



Neutral Citation Number: [2024] EWFC 309

Case No: ZC21P00514

IN THE FAMILY COURT
SITTING AT THE ROYAL COURTS OF JUSTICE

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30/10/2024

Before:

MR JUSTICE MACDONALD

Between:

N
- and -
D

Applicant

Respondent

The Applicant appeared in person
Ms Fazeela Ishmael (instructed by Goodman Ray LLP) for the Respondent

Hearing dates: 3 October 2024

Approved Judgment

This judgment was handed down remotely at 10.30am on 30 October 2024 by circulation to the parties or their representatives by e-mail.

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MR JUSTICE MACDONALD

This judgment was delivered in private. The Judge has given permission for this anonymised version of the judgment (and any of the facts and matters contained in it) to be published on condition always that the names and the addresses of the parties and the children must not be published. For the avoidance of doubt, the strict prohibition on publishing the names and addresses of the parties and the children will continue to apply where that information has been obtained by using the contents of this judgment to discover information already in the public domain. All persons, including representatives of the media, must ensure that these conditions are strictly complied with. Failure to do so will be a contempt of court.

Mr Justice MacDonald :

INTRODUCTION

1. These proceedings concern the welfare of P who is, in the papers, described as “formally” G. The mother contends that P is biologically male but “identifies as a girl”, having done so, it is said, since she was 3 years and 5 months of age. For the purposes of this judgment I propose to use the name P and the pronoun “she”.
2. P’s father, N, is not named on P’s birth certificate and does not share parental responsibility for her. He has had no contact with P since she was born but expresses his wish to know P and to be a father. The father applies under the Children Act 1989 for a parental responsibility order and a child arrangements order providing for him to spend time with P. He represents himself. P’s mother, D, strenuously resists those applications. The mother contends that the father has previously shown little interest in P. She has refused contact between P and her father on the grounds of the father’s abusive conduct and what she contends is the risk posed by the father to P and herself. The mother is represented by Ms Fazeela Ishmael of counsel.
3. Within the foregoing context, the matter has been listed before this court to determine the following issues:
 - i) Whether the court should grant the mother’s application for a general stay of the proceedings?
 - ii) Whether the court should make an order pursuant to s.37 of the Children Act 1989?
 - iii) Whether the child should be joined as a party to the proceedings?
 - iv) Whether the father should receive monthly updates in writing concerning P?
4. On behalf of the mother, Ms Ishmael informed the court that it has not been possible to take instructions from the mother beyond the question of whether a stay should be granted, Ms Ishmael submitting that there is “significant concern about the serious risks to the mother of progressing other matters”. In these circumstances, Ms Ishmael further submitted that the court should determine the question of stay and adjourn consideration of the other issues. I was not prepared to accede to that submission. It is the court that determines what issues are to be determined at a hearing, not the parties. The matter has been listed for determination of the foregoing issues since 22 April 2024, the original hearing and a further timetabled hearing having been adjourned by consent due to the mother requiring further time with a trauma trained intermediary to prepare for the hearing and to enable her lawyers to take full instructions on the issues set out above. The court will not permit the proceedings to be derailed by a party simply refusing to engage in the issues the court has listed for determination.

RELEVANT BACKGROUND

5. Much of the background to this matter can be taken from the finding of fact judgment of Recorder Meacher, handed down on 17 June 2022.

6. The parents met on an adult social platform in 2015. The father was born in 1985. The mother was born in 1984. Both parents accept that their relationship was casual, although the father claims that the mother attempted, on occasion, to develop a more romantic relationship. The relationship continued on a casual basis until 2018, when the mother became pregnant with P. The mother informed the father of this on 14 October 2018. The mother alleged that after doing so, the father became physically, verbally and emotionally abusive and pressured her to have an abortion. The mother further alleged that the father threatened to kill her, to kill P in-utero and to kill himself. The father contended that he was initially upset by this news of the pregnancy. He further asserted, however, that he was subsequently supportive of the pregnancy and became excited about the prospect of being a father.
7. Between 14 October 2018 and P's birth, the parents' communication was intermittent, primarily via WhatsApp and email, though there were some direct encounters. Some of these were instigated by the mother and others by the father. The parents did not resume a relationship during this period. During this time, contact would occasionally cease when the mother broke off communication with the father. The mother alleged that despite her breaking off all contact with the father on 6 April 2019, the father continued to contact and harass her.
8. The mother alleged that the father's conduct placed her pregnancy at risk. The mother made a number of allegations during this period, including that the father continued to make threats to her pregnancy and stalked and harassed her. The mother suffered medical complications during her pregnancy, including increased blood pressure. The mother attributed these complications to the father's behaviour. The father denied responsibility for the mother's high blood pressure and alleged that the mother was prone to temperamental behaviour. The mother further contended that the father's actions endangered her pregnancy, resulting in her being admitted to a High Dependency Unit, and ultimately leading to P's premature birth in May 2019.
9. On 15 May 2019, the mother was granted a without notice non-molestation order against the father. On 29 May 2019, an on notice hearing took place at which the non-molestation order was extended for a further 12 months until 28 May 2020. The father did not contest that outcome on the basis that he had no intention of breaching the order. He received no legal advice regarding the order. No application was made by the mother to renew the non-molestation order upon its expiry.
10. On 13 April 2021, the father made an application for a child arrangements order permitting him to spend time with P and an application for a parental responsibility order with respect to P. In July 2021, Cafcass completed the Safeguarding Letter. That letter revealed that the father knew that the mother had not moved from her home, notwithstanding that she had informed the father that she had done so. In consequence the mother made a complaint of stalking to the police. The police investigated that complaint but took no further action.
11. Within the proceedings under Part II of the Children Act 1989, the court determined that a fact finding hearing was necessary. That hearing commenced remotely on 30 May 2022 with both parties represented by counsel. The mother made an unsuccessful application to adjourn the proceedings on the first day of the hearing. During the hearing, the mother was treated as a vulnerable party and benefited from

special measures pursuant to FPR Part 3A and PD 3AA. On 17 June 2022, the Recorder drew the following conclusions and made the following findings:

- i) The court assessed the mother to be forceful, pedantic and argumentative and someone who could not accept there was any other way of viewing the evidence before the court than her own. The mother's failure to make appropriate concessions in the face of clear, independent evidence to the contrary was considered by the court to be an attempt to bolster her desire to ensure that P did not spend time with the father. The court further concluded that the mother at times reconstructed events and the meaning of messages to be consistent with her beliefs regarding the father. She was assessed not to be a reliable or credible witness.
- ii) Whilst some of the father's answers were ambiguous, the court was satisfied that he did not attempt to avoid answering questions. When asked short, clear questions the court considered that he provided direct and focused responses. He was assessed by the court as a reliable and credible historian of events.
- iii) The court found that mother's allegation concerning the alleged conduct of the father when she informed him of her pregnancy on 14 October 2018 was not made out in full. The judge concluded that a discussion regarding termination of the pregnancy had caused the mother great offence and she was angry with the father and that both parents became angry as part of a "power struggle". The court concluded that the father grabbed the mother by the arms and shook her and that thereafter the father pushed the mother away from him and she asked him to leave her home. The court declined to find that the father pushed the mother into a wall, ripped her clothes or refused to allow her to change her clothes. The court declined to find that the father hugged the mother and whispered into her ear that he would kill her, the baby and himself. The court was satisfied that the mother left the property as she did not feel safe given the events, was scared, frightened and traumatised. The court found that the father notified the mother when he left her property and the mother did not stay out until 10pm to ensure he left the property. The court declined to find that the events of 14 October 2018 caused the mother to have a haematoma that threatened the pregnancy. The court concluded that after the incident on 14 October 2018 the father's conduct did not give her further reason to be fearful of him and that her conduct during the pregnancy did not support her contention that she was fearful of him.
- iv) The court found that the message from the father on 5 November 2018, in which he said "Get the strap!" was not a threat to kill the mother or the baby. The court concluded that the mother was unhappy that the father was not meeting expectations and was concerned why he had posted on social media rather than checking she was alright. The court found that the mother had sent ugly and unpleasant messages on 5 November 2018. The court was satisfied that from at least 5 November 2018 the father was supportive of the pregnancy and excited about the birth.
- v) The court declined to find the father said to the mother at the baby scan on 30 November 2020 that he wanted the baby to go away or that he got angry at the appointment. The court was satisfied that the mother had subsequently

