the child since the original registration may be relevant.
f. In the case of a child whose parents were married to each other, the fact of the marriage is important and I would suggest that there would have to be strong reasons to change the name from the father's surname if the child was so registered.
g. Where the child's parents were not married to each other, the mother has control over registration. Consequently, on an application to change the surname of the child, the degree of commitment of the father to the child, the quality of contact, if it occurs, between father and child, the existence or absence of parental responsibility are all relevant factors to take into account.
h. these are only guidelines which do not purport to be exhaustive. Each case has to be decided on its own facts with the welfare of the child the paramount consideration and all the relevant factors weighed in the balance by the court at the time of the hearing.

43. Part of the mother's rationale for seeking a change in his name is to bring his official documents into line with what he understands to be his name and how he is known at school and within his community. Most children and adults in 21st-century UK understand that the modern family will often be comprised of adults and children with differing surnames and issues of stigma are uncommon and hence the mere fact of a difference between a parent and a child's name rarely carries any weight. However the situation in this case is fundamentally different; this is not a mere lifestyle choice for the mother but is designed to insulate the child from the name of his father which is not only in the public domain but also now as a result of the findings identifies the name with a man who poisoned and killed the maternal grandfather and poisoned the maternal grandmother and mother. The child has grown up understanding his name to be Z - his mother's name and that is entirely understandable given that he has had no relationship with his father for eight years. The child's registered name was chosen at a time when the parents were in a trusting relationship and where the association with the father's name was no doubt something which both parents and the child

could be expected to be proud of in the future. The reality has proved to be very different. It seems highly likely that were the child to know the truth about his father and the truth about his registered name that he would wonder why he should bear the surname of a man who killed his grandfather and poisoned his grandmother and mother. The mother's name is entitled to the same respect that a father's name is entitled to; the selection of the father's name for formal registration was in a world that was fundamentally different to the world that the mother and the child now inhabit. Although the parents' choice was converted into legal formality and the public record by the registration and that must bear some weight I'm satisfied that the welfare benefits to the child of formal disassociation with the father's surname outweighs any benefits associated with the status associated with registration. Inevitably as the child enters his teenage years formal documents the most obvious of which will be his passport and if that carries his father's name I have little doubt that it will initiate questions and perhaps enquiries by the child which would be better left addressed in a planned way at an appropriate age. Creating congruence for all important documents between his mother and what he knows himself as well I'm satisfied will be more beneficial to him than maintaining what is essentially now an artificial formality which has no traction in his real world.

Section 91(14) Prohibition

44. Section 91(13) & (14) Children Act 1989 provide:

(13) Any order made under any other provision of this Act in relation to a child shall, if it would otherwise still be in force, cease to have effect when he reaches the age of eighteen.

(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

45. In Re P (Section 91(14) Guidelines) (Residence and Religious Heritage) [1999] 2 FLR 573, Lady Justice Butler-Sloss set out the following guidelines for the making of S91(14) orders at pages 592 – 593:

a. Section 91(14) should be read in conjunction with s 1(1) which makes the welfare of the child the paramount consideration.
b. The power to restrict applications to the court is discretionary and in the exercise of its discretion the court must weigh in the balance all the relevant circumstances.
c. An important consideration is that to impose a restriction is a statutory intrusion into the right of a party to bring proceedings before the court and to be heard in matters affecting his/her child.
d. The power is therefore to be used with great care and sparingly, the exception and not the rule.
e. It is generally to be seen as an useful weapon of last resort in cases of repeated and unreasonable applications.
f. In suitable circumstances (and on clear evidence), a court may impose the leave restriction in cases where the welfare of the child requires it, although there is no past history of making unreasonable applications.
g. In cases under para (6) above, the court will need to be satisfied first that the facts go beyond the commonly encountered need for a time to settle to a regime ordered by the court and the all too common situation where there is animosity between the adults in dispute or between the local authority and the family and secondly that there is a serious risk that, without the imposition of the restriction, the child or the primary carers will be subject to unacceptable strain.
h. A court may impose the restriction on making applications in the absence of a request from any of the parties, subject, of course, to the rules of natural justice such as an opportunity for the parties to be heard on the point.
i. A restriction may be imposed with or without limitation of time.
j. The degree of restriction should be proportionate to the harm it is intended to avoid. Therefore, the court imposing the restriction should carefully consider the extent of the restriction to be imposed and specify, where appropriate, the type of application to be restrained and the duration of order.

