Neutral Citation Number: [2023] EWFC 5

Case No: ZE17P01593

IN THE FAMILY COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/01/2023

Before:

THE HONOURABLE MR JUSTICE HAYDEN

- -

Between:

F

Applicant

- and –

M

Respondent

- -
- -

(**Julien Foster** instructed by **Dawson Cornwell LLP**) for the **Applicant**
(**Matthew Stott** instructed by the **Duncan Lewis Solicitors**) for the **Respondent**

Hearing dates: 5th and 6th December 2022

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 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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THE HONOURABLE MR JUSTICE HAYDEN

MR JUSTICE HAYDEN:

1. On the 15th January 2021, I handed down judgment in ***F v M [2021] EWFC 4***. The case presented very serious allegations of coercive and controlling behaviour by the father (F), in the context of two relationships. The first of the relationships analysed in that judgment concerned the mother (M) of the two children with whom I am concerned at this hearing. They are Y, now aged 8, and S, now aged 5. The litigation history, as I recorded in the earlier judgment, had been extraordinarily protracted. The final fact-finding hearing, which I concluded in January 2021, had been adjourned 6 times. The originating application was made by F in October 2017. In August 2021, there had been a successful appeal from a case management decision by a Circuit Judge, and the case was then allocated to me. Peter Jackson LJ, delivering the judgment of the Court of Appeal, referred to the *"extremely difficult procedural history"*.

2. My judgment sets out very serious findings, at the highest end of the index of gravity, within the sphere of coercive and controlling behaviour. The findings have not been appealed. My approach, in the judgment, to this particularly insidious type of abuse, was approved by the Court of Appeal in *H-N and others (Children) (Domestic Abuse: Finding of Fact Hearings) (Rev 2) [2021] EWCA Civ 448.*

3. On the 24th March 2021, F issued an application for a Child Arrangements Order for contact with both children (i.e., barely 8 weeks after the judgment). It should be noted that he has never met S (the youngest child). There was also an application for a Specific Issue Order, seeking a change of surname for S. The latter application, in particular, and in the context of my findings, reveals, at best, an arrogant lack of empathy for the effect that the protracted proceedings had already had on M and the elder child, Y. More than that, however, it reveals how F has used the Court proceedings as a different facet of controlling behaviour.

4. On the 21st May 2021, M's legal team made applications for permission to disclose the judgment and the case papers to the police. Additionally, the application sought, in the event that no order for contact was made, to remove F's Parental Responsibility. It would appear to require to be stated that disclosure of the judgment to the police does not require a Court order. Unless the court specifically prevents it, the police and CPS are entitled to a copy of a judgment pursuant to Family Procedure Rules r.12.73. The information within that judgment must only be used for the purposes of child protection and/or investigation of crime. M's legal team also sought disclosure of the court order to F's immigration lawyers.

5. The parties here are married. Accordingly, F is granted parental responsibility for his children automatically, see *Section 2(1) Children Act 1989* ("the Act"). Withdrawal of parental responsibility is provided for by Section 4(1) of the Act:

> ***"Acquisition of parental responsibility by father.***
> *(1) Where a child's father and mother were not married to, or civil partners of, each other at the time of his birth, the father shall acquire parental responsibility for the child if—*
>
> *(a) he becomes registered as the child's father under any of the enactments specified in subsection (1A);*

> *(b) he and the child's mother make an agreement (a "parental responsibility agreement") providing for him to have parental responsibility for the child; or*
> *(c) the court, on his application, orders that he shall have parental responsibility for the child"*

Section 4(2)(A) provides:

> *"A person who has acquired parental responsibility under subsection (1) shall cease to have that responsibility only if the court so orders."*