recreated a narrative for 30 November 2020 to fit her subsequent and current view of the father.

- vi) The court was satisfied that the father discussed a made up incident in which he said he had been involved with the police on 2 November 2018 and this caused the mother reasonable concern in light of the events on 14 October 2018. The court declined to find that the father threatened in December 2018 to get rid of the baby and to make it look like an accident.
- vii) The court found that the father attended the mother's property on 15 January 2019 uninvited and refused to leave. The court declined to find that the father had hidden in a cellar before knocking on the mother's door and found that the mother had let the father into the property. The court declined to find that once in the property the father was intimidating to the mother or that the father made threatening comments about making the pregnancy go away and making it look like an accident.
- viii) The court declined to find that the father attended the mother's house sometime between January and March 2019 and acted in an abusive manner.
- ix) The court declined to find that when giving the mother a massage the father slapped her on the back and threatened to make the baby 'go away'.
- x) The court declined to find that the father made unwanted sexual advances to the mother and declined to find that the father had grabbed the mother's hand, placed it on his erect penis and tried to stimulate himself with it.
- xi) The court declined to find an incident had taken place on 18 March 2019 and concluded that the mother was upset that the father was on his phone during a midwife appointment.
- xii) The court declined to find that the father came to the mother's home and made comments about how easy it would be to kill a new-born baby in the same way he killed possums as a child. The court declined to find that the father had touched the mother's stomach and found the feeling of the baby "disgusting". Rather, the father was excited by the new arrival, had attended scans with the mother, but found it uncomfortable feeling her stomach as he did not wish it to appear to the mother that he was in a committed relationship with her.
- xiii) The court found that the father attended the mother's property uninvited on 16 April 2019 and left when a neighbour asked him to. The court declined to find that the father's car was parked in the locality or that the father was stalking or intimidating the mother thereafter.
- xiv) The court found that the first time the mother asked the father not to contact her was on 17 April 2019 and that the email messages sent by the father after that date were not designed to intimidate or harass the mother.
- xv) The court found that the father had not received an electronic notification cancelling his attendance at the ante natal course on 20 April 2019, that the mother had ample time to tell him he was no longer invited to attend the

course but did not do so and that the father was angry at being excluded and embarrassed, which was a reasonable reaction in the circumstances. The court was satisfied that the father left voluntarily when asked and despite being angry remained calm and compliant and that the course facilitator encouraged the mother to call the police having been told by the mother that she had been advised to do so if contacted by the father.

- xvi) The court further concluded that in March and April 2019 the mother decided that contact with the father was not good for her and the baby and thereafter created a narrative fitting her view of the father and decided that she did not want the father to be part of her and the child's life.
 - xvii) The court found that the letter accompanying the get well soon card sent to the mother in May 2019 did not amount to a threat or intention to harass her.
 - xviii) The court declined to find that the 'no caller ID' calls to the mother's phone in April 2022 were made by the father.
 - xix) The court declined to find that the mother's high blood pressure and admission to the High Dependency Unit of the hospital were caused by the father. Rather, the court found that the mother experienced a traumatic birth which had a lasting impact on the mother. The court declined to find that the traumatic birth was caused by the father's conduct.
 - xx) The court declined to find that the father had stalked the mother and found that this allegation was part of a misguided and unfounded belief that the father wanted to cause harm to her and the child.
 - xxi) The court declined to find that the father had financially abused the mother by not paying CMS arrears in one lump sum but by a payment plan or by seeking a paternity test through the CMS.
12. In the foregoing circumstances, the findings of fact adverse to the father comprised:
- i) A finding that the discussion regarding termination of the pregnancy caused the mother great offence. During the discussion both parents became angry, the father grabbed the mother by the arms, shook her and pushed her away from him, following which she asked him to leave her home.
 - ii) A finding that the father discussed a made up incident in which he said he had been involved with the police on 2 November 2018, causing the mother reasonable concern in light of the events on 14 October 2018.
 - iii) A finding that the father attended the mother's property on 15 January 2019 uninvited and refused to leave.
 - iv) A finding that the father attended the mother's property uninvited on 16 April 2019 and left when a neighbour asked him to.
13. Recorder Meacher noted that, during the course of her oral evidence, the mother stated in terms that she did not want the father to be involved in the child's life and wanted P to make the decision as to whether she has contact with her father when she

is an adult. The mother further stated her belief that the father is a risk to P and that if he has contact with her he will kill her. This notwithstanding the court's finding that the father had *not* made threats to kill the child, the mother or himself. Given the mother's strength of feeling, Recorder Meacher was satisfied that if contact were ordered the mother would make it difficult for the father to have contact with P.

14. On 17 June 2022, Recorder Meacher made an interim child arrangements order for indirect contact that required the mother to send to the father by 27 June 2024 a selection of photographs of P to show her development and growth. The court further ordered that once per month the mother must send to the father an update in respect of P.
15. The mother sought permission to appeal the findings made by Recorder Meacher. Permission to appeal was refused. On 21 February 2023, the report submitted by Cafcass pursuant to s.7 of the Children Act 1989 recommended that the father attend the Freedom Programme for perpetrators of domestic abuse and a parenting course. The Cafcass report further recommended that there be a psychological assessment of the mother.
16. On 22 February 2023, the mother applied for an assessment by a trauma trained intermediary in circumstances where she asserted, without medical evidence, that she suffered from symptoms of Post Traumatic Stress disorder which prevented her from engaging with her legal advisers. The mother also applied to adjourn the Dispute Resolution Appointment (DRA) for the same reasons. The court refused to adjourn the DRA. At the DRA on 1 March 2023, the court adjourned the mother's application for an intermediary assessment and instead concluded that an expert psychological assessment of the mother was necessary to determine the proceedings justly and directed the mother to file and serve a Part 25 application for permission to instruct an expert psychologist to assess her by 8 March 2023. An addendum Section 7 report was directed and a further directions hearing was listed on 31 May 2023.
17. On 11 March 2023 the mother applied to vary the order dated 1 March 2023 to permit an assessment by a trauma trained intermediary prior to any psychological assessment. The grounds for that application were that the mother was not able to provide instructions to her legal team due to "significant symptoms of trauma". On 23 March 2023, having acknowledged the difficulties the mother's solicitors were encountering taking instructions from the mother given her self-reported symptoms of PTSD, the court acceded to the application to vary the order of 1 March 2023 and granted the application for an intermediary assessment. The court reiterated that the opinion of an expert psychologist was necessary to resolve the proceedings justly and extended the time for filing and serving a Part 25 application for permission to instruct an expert psychologist to 4 May 2024.
18. The intermediary assessment took place on 28 April 2023. The subsequent report recommended that the mother have a trauma-trained intermediary for the duration of the case. Within the context of the current application, the following matters are of note:
 - i) In preparation for a hearing the mother should be supported by an intermediary to assist her with understanding the evidence, preparing her statement and response and preparing for cross examination. The mother should be given the

opportunity to familiarise herself with the courtroom. Written material should be provided in advance and adequate time allowed for discussion on the morning of the hearing.