46. The mother has set out in her statements the impact of the proceedings upon her and the child emotionally, financially and in terms of her physical availability to care for the child. From what the Guardian was able to ascertain when she

visited the family it appears that the child has largely been insulated from the adverse consequences of the father's actions and the litigation which has taken place over the last three odd years. This forms a key component in her submission that the child's welfare requires the imposition of a restriction on the father's ability to make applications in respect of the child. In essence she says she and the child need a break from litigation. That would enable her to redirect her finances to provide a better quality-of-life for herself and the child and the maternal grandmother. It would enable her to be emotionally more available to provide the best quality care for the child. It would enable her to dedicate the time currently spent on preparing documents for litigation or investigating the case or attending court to other things more beneficial to the child and the family. She also relies on the submission that the father's applications are not primarily motivated by the child's best interests but rather his own and are not made when it is in the child's best interests but at times to suit the father's. She seeks an order which prohibits the father from making applications without the leave of the court until the child reaches the age of 18. She submits that making an order for three years would coincide with the commencement of the child's GCSE years and that if the court feels a shorter period of time is appropriate that five years which would take the child through to his GCSEs would be more appropriate.

47. On behalf of the father Mr Mansfield emphasises the following:

a. Father has not made repeated applications.

b. Father has not sought to undermine in any way Mother's role as primary carer, indeed he fully accepts it.

c. There is no evidence before the court that the child's welfare needs require such an order to be made in the absence of repeated unreasonable applications.

d. There is no proper evidence that without such an order being made Mother would be subject to unacceptable strain.

In the circumstances the father submits that the making of such an order would be disproportionate

48. The Guardian, again for essentially for reasons of proportionality submits that three years would give the mother and the child a period of stability and recovery which would be appropriate against the factual matrix in this case.

49. I have no doubt that this litigation has consumed the mother over the last three odd years. For significant periods she has acted as a litigant in person with direct access Counsel and even during my involvement in the case the extent to which she has dealt with matters usually in the domain of a solicitor has been substantial. More importantly her evidence made clear the extent to which establishing the truth has come to dominate her thinking and I have no doubt that not only has the litigation consumed considerable financial resources, but also a huge amount of her time and an even greater amount of her emotional energy. Whilst all the indicators are that the child is thriving, it begs the question of how well he would be doing if all of the family's financial, temporal and emotional energies were available for the benefit of the family rather than fighting litigation. Having said that I have no doubt that even prior to the litigation a huge amount of the mother's emotional resources were taken up with the Bulgarian criminal investigation and seeking to find answers to the question of who poisoned them or proof that it was the father. Thus, it was not only the litigation which was the cause of the calls upon the mother's resources. No doubt the continuation of the appellate process will also continue to call heavily upon the mother's resources emotionally and perhaps financially and in terms of her time. Only when the appeal has reached a conclusion and the findings stand or reached a conclusion and a different outcome finally settled will the mother be able to dedicate herself to the child and to family life. Having said that, were the outcome of the appeal to be that the father was exonerated, I have little doubt that the mother would for some period of time be consumed by the injustice that she would perceive had taken place.

50. The statements of the mother and what I witnessed during the fact-finding hearing lead me to an inexorable conclusion that an end to litigation would be of benefit to the child in making his mother more available to meet his needs.

51. It is also the findings I have made against the father in themselves, and in particular when accompanied by the father's denial of the truth, present a very high bar indeed to the viability of any application pursuant to section 8 that might be issued. Only were there to be a significant landscape altering event would section 8 applications have any purpose in being litigated. That might be the father accepting the findings and providing an explanation, it might be the child reaching an age where he reached out to the father and sought a relationship. However, absent such significant alterations it is hard to discern what purpose would be served by further applications and thus to that extent the imposition of a bar would in effect be to prevent meritless applications. The permission requirement would still allow the father to identify to me a factor of landscape shifting significance which might justify the grant of permission.

52. This is self-evidently not a case of repeated unmeritorious applications. The father has only made one application of substance albeit his application to withdraw it and his subsequent volte face following my findings could be said to amount to an unmeritorious pursuit of a previously abandoned (or attempted abandoned) application. However, that is not the fundamental reason why the mother and the Guardian seek the imposition of a bar.