6. Accordingly, as Section 4(1) only applies if the parents **were not** married at the time of the birth, the provisions of Section 4(2)(A) are not engaged. This is undoubtedly anomalous. The question has been raised as to whether such a distinction between married and unmarried parents is compatible with the European Convention on Human Rights. The matter has been considered by Russell J in *Re A and B (Children: Restrictions on Parental Responsibility: Radicalisation and Extremism) [2016] 2 FLR 977* and, in greater focus, in *MZ v FZ and others [2022] All ER (D) 130.* In that case, a declaration of incompatibility in respect of ss (2) and (4) of the Act was sought. The Secretary of State intervened. Russell J concluded that Parliament had determined that "birth" mothers and "married" parents should be afforded an irrevocable legal status and that there were legitimate reasons underpinning the legislative distinction, which also resonated in other areas of Family law. These, Russell J concluded, established *'weighty reasons'* justifying a difference in treatment, predicated on marital status. Accordingly, she determined that the statutory scheme was not incompatible with the Convention. Importantly, in her detailed factual analysis of the case, Russell J concluded that the inability of the applicant to secure a revocation of the respondent's parental responsibility had not amounted to a failure on the part of the State in its positive obligation or duty to do what was reasonable in all the circumstances, to protect her and the children from a real and immediate risk of harm:

> *"[128] The undoubted psychological harm, fear, anxiety, and emotional distress suffered was largely caused before these applications were made to the court. The residual trauma is undoubtedly severe enough to require treatment, but its primary cause was the behaviour of the FZ in the present case and not as a result of her inability to make an application to revoke parental responsibility as opposed to the CA 1989 orders granted which have virtually extinguished FZ's ability to exercise that parental responsibility. Such distress as that inability to apply for revocation has caused fail to meet the minimum level of severity threshold. The courts have held this to be a very high bar. I was referred to a number of cases where the domestic courts have concluded that the minimum level of severity had not been reached and/or Art 3 had not been violated, some of which made uneasy reading.[8] In AB v Secretary of State for Justice [2019] EWCA Civ 9 which concerned a minor, the suffering caused to a young offender who was placed on a "single lock'" regime whereby he could not leave his cell unless no other inmates were out of theirs for 55*

> *days was found by the Court of Appeal that it did not violate Article 3, where a positive obligation was asserted.*
>
> *[129] I do not consider that the inability of MZ to apply for a revocation of FZ's parental responsibility amounts to failure on the part of the State in its positive obligation or duty to do "what is reasonable in all the circumstances to protect her (or the children) a real and immediate risk of harm": Re E (A Child) (Northern Ireland) [2009] AC 536 per Baroness Hale. The available orders which have been granted by this Court are in this context reasonable and afford protection."*

7. As Russell J observed in *MZ v FZ* (supra), society and families have changed very considerably since the introduction of the Children Act 1989 (in October 1991). Cohabitation outside marriage has become far more commonplace. Marriage is available to same-sex couples, civil partnerships have been created and extended to heterosexual couples, carrying with them, the same privileges, and responsibilities of marriage. The Human Embryology and Fertilisation Act 1990 has now opened opportunities for biological parenthood to those for whom it would never otherwise been available. In this case, I found that F had raped M on more than one occasion. It is worth reflecting that even the concept of marital rape was not recognised until after the Children Act came into force. Each of these developments represents significant social change. Collectively, they reveal a very different social landscape to that facing the authors of the Children Act 1989. Prescient though the legislation has proved to be, I do not think it could have contemplated social change on the level we have seen. Against this backdrop, it is uncomfortable to realise, in 2022, that M may not make an application to divest F of his parental responsibility entirely due to the fact that she was married to him when the children were born. Moreover, by the time of the marriage, as I found in the judgment, M's autonomy had already been significantly corroded in consequence of her treatment by F. Her parents believed and continue to believe that the marriage was driven by F's desire to obtain leave to remain in the United Kingdom. However, whilst I find this anomaly of legal status to be profoundly uncomfortable, I do recognise that the contemplated protection for the applicant parent and children is to be found in the regime of Prohibited Steps Orders and Specific Issue Orders which the Children Act affords. Thus, whilst the legal status of a married father remains intact, it can be stripped of any potency to reach into the lives of the mother and children. His ability adversely to affect the welfare of either may be effectively prevented. This was the approach endorsed by Sir Andrew McFarlane P in *Sheikh Mohammed v Princess Haya [2021] EWHC 3480 (Fam)*.

8. On the 27th September 2021, F made an application, framed as a Specific Issue Order, seeking that any statement or admission made by him in the proceedings, would not be disclosed to the police. That application was pursued on his behalf by leading Counsel on the 17th November 2021. I refused the application for the reasons set out in my judgment: *F v M [2021] EWHC 3133*. On the 5th January 2022, F issued an application for permission to appeal my judgment to the Court of Appeal and an accompanying application to adjourn the final hearing pending the outcome of this appeal. Inevitably, I had to yield to the adjournment application.

