

Case No: ZW18P00480

IN THE FAMILY COURT AT WEST LONDON

West London Family Court,
Gloucester House, 4 Dukes Green Avenue
Feltham, TW14 0LR

Date: 20 February 2019

Before :

HIS HONOUR JUDGE WILLANS

Between :

ND

Applicant

- and -

(1) KD

(2– 3) I & L

Respondents

(by their Guardian ad Litem, NYAS)

Ms Amanda Meusz (instructed by Direct Representation) for the Applicant
Mr Francis Wilkinson (instructed by Direct Representation) for the First Respondent
Ms Victoria Haberfield (instructed by NYAS) for the Second and Third Respondents

Hearing dates: 29-30 January and 28 February 2019

JUDGMENT

HIS HONOUR JUDGE WILLANS :

Introduction:

1. This judgment concerns I and L. I is 12 years of age (xxxx 2006) and L is 9 years of age (xxxx 2009). Their father is the applicant and their mother the respondent to the proceedings. The children have been joined as parties to the proceedings and are represented through the offices of NYAS (National Youth

Advisory Service). Within this judgment I will refer to the parents using the labels ‘mother’ and ‘father’, no discourtesy is intended.

2. At this time the father has only supervised contact with the children. The question for me is whether the time is now right for the father to begin unsupervised contact with his children and if so what should be the parameters of that contact? This simple question belies the lengthy history of proceedings between the mother and father before this Court.
3. The mother opposes any change in the arrangements on the basis the arrangements are working and that any change removing supervision is likely to bring with it an unacceptable risk of harm. She is open to supervised contact being developed and agrees a modest variation to the existing order with respect to the use of a vehicle. She seeks a section 91(14) order until the youngest child is 16 (c. 2022). At outset I understood the father to be seeking a final order removing supervision and progressing contact to the point of shared holidays with lengthy periods of unsupervised contact, however, by the end of the hearing he was arguing a more modest change incorporating the relaxation of supervision with a review in due course. He opposed the section 91(14) order. The Children’s Guardian agreed with the mother’s position save that she supported a section 91(14) order for a more limited period of about 2 years.
4. In reaching my decision in this case I have had regard to; (a) the papers contained within the final hearing bundle; (b) the live evidence of (i) Ms A; (ii) the father; (iii) the mother, and; (iv) the NYAS officer, Ms T, and; (c) the oral and written submissions of counsel for each party. Although I will not seek to resolve all matters between the parties and I will not refer to all of the evidence considered, I remain mindful of all the evidence presented to me. The structure of this judgment will be to first set out the applicable legal principles before setting out the procedural history. I will then set out the background history before turning to the evidence I heard and the impression I formed as to each witness. I will finally set out my analysis and conclusions.

Legal Principles

5. The legal framework governing my approach is provided by the Children Act 1989 section 1 which stipulates as follows:

1 Welfare of the child

- (1) 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)
- (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).

9. In summary I must have regard to the following (a) the children's best interests are my paramount concern; (b) the involvement of the parents in the life of the children will further their welfare unless the contrary is shown; (c) the factors set out in the statutory 'welfare checklist' in the Children Act 1989 s.1(3); (d) the principle that no order should be made unless to do so would be better for the children than making no order and (e) to the principle that delay is ordinarily inimical to the welfare of the children.

10. With respect to the specific factors set out in the statutory 'welfare checklist' in the Children Act 1989 s 1(3), the wishes and feelings of a mature child do not carry any presumption of precedence over any of the other factors in the welfare checklist. The weight to be attached to the child's wishes and feelings will depend on the particular circumstances of each case. In particular, having regard to the words of section 1(3)(a), it is important in every case that the question of the weight to be given to the child's wishes and feelings is evaluated by reference to the child's 'age and understanding'.

11. Further with respect to the specific factors set out in the statutory 'welfare checklist' in the **Children Act 1989 s 1(3)**, the court is required to consider the effect on the children of any change in their circumstances. The concept of '*the status quo*' is not expressly articulated within the welfare checklist and there exists no presumption in favour of an existing arrangement. Nonetheless in carrying out my analysis of the children's welfare needs I should consider the extent to which it is desirable to maintain the children's status quo. The weight such feature carries in the analysis will vary depending on the facts of the case.
12. The issues raised engage the right to respect for family life under Article 8 of the Convention. As such the outcome reached should be tested against the principles of proportionality, reasonableness, necessity and lawfulness. To the extent I interfere I do so at the lowest level required.
13. I do not overlook the history of this case involves allegations of domestic abuse and that there has been a fact finding hearing in which findings of domestic abuse have been established. This has the following implications which deserve repeating. First, I am bound by such findings and they stand as **facts** before me. Furthermore to the extent the Court before me has resolved matters outside of any fact finding schedule I am equally bound. It is no part (indeed it would be legally wrong for me to so act) of this hearing to carry out a review of the previous determinations. I proceed informed by the previous judgments without reservation and they provide a starting point or baseline against which I can evaluate change or development. Second, these circumstances necessitate consideration of **PD 12J Children Act 1989**. Given findings have already been made the relevant parts of the Practice Direction are paragraphs 35 to 40 as follows:

Factors to be taken into account when determining whether to make child arrangements orders in all cases where domestic violence or abuse has occurred