53. I'm satisfied that it is in the child's welfare interests that he and the mother are protected from further applications made by the father for a period of time. I have considered anxiously whether the child's welfare demands that he be protected throughout his minority and if not what a shorter suitable period would be. Of course, it is hard to predict how one child will develop into their adolescence. When will the child begin to question his paternity and his family history? It may be in his early teens it may not be until later. Given the extent to which the events of 2012 and the litigation since 2018 have dominated the family's existence most particularly the mother's existence (she seems to have shielded the child) and given the fact that an appellate process is still underway a period of three years from now will in effect probably amount to no more than two years by the time the dust settles assuming the appeal is unsuccessful. Whether any landscape altering developments are likely within that sort of

period I could only speculate. The period of three years will take us through to 2024 which I think would bring the child into the beginning of year 9 and so that would not coincide with his GCSEs year. A period of six years would bring him into the beginning of year 12 and the commencement of his A-levels. Although ultimately settling on the period is somewhat arbitrary it seems to me that any period which significantly impacts upon the child's schooling would be counter-productive in welfare terms but that a period of six years or more would be disproportionate in terms of the interference with the father's access to the court. Given that the three year period is not disproportionate but is significant in terms of the ability of the mother and the child to distance themselves from the preoccupation that litigation has brought with it that appears to me to be the appropriate period that a section 91(14) bar should apply for is 3 years.

Disclosure

54. The mother seeks permission to disclose material to the Metropolitan Police, the Bulgarian Police and to the GMC. I believe that the mother has already disclosed the judgment to those bodies and now seeks to supplement that disclosure in order to provide them with further information which will inform their investigations. It was accepted on her behalf that disclosure prior to the outcome of any appellate process might complicate rather than clarify and that the order should take effect once the outcome of the appellate process is known. The Guardian agreed with this position. The following documents are the subject of the application.

(1) All father's statements including the exhibits and his response to the mother's Schedule of allegations.

(2) The mother's and maternal grandmother's statements including the exhibits.

(3) Report of Dr. Douse.

(4) The transcripts of the father's evidence from the first and second fact-finding hearing at the Family Court sitting in Barnet (October 2019) and the Family Court sitting at the Royal Courts of Justice (April 2021).

(5) Judgment dated 29/04/2021 (Mr. Justice Williams).

(6) Chronology dated 29/04/2021 (Mr. Justice Williams).

55. FPR 12.75 provides that a party may communicate information relating to the proceedings to work necessary to enable that party to make and pursue a complaint against a personal body concerned in the proceedings.

56. PD 12G permits the disclosure of a judgment by a party to a police officer for the purposes of a criminal investigation. This is not limited to the English or Welsh police. Disclosure to the police of documents other than a judgment requires the permission of the court.

57. The protocol of October 2013 disclosure of information in cases of alleged child abuse and linked criminal and care directions hearings confirms that:

(a) The text or summary of the court's judgment in care proceedings may be disclosed to a police officer for the purpose of a criminal investigation, subject to any direction of the court. The onus for arguing that such material should not be disclosed lies on the party contending that it should not;

(b) Other documentation relating to the proceedings may be disclosed to the police only with the court's leave. The onus for arguing that such disclosure should be made lies on the party seeking it.

58. *Re EC (Disclosure of Material) [1996] 2 FLR 725*. Swinton-Thomas LJ identified the principal issues for the court to consider when deciding whether to order disclosure. In Re H (children) [2009] EWCA Civ 704 the Court of Appeal considered the Re EC criteria. The Court of Appeal emphasised that it is impossible to place them in any order of importance because they will vary from case to case and the weight to be given to any factor may differ significantly. For instance, the public interest in the prosecution of serious crime is likely to be a very important factor. The factors identified in Re EC were:

"(1) The welfare and interests of the child or children concerned in the care proceedings. If the child is likely to be adversely affected by the order in any serious way, this will be a very important factor.

(2) The welfare and interests of other children generally.

(3) The maintenance of confidentiality in children cases.

(4) The importance of encouraging frankness in children's cases. All parties to this appeal agree that this is a very important factor and is likely to be of particular importance in a case to which s98(2) applies. The underlying purpose of s98 is to encourage people to tell the truth in cases concerning children, and the incentive is that any admission will not be admissible in evidence in a criminal trial. Consequently, it is important in this case. However, the added incentive of guaranteed confidentiality is not give by the words of the section and cannot be given.