- ii) During the hearing, the mother's communication skills should be continually appraised, time will be needed for detailed explanation and checking of understanding and time will be needed for breaks. The intermediary should monitor the mother's emotional state and the court should break immediately in the event of an anxiety attack. The mother should be provided with a simplified copy of the witness template. Consideration should be given to the use of a screen in court (although at a later point in the report the use of screens is recommended throughout the proceedings). The intermediary will assist counsel in framing questions having regard to the recommendations in the report.
 - iii) Following the hearing, consideration will need to be given to the manner in which the judgment is delivered, for example by way of a brief summary and the opportunity to check understanding with the legal team and intermediary.
 - iv) Subject to having an intermediary for the duration of the case, at no point does the assessment suggest that the mother is not capable of participating in the proceedings.
19. On 26 June 2023, Cafcass submitted an addendum report. That report stated that the FCA had had email correspondence "relating to G's gender identity". The report further details that it had not been possible to complete the welfare assessment in circumstances where the mother had not, to that point, been able or willing to meet with the FCA either in person or remotely. The report appends correspondence from the childminder which is stated to set out that childminder's "potted history of the development and emergence of P's gender identity". The following points are of note from that correspondence from the childminder:
- i) P is said to have become interested in horses and thereafter dolls in early 2021 aged 20 months and developed "a love of Frozen and Elsa". P is described as wearing an 'Elsa' cape followed by an 'Elsa' dress and shoes to which she became very attached. By January 2022 P is said to have "wanted to wear dress up costumes all the time".
 - ii) In January 2022, it is said that following the children talking about their 'willys' and the child minder explaining the anatomical terms 'penis' and 'vulva', the exchange "seemed to strike a particular chord with P", who is described as returning to the subject to ask questions more often, in contrast to the other children "who just accepted the information and moved on".
 - iii) Thereafter, P is described as having "some behavioural problems" around objects that would be considered "feminine items". Having detailed what are described as "struggles / tantrums / anxiety" over such objects, the childminder states that "we didn't realise at the time what P was trying to tell us but hadn't quite found the language yet".

- iv) It is stated that in January 2023, when P was three and a half years old, the childminder states that P “disclosed” that she “wanted to cut off her penis with scissors and have a vulva”. It is said that when asked why, P stated “because she wanted to be a girl”. Within the context, the child minder relates as follows:

“This caused her mother great alarm as it’s indicative of body dysmorphia/gender dysphoria which can be very distressing, so she explained to P that it’s ok to be a girl and have a penis, which seemed to be a relief to P who then stated that she is a girl and asked to be addressed as ‘she/her’. At this point, her mother asked her if she would like to go out and buy some dresses that she could wear day to day rather than needing dress-up, P was very excited about this and I agreed that it was a great idea. Once P felt that she had our support and affirmation and finally understood what was going on, the object-based behaviour/anxiety stopped pretty much overnight. I strongly believe that the behaviour around these items was frustration at not having the ability or courage to explain to us why they were so important, a reflection of her identity as she saw it.”

- v) Thereafter, the childminder states that she and the mother “spent a lot of time advocating for P” and that the mother secured a referral to the GIDS clinic for gender affirming care. In her letter to the FCA, the child minder states that “The GIDS referral should be filled out by the GP, but they asked Mum to fill it out” and that “Mum didn’t feel comfortable doing this and referred it to me as someone impartial and a professional with an extensive overview of Ps (*sic*) history and development.”
- vi) It is stated that in March 2023 P chose that name and used it consistently thereafter.

20. Notwithstanding the mother having expressed her view to the court that P should have *no* contact with her father until an adult, and the contents of the childminder’s letter, which suggested P had been diagnosed with “body dysmorphia / gender dysphoria” by the childminder and/or her mother on the basis of the information set out above and without any input from the NHS or other statutory agencies, the FCA concluded her report of 26 June 2023 as follows:

“In the absence of further information about G's mother's capacity to engage with the proceedings and with Cafcass, there is no further role for us.”

21. The foregoing circumstances fall to be viewed in the context of the outcome of assessments the mother sought in respect of P. That assessment was undertaken as the result of a private referral rather than by way of a referral through the NHS. Within this context, the court has before it a report prepared by Dr D-V, Consultant Child and Adolescent Psychiatrist. In Dr D-V’s report, she is described as providing an assessment service only. Dr D-V’s report is entitled “*Autism Spectrum Disorder (ASD) and Attention Deficit Hyperactivity Disorder (ADHD)*”. It is dated 17 May 2024 and is co-signed by SD, a counselling psychologist. Dr D-V concludes that P meets the DSM-V diagnostic criteria for ADHD and for ASD. Dr D-V further opined

that P showed “significant signs and symptoms of Pathological Demand Avoidance (PDA)”.

22. The sources of information cited by Dr D-V do not include the finding of fact judgment delivered by the court on 17 June 2022. In the circumstances, with respect to the impact of the father’s conduct, Dr D-V appears to have been reliant on the mother’s account, which was expressed in terms of “ongoing abuse” and the mother suffering from PTSD “given the length and severity of the abuse she endured”. In particular, it is clear from the report that the mother gave Dr D-V a detailed account of the actions of the father that included actions that the court subsequently declined to find proved or was satisfied had not occurred. It would also appear that the mother informed Dr D-V that children’s services had informed her that they were considering a placement for P if the mother “did not keep the child safe from her biological father”.
23. Much of Dr D-V’s account of P’s difficulties is drawn from reporting by the mother and P’s childminder. Within this context, Dr D-V records that a *markedly* different account was provided by P’s nursery. P’s very different presentation at nursery when compared to the presentation described by her mother and her child minder is ascribed by Dr D-V to P’s ability to “mask her needs and difficulties...at a great expense to P’s emotional and psychological wellbeing”. Dr D-V further opines that P is not able to cope with the multiple demands posed by mainstream education and advises an Education Otherwise than at School (EOTAS) package providing specialist educational provision with an expertise in autistic children with a PDA profile and ADHD. Looking forward, Dr D-V opines that teenage years “can be particularly difficult for transgendered girls with ASD” and recommends a range of written resources.
24. The court also has before it an Occupational Therapy assessment by DM dated 1 March 2024. That assessment is expressed as having been prepared to assist the mother to apply for an Education, Health and Care Plan (hereafter ‘EHC plan’). Mr M saw P for one session over the course of two hours, in addition to conducting a home visit. He concluded that, at four years and nine months old, P presented with a complex sensory and neurodevelopmental profile, with clinical signs of a sensory processing disorder and a developmental coordination disorder / dyspraxia. Mr M considered that P required a home based occupational therapy input over the course of 12 months, including sensory integration treatment and play based creative art therapy. With respect to her educational needs, Mr M was likewise of the opinion that P requires an EOTAS package with a Learning Support Assistant. With respect to social care, Mr M opined that P requires two to one support. Mr M further advocated the installation of a sensory room, a multidisciplinary approach and parent training.
25. I pause to note that the total cost for these assessments came to £6,020. The mother requested that the father pay half of these costs. The mother’s solicitor informed the father that the mother was considering a claim under Schedule 1 of the Children Act 1989 if an agreement could not be reached promptly with respect to the costs of the assessments. I will return to this topic in due course.
26. In addition to the reports of Dr D-V and Mr M, the court before it has a speech and language report from LH, Consultant Speech and Language Therapist, dated 6 June 2024. Ms H details P’s diagnosis of ADHD and ASD, noting that P displays signs of