- 35 When deciding the issue of child arrangements the court should ensure that any order for contact will not expose the child to an unmanageable risk of harm and will be in the best interests of the child.
36. In the light of any findings of fact or admissions or where domestic abuse is otherwise established, the court should apply the individual matters in the welfare checklist with reference to the domestic abuse which has occurred and any expert risk assessment obtained. In particular, the court should in every case consider any harm which the child and the parent with whom the child is living has suffered as a consequence of that domestic abuse, and any harm which the child and the parent with whom the child is living is at risk of suffering, if a child arrangements order is made. The court should make an order for contact only if it is satisfied that the physical and emotional safety of the child and the parent with whom the child is living can, as far as possible, be secured before during and after contact, and that the parent with whom the child is living will not be subjected to further domestic abuse by the other parent.
- 37 In every case where a finding or admission of domestic abuse is made, or where domestic abuse is otherwise established, the court should consider the conduct of both parents towards each other and towards the child and the impact of the same. In particular, the court should consider –
- (a) the effect of the domestic abuse on the child and on the arrangements for where the child is living;
 - (b) the effect of the domestic abuse on the child and its effect on the child's relationship with the parents;
 - (c) whether the parent is motivated by a desire to promote the best interests of the child or is using the process to continue a form of domestic abuse against the other parent;
 - (d) the likely behaviour during contact of the parent against whom findings are made and its effect on the child; and
 - (e) the capacity of the parents to appreciate the effect of past domestic abuse and the potential for future domestic abuse.

Directions as to how contact is to proceed

- 38 Where any domestic abuse has occurred but the court, having considered any expert risk assessment and having applied the welfare checklist, nonetheless considers that direct contact is safe and beneficial for the child, the court should consider what, if any, directions or conditions are required to enable the order to be carried into effect and in particular should consider –
- (a) whether or not contact should be supervised, and if so, where and by whom;
 - (b) whether to impose any conditions to be complied with by the party in whose favour the order for contact has been made and if so, the nature of those conditions, for example by way of seeking intervention (subject to any necessary consent);
 - (c) whether such contact should be for a specified period or should contain provisions which are to have effect for a specified period; and
 - (d) whether it will be necessary, in the child's best interests, to review the operation of the order; if so the court should set a date for the review consistent with the timetable for the child, and must give directions to ensure that at the review the court has full information about the operation of the order. Where a risk assessment has concluded that a parent poses a risk to a child or to the other parent, contact via a supported contact centre, or contact supervised by a parent or relative, is not appropriate.
- 39 Where the court does not consider direct contact to be appropriate, it must consider whether it is safe and beneficial for the child to make an order for indirect contact.

The reasons of the court

- 40 In its judgment or reasons the court should always make clear how its findings on the issue of domestic abuse have influenced its decision on the issue of arrangements for the child. In particular, where the court has found domestic abuse proved but nonetheless makes an order which results in the child having future contact with the perpetrator of domestic abuse, the court must always explain, whether by way of reference to the welfare checklist, the factors in paragraphs 36 and 37 or otherwise, why it takes the view that the order which it has made will not expose the child to the risk of harm and is beneficial for the child.

14. **The Court can control future applications by reference to section 91(14) Children Act 1989. I acknowledge that such orders are to be considered the exception rather than the rule and only to be made where the welfare of the child demands the making of such an order. Important guidance is given in **Re P (a minor) (residence order: child's welfare) [1999] 3 WLR 1164 per Butler Sloss LJ:****

Guidelines

- 1) Section 91(14) should be read in conjunction with section 1(1) which makes the welfare of the child the paramount consideration.
- 2) The power to restrict applications to the court is discretionary and in the exercise of its' discretion the court must weigh in the balance all the relevant circumstances.
- 3) An important consideration is that to impose a restriction is a statutory intrusion into the right of a party to bring proceedings before the court and to be heard in matters affecting his/her child.
- 4) The power is therefore to be used with great care and sparingly, the exception and not the rule.
- 5) It is generally to be seen as an useful weapon of last resort in cases of repeated and unreasonable applications.
- 6) In suitable circumstances (and on clear evidence), a court may, impose the leave restriction in cases where the welfare of the child requires it, although there is no past history of making unreasonable applications.
- 7) In cases under paragraph 6 above, the court will need to be satisfied first that the facts go beyond the commonly encountered need for a time to settle to a regime ordered by the Court and the all too common situation where there is animosity between the adults in dispute or between the local authority and the family and secondly that there is a serious risk that, without the imposition of the restriction, the child or the primary carers will be subject to unacceptable strain.
- 8) A court may impose the restriction on making applications in the absence of a request from any of the parties, subject, of course, to the rules of natural justice such as an opportunity for the parties to be heard on the point.

- 9) A restriction may be imposed with or without limitation of time.
- 10) The degree of restriction should be proportionate to the harm it is intended to avoid. Therefore the court imposing the restriction should carefully consider the extent of the restriction to be imposed and specify, where appropriate, the type of application to be restrained and the duration of the order.
- 11) It would be undesirable in other than the most exceptional cases to make the order ex parte

The Procedural History

15. The origins of this case can be traced to January 2012. By that point the parties had separated and in that month the mother sought protection under the Family Law Act 1996 whilst the father sought orders under the Children Act 1989. The injunctive proceedings were compromised before District Judge Stewart on 13 March 2012 and he also made substantive child arrangement orders. On 14 June 2012 the mother applied to suspend the contact order. This was done and the matter listed for 20 June 2012. On that day Her Honour Judge Williams gave case management directions towards a fact finding hearing. The fact finding hearing ~ as with all other hearings prior to my involvement ~ was heard by Recorder Woods QC. She heard three days of evidence completing on 23 August 2012. Her judgment is dated 13 September 2012 (“**the fact finding judgment**”). She found proved allegations of serious domestic violence against the father. She dismissed allegations raised by the father. In the light of her findings she asked CAFCASS to file a risk assessment.
16. My bundle does not include all hearings thereafter conducted by the Recorder however pursuant to her direction on 13 December 2012, Dr Chris Newman (PAI: Family Safety Assessments) filed a risk assessment. On 30 August 2013 the children were joined to the proceedings with NYAS acting as their litigation friend. At a hearing on 23 April 2014 the Recorder made a non-molestation order against the father; a residence order in favour of the mother; a prohibited steps order against the father and an order for indirect contact. On 10 February 2014 the Recorder provided her first judgment as to welfare (“**the first welfare judgment**”) the conclusion of which was a period of supervised contact with a review in February 2015. Following two days of evidence in February 2015 the Recorder in a judgment dated 23 April 2015 (“**the second welfare judgment**”) ordered long term supervised contact between the children and the father and indirect ‘Skype’ contact. In addition she made an order preventing further applications without the permission of the Court until 2 April 2018. The father sought to appeal this decision¹. The appeal whilst successful in one aspect did not materially change the substantive child arrangements. On 10 June 2016 the father applied to vary the final order. In a judgment dated 18 July 2016 (“**the permission judgment**”) the Recorder refused the father permission to make the application.
17. On 19 April 2018 the father issued this application. He sought to progress contact to unsupervised contact. On 5 September 2018 the Recorder joined the children to the proceedings and listed a directions appointment. She considered allocation and determined the matter should be heard by ‘*a Circuit Judge...which may include Recorder Catherine Wood QC if she is sitting at West London Family Court*’. I heard the case on 24 October 2018 since which time I have heard all hearings. I listed a dispute resolution appointment on 6