(5) The public interest in the administration of justice. Barriers should not be erected between one branch of the judicature and another because this may be inimical to the overall interests of justice.

(6) The public interest in the prosecution of serious crime and the punishment of offenders, including the public interest in convicting those who have been guilty of violent or sexual offences against children. There is a strong public interest in making available material to the police which is relevant to a criminal trial. In many cases, this is likely to be a very important factor.

(7) The gravity of the alleged offence and the relevance of the evidence to it. If the evidence has little or no bearing on the investigation or the trial, this will militate against a disclosure order.

(8) The desirability of co-operation between various agencies concerned with the welfare of children, including the social services departments, the police service, medical practitioners, health visitors, school, etc. This is particularly important in cases concerning children.

(9) In a case to which s98(2) applies, the terms of the section itself, namely, that the witness was not excused from answering incriminating questions, and that any statement of admission would not be admissible against him in criminal proceedings. Fairness to the person who has incriminated himself and any others affected by the incriminating statement and any danger of oppression would also be relevant considerations.

(10) Any other material disclosure which has already taken place".

59. The father opposes any disclosure to the UK or Bulgarian police or the GMC whilst there is an extant appeal but also objects to disclosure on the basis that it should be for those investigating bodies to make application in accordance with the procedure contemplated by the Protocol on Disclosure. The father also submits that because there is no live criminal investigation PD 12G does not apply so as to authorise disclosure of the judgement to the English police. In respect of the Bulgarian police the father submits that an application should be made through the Hague evidence convention.

60. Given the seriousness of the findings that I made there is clearly a very strong public interest argument in the disclosure of relevant material into the Bulgarian criminal investigation and to the GMC. The issues of the child's welfare, the maintenance of the confidentiality of these proceedings and the encouragement of frankness in children proceedings carry relatively little weight in the particular factual context of this case. As I found in my judgement the father adopted a strategic approach to the giving of evidence rather than a frank approach and given the child has had no relationship with him for the last eight years and by reason of my judgement is not likely to for the foreseeable future I do not think there is any strong welfare reason to prevent disclosure. However, in respect of the GMC I'm not convinced that they would require any more than the judgement and chronology which can be provided to them in any event. The provision of the significant volume of further material does not seem in my view likely to add much and they are in a position to make an application to me for further disclosure if they consider that it would assist their investigation. The same holds true for the Metropolitan Police in particular given that there is no live investigation and events took place in Bulgaria. If they open an investigation or wish to consider opening an investigation and seek disclosure in order to inform that they can apply to me; otherwise disclosure seems to me to be without clear purpose at this stage. The position is different in relation to the Bulgarian Police. Not only are they carrying out an on-going criminal investigation who therefore ought to have access to the fullest range of material but they are not in

a position easily to either know that they can make an application or in fact to make an application to me; which would probably take the form of letters of request under the Hague taking of evidence convention. On balance I am therefore satisfied that following the conclusion of the appellate process and assuming that the conclusions I reached remain intact the mother should have permission to disclose the material identified above to the Bulgarian Police. In respect of the Metropolitan Police and the GMC they will need to apply to me.

Costs:

61. The mother seeks an order that the father pay various sums in costs that she has incurred in the conduct of the case.

62. On 14 January 2020 Her Honour Judge Jacklin ordered the father to pay the costs of the respondent mother summarily assessed at £54,390. £10,000 was payable by 28 January 2020 with the balance to be considered at the hearing on 7 February 2020. The father was ordered to pay the balance of £44,390 by 14 April 2020. That order was stayed by Mrs Justice Judd on 6 February 2020. The costs orders were also appealed, and those appeals allowed. The costs of the first instance hearings and the costs of the appeal were reserved to me as the subsequent trial judge.

63. In his application to withdraw the proceedings the father himself sought an order for costs against the mother and the return of the £10,000 he had paid in compliance with the January 2020 order. He also filed a Costs Schedule in advance of the April 2021 hearing signalling a possible application for costs had he been successful.