PDA, as well as her sensory processing disorder and developmental co-ordination disorder. Ms H states that P “has gender dysphoria”. Ms H opines that P has cognitive abilities and good verbal skills which mask her overall difficulties. Ms H further considered that P had “fluctuating capacity” for many areas of language and communication and showed “differences” in attention listening and auditory processing, social communication and anxiety, leading to demand avoidance and selective mutism.

27. Finally, the mother has provided the court with an educational psychology report compiled by IM, Educational Psychologist. The sources of information for the report, dated 13 June 2024, include the foregoing reports, the mother, the nursery and the childminder. Once again, it would not appear that the finding of fact judgment handed down by the court featured in the sources of information provided to the educational psychologist. Within this context, the educational psychologist records “It has been reported that when in utero, P would have experienced implications of domestic abuse. It is believed that this exposure to trauma continued through her experience of the family court.” The source of these reports and beliefs is not made clear by Ms M. The Educational Psychologist records that “P (formerly G) disclosed her change in gender identity to both her mother and childminder”.
28. Ms M recommends a holistic, MDT approach is applied to meet P’s needs. She considered that P’s educational needs could not be met in mainstream education or specialist school provision. Within this context, Ms M too recommends an EOTAS package for P.
29. Returning to the chronology of these proceedings, on 29 June 2023 the mother filed a C2 application seeking permission pursuant to FPR 2010 Part 25 for an expert psychological assessment and the appointment of a trauma-trained intermediary for all future hearings. The mother also sought an adjournment of the next directions hearing, then listed on 1 August 2023. That latter application was refused and at the hearing on 1 August 2023 the court gave permission to instruct an expert forensic and chartered psychologist, Dr HJ. The order of 1 August 2023 also provided for the implementation of special measures to ensure that the mother would not come into contact with the father at any future hearing. Within that context, the court directed that all future hearings should be attended in order to allow the mother to be present in court with both her intermediary and legal representative. The court also confirmed the direction for the mother to send monthly updates to the father in respect of the P, and encouraged the mother to provide recent photographs of P and images of any interesting artwork or similar items that P had completed.
30. The expert psychological report was received on 31 October 2023. The following aspects of the report of Dr J are relevant for the purposes of the current application before the court:
 - i) The mother’s account of events differs from the findings of fact made but the mother holds her narrative of events as being true and, regardless of the accuracy of her own narrative, this will impact on her beliefs and her behaviours.
 - ii) The mother was unable to complete the psychometric assessment of PTSD due to extreme distress. From the clinical interview and written descriptions the

mother is currently experiencing Post-Traumatic Stress Disorder (PTSD) with elements of Complex-Post Traumatic Stress Disorder (CPTSD) although she does not meet the diagnostic criteria for CPTSD.

- iii) The mother's psychological vulnerabilities are likely to impact on her ability to give her best evidence within the context of a traditional hearing, with both the quality of her evidence and her ability to participate more widely being impacted by PTSD. The mother's symptoms "catastrophically" impair her ability to engage with the current proceedings.
- iv) Contact between P and the father is likely to exacerbate the mother's symptoms of PTSD, which would in turn impact "her interpersonal relationships, including her availability to her child".
- v) The mother is unlikely to be able to engage meaningfully with therapeutic input whilst the proceedings and / or involvement with the father is ongoing. It is imperative that the mother receives specialist trauma specific psychotherapeutic input.
- vi) The mother has litigation capacity. She displays the ability to understand information regarding litigation, the ability to retain information long enough to litigate, the ability to weigh up information, and the ability to communicate her decisions regarding litigation through any means.
- vii) The mother will not be able to provide her best evidence within the context of a "traditional" hearing.
- viii) A "trauma informed" approach is required in order to facilitate the mother's engagement with the proceedings and with professionals. It is imperative that the recommendations made by the Trauma Trained Intermediary are put into place. By an addendum letter, Dr J opines that, if the mother is required to continue to engage with the proceedings, the following special measures would be appropriate:
 - a) Ensuring she is not subject to direct or indirect contact with the father, with the father being unable to see the mother whilst she gives evidence.
 - b) Frequent breaks and additional breaks should the mother display signs of trauma related distress.
 - c) Exposure in advance to the areas of questioning that will take place.
 - d) The use of an intermediary at all stages of the proceedings.
 - e) Adherence to the recommendations made by the trauma informed intermediary.
 - f) Avoidance of unnecessarily intrusive questioning regarding traumatic experiences.
 - g) Avoidance of unnecessary exposure to trauma related material.

- h) If traditional cross examination is directed to take place then it should centre on tangible, fact-based evidence gathering, that is split into short sections, with breaks in between. Questions should be put by one legal representative only.
31. Dr J makes clear in her addendum report that given the concerns with respect to the mother relate primarily to her physical health, namely the contended issues with hypertension, Dr J does not feel able to comment on the effectiveness of the foregoing measures.
32. With respect to evidence concerning the mother's physical symptoms, there is no formal evidence before the court. Attached to the mother's application to stay the proceedings dated 22 February 2023 is a copy of online consultation notes, which are undated. Those notes detail the mother telling the general practitioner that her blood pressure readings are related to how stressed she is and that she is going through a stressful period in the lead up to a court hearing. Also attached is what is said to be a copy of blood pressure readings taken during a conference with her legal team. It would appear the mother took these readings herself and annotated them. There is no sworn evidence setting out the details of the device used to take those readings or the precise circumstances in which those readings were obtained. The mother issued her C2 application to stay the father's application on 11 January 2024. The mother contends that at a court hearing on 16 January 2024 she suffered a medical emergency associated with a rise in blood pressure, resulting in her solicitor needing to call the emergency services. No records have been produced in respect of that incident.
33. A further screen shot of consultation notes dated 26 January 2024 is attached to the mother's application to adjourn a hearing listed on 12 March 2024. Those notes demonstrate that the mother gave an account of the incident at court to the general practitioner, who diagnosed essential hypertension in the context of that self-reported history. The mother also attached further self-annotated blood pressure readings taken by her, which purport to demonstrate a rise in her blood pressure when speaking with her legal advisers and working on court documents. Again, there is no sworn evidence setting out the details of the device used to take the readings or the precise circumstances in which those readings were obtained. Whilst in her Skeleton Argument Ms Ishmael, at the urging of the mother, also cites a number of medical papers dealing with hypertension, it would not be appropriate for the court to take account of that material absent jointly instructed expert evidence dealing with it.
34. Dr J further opines that a time-limited stay of proceedings is unlikely to ameliorate the mother's symptoms of trauma, as she would in such circumstances remain involved in the proceedings, albeit with a pause in active involvement. Dr J considers that in such circumstances the mother's symptoms may in fact continue to deteriorate due to a sense of impending danger that could accompany the knowledge that the proceedings would be re-commencing. Within this context, Dr J opines that only once proceedings have concluded entirely, with a concrete outcome, that the mother is likely to be able to meaningfully address her symptoms of trauma.
35. Returning to the procedural chronology, the father refused to share the funding of the assessments of Dr D-V and Mr M. In the circumstances, on 5 December 2023 the mother issued proceedings against the father under Schedule 1 of the Children Act 1989. It was not clear during the course of the hearing what stage that application had