¹ D (Children)(Contact Supervisor Remuneration) [2016] EWCA Civ 89

December 2018 and when this was not successful in resolving the case I listed this final hearing. I took steps to enquire as to the availability of the Recorder for this hearing but when this was not possible I determined it should proceed before me.

Background History

18. For the purposes of my decision-making the relevant background can be found within the judgments of the Recorder referred to above. These extensive judgments are a testament to the conscientious care given by the Recorder to the case over several years. I have read these judgments with the care they deserve and have them at the forefront of my mind when carrying out my own analysis and I note following:
- i) Throughout her judgments the Recorder was confident both parents were committed to their children and had a deep love for the children.
 - ii) The Recorder found the mother to be a '*credible, measured and reliable witness*' in contrast to the father who she did not find to be a credible witness.
 - iii) The Recorder found the mother's 8 allegations of domestic violence proven. The allegations extended over 5 years of the relationship and are serious in nature with for instance the Recorder finding proven allegations of repeated kicking and the mother being throttled by the father and on one occasion thinking he was going to kill her. It is noteworthy the findings indicate the children were present on occasions and caught up in the incident as they sought to protect their mother. The Recorder observed that at least one of the incidents had a '*considerable impact on [I]*'. The Recorder rejected the father's evidence and felt he was minimising matters and had little understanding of the impact his behaviour had on others.
 - iv) The Recorder rejected three allegations made by the father against the maternal grandfather as being made by the father '*maliciously*' and in the knowledge they had '*absolutely no foundation in truth*'. It is relevant to note the allegations included a connotation of sexual impropriety towards I.
 - v) The Recorder noted that having dismissed the father's allegations he subsequently raised the same allegations with the local authority local to the children (as he did additionally with the NSPCC).
 - vi) The Recorder did not consider the application itself was geared towards intimidating the mother but did find the proceedings were '*extremely stressful for the mother, that her concerns are genuine and that the situation in general terms is hugely pressurising for her*' with the mother showing physical signs of the impact the proceedings were having upon her.
 - vii) In her first welfare judgment the Recorder observed the father was holding onto the allegations against the grandfather.

- viii) The Recorder noted problematic communications from the father to those involved in the case with an email to the NYAS worker being *'unpleasant, condescending and offensive, though in my experience of reading emails sent by the father, fairly typical'*. She cautioned the father that he would be well advised to moderate his communications, but not accepting responsibility for his actions and transferring blame to others was a personality trait of his.
- ix) At the stage of the first welfare judgment the Recorder concluded the father was not a physical risk to the children or a risk of abduction but she was concerned as to the risk he might pose to the mother if they were in close proximity in an uncontrolled setting having regard to the father's lack of emotional containment.
- x) She considered the central risk was of emotional harm to the children. She felt the father would not act intemperately to professionals involved during contact because he would not want to jeopardise his relationship with the children or do anything to make their experience of seeing him an uncomfortable one.
- xi) The Recorder judged the father *'had no capacity to appreciate the effect of past violence on the mother...does not regard himself at fault...[and]...has limited capacity to appreciate the effect of future violence on either the mother or the children'*.
- xii) The Recorder judged the contact had to be supervised to manage the risks identified but also to support the mother in her role as primary carer by ensuring contact is safe and thus reducing her anxiety. The contact was not to be conditional on any further work given the father's opposition to the same and the view that the father would not prejudice his position by inappropriate conduct during a period of supervised contact.
- xiii) The Recorder has noted that all subsequent contacts have been *'extremely positive'* and *'glowing'* but in the background there has been a familiar pattern of mistrust, accusation and misguided anger/frustration on the father's part. This led to the initial period of supervised contact collapsing after only two sessions. The Recorder observed the father focused on what he sees as the 'wrongs' such that he loses sight of the children's needs. On an occasion in July 2014 this had a plain impact on L who *'crumpled up crying'* when told contact would not be happening in the most inappropriate of circumstances.
- xiv) Within her second welfare judgment the Recorder voiced repeated concern as to the father's communication style and found it *'extraordinary...that the father continues to send emails of this nature knowing how distressing they are to receive, having been advised to moderate his email communications and whilst under the microscope of these proceedings'*. She felt it a fanciful suggestion that the father and mother could between themselves make ad hoc arrangements.