9. The Court of Appeal granted the application to appeal out of time and gave permission to appeal. On the 28th February 2022, Peter Jackson LJ invited the Director of Public Prosecutions (DPP) and/or Secretary of State to consider making representations to assist the Court of Appeal with regard to the legislative differences identified in the appeal, concerning the application of Section 98 of the Children Act 1989 in private and public law proceedings. The DPP accepted the invitation and was joined as an intervenor in the appeal hearing on 31st March 2022.

10. On the 21st April 2022, the Court of Appeal dismissed the appeal. Lord Burnett of Maldon CJ concluded:

> *"[42] We see nothing unfair in expecting the father to make his case in the family proceedings to secure the outcome he desires and, if he considers it to be the case, to seek to persuade the judge that contact is in the best interests of his two children. He played a full part, including giving evidence, in the fact-finding hearing. If he has decided that his evidence in that earlier hearing was untrue and wishes to qualify or change it there is nothing unfair in letting him choose to do so. We observe that even section 98 of the 1989 Act provides no protection in the case of perjury. The Strasbourg Court generally looks at the totality of proceedings before determining whether they have been fair for the purposes of article 6. It does not exclude the possibility that a single step may render them unfair. Yet it is inconceivable that the refusal of a pre-emptive blanket order of this sort could amount to a violation of article 6. We are satisfied that the approach to disclosure from the family proceedings found in Re EC (Disclosure of Material) (see para. 17 above) provides appropriate protections and ensures that the family law proceedings would, in this respect, be fair."*

11. An application to the Court of Appeal for permission to apply to the Supreme Court was rejected. The application was renewed before the Supreme Court. On the 30th September 2022, F applied to adjourn the directions hearing before me pending the Supreme Court's decision on F's application. With very great reluctance, I did so. However, having heard nothing at all, from either of the parties, I caused my clerk to contact the parties' solicitors, informing them that I had listed the case on the 5th December 2022 for a final hearing. For completeness, I record that on the 2nd November 2022, the Supreme Court, Lord Lloyd-Jones, Lord Hamblen, and Lord Stephens refused the permission to appeal having concluded that the application raised no arguable point of law.

12. The order of the Court following the fact-finding judgment on 15th January 2021, records the following findings:

> *i. That the applicant father coercively controlled the respondent mother throughout the relationship by preventing her access to ante-natal care, isolating her*

from her family, friends and peers, controlling her money and food and deliberately curtailing her freedom, also amounting to emotional abuse;

ii. *That the applicant father raped the respondent mother, probably on more than one occasion, during their marriage;*

iii. *that the applicant father's conduct during the relationship, resulted in [Y] being exposed to emotional harm."*

13. I do not believe that the mother's legal team were successful in their attempts to ensure that the Home Office saw either this order or my judgment. In any event, in November 2021, I am told F received a letter from the Home Office, granting him a period of 30 months limited leave to remain in the United Kingdom. I am told that this is predicated on F's pursuit of the '10-year partner route' to secure eligibility for indefinite leave to remain in the United Kingdom. It is clear from my judgment that I have found F to be a serious danger to the physical and emotional safety of women and children. His evidence at this hearing revealed him, once again, to be narcissistic, arrogant, and entirely devoid of empathy for his former partner and the children. On this occasion, I propose to send a copy of this judgment and my earlier judgments to the Home Secretary for her personal consideration. Decisions relating to immigration are, of course, entirely for her. I forward the judgments simply to reassure myself that she has the full information before her.

14. On the 11th October 2021, the Cafcass Officer filed a report setting out her recommendations. She concluded that it would not be possible to safeguard the children from F's emotionally and psychologically abusive behaviours until he has undertaken behaviour change work. She noted that in my January judgment, I considered that F had caused emotional harm to children in the other relationship that I analysed. Nonetheless, she recommended that there be indirect contact by way of a letter once per year, to the children, which should be stored by their mother in a safe place, *"until such a time that they are able to read his letters"*. The Cafcass Officer had not revisited her report during the course of the intervening delay, nor had anyone requested her to.