reached. However, on behalf of the mother, Ms Ishmael confirmed that the mother does *not* seek to stay those proceedings. When the court pressed Ms Ishmael as to the apparent contradiction in the mother seeking to stay the father's application under the Children Act 1989 on the grounds she is unable to cope with participating in those proceedings, whilst at the same time prosecuting her own application under the same statute, Ms Ishmael submitted that the proceedings under Schedule 1 are manageable because the mother will not be required to give oral evidence at a contested final hearing whereas the contact proceedings have the potential consequence of the mother coming into contact with the father (the Deputy District Judge currently hearing that matter having, it is said, directed that the mother be assisted by an intermediary, be permitted not to attend the final hearing of the application for financial relief, be permitted not to give oral evidence on that application and that the father place any questions he has in writing for the mother to answer by way of a further statement of evidence).

36. The mother embarked on further litigation a week later on 12 December 2023. On that date the mother filed a human rights claim against the Family Court. The application was issued on 21 February 2024. By that application, the mother alleges breaches of her and P's rights under Arts 1, 3, 6, 8, and 14 of the ECHR. Once again, when the court pressed Ms Ishmael as to the apparent contradiction in the mother seeking to stay the father's application under the Children Act 1989 on the grounds she is unable to cope with participating in those proceedings, whilst at the same time prosecuting her own application under the ECHR in addition to her claim under Schedule 1 of the Children Act 1989, Ms Ishmael submitted that the father's application has the potential consequence to bring the mother into contact with the father, which the human rights claim does not.
37. A further trauma informed intermediary report was obtained dated 26 March 2024. That report contained the following recommendations, made in light of the conclusions of the report of Dr J:
 - i) The mother considered that the main role of the intermediary would be to recognise her "triggers", monitor her emotional regulation, intervene before dysregulation and dissociation became dangerous to her health, and to distract at appropriate times with non-case related conversation.
 - ii) If the view of the general practitioner, that the mother does not attend court due to the risk that her blood pressure will reach dangerous levels, was to be accepted then an intermediary would not be appropriate.
 - iii) If the court requires the attendance of the mother at court, she will require a trauma informed intermediary to assist her to feel as safe as possible, focusing exclusively on her emotional regulation. The mother should be permitted to be in a side room, using the intermediary's laptop for remote access.
 - iv) A requirement for the mother to give evidence should be considered only if essential to proceedings. If this is the position, a review of the manner in which this can be achieved will need to be conducted proximate to the hearing.
38. On 21 January 2024 the mother's application for a stay was reallocated to this court and listed for directions on 13 March 2024. That hearing was subsequently vacated

by consent and relisted on 22 April 2024. The court gave the mother permission not to attend the hearing provided she was represented. A further hearing listed on 6 June 2024 was again adjourned by consent due to the mother's need to attend a medical appointment. At this hearing, the mother pursues her application for a stay. She resists an order joining P as a party to the proceedings and likewise resists an order being made pursuant to s.37 of the Children Act 1989. The mother further contends that the order stipulating that the father should receive monthly updates in writing concerning P should remain suspended. The father resists the application for a stay and supports an order being made joining P as a party to the proceedings.

RELEVANT LAW

39. The father applies under s.4(1)(c) of the Children Act 1989 for a parental responsibility order and under s.8(1) of the 1989 Act a child arrangements order providing for him to spend time with P. Both applications fall to be determined by reference to the best interests principle in s.1(1) of the 1989 Act (see *Re H (Parental Responsibility)* [1995] 2 FLR 648 in relation to parental responsibility orders). Section 1 of the 1989 Act provides as follows:

“1 Welfare of the child.

When a court determines any question with respect to—

- (a) the upbringing of a child; or
- (b) the administration of a child's property or the application of any income arising from it,

the child's welfare shall be the court's paramount consideration.

(2) In any proceedings in which any question with respect to the upbringing of a child arises, the court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child.

(2A) A court, in the circumstances mentioned in subsection (4)(a) or (7), is as respects each parent within subsection (6)(a) to presume, unless the contrary is shown, that involvement of that parent in the life of the child concerned will further the child's welfare.

(2B) In subsection (2A) “involvement” means involvement of some kind, either direct or indirect, but not any particular division of a child's time.

(3) In the circumstances mentioned in subsection (4), a court shall have regard in particular to—

- (a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);
- (b) his physical, emotional and educational needs;
- (c) the likely effect on him of any change in his circumstances;

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

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

(f) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;

(g) the range of powers available to the court under this Act in the proceedings in question.

(4) The circumstances are that—

(a) the court is considering whether to make, vary or discharge a section 8 order, and the making, variation or discharge of the order is opposed by any party to the proceedings; or

(b) the court is considering whether to make, vary or discharge a special guardianship order or] an order under Part IV.

(5) Where a court is considering whether or not to make one or more orders under this Act with respect to a child, it shall not make the order or any of the orders unless it considers that doing so would be better for the child than making no order at all.

(6) In subsection (2A) “parent” means parent of the child concerned; and, for the purposes of that subsection, a parent of the child concerned—

(a) is within this paragraph if that parent can be involved in the child's life in a way that does not put the child at risk of suffering harm; and

(b) is to be treated as being within paragraph (a) unless there is some evidence before the court in the particular proceedings to suggest that involvement of that parent in the child's life would put the child at risk of suffering harm whatever the form of the involvement.

(7) The circumstances referred to are that the court is considering whether to make an order under section 4(1)(c) or (2A) or 4ZA(1)(c) or (5) (parental responsibility of parent other than mother).”

40. The father’s applications under s.4(1)(c) of the Children Act 1989 for a parental responsibility order and under s.8(1) of the 1989 Act for a child arrangements order providing for him to spend time with P fall to be considered separately. In *Re C and V (Minors)(Contact: Parental Responsibility Order)* [1998] 1 FLR 392 the Court of Appeal made clear that such applications are to be considered wholly separately. Within this context, in *Re W (Parental Responsibility: Inter-Relationship with Direct Contact)* [2013] 2 FLR 1337 the Court of Appeal held that whilst the court had been entitled to refuse the father’s application for contact, on the grounds that the mother’s fears with respect to him playing any role in the child’s life put the child’s future stability and wellbeing at risk, the court had been wrong to refuse to grant the father

parental responsibility on the same grounds, the latter application falling to be considered separately.