- xv) At the same stage the father was holding onto the allegations against the grandfather as being '*absolutely factual*' with the consequence that the children were potentially at risk whenever they are exposed to the maternal family.
- xvi) The Recorder observed the contact was a happy, enjoyable and positive experience for the children. The mother deserved credit for supporting the children's relationship with the father and the father was due credit in circumstances where he could not have done more to make the contact a positive experience for the children. The children missed the father. The Recorder sadly noted she was faced by a difficult decision where the contact was very positive and demonstrative of an entirely appropriate relationship between father and children but one in which none of the risk factors previously identified had been ameliorated.
- xvii) The Recorder maintained her view the risks were not of physical harm to the children or of abduction. But she was not satisfied the father would not seek to undermine the mother's relationship with the children or the grandfather. This issue remained a vivid 'concern' for the father and the mother had valid grounds for being concerned the father would misinterpret (deliberately or otherwise) something said by the children and capitalise on it.
- xviii) Her conclusion was that the risks outweighed the benefits of unsupervised contact. An undertaking would not be sufficient to secure the children's emotional needs and would be impossible to police.
- xix) The Recorder concluded the mother required some respite from the litigation and the opportunity to focus on her work. She could not predict how things might develop on the ground and how over time the children might develop self-protective strategies for coping with the risks of unsupervised contact. She was doubtful the father would take proper steps to address the safeguarding issues identified by the expert. She took these points into account in applying a 3-year bar.

The Hearing

19. Alison Austin gave evidence first. She is a highly experienced professional with many years experience as a Guardian. Her role in these proceedings has been to supervise contact over the last 3½ years. As such she meets with the father and the children every 6 weeks or so. In total she must have supervised close to twenty sessions of contact and given the contact lasts for about 6 hours she has spent the best part of 120 hours in the company of the father and children. It is important to make clear Ms Austin gave evidence as a witness of fact not as an expert. It was not her role to report on the interests of the children or to recommend a way forward. She told me she had read the relevant documents as to the history of the case. She had experienced no hostility or aggression from the father. She went as far as to comment that it was like reading about a different person when she read the mother's position note. The children are always keen to see their father and there is a lot of joking and laughter. The children differ but are intelligent and articulate and present as ordinary children and engage with the father in an appropriate manner. She was confident that

either of the children would share with her if there were issues with contact or she would see it for herself. The father does not talk ill of the mother in front of the children and there is no bubbling hostility. There is no evidence of subtle manipulation. The children are forthcoming in contact about their lives and there has been nothing of concern. The father does not question the children about their mother. He is conversational about what is happening at home and is benign and accepting. There have been limited opportunities for the father to speak out of earshot but she had sensed no issues. Her sense is the father is aware of the impact on contact and the children were he to act in a hostile manner. He is supportive of the children and there is no sense of a lack of empathy. He is patient with the children and can get on their wavelength. Ms Austin made clear she can continue to support contact. She told me about her discussion with the Guardian as to moving things forward with her role being initially restricted to the ends of contact. This would allow her to assess the moods and report back to the mother at the end of contact. She would not hesitate to report if there were issues and felt confident she would pick up on any issues. She had a degree of concern as to her supervising periods where the father engaged with the children's day to day activities as she felt this might cause embarrassment in having to explain her role to third parties.

20. ND told me the children were '*amazing*' and he '*was very proud of them*'. He told me the mother has done a fabulous job bringing them up alone. They are balanced and confident children. He was asked about the prospects of him speaking inappropriately to the children. He understood the children would be conflicted if he was negative about the mother and they find it difficult to navigate the relationship being aware of the difficulties. He understood if he said anything '*it would damage their trust in...[him] ...and would damage their relationship...[he] would avoid this at all costs*'. He commented that the end of the parents relationship was horrible. Trust needs to be rebuilt which will be difficult but he wants to achieve this for the children. He told me he was ambivalent to the past although felt there had been an injustice but he has moved on and is in a new relationship. He felt he was in a new place and wanted to move things forward. He spoke about a Skype call with L and commented as his wish to move into emotional territory with the children. He felt he had been criticised for not doing so in the past. He felt he was criticised if he avoided talking about the mother and liable to criticism if he did. This was not intended to be hostile. He could not understand why he was still perceived to be a risk. He has moved on and has a new partner and is involved in the lives of her two children. This needs to be handled with care given his children know little about this relationship. When asked about the risk of making allegations he told me this would undermine future contact and risk his relationship with the children. He was willing to give promises to the Court and was full aware of information which should not be shared with the children. There have been no issues in the contact and the email communications have been different in tone to previously. He felt continued supervision was sending the wrong message to the children. The issue for him was moving contact forward in a manner respectful to the mother and workable for the children. He would like to be able to introduce his family over time with overnight contact. His partner told him he had changed in that he no longer stressed over trivial matters. He was cross-examined as to his style of communication with the mother. The suggestion being that limited progress had been made. He denied attempting to make the mother insecure when questioning which orders were still in force. He was questioned as to the

courses he pursued pursuant to the fact finding. He maintained the findings had been sent to RELATE but he had been on no further courses. He was deemed of insufficient risk to pursue a MAPPA course. He told me he accepted shared responsibility for what had happened (with the mother) and bore the primary responsibility. He denied his email style was demeaning of the mother or condescending. He disagreed with the interpretation placed on certain aspects of the communication. He was asked about recording Skype calls but disputed this was a valid criticism of him. He did not consider his messages were belligerent but were in any event different in quality to historic messages. He was asked about the findings and *'accepted the findings were made'*. However he agreed he had repeated the allegations to the NSPCC. He told me this was on the advice of the MAPPA/RELATE. He told me it would now be *'damaging and wrong'* to repeat them. He agreed he has said he would *'not betray I'* with respect to the allegation but told me this meant to deny she had said the things but it did not follow he would talk about these things. He denied he was just waiting for the moment to speak about these matters. He agreed further allegations would be damaging for I. He accepted findings were made against him. He had behaved despicably but has changed. He is not hostile to the mother; has not undermined her and has not repeated the allegations. He was asked about Skype and whilst noting its limitations told me he would be concerned if it were reduced. Given the gaps in contact less frequent Skype would not fill the gaps. He was questioned about his case as to his families contact with the children. He was concerned the mother was overstating the opportunity available for the children. He denied he had been checking on the mother when speaking to Lucas on Skype about a bad dream. As to communication with the mother he felt it was important not to be upsetting each other and that this could be managed with messages which were purely *'transactional'*.