15. On the 30th November 2022, F's solicitors contacted my clerk, informing me that *"the parties are in the process of preparing a consent order to adjourn the final hearing"*. The email went on to say that *"we believe that the time estimate for the final hearing can also be reduced… as it is hoped that the parties are able to narrow down some of the remaining issues by consent. The agreed consent order will be with the Court at the earliest opportunity"*. Reference was also made to the unavailability of M's Counsel. Via my clerk, I responded immediately, refusing the application to adjourn. I regarded that application as, at very best, misconceived. The case remained in the list and a different Counsel was instructed for M. Mr Matthew Stott was able to prepare the case thoroughly and has presented M's case with care, sensitivity and skill. If I may say so, Mr Julien Foster has provided similarly impressive representation for F.

16. I had noted that no application had been filed by either party for any order pursuant to Section 91(14) of the Children Act 1989. I therefore signalled, again via my clerk, that

I should like the parties to consider it and address me upon it. On the morning of the hearing, the following protective provisions had been agreed between the parties. Additionally, there appeared to be a consensus as to indirect contact as recommended by the Cafcass Officer:

> ***"Child arrangements (spends time with) order (Children Act 1989, section 8)***
>
> - *The father is permitted to send each of the children a letter once per year.*
>
> - *The mother is permitted to make arrangements for any other appropriate person to read any letter to the children.*
>
> - *It is a condition of the above arrangement that the father will set up a Post Office Box, fund it, provide the details of the Post Office Box to the solicitors for the mother and send any letter in accordance with this order via that Post Office Box. If he fails to take any of these steps then none of the arrangements at paragraphs 10 and 11, above will come into effect.*
>
> - *Except for the above arrangements, the children shall have no contact with the father.*
>
> ***Prohibited steps order (Children Act 1989, section 8)***
>
> - *No steps which could be taken by the father in meeting his responsibility for the children of any kind shall be taken by the father without the consent of the court.*
>
> ***Further applications (Children Act 1989, section 91(14))***
>
> - *Until 16 November 2035, no application for any order under this Act may be made with respect to the children concerned by the father without leave of the court. Any hearing is reserved to Hayden J if available.*
>
> ***Non-molestation order (Family Law Act 1996, section 42)***
>
> - *The non-molestation order made by Deputy District Judge Willbourne on 30 May 2019 and extended by Deputy District Judge Orchover on 4 November 2019 is extended until 16 November 2035.*
>
> ***Order for disclosure (Family Procedure Rules 2010, rule 12.73(1)(b)***
>
> - *The mother may disclose any document filed within these proceedings to any of the following persons: (a) the solicitor*

> *acting for the father in relation to his immigration matters; (b) the Secretary of State for the Home Department; (c) the police."*

17. This case commenced, on F's application, on 25th December 2017. As is abundantly clear, it has been heavily litigated. The challenges and obstacles to the smooth and timely resolution of the case, as discussed in the judgment from the fact-finding hearing, have been almost entirely of F's making. At risk of repetition, it requires to be emphasised, that F found the opportunity to extend his controlling behaviour into the Court arena. The Children Act embodied, for the very first time, in English statute, the obligation to avoid delay in litigation relating to a child. Underpinning that is a recognition that delay is invariably inimical to the welfare of children. Here, it has been actively harmful. The protective provisions agreed by the parties and set out above related to the findings that I had made but they did not recognise the opportunities that the litigation has created for F to exert control over M and the children's lives. With this omission in mind and with the full co-operation of the parties, I decided to hear evidence from the Cafcass Officer and from M and F.