41. In determining the father's applications, FPR 2010 Part 1 requires the court to have regard to the Overriding Objective:

“The overriding objective

1.1.— (1) These rules are a new procedural code with the overriding objective of enabling the court to deal with cases justly, having regard to any welfare issues involved.

(2) Dealing with a case justly includes, so far as is practicable—

(a) ensuring that it is dealt with expeditiously and fairly;

(b) dealing with the case in ways which are proportionate to the nature, importance and complexity of the issues;

(c) ensuring that the parties are on an equal footing;

(d) saving expense; and

(e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.”

42. Integral to the requirement under FPR 1.1(1)(c) to ensure that the parties are on an equal footing is FPR Part 3A and FPR PD3AA. FPR Part 3A and FPR PD 3AA set out the rules and practice to be followed with a view to achieving a fair hearing by providing for participation directions to ensure that the participation of the parties and the quality of the evidence of the parties is not diminished by reason of their vulnerability. Paragraph 1.4 of FPR PD 3AA stipulates as follows:

“1.4 All parties and their representatives are required to work with the court and each other to ensure that each party or witness can participate in proceedings without the quality of their evidence being diminished and without being put in fear or distress by reason of their vulnerability as defined with reference to the circumstances of each person and to the nature of the proceedings.”

43. Pursuant to FPR r.3A.2A, if a party is, or is at risk of being, a victim of domestic abuse carried out by another party, the court must assume that the quality of their evidence and their participation in the proceedings is diminished. Pursuant to FPR r.3A.2A(3), where this assumption applies the court must consider whether it is necessary to make one or more participation directions. The court is also under a duty to consider whether it is necessary to make one or more participation directions under FPR r.3A.4, where a party's participation in the proceedings is likely to be diminished by reason of vulnerability, and under FPR r.3A.5, where the quality of evidence given by a party is likely to be diminished by reason of vulnerability. Pursuant to paragraph 3.71 of FPR PD3AA, when considering vulnerability, the court should consider the ability of the party to (a) understand the proceedings, and their role in them, when in

court, (b) put their views to the court, (c) instruct their representatives before, during and after the hearing, and (d) attend the hearing without significant distress.

44. FPR r.3A.7 sets out the factors that the court must have regard to when deciding whether to make one or more participation directions where it has concluded that a party is, or is at risk of being, a victim of domestic abuse carried out by another party or that a party's participation in the proceedings or the quality of evidence given by a party is likely to be diminished by reason of vulnerability. FPR r.3A.7 provides as follows in that regard:

“What the court must have regard to

3A.7. When deciding whether to make one or more participation directions the court must have regard in particular to—

(a) the impact of any actual or perceived intimidation, including any behaviour towards the party or witness on the part of—

(i) any other party or other witness to the proceedings or members of the family or associates of that other party or other witness; or

(ii) any members of the family of the party or witness;

(b) whether the party or witness—

(i) suffers from mental disorder or otherwise has a significant impairment of intelligence or social functioning;

(ii) has a physical disability or suffers from a physical disorder; or

(iii) is undergoing medical treatment;

(c) the nature and extent of the information before the court;

(d) the issues arising in the proceedings including (but not limited to) any concerns arising in relation to abuse;

(e) whether a matter is contentious;

(f) the age, maturity and understanding of the party or witness;

(g) the social and cultural background and ethnic origins of the party or witness;

(h) the domestic circumstances and religious beliefs of the party or witness;

(i) any questions which the court is putting or causing to be put to a witness in accordance with section 31G(6) of the 1984 Act;

(j) any characteristic of the party or witness which is relevant to the participation direction which may be made;

(k) whether any measure is available to the court;

(l) the costs of any available measure; and

(m) any other matter set out in Practice Direction 3AA.”

45. Where the court decides to make one or more participation directions with respect to a party, FPR r.3A.8 sets out the type of measures that may be utilised, including measures to (a) prevent a party from seeing another party, (b) allow a party to participate in hearings and give evidence by live link, (c) provide for a party to use a device to help communication, (d) provide for a party to participate in proceedings with the assistance of an intermediary, (e) provide for a party to be questioned in court with the assistance of an intermediary and (f) do anything else set out in FPR PD3AA. Paragraph 4.2 of FPR PD3AA provides as follows in that regard:

“4.2 The court will consider whether it is necessary to make one or more participation directions, as required by rule 3A.4 and rule 3A.2A. The court may make such directions for the measures specified in rule 3A.8. In addition, the court may use its general case management powers as it considers appropriate to facilitate the party’s participation. For example, the court may decide to make directions in relation to matters such as the structure and the timing of the hearing, the formality of language to be used in the court and whether (if facilities allow for it) the parties should be enabled to enter the court building through different routes and use different waiting areas.”

46. Pursuant to FPR r. 4.1(3)(g) the court may stay the whole or any part of any proceedings or judgment either generally or until a specified date or event. A permanent stay can only be granted under FPR r. 4.1(3)(g) where the test in *Barder v Caluori* [1988] AC 20 is satisfied (see *BT v CU* [2021] EWFC 87). As made clear by Mostyn J in *AY v AS* [2019] EWHC 3043 (Fam) and by Gwynneth Knowles J in *Akhmedova v Akhmedov and Others* [2020] EWHC 2235 (Fam), the court also has a common law power to stay proceedings, which is expressly reserved by s.49(3) of the Senior Courts Act 1981.
47. Ms Ishmael relied on a number of authorities in support of the mother’s application for a stay and, in particular, *Akhmedova v Akhmedov and Others* and *Timokhin v Timokina* [2023] EWHC 58 (Fam). However, each of those authorities concerns a stay of a substantive domestic application with respect to financial matters in the context of ongoing litigation in a foreign jurisdiction (in *Akhmedova v Akhmedov and Others* the stay being sought but refused in the context of pending proceedings in Liechtenstein and in *Timokhin v Timokina* the stay being imposed pending the outcome of litigation in Russia). In the circumstances, both cases relied on by the mother can be readily distinguished from the present case. There appears to be only one reported case, *P v G* [2010] 2 FLR 1888, in which a stay was imposed in the context of an application under Part II of the Children Act 1989. Once again, however, the stay was imposed in the context of ongoing proceedings in another jurisdiction. Ms Ishmael was unable, on behalf of the mother, to point to any authority in which the court has decided to stay a substantive application under Part II of the Children Act 1989 generally, absent proceedings in a foreign jurisdiction.
48. Pursuant to FPR r.16.2 the court may make a child party to proceedings if it considers it is in the best interests of the child to do so. FPR PD16A paragraph 7.2 makes clear

that the decision of whether or not to join the child as a party to proceedings “will always be exclusively that of the court” and is to be decided in light of the facts and circumstances of the particular case. By way of guidance as to what factors might justify joining the child, paragraph 7.2 of PD16A gives a list that includes where the child has a standpoint or interest which is inconsistent with or incapable of being represented by any of the adult parties and where there are complex medical or mental health issues to be determined or there are other unusually complex issues that necessitate the separate representation of the child. Paragraph 7.3 of PD16A stipulates that when considering whether to join the child as a party the court must take account of the risk of delay or other factors adverse to the welfare of the child and that the court’s primary consideration will be the child’s best interests.