21. The mother gave evidence next. She disputed any alienation of the children from the paternal family. She explained the difficulties that had arisen some time ago when the family had leant themselves to deceive her but more recently there had been contact with the paternal grandmother and aunt/cousins. She had an open door to them. She was critical of the father in relation to his continuing communications which took her *'straight back to the same old same old'*. It shows no appreciation as to how she might feel and has left her feeling incredibly weary and tired. The existing section 91(14) has given her the luxury of not having to respond to the father's communications. She felt the father expressed negativity towards her in Skype by his mannerisms. The look of his face and the way he responded. He closes down conversations about her in contrast to the manner in which she keeps the father alive in her home. The father expresses his hostility in a subtle manner but the children are conscious and have made this clear when an issue arose about a Christmas present. The present was a duplicate and she said it could be given back to the father to which L said *'don't do that, you know he hates you'*. She felt Skype should be less prescriptive and would be better on a bi-weekly basis. There is nothing wrong with the structure of the calls and the conversation happens naturally. The contact needed to remain supervised due to the ongoing risks having regard to the fact the father does not accept the findings which leaves a huge risk of emotional harm. When cross-examined she confirmed the children love their father and have a good relationship with him enjoying contact. When asked about more normal arrangements she commented that this was not an ideal

world and her aim was to keep the children safe and have the most opportunity to have contact with the father. She had seen nothing to persuade her unsupervised contact could occur safely. If she could be released from the complications and have respite then she would have taken the opportunity. She explained her reticence in the context of the seriousness of the findings. She talked about the therapy she had received to help her move forward and told me what has been most successful is the knowledge the children are safe and nothing can happen to them. She told me the children have a sense of what happened. They had been present and experienced the incidents. The children had received therapy after the fact finding and received extra support at school, they do not feel safe either. The risks are the same as in 2012. The risk of repeating allegations and making false allegations. The father's hostility to her and the difficulties in communication. She further fears the breakdown of contact and the impact this will have on the children. Her position is in line with what the children want. Thought has to be given to the impact on her. They have required Ms Austin to resolve difficulties. When asked about the proposal for change she wondered for whose benefit this was calculated. The children are happy as things are and this is what they want. It would not ameliorate the difficulties of unobserved communications and hostility. He continues to keep the allegation alive and what will stop him from doing this again. He loves the children but if he believes this then he will shape anything said to this purpose. She did not accept the slant the father was placing on some of the more recent communications. If he does not get his own way then things break down. The email exchange about the bad dream was inappropriate and deliberately geared to undermine her. She did not accept the father had moved on at all. The progress with contact does not suggest a change in capacity. Supervised contact does not send a negative message to the children. They would not go if they had a negative view of the father. They want the contact to continue and want nothing to cause it to break down. She had done nothing to undermine the contact. The proposal would not go well. It would put pressure on the children and would end up with deterioration not improvement. This would happen because the father sometimes loses control of his emotions and says things without thinking. When he is backed into a corner he is unable to accept when he is wrong.

22. Ms Timmis had two meetings with the children, in October and then November. She had met the children on a further occasion since filing her report. The message was they wanted to see their father and they did not want things to change. They were asked about Ms Austin not being there and commented that they did not want anything to destabilise the contact and did not know whether their father might say things about her. She had the sense they know things are tricky between their parents but want both to be OK and this is why they are taking this line: *'it is working...we see him lots...we don't want either upset'*. They don't want to be the people forced to decide what is appropriate during contact. She had questioned whether they might get reassurance from seeing their father could manage unsupervised contact. However the history of the case did not give confidence this would happen and the arrangement does not feel like one that can develop in the way suggested by the father. Moreover the children are not asking for this and are happy with the arrangements. She didn't feel the children took much from the presence of the supervisor, it is the norm for them and they enjoy contact. The children want the Skype to continue. It would be good for the children not to have to see a professional again. They

appear settled in their views. On balance she would support a section 91(14) Order. A period around 2/3 years would be right. She agreed it was not necessary to go on a course to demonstrate change. What is important is the relationship between the parents and the ability to work together. This is difficult without a sense of acknowledgment on the part of the father. She agreed there was no sense the father wants to isolate the children or take them away from the mother. There was no uncontainable anger at the mother but he was hanging on to issues in the earlier proceedings. There is no sense of the father putting emotional pressure on the children. The children are saying they want Ms Austin to be there. Looking forward who would decide the right level of progression ~ the development of contact would be tricky.

23. Ms Timmis was not a particularly controversial witness. She was appropriately probed as to her conclusions but the questioning was respectful and no suggestion was made that she had failed to maintain her professionalism / independence. I accept her evidence as balanced and helpful and given with the intention of seeking to assist the Court to reach a child focused answer. I note her report is a relatively short document with a particular focus on the wishes and feelings of the children which have been gauged from two meetings prior to reporting and confirmed in a subsequent follow-up meeting. I appreciate she has paid regard to the detailed background history in reaching her conclusions.
24. Ms Austin was a professional witness who gave evidence which I have no hesitation in accepting without reservation. She has significant experience of the father's interactions with the children and I found her evidence valuable. She was not challenged at any level and I approach her evidence on that basis. I have not yet commented on the impression I formed as to each parent. I turn to this now.
25. I was impressed by the mother. She gave her evidence in a clear and compelling fashion. I am sure she finds the process stressful and anxiety provoking. Whilst her frustration showed in her evidence I found this an understandable emotion in the context of the case. She is entitled to refer back to the findings made by the Court and I accept the underlying events will likely continue to impact upon her. She was at one point challenged as to exaggeration when she described an incident as the father attempting to kill her. I did not consider the challenge to carry great weight given the finding of the Recorder of the mother being 'throttled'. Overall I found her a witness upon whom I could place weight. I would also highlight my clear and strong impression of a parent who despite her own experiences is an advocate for contact. This was the finding of the Recorder but it independently chimes with my own assessment. All the evidence is of children who despite the history come to contact open to enjoy the occasion. Had she wanted the mother would have had every chance to seek to alienate the children. Her own experiences would explain but not excuse such conduct. Yet I accept she has in her words '*kept the father alive as a living and breathing person in the home*' notwithstanding this requires her to put to one side her experience of him. Whilst I will not agree with her at all times in my assessment I proceed from the starting point that I pay her significant credit for the manner in which she has approached her task.
26. The father impressed me as having a genuine love for his children. His evidence as to their personalities was plainly heartfelt and suggested he had a good sense