18. Section 91A was inserted into the Children Act on the 19th May 2022 pursuant to the Domestic Abuse Act 2021 ss. 67(3), 90(6), SI 2022/553, Regs 1(2), 2(1)(b). In *Re A (A Child) (Supervised Contact) (Section 91(14) Children Act 1989 Orders) [2021] EWCA Civ 1749*, King LJ referred to a prevailing and *"changed landscape"*, not least in consequence of social media and wide access to smart phones. She considered that this opened considerably wider scope for the greater use of Section 91(14) which, to my mind, had always been intended to provide a protective filter from inappropriate applications. The filter exists to protect the child and, not infrequently, the parent with whom the child lives. It is not a punitive measure towards a recalcitrant parent. Neither is it a bar on access to justice. Where a Court identifies an issue that requires to be resolved, the case will proceed but where it does not, the child and the primary carer are protected from the stress and uncertainty of a misconceived or vexatious application. Anticipating the introduction of the amended Section 91A reforms, which had received Royal Assent, but not yet come into force at the time of her judgment, King LJ said:

> *"[45] ...It is worth however noting that the proposed new section 91A dovetails with the modern approach which I suggest should be taken to the making of s91(14) orders. In particular the provision at section 91A(2), if brought into effect, gives statutory effect to Guideline 6 of Re P (see para 39 above) by permitting a s91(14) order to be made where the making of an application under the Children Act 1989 would put the parent or child at risk of physical or emotional harm."*

19. Earlier, King LJ identified a concept of *"lawfare"*. That is a term I have not seen before but it encapsulates an experience that will be familiar to every family lawyer:

> *"[41] In my judgment in many cases, but particularly in those cases where the judge forms the view that the type of behaviour indulged in by one of the parents amounts to 'lawfare', that is to*

> *say the use of the court proceedings as a weapon of conflict, the court may feel significantly less reluctance than has been the case hitherto, before stepping in to provide by the making of an order under s91(14), protection for a parent from what is in effect, a form of coercive control on their former partner's part."*

20. The provisions within Section 91A are transformative. The section provides a powerful tool with which Judges can protect both children and the parent with whom they live, from corrosive, demoralising and controlling applications which have an insidious impact on their general welfare and wellbeing and can cause real emotional harm. This amended provision strikes me as properly recognising the very significant toll protracted litigation can take on children and individuals who may already have become vulnerable, for a variety of reasons. It also dovetails with our enhanced understanding of the nature of controlling and coercive behaviour. When all other avenues are lost, too often the Court process becomes the only weapon available. Lawyers and Judges must be assiduous to identify when this occurs, in order to ensure that the Court is not manipulated into becoming a source of harm but a guarantee of protection.

21. Section 91A requies; Section 91(14) require to be set out in full:

> **Section 91(14) orders: further provision**
>
> *(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.*
>
> *(5) A section 91(14) order may be made by the court—*
>
> > *(a) on an application made—*

(i) by the relevant individual;

(ii) by or on behalf of the child concerned;

(iii)by any other person who is a party to the application being disposed of by the court;

(b) of its own motion.

(6) In this section, "the child concerned" means the child referred to in section 91(14)

22. This has to be read in conjunction with PD12Q:

"Key Principles

2.1 Section 91(14) orders are available to prevent a person from making future applications under the 1989 Act without leave of the court. They are a protective filter made by the court, in the interests of children.

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.

2.4 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.

2.5 There is no definition in section 91A of who the other individual could be that could be put at risk of harm. However, it is most likely to be, but is not limited to, another person who has parental responsibility for the child and/or is living with or

has contact with the child, or any other individual who would be a prospective respondent to a future application.

2.6 In proceedings in which domestic abuse is alleged or proven, or in which there are allegations or evidence of other harm to a child or other individual, the court should give early and ongoing consideration to whether it would be appropriate to make a section 91(14) order on disposal of the application, even if an application for such an order has not been made (since the court may make an order of its own motion – see section 91A(5)).

2.7 Section 91(14) orders are a protective filter – not a bar on applications – and there is considerable scope for their use in appropriate cases. Proceedings under the 1989 Act should not be used as a means of harassment or coercive control, or further abuse against a victim of domestic abuse or other person, and the court should therefore give due consideration to whether a future application would have such an impact.

2.8 The court should consider case law for further guidance and relevant principles, bearing in mind Parliament's insertion via the 2021 Act of section 91A into the 1989 Act."

23. The following practice guidance is given in relation to duration of orders:

***4.1** Sections 91(14) and 91A are silent on the duration of a section 91(14) order. The court therefore has a discretion as to the appropriate duration of the order. Any time limit imposed should be proportionate to the harm it is seeking to avoid. If the court decides to make a section 91(14) order, the court should explain its reasons for the duration ordered.*

24. The protective provisions agreed by the parties were to extend until the youngest child had reached 18. I consider that this was necessary and proportionate. Having conferred with his client, Mr Foster told me that F was able to agree to the making of an order pursuant to Section 91A and for the same period. Again, on the facts of this case, I consider the duration of that order reflects the nature of the identified harm.