64. The costs which the mother seeks amount to:

a. £54,390 as per the original order of HH J Jacklin less the £10,000 the father paid leaving an outstanding balance from the first set of litigation of £44,390.
b. £4800 being the cost of Ms King QC for 7 February 2020.
c. Litigant in person costs of £11,480.25 [|G14]
d. Costs to 24 July 2020 totalling £22,139.

e. Costs to 26 April 2021 as a litigant in person using direct access Counsel. £54,411

Since then the mother has been represented pro bono by solicitor and counsel.

65. I note that in relation to her litigant in person costs the mother has quantified them at the rate of £85 per hour whereas For LiP's the rate is fixed at £19ph by PD46 para 3. The adjusted figures therefore come to

a. £44,390
b. £4,800
c. £2,408 + £706,50 = £3,114
d. £22,139
e. £5,172 + £1,470.21 + £31,800 (counsel) = £38,442

£112,885

66. Both parties sought summary assessment in the N260 statements of costs they filed for the April hearing. The father was represented by solicitor and Counsel throughout. By way of a simple parallel his Counsel's fee for the final hearing totalled £41,500 which would suggest that the fees incurred by the mother in respect of her counsel could not be subject to serious challenge in terms of the reasonableness of the amount.

67. The mother relies on a number of factors in support of her application that it would be just to make a costs order including:

a. the impact on her of the proceedings which have now been ongoing for several years and the extent to which she has adjusted her domestic life and what she has provided for the child in order to put herself in a position to fund the proceedings and to make the time available to prepare for the proceedings. She says this has affected not only her social life and that of the child but also her ability to for instance fund the purchase of major items such as vehicles and has impacted upon their ability to move. Her own savings and monies which she received from her mother from the sale of property in Bulgaria have been expended on these proceedings. In addition, the maternal grandmother requires medical treatment for the peripheral neuropathy which she sustained

as a result of the thallium poisoning. She has not had this as her funds have been expended on supporting the mother and the child.

b. The father's conduct in terms of the poisoning but also his approach to the litigation (as set out in the judgment) are both within the meaning of seriously unreasonable or reprehensible conduct as interpreted by the Supreme Court. The poisoning is at the most serious end of the forms of behaviour that a parent might exhibit in relation to their child and the maternal family. The father's failure to make any admissions and his tactical approach to all matters of evidence in effect putting the mother to proof or denying knowledge of documents found on the SD card and suggesting the fabrication of those documents are also litigation conduct.

c. Although the father maintains that he is unable to meet any costs order which is made against him as set out in his income and expenditure document which shows a net deficit in terms of his income and outgoings this is inconsistent with what he said in one of his statements where the father referred to the fact that he had a good income and that he owned three properties. The mother says she has sought disclosure of his financial position and he has not disclosed any material to support his bare assertions.

68. The father submits that it would be inappropriate to determine the application prior to the outcome of the appeal. I have dealt with this above.

69. The father submits that this is not a case where a costs order should be made for all the reasons set out by the Supreme Court in Re S and Re T and which do not differentiate between public law and private law cases to any meaningful extent. In particular Mr Mansfield submits that the conduct principally identified as being relevant to the making of a costs order in children cases is litigation conduct. Failing to make admissions in a case such as this is not litigation conduct. In the face of such serious allegations which are denied despite the findings it would be unreasonable to expect the father to have admitted it. If failing to make admissions of the central allegation were to amount to unreasonable conduct for the purposes of costs it would drive a coach and horses through the rule as it would apply in almost every case where there were disputes as to behaviour. Furthermore, the court should not interpret conduct so as to

include the behaviour which was the subject of the fact-finding for the same reasons. If adverse findings as to behaviour were to amount to conduct costs orders would not be the exception but the rule in fact-finding cases. The possibility of costs orders would also adversely impact upon the parties' engagement in the proceedings which is one of the central reasons identified by the Supreme Court for costs not usually following the event. The quasi-inquisitorial process even within a fact-finding hearing is intended to promote the welfare of the child and should be assumed to be acting in the welfare interests of the child and to promote this they should not make decisions with the spectre of a costs order being made against them. Paradoxically the mother's application if it resulted in a costs order would maintain the father's presence in their lives as inevitably, they would have to be some instalment order to meet it. If there is to be contact in the future or any sort of relationship a costs order will have a seriously detrimental impact upon the ability of the parents to work together. It will have seriously adverse consequences for the father and his ability to meet his own family's needs and his income and assets are insufficient to meet the order sought. He himself has expended very significant sums on his costs including monies provided by his family and a loan. In particular given he was successful on his appeal he should not be liable to any costs incurred in relation to that. Having sought to withdraw this application the fact that he sought to minimise the costs by that action should be taken into account in the court's evaluation.

70. The Guardian is neutral as to the costs application.

71. The parties are essentially agreed on the relevant statutory framework and the jurisprudence which outlines how it should be applied.

72. Section 51(1) of the Senior Courts Act provides that costs in the Civil Division of the Court of Appeal, the High Court and the Family Court shall be in the discretion of the court. Section 51 (2) SCA provides that rules may be made regulating matters relating to costs. The combined effect of the Civil Procedure Rules 1998 and the Family Procedure Rules 2010 set out a framework to deal

with the award of costs in family cases. The combined effect of FPR 28.2 and CPR 44.3 is that the court may make such order as to costs as it thinks just and provides for the application of the CPR framework save for the disapplication of the usual rule that the unsuccessful party will pay the successful party's costs.

73. The Supreme Court decisions in Re T (Children) (Care Proceedings: Costs) (CAFCASS and Another Intervening) [2012] UKSC 36, [2012] 1 WLR 2281, sub nom Re T (Costs: Care Proceedings: Serious Allegation Not Proved) [2013] 1 FLR 133and Re S (A Child) (Costs: Care Proceedings) [2015] 2 FLR 208 [2015] UKSC 20 have been considered in the context of private law cases in the High Court In M-v-F and H [2013] EWHC 1901 (Fam) by Peter Jackson J as he then was and by Cobb J in *Re E-R (Child Arrangements) [2016] EWHC 805 (Fam), [2017] 2 FLR 501*

74. The following principles can be distilled from the cases.

a. FPR 28.1 provides that the court may make such order as to costs as it thinks just. This is 'a rule of court' within s.51 Senior Courts Act 1981 which provides that costs are in the discretion of the court. FPR 28.2 applies CPR 44 (except rules 44.2(2) and (3) and 44.10((2) and (3)). CPR 46 and 47 and 45.8 also apply.
b. The court has a discretion as to costs
c. In deciding what order to make the court will have regard to all the circumstances including
    i. The conduct of all the parties. Conduct includes
        1. Conduct before as well as during the proceedings and in particular the extent to which the parties followed any pre-action protocol
        2. Whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue
        3. The manner in which a party has pursued or defended the case or a particular allegation or issue and

4. Whether a claimant who has succeeded in the claim, in whole or in part, exaggerated its claim.

5. Whether a party has succeeded on part of its case, even if that party has not been wholly successful, and

6. Any admissible offers to settle

d. The effect of the UKSC decisions in Re T and Re S (building on R-v-R [1997] 2 FLR 95 FPR28 and Sutton-v-Davis) in a case such as this is that the court starts from the no order principle because proceedings concerning a child are partly inquisitorial and the spectre of costs should not discourage participation in the proceedings or the possibility of cooperation in the future. In children proceedings one can generally assume both parties are motivated by concern for the child's welfare.

e. In Re: S at paragraphs 30 and 31 the Supreme Court said:

secondly, however, are there circumstances other than reprehensible behaviour towards the child or unreasonable conduct of the proceedings which might justify a costs order in care proceedings? It is clear from the authorities cited above that there may be other such circumstances in private law proceedings between parents or family members…….

I do not understand that Lord Phillips of Worth Matravers giving the judgment of the court in re T was necessarily intending to rule out the possibility that there might be other circumstances in which an award of costs in care proceedings might be appropriate and just. See also paragraph 26 in Re S

f. The principles can be applied in all kinds of proceedings concerning children regardless of whether the proceedings involve local authorities or private parties or whether the hearing a welfare, a fact-finding hearing or a mixture. Orders for costs may be made where a party's conduct has been reprehensible or significantly unreasonable but not otherwise. Conduct may include that before as well as during the proceedings and all the manner in which a case has been pursued or defended.

g. Making an order for costs may diminish the funds available to meet the needs of the family equally not making an order may also have that effect.

h. The orders the court may make include a proportion of a parties costs, a stated amount, costs from or until a certain date only, costs incurred before the proceedings have begun, costs relating to particular steps in the proceedings, costs relating only to a distinct part of the proceedings and interest of costs.

i. The court may make an order for costs subject to detailed assessment or may make a summary assessment.

j. The amount of costs will be assessed on a standard or indemnity basis, but the court will not allow costs which were unreasonably or disproportionately incurred or are unreasonable or disproportionate in amount. If assessed on a standard basis the costs will only be allowed if they are reasonably incurred and proportionate having regard to the matters set out in CPR 44.3(5). Doubts will be resolved in favour of the paying party. The court must have regard to all the circumstances and to the matters set out in CPR 44.4(3).

75. It is clear from the authorities that the conduct that the Supreme Court and other courts have considered support the making of a costs order includes reprehensible conduct towards the child and not just unreasonable conduct of the litigation. The inescapable fact in terms of conduct is my finding that the father poisoned and killed the maternal grandfather and poisoned the mother and maternal grandmother. Save by some contorted literal approach which said the poisoning was only conduct towards those who consumed it, it is plainly reprehensible conduct and on any common sense application is plainly reprehensible conduct in respect of the child. Indeed, it is conduct at the most reprehensible end of the spectrum. Save for killing the mother or killing a sibling I am unable to think of anything more reprehensible that a father could do. I therefore have no difficulty in placing the father's actions within the bracket of reprehensible conduct. I do not accept the submission that making a costs order based on conduct which was at the centre of the fact-finding hearing would be to drive a coach and horses through the no order approach. As ever with the evaluation of something such as conduct which sounds in costs the boundary between conduct which would not displace the no costs order and that which

does is blurry. However, this is not a case where the conduct is anywhere near the blurred boundary. In addition, the father's conduct of the litigation in particular in terms of his tactical approach and the non-admission of facts such as the SD card illustrate that his approach was far from open, frank and where the child's interests were front and centre. I concluded that the father's self-interests dominated many of his actions in relation to the commencement of the proceedings and their conduct thereafter including his application to withdraw the proceedings. I do not think that he can rely on his attempt to withdraw proceedings in support of his argument that his costs liability should be minimised. Nor can his success on the appeal given that the ultimate outcome I reached was the same as that reached by Her Honour Judge Jacklin QC.

76. The Court of Appeal specifically remitted the costs of that to be determined by the trial judge no doubt for the very reason that they considered that if the finding were made following the rehearing that it would be open to me to include the appellate costs in any costs order I made given the nature of the conduct in issue.

77. These matters make it entirely just that he pays the costs of the mother.

78. Inevitably making a costs order will have a significant impact on the father's current family. I do not accept what is said on his behalf about his financial circumstances or the impact of a costs order on him. I am not satisfied that the father's submissions as to his ability to make the award are evidentially reliable. His earlier statement that he owned three properties is in direct contradiction to the statement put before this court outlining his income and outgoings the explanation given by Mr Mansfield that his properties were in fact owned by a company. They may have the benefit of the legal veil a company and the owner of the shares enjoy but if the husband is the true and sole beneficial owner of those properties there may be arguments as to the lifting of the veil which may be appropriate for enforcement and are certainly not determinable by me today.

79. I am therefore satisfied that it is just having regard to the reprehensible conduct of the father together with aspects of his conduct of the litigation and his obscured financial position that he should pay the mother's costs.

80. I have already referred above to the comparison between the level of costs incurred by the father and that of the mother which indicate to me that the sum sought by the mother are reasonable. It is clear that she has dedicated a huge amount of her own time to preparing the case and this has resulted in a far lower figure for her costs assessed at the litigant in person rate than would have been the case had she continued to instruct solicitors as the father did. I therefore conclude that the sum set out above of £112,885 is reasonable and should be paid by the father within three months of the determination of the appeal.

81. That is my judgement. I invite the parties to submit an order which reflects those decisions. Clearly if the Court of Appeal accedes to the father's appeal the decisions, I have reached in this judgment will no longer be supportable as they are all founded on the rock of the father's conduct. Any order made should reflect this; probably by way of a recital. Inevitably each of the orders which follow upon the findings will be susceptible to being set aside if the appeal is successful. On that we must abide the event. Any future applications in relation to the child are reserved to me; subject to the Court of Appeal decision on my findings.

82. That is my judgment.