of them. The contact notes fortify my conclusion in this regard. In the ultimate assessment I found him to be an individual whose focus is on the children and not on his ex-wife and not on righting the wrongs as he sees it. Despite this I found him to be less impressive than the mother. He is (as is the mother) an intelligent and articulate individual who knows the case in depth. In this context I found his inability to properly confront the question of accepting the findings indicative of evasion rather than confusion. I am clear he does not accept the findings and I found his answers designed to avoid an honest answer in that he accepted the fact of the findings without engaging with the merit of the same. He was given every chance to express his position with clarity but balked from doing so. Whilst he gave credit to the mother in raising such confident and competent children on her own I found his overall approach to be one of frustration at the speed at which she was able to move things on. He commented as to her inability to move on without recognising the ultimate issue in this regard lay with him. Nonetheless I did not find him to be a wholly unhelpful witness. I approach him on the basis that his evidence was shaped by his wishes and that this is underlaid by some genuine motivations. I consequently do not look for corroboration before accepting what he says but I do approach what he says with a heightened level of caution.

Analysis and Conclusions

27. I intend to (1) set out my overview with the respect to the welfare checklist; (2) then turn to particular issues of significance before (3) reaching conclusions and (4) setting out the implications of the same in respect of the order I intend to make.
28. **The wishes and feelings of the children:** This has been a matter of prime significance within the hearing. The argument for the mother and guardian rests on the expressed wishes of the children. In approaching this factor I bear in mind I am considering children aged 9 (nearly 10) and 12 who are intelligent and articulate. The question for any Court is the assessment of wishes and feelings in the light of maturity and understanding. These are children who are mature (consistent with their age) and have an appreciation of the issues in the case. As such they have a right to have their views seriously considered. If I am to depart from such views then it is only right that I explain why I do so. The evidence suggested neither parent has sought to influence the views expressed by the children. I accept the mother's evidence that she left this issue to Ms Timmis. Equally it is clear the father has not had direct communication with the children on this subject. As such the evidence in such regard comes from Ms Timmis and the focus of her report was on the expressed wishes of the children. Her report confirms the following views:

L: "I'm happy how it is" and he doesn't want anything to go wrong which would lead to him not being able to see his Dad as often as he does at present...he might like to see his Dad more often when he is older...he'd want Alison there if he went to Liverpool...Alison needed to be there so they can talk to her "if Dad says anything"

I: She likes contact as it is...having Alison along doesn't impact on anything...her being there "makes it safer"and if she wasn't there "Dad could say something about Mum"

Children: "We just like it working and we want it to keep working" and were concerned in case "Dad does say something and then it might have to stop, and that's a risk we don't want to take".

The children understand the concern is as to what their father might say. In this regard their concerns fit with the concern of the Recorder. Their concern is that without supervision things may be said and contact may be effected. As such the children are demonstrating a risk adverse approach because they place a high value on contact. I am less persuaded the children are of itself oppositional to contact developing although I note reticence around trips away. It seems to me only appropriate that I should subject these views to my assessment of actual continuing risk. Were I to assess risk as low than I should at least question whether there is benefit in the children having their fears confounded. In such a circumstances the alternative would be to leave the children in an unnecessary state of trepidation. Were I however to assess the risks as remaining unacceptable then it would seem to me inappropriate to act contrary to their wishes with the possibility that they may end up losing their contact. It will also be right for me to reflect possible versions of contact that might nonetheless meet the needs / fears of the children. In this regard I will need to consider whether the suggested proposal of either end supervision would itself provide appropriate protection whilst meeting the expressed wishes of the children. I am not of the view the children's views determine the issue, the position is more nuanced.

29. **The children's needs:** These are children who are doing well at school and it is important this positive platform is built upon without unnecessary external stressors and disruption. My sense is of parents who are/have been successful in their own right and these children have real potential to achieve. The mother is meeting the children's needs at a good level. There are no issues touching upon their physical needs which demand consideration within this judgment. Their emotional needs are particularly relevant to my analysis. I have commented upon their wishes and feelings and their anxiety over contact being effected. I bear in mind the evidence from Ms Timmis as to the impact on the children of being placed in the position of referee as to what is said at contact. I agree this would be an unacceptable position to place the children in. It would necessitate them choosing (were the father to misconduct himself) between informing their mother with a possible consequent loss of contact and not informing their mother with all the complications this would bring of apparent collusion. I accept the children should be free of such risk and take the view this would, if it arose, be emotionally harmful. I also have to reflect on the potential emotional impact on the children of their mother suffering anxiety from any change. She is their sole financial provider and it would be contrary to their interest were her income earning potential to be damaged as a result of any order made by me. She is in the early stages of a new business and it is plain this will demand her focus for it to succeed. I have noted the impact the process has had upon her and I accept her evidence of feeling weary as a result. I also accept her evidence of a sense of freedom from the proceedings during the previous 91(14) period. My overview is that she is a mother who is resourceful and focused on the children's needs. I consider an order developing contact will have an impact upon her and it will therefore be important to work this into my evaluation.

30. **Effect of change in circumstances:** The change under consideration is essentially of a move to unsupervised contact. The heart of this case involves an analysis of the risks attendant upon such change. I acknowledge that a change which is followed by improper conduct by the father is likely to be highly damaging and may fundamentally undermine any trust the children have in their father. It will unsettle the children and will have significant impact on their emotional wellbeing. The converse would be for a change not to be surrounded by difficulty. This would confound the perceived concerns and would permit the children to naturally develop their relationship with their father.
31. **The personal characteristics:** I have reflected upon the age and sex of each child. I have regard to I's age and the emotional complications that will arise as she progresses through puberty. She would be particularly vulnerable at such a stage were the father to repeat his allegations. Given, as I accept, she has no recollection of the matters, this would cause her to call into question all she understands. The implications of the same are difficult to work through with any level of certainty. I do bear in mind the children come for contact together and I do consider this has a protective quality. I also bear in mind the father's allegations did not directly impact on L and he appears to hold no particular view in such regard. Given their maturity and intelligent and reflecting on their strong connection to their mother it does seem likely they will gain self-protective skills as they age. This increases the prospects of them acting appropriately in the context of their father speaking inappropriately and decreases the chance of them not sharing such a situation with their mother. I consider it also reduces the risk of their father acting inappropriately as he will understand their likely response in such circumstance and will have to measure his behaviour in this knowledge.
32. **Risk of harm:** I adopt the analysis of the Recorder. I agree the risk is not of physical harm to the children or of abduction. I also agree the risk of physical harm to the mother cannot be said to be non-existent but it is reduced where the parents are not required to meet. The risks are essentially in respect of allegations being made or repeated; of the mother being undermined and the children experiencing the hostility of the father to the mother; of contact breaking down out of the above and/or communication difficulties.
33. **Capacity of the parents:** There is no issue surrounding the mother's capacity to care for the children. As I have noted above she has proven herself able to provide good and successful care in the light of the difficult prevailing circumstances. There is no issue with the care provided by the father in the context of the current contact which is positive. The issue in this case is as to whether the father can maintain an appropriate approach to contact if unsupervised. Does he have the capacity to prioritise the children's needs by avoiding negative commentary and more worryingly unjustified allegations? Is he able to navigate the change to unsupervised contact without causing harm to the children? At the time of the last substantive hearing the Recorder concluded he was not able to do so. Has anything changed in this regard? Has sufficient changed? It can be seen the central issue in this case is the question of risk of harm with the ripple effects of the same permeating through the other factors.

34. I next turn to important issues raised by the parties and will comment on each in turn whilst noting the significance of the issue for the ultimate resolution of this case.
35. **The findings of the Court:** It is clear to me the father does not accept the findings made, both as to those made against him as much as the rejection of the allegations made by him. In respect of the latter he told me he had made no allegations (the inference being he had simply passed on reports from others). This flies in the face of the clear finding of the Court that the allegations were '*malicious*' with '*absolutely no foundation in truth*'. The mother has a point in saying the father is '*hanging on to the allegations*' and his observation as to not being willing to betray I raises concern as to whether he might seek to repeat the allegation. In her evidence the mother talked in terms of the father convincing himself with respect to the allegations, I do not agree. There really is limited basis on the factual findings for such a conclusion. The father is an intelligent man and in reality the evidential basis for the I allegation was (even taken at its highest) poor to say the least. When I considered the evidence (without seeking to determine the point) I was struck the father had considered the suggested disclosure to be obviously evidential of inappropriate conduct. I struggled to understand why he had not simply understood it in the context of an accidental exposure in the course of ordinary family life. This confirms my view that it is more likely he has entrenched himself into a position around a false allegation and is now unwilling to drop the point given it would mean he would have to lose face and at the same time accept it has been him who has been responsible for his separation from the children. Whilst he holds onto the allegation he can distance himself from responsibility. But this does not mean he actually believes in the allegation.
36. The position is little better with respect to the findings of DV. The father's evidence in this regard was inconsistent and contradictory. At one point he appeared to accept the findings. It then became quite clear he only accepted the fact of findings. When asked to detail what he accepted as being the most serious act on his behalf he detailed circumstances that not only fell significantly below the findings of the Court but appeared to fall below his own admissions when the matter was determined. The evidence I heard as to the work he has undertaken confirmed my view that the father has not moved on in his thinking or undertaken work which would assist him in such regard. I reject the notion, advanced by the father, that a professional body working in this field and which had sight of the findings of the Court would advise the father to repeat his allegations to the NSPCC. On balance the evidence confirmed the finding of the Recorder that RELATE had not seen the judgment and the findings. In such a context any work would be of limited value. I am left agreeing with the Recorder as to a limited expectation of the father undertaking work to address the underlying issues which came before her. This remains the position. I am satisfied to a very high standard that there will be no material change in this regard during the children's minority.
37. **Communication:** This was a significant part of the evidence before me. The mother sought to argue that the father had made little progress in his style of communication when compared with the position found by the Recorder. The father disagreed and challenged the notion there had not been a change in his approach. The parties debated the content of a limited number of

email/messaging chains in this regard. I identify these as the (a) ***Barcelona ticket chain***; (b) the ***video recording chain***, and; (c) the ***existing orders chain***.