25. Thus, the only remaining issue before the Court was the question of the indirect contact recommended by the Cafcass Officer, in the terms already referred to at para. 14 above. The indirect contact that had been taken up by F plainly troubled the mother, though for reasons that she struggled to articulate. However, I found the maternal grandmother's (MGM) statement insightful and powerful. I set out her observations:

"Our whole family is emotionally, physically and mentally drained from the damage the Applicant has exerted on us over the years… The indirect contact that is currently in place

> *provides the Applicant with the opportunity to abuse or manipulate the children in the future; especially once these proceedings conclude. It should be highlighted that the Applicant has only sent the children cards twice since this was ordered, and in fact he again undermines the Respondent by writing the card to ["B"] and further asking in the card, "I wonder if you've learnt how to write your name".*
>
> *In [S]'s card, the Applicant has sent a card with two elderly people, not what I would call child friendly and talks about "sky gardens" and "a Punt in Cambridge", this would his wishes to again brag above living his alleged highlife… Our family have grave concerns for the welfare of [Y] and [S] in the event that the Applicant is granted any direct contact with the children. I do not believe the Applicant wishes to have a relationship with his children and his motives are questionable. It is hard to believe that the Applicant is able to love anyone else but himself from his previous actions, which is evident through the way he has continued to treat [the other families]."*

26. MGM concludes as follows:

> *"Our life has been in complete limbo and will continue to be until this case reaches a conclusion in favour of our daughter's position in respect of any future contact between the Applicant and the children. We are concerned from the knowledge we have been provided by one of the other families, that the Applicant continues to pose a risk and clearly has no insight into his behaviour. My husband and I are extremely concerned of how the Applicant will continue to deceive professionals to further himself in obtaining contact with [Y] and [S]. Currently, as [Y] and [S] are so young, they are without a voice. This worries me further as the Applicant seems to damage and ruin everything he touches, which can be seen in the psychological and emotional trauma he has caused to the [Z] children, who are much older than his own. It has always crossed my mind whether the Applicant requires professional psychological help to assist him in his urges to manipulate, control and abuse women and children. All we can hope for is that these proceedings will acknowledge the damage the Applicant has inflicted upon us and bring some justice to enable our family to heal, grow and progress."*

27. The Cafcass Officer told the Court that if the parties had not been married, she would have been recommending revocation of F's parental responsibility. This begs an inevitable question. If that were so, why would she recommend indirect contact? It struck me that the Cafcass Officer had reverted to general principles, without weaving them into the particular circumstances of this deeply troubling case. It is a professional

and, indeed, a human instinct to preserve some thread, however vestigial, that leaves open options for a child who does not have contact with a parent. Generally, this is considered to be an opportunity for a child to obtain some understanding of their cultural and genetic inheritance. As a principle, it is obviously both sound and important but it must not be seen as automatic. The need for it and the potential damage that might be caused by it, need properly to be evaluated. Nor, in my judgement, should the importance and reach of indirect contact be underestimated.

28. MGM had rightly identified that F was projecting an image to his children that cast him in a glamorous way. She talks of his 'highlife' which she sees reflected in a photograph of him in a punt in Cambridge. This tendency can be seen in the earlier judgment. Referring to the evidence of the second victim's mother, I made the following observation:

> *"[69] She told me how in February 2018, her daughter brought F to stay for the weekend. She recalled some facts to which she attributed significance, correctly in my view. F called himself 'Jordan', that was not his name, as emerged a few weeks later. He said that he was 40 years of age, he was 26. He stated that he had a Master's degree, that his family lived in Windsor and that he had been educated at Eton College. He claimed to drive a white Mercedes sports car and to live in a flat near London Bridge, where he was looked after by a housekeeper. I am not sure whether Mrs G had met many old Etonians, but she had perhaps seen sufficient of them in the media to cause her strongly to suspect that F was not one of their number. All this background was fantasy."*