49. Finally, when deciding whether to make an order under s.37 of the Children Act 1989 directing the local authority to undertake an investigation of the child’s circumstances, the court must be satisfied that in family proceedings a question arises with respect to the welfare of any child and that it appears to the court that it may be appropriate for a care or supervision order to be made under Part IV of the 1989 Act. The purpose of a direction pursuant to s.37(1) of the 1989 Act is to enable the court to cause the local authority to assess whether a care or supervision order is needed.

DISCUSSION

50. Having considered carefully the evidence and the submissions in this case, I am satisfied that it is *not* appropriate to stay the proceedings under Part II of the Children Act 1989. Further, whilst I am not satisfied that it is appropriate to make an order pursuant to s.37 of the Children Act 1989 at this stage, I am satisfied that it is in P’s best interests to be joined as a party to these proceedings and for a Children’s Guardian to be appointed for her. My reasons for so deciding are as follows.

Stay

51. During her oral submissions, Ms Ishmael suggested that the duration of the stay sought would be the period required for the mother to engage in therapy, although Ms Ishmael was not able to provide an estimate of the length of any stay in that context. By her application form dated 9 January 2024, however, the mother seeks to stay the father’s application *generally*. As I have noted, the mother goes further in her C2 application and contends that it is in P’s best interests for these proceedings to come to an end with no order for contact or parental responsibility in favour of the father. In the circumstances, at the very least, the reality is that the mother seeks to place these proceedings in aspic indefinitely, with no determination being made by the court of the father’s application for a parental responsibility order and a child arrangements order. I am satisfied that such a course would not be appropriate.
52. In determining whether to stay these proceedings, it is very important to maintain an acute focus on the function of these proceedings and the principles that apply when determining them. The function of the court in these proceedings under Part II of the Children Act 1989 is to decide whether it is P’s best interests for her father to have parental responsibility for her and, as a separate and distinct question, whether it is in her best interests to spend time with him. Section 1 of the Children Act 1989 prescribes a clear legal framework within which those matters fall to be decided by the court. That framework ensures, by placing P’s best interests as the court’s

paramount consideration, presuming unless the contrary is shown that the involvement of each parent in her life will further her welfare, providing a non-exhaustive list of welfare matters to which the court can have regard and recognising that delay is inimical to her welfare, that P's welfare is the determining factor in the outcome of the applications made by the father.

53. A court seised of proceedings under the Children Act 1989 is duty bound to determine those proceedings by reference to the foregoing principles. In the circumstances, and whilst each case will fall to be determined on its facts, staying proceedings under Part II of the Children Act 1989 generally and thus for an indeterminate period, rather than completing the statutory process of welfare determination with which the court is seised and in which the child's best interests are the court's paramount consideration, will be an exceptional course.
54. Within the foregoing context, the mother's case with regard to a stay relies primarily on the report of Dr J in order to demonstrate that, in this case, there are *no* participation directions pursuant to FPR Part 3A and PD 3AA that are capable of mitigating her vulnerabilities so as to allow her to participate in proceedings without the quality of her evidence being diminished and without being put in fear or distress. In such circumstances, the mother submits that the exceptional course of staying the proceedings generally for an indeterminate period is justified in this case. There are, however, a number of difficulties with that submission.
55. The mother was able, with the benefit of participation directions pursuant to FPR Part 3A and without the assistance of an intermediary, to participate in the proceedings between April 2021 and 17 June 2022. This included giving instructions in respect of, and participating in, two directions hearings and a finding of fact hearing. It was only after the court had rejected the majority of the mother's case with respect to the findings that the mother began to indicate, by her application dated 22 February 2023, that she was unable to engage in the proceedings by reason of symptoms of PTSD.
56. With respect to the current stage of the proceedings, the court has before it reports from two intermediaries. Whilst making recommendations for participation directions, the report of 28 April 2023 at no point suggests the mother is incapable of participating in a hearing even with participation directions in place. The same is true of the second intermediary report dated 26 March 2024.
57. Dr J likewise felt able in her report to set out the participation directions that she would recommend if the mother is required to continue to engage in the proceedings (namely ensuring she is not subject to direct or indirect contact with the father, frequent breaks, advance exposure to areas of questioning, the use of an intermediary at all stages, avoidance of unnecessarily intrusive questioning, avoidance of exposure to trauma related material and adaptations to cross examination). It is further plain from the report of Dr J that her reservations regarding the efficacy of these participation measures centre on the mother's physical health. Namely, her asserted difficulties with hypertension consequent on the stress of the proceedings. The court, however, has no independent evidence detailing the nature and extent of the mother's asserted hypertension nor any independent evidence demonstrating that that asserted condition is as a result of participation in these proceedings. At present, the evidence on this issue is limited to screenshots of blood pressure results that the mother has annotated and screenshots of consultation notes detailing the views of the general

practitioner based on the mother's self-reporting. As I have noted, whilst in her Skeleton Argument Ms Ishmael, at the urging of the mother, cites a number of medical papers dealing with hypertension, absent jointly instructed expert evidence on the existence and provenance of hypertension, it would not be appropriate for the court to take account of that material. As Dr J very properly makes clear, she is not qualified to comment on this aspect of the evidence.

58. The mother's assertion that she is not able to cope emotionally or physically with proceedings before the court, to the extent that the proceedings should now be placed in abeyance, is also contradicted by her approach to litigation elsewhere.
59. Although the mother now contends that she is incapable of participating in these proceedings against the father under the Children Act 1989, by reason of the emotional and physical impact on her of those proceedings, the mother has *herself* now started further proceedings against the father under the *same* statute by making an application for financial relief under Schedule 1 of the 1989 Act. Accordingly, the mother seeks a stay of the proceedings under Part II of the Children Act 1989, by which the father pursues his case for parental responsibility and contact for P, but is actively litigating her own application against the father for financial relief under Schedule 1 of the Children Act 1989. Whilst, as I have noted above, certain participation directions have been made by the Deputy District Judge in that latter application, the mother has not suggested that in those proceedings against the father under the 1989 Act she is unable to participate to the extent they should be stayed generally. Again as noted, the mother also now pursues litigation under the Human Rights Act 1998, alleging breaches of her and P's rights under Arts 1, 3, 6, 8, and 14 of the ECHR. Again, it would not appear that mother has suggested that she is unable to participate in those proceedings or, indeed, that she requires the assistance of an intermediary in respect of the same.
60. Within the foregoing context, it is a stark fact that *only* with respect to the proceedings in which the father seeks to pursue a relationship with P does the mother assert she is too vulnerable to participate to the extent that the proceedings should be stayed generally. In the foregoing context, I pause to note again that Dr J' diagnosis of PTSD was made only on the basis of her clinical interview with the mother and written descriptions of her presentation, in circumstances where the mother presented herself as too distressed to complete the psychometric testing for PTSD.
61. The selective approach of the mother to her ability to participate in proceedings is also evident in her conduct with respect to this hearing. The mother was plainly capable of giving instructions on issues that advanced her case, namely on the question of a stay. However, through Ms Ishmael, the mother also contended that she was *incapable* of giving instructions on issues that may not support her case, in this instance the questions of whether an order under s.37 of the Children Act should be made, whether P should be joined as a party to proceedings and whether the father should receive monthly updates with respect to P.
62. Finally, the mother seeks to suggest that the proceedings are having such an adverse impact on her that they are interfering with her ability to care for P. Whilst making some general observations, Dr J properly acknowledges that she cannot comment on the mother's parenting capacity. Further, and once again, beyond the mother's self-report, there is no independent evidence to support her contention that the proceedings

are corrosive of her ability to parent P. Indeed, in seeking to resist at an earlier hearing the proposition that an order pursuant to s.37 of the Children Act 1989 may be merited, it was said on behalf of the mother that the relevant local authority had no concerns regarding her parenting. The assessments outlined above provide further evidence of the mother's ability to advocate for P's identified needs to be met.