38. In the ***Barcelona chain*** the parties came to debate a suggestion made by the father as to whether the children would be able to attend a football match between Liverpool and Barcelona. In the video recording chain the parties fell into disagreement about the father recording contact (indirect and direct). In the existing orders chain it was said the father had sought to undermine the mother by suggesting he was unclear which orders remained in force. I have considered each with care. My overall assessment is that the examples are not indicative of a healthy relationship between separated parents. The messaging becomes argumentative far too early and without good reason. There is a tendency to debate, particularly the father, when the same is not helpful. Yet I do not assess the communications as having a quality that would justify the description previously given by the Recorder. i.e. ‘*appalling*’. Sadly, the communications come closer to that commonly seen by the Court when considering estranged parents. There are other features I bear in mind. In the case of the Barcelona tickets I tend to agree with the mother that the father appeared to be seeking contact outside of that ordered or likely to be agreed. But the message is not unequivocal and his account of offering tickets for the children (and mother) is not ruled out by the messaging. Clarity at the time from either parent would have put the issue beyond doubt yet neither communicated to obtain clarity. In respect of this example the mother did not have her best moment in observing ~ when she was told the tickets were lost ~ that this would allow the father to fund supervised contact. That comment was both unhelpful and provocative. In any event the tickets were free and the children as keen football fans would have had a lasting memory had they been able to attend.
39. I am unwilling to hold the father wholly responsible for the ***video recording chain***. I accept his lengthy response was unnecessary and unhelpful and that he expressed himself in terms which might have upset the mother. I disagree with him that his reference to the Court believing the mother when she lies did not have general application. However, the context of the messaging is important. It commences when the mother discovers the father is recording his indirect Skype calls with the children. Her response was to message him saying he must not record any contact (direct or indirect) or she would seek an injunction. The inclusion of direct contact was in my judgment inappropriate. There was no reason why the father should not have videoed his time with his children in circumstances which have been described in positive terms. To argue otherwise was disproportionate. Moreover, I am not satisfied it was merited to threaten an injunction with respect to the indirect contact. The context is important. The father has limited contact. He loves his children. The evidence does not suggest the video messaging has been inappropriately abused. For the father to record this time with the children is in my judgment understandable. I do not consider it requires prior consent from the children anymore than any other ordinary parent would seek the same consent when recording time with their children. In this context his email response was not helpful but it cannot be disentangled from what came before.
40. The messaging as to the ***existing orders*** was unhelpful and potentially provocative on the part of the father. I am willing to accept he may have had some level of uncertainty as to the total detail of all orders but he expressed

himself in a manner which was likely to induce anxiety in the mother. I do though note this message was some time ago. I am left concluding the messaging issue is not at the levels previously experienced and the criticism attaching to the father is correspondingly reduced. I accept there remains aspects of criticism and niggling comments within the communications but I am not persuaded these continue to have marked relevance to the issues before me. It is right to record that this conclusion of itself is an indicator of progress albeit not complete.

41. **Ability of parents to independently make arrangements:** The mother tells me this remains impossible for her and she requires the assistance provided through Ms Austin. The father's case suggested it is now time for the parents to move on from the past and construct a working relationship. I prefer the mother's position in this regard. From her perspective the father who attacked her has not moved on by way of any therapeutic or other assistance. It does not help that he remains argumentative in communications. In such circumstances how can it be reasonable to compel her to negotiate directly with the father. I consider his approach is naïve and fails to pay proper regard to his contribution to this issue. Moving on requires progress, acknowledgement and perhaps remorse on his part ~ at this time his progress is insufficient. I bear in mind **PD 12J**. It is however questionable as to the impact of this issue given the continuing availability of Ms Austin. She told me she can continue to assist even if this means for a short period at the start and end of contact. She would be available to support contact on consecutive days (avoiding Sunday if possible). Bearing this in mind one can see that progress might be possible without requiring a change in the respective role of each parent.

42. **Hostility and undermining the mother:** Having heard both parents I am of the view the father has not reconciled himself to his responsibility for the position he finds himself in. He blames the mother in a manner which is not justified on the evidence and is frustrated by, as he sees it, her intransigence. The mother argues he brings hostility to the attention of the children and this is likely to be a negative consequence of progressing contact, i.e. given the opportunity for unsupervised time he will denigrate her and generally undermine her position. She relies upon this in advocating the continuation of supervised contact. Does the evidence establish the mother's case in this regard? Frankly the evidence is limited. It seems to comprise the father's attitude when conversation turns to the mother during Skype calls; his body language during such calls; and I assume the communications I have considered above. I am not persuaded this aspect of the case is particularly illuminating. It is said the father closes down conversation during Skype calls when it turns to the mother. I accept this is the case and my sense of the evidence is that this was not particularly in dispute. However, the father argues that he is placed in a difficult position. If he does not engage with the conversation then he is said to be hostile but if he were to engage then he might be said to be invading the mother's private home life. I understand this point. The Skype calls are from the mother's house and she is known to be present. In such a situation engaging with conversation about her may appear problematic.

43. The concern is further undermined by the evidence of Ms Austin that the father does naturally engage with conversation about the maternal family during direct contact. The second point relates to his body language with the mother saying

his expressions convey hostility. This is such that the children have picked up on the hostility and on one occasion L asked the mother not to send a present back to the father as it would cause issues because *'you know he hates you'*. I do not consider the evidence as to body language is sufficient to make a finding. It sits somewhat uncomfortably with the evidence of the Skype contact being positive and the children managing it without difficulty. My sense is they would struggle with such contact if it brought the father's hostility to their mother ~ to whom they are close ~ into their home. There may be occasions where the body language is open to interpretation but this may arise for a whole host of reasons in the course of Skype messaging. A particular example of hostility/undermining behaviour is the example of a Skype call in which the father addressed an issue of L being effected by the process of having to meet with Ms Timmis. At an earlier Court hearing both parents had resisted the notion of permitting a follow-up meeting with the children with the mother citing some emotional disruption. Shortly afterwards in a Skype contact the father questioned L about this. The mother said this was geared to undermine her by questioning whether she had been truthful with the Court. The father in contrast argued that he had historically been criticised for being the 'Chief Entertainment Officer' and failing to engage emotionally with the children. He told me