29. None of this leads me to have any confidence that F is capable of fulfilling the Cafcass Officer's hope that he might, through indirect contact, be a conduit by which the children might know something of their cultural origins. He is, as I concluded above, a fantasist. Already MGM spots something of this fantasy life creeping into the limited indirect contact he has taken up. I consider her judgment to be correct and I entirely share her concerns. I note that F signs his cards off by stating *"I love you a lot and I miss you…"*. This is, on the face of it, innocuous but in the context of the background of the case, it is manifestly unsettling and confusing for the children. I emphasise again, that F has never seen the youngest child. Throughout these proceedings, F has not revealed the slightest insight into his own behaviour nor have I seen him exhibit even a scintilla of empathy for those whose lives he has grievously damaged. In cross-examination by Mr Stott, F was arrogant and even, at times, belittling of Counsel's questions.

30. MGM is also right, in my view, to comment on the nature of the cards. They are not strikingly 'inappropriate' in any offensive way, but they are cards intended for an adult. One of them shows an old couple walking along a road together, but there is something dark and slightly frightening in the image. It is intentional on the part of the artist. It is far from the type of card that one would send to children of this age. F told me that he bought the card because he had been talking to a woman at the Tate who had created the images on the card and was selling her own work. He told me that he engaged in

conversation with her and that she was an artist from the South-West. He wanted to encourage her work. This may be a laudable sentiment, but it failed entirely to recognise that this was a card for his children and not an opportunity for philanthropy. I found the absence of empathy, warmth or sentiment towards the children to be striking. I agree with M that the casual inappropriateness of the card is, itself, illustrative of F's attitudes and behaviour. MGM puts it simply: *"It is hard to believe that the Applicant is able to love anyone else but himself"*.

31. Analysed in this way, it is impossible to identify any benefit that indirect contact might bring to these children in this case. By contrast, it is easy to see how it might be unsettling and potentially harmful to the security of both the mother and children. After reflection in the witness box, the Cafcass Officer decided that this was a case where indirect contact was not appropriate. Though M, through her previous counsel, had been prepared to agree to an order for indirect contact, it was plain that she was doing so in an attempt to avoid conflict. It is equally plain that she could see only trouble coming from it. Additionally, she is very respectful to authority and I think, had been prepared to accept that if the Cafcass Officer had recommended indirect contact, it must have been in the interests of her children. That she was prepared to take advice that ran counter to her own instinct, reflects her determination to do what is right for her children at every turn but, it is also a signal that she has not yet fully achieved the capacity to assert her own autonomy. In my view, she should follow her parental instincts. Despite all that has happened to her, she is proving to be a very good mother. Her children are both doing extremely well. I asked M if she had their school reports. She told me that she had and brought them in the next day. They were in a folder in chronological order. This was not prepared for the Court; it was how she kept them and it reflected her obvious pride in them. The reports also told their own story, particularly, in relation to Y. The growth of Y's confidence can be tracked with each passing term. She is now doing very well academically. However, she knows when her mother and grandmother have had to attend Court and this causes her anxiety. It would have been impossible to conceal this from her given that the litigation has endured for 5 years and required many court attendances.

32. Ultimately, at the very end of the hearing, F decided that he would not oppose an order for *'no indirect contact'*. For reasons which are clear from the above paragraphs, the case requires a judgment to be given. Moreover, there are occasions where it is necessary to recognise a disagreeable truth. There is, sometimes, though very rarely, a parent who has nothing to offer a child and whom the child is better off without. This is such a case. When children are received into the care system and subsequently adopted, indirect contact is invariably ordered, though on a very limited basis. This recognises that though parents will not have been able to provide a satisfactory standard of care for their children, the children continue to be loved and their parents have an important contribution to make to their evolving understanding of their lives. The decision not to order any indirect contact has to be seen in this light, truly to understand how uncommon the order is and why. My comments in respect of this father are not ones that any Judge makes lightly. Judges do well to avoid emotive terms, but equally, where a clear finding requires to be made, it cannot be concealed in abstruse and cryptic language, which might only serve to soften or occlude the message. My conclusion accords exactly with that of M and her family. In the light of all they have experienced, it seems to me that they are entitled to know and in unambiguous terms, that their assessment of this father is, in my judgement, entirely accurate.