63. As I have noted, in circumstances where staying proceedings under the Children Act 1989 generally and thus for an indeterminate period will prevent the court from considering the application before it, and lead to a *de facto* determination of the welfare issues before the court outside the statutory framework for determining those issues, such a course will be exceptional. Within that context, and having regard to the matters set out above, I am not satisfied that the mother's mental and physical health issues amount to the exceptional circumstances required to justify these proceedings being stayed generally, rather than being determined by reference to the statutory principles set out in s.1 of the Children Act 1989.
64. Parliament has, by FPR Part 3A and PD 3AA, legislated for the situation where a party finds it challenging to engage in proceedings in which the court is required by statute to decide the outcome that best meets the welfare of the subject child in accordance with the principles I have described. That legislative approach makes clear that, ordinarily, the proper course where a party to proceedings under the Children Act 1989 has vulnerabilities that affect their ability to participate in proceedings and/or the quality of their evidence is not to bring the proceedings to a premature conclusion as the means of addressing those vulnerabilities. Rather, the correct approach is to ensure that such participation directions as are necessary to enable that party to participate in proceedings without the quality of their evidence being diminished and without being put in fear or distress by reason of their vulnerability, as defined with reference to the circumstances of each person and to the nature of the proceedings, are put in place.
65. I am satisfied, having regard to the matters set out above, that it remains possible with respect to the father's application under the Children Act 1989 to put in place participation directions to enable the mother to participate fairly and to give her evidence. The precise nature and extent of those participation directions will need to be decided at a ground rules hearing, informed by the two intermediary assessments that have been obtained and by the report of Dr J. However, it is apparent that the following will need to be the subject of further consideration by the court:
 - i) The use of an intermediary at all stages of the proceedings and adherence to the recommendations made by the intermediary.
 - ii) Enabling the mother, together with her solicitor and an intermediary, to attend any hearing via remote means, with her camera off if necessary.
 - iii) Ensuring the mother does not come into indirect contact with the father during the course of the remote hearing.
 - iv) Ensuring that the father is unable to see the mother whilst she gives evidence remotely.

- v) The provision of frequent breaks during the hearing, with the provision of additional immediate breaks should the mother display signs of distress.
 - vi) Exposing the mother in advance to the areas of questioning that will take place.
 - vii) The use of appointment of a Qualified Legal Representative to undertake any cross-examination of the mother in circumstances where the father acts in person, with cross-examination split into short sections, with breaks in between.
 - viii) Avoidance of unnecessarily intrusive questioning regarding past traumatic experiences and avoidance of unnecessary exposure to material related to past trauma.
 - ix) The use, in the alternative, of written questions to the mother, answered in writing.
66. In all the circumstances, the mother's application to stay these proceedings generally is refused.

Party Status for Child

67. P plainly has an interest in having, if possible, a family life in the fullest sense by knowing and developing a relationship with her father. As noted recently by Hayden J in *AB v TC & Anor* [2024] EWFC 296, it is the responsibility of both parents to ensure the child has the best possible relationship with each of them, recognising that as the child's right. I am satisfied that a further consequence of the mother's approach as set out above, together with the fact that at present contact between P and her father is not being promoted at all and the father does not currently share parental responsibility for her, is that this plain interest of P's is not capable of being represented by the adult parties to the proceedings.
68. In the circumstances, and taking P's best interests as my primary consideration, I am satisfied that P should be joined as a party to these proceedings and a Children's Guardian appointed to represent her interests. Having regard to the matters set out above, I am satisfied that this is the only reliable way of ensuring that P's interest in knowing, and developing a relationship with, her father if that is in her best interests is properly represented in the proceedings. Indeed, on the facts, I consider this matter to be a paradigm case for joinder of the subject child. Having regard to the history of this matter, I am satisfied for the purposes of paragraph 7.3 of FPR PD16A that joining P will not result in an unacceptable risk of delay.

Section 37 Order

69. As noted, one of the issues that the court listed this matter to consider is whether an order should be made pursuant to s.37 of the Children Act 1989 directing the local authority to undertake an investigation of the P's circumstances. In *Re J (A Minor)* [2016] EWHC 2430 (Fam), in a case in which the mother had sought to engage in the proceedings before the court only on her own terms, Hayden J articulated the care and caution required in circumstances where it is important that children who identify

strongly with their opposite gender are listened to and their views afforded respect but where such children are also ill-served by premature labelling. The position outlined at paragraph 19 above regarding the circumstances in which the mother and the childminder concluded that P has “body dysmorphia / gender dysphoria” has inevitably given the court pause. However, having considered the matter further, and in circumstances where I have decided to join P to the proceedings and appoint a Children’s Guardian to represent her interests, I am satisfied that the question of whether an order pursuant to s.37 of the Children Act 1989 is merited in this case should be the subject of further consideration by the court once P has legal representation in these proceedings and the Children’s Guardian has completed his or her enquiries.

Interim Contact

70. As with the question of party status for P and the question of whether an order should be made pursuant to s.37 of the Children Act 1989, the mother refused to engage with the court on the question of whether the arrangement for the provision of monthly updates from the mother to the father provided for by the order of 17 June 2022 should be reinstated. Once again, and given the complexities of this matter, in circumstances where I have decided to join P to the proceedings and appoint a Children’s Guardian to represent her interests, I am satisfied that the question of whether an order reinstating the requirement for monthly updates from the mother to the father is merited in this case should be the subject of further consideration by the court once P has legal representation in these proceedings and the Children’s Guardian has completed his or her enquiries.

CONCLUSION

71. In the circumstances, and for the reasons set out above, I am satisfied that the court should make the following orders:
- i) The mother’s application of 11 January 2024 for a stay of these proceedings is refused.
 - ii) Pursuant to FPR r.16.2, P shall be joined as a party to the proceedings and a Guardian appointed to represent her interests.
 - iii) Consideration of the issue of whether an order pursuant to s.37 of the Children Act 1989 is merited is adjourned to the next hearing.
 - iv) Consideration of the question of whether the arrangement for the provision of monthly updates from the mother to the father provided for by the order of 17 June 2022 should be reinstated is adjourned to the next hearing.
 - v) The mother’s application under Schedule 1 of the Children Act 1989 will be re-allocated to this court, consolidated with these proceedings and will be listed with these proceedings for future hearings.
 - vi) The matter will be listed for directions to consider the further case management and determination of the father’s application for a parental responsibility order and a child arrangements order under Part II of the

Children Act 1989 and the mother's application for financial relief under Schedule 1 of the Children Act 1989.

72. I will invite the parties to draw an order accordingly for approval by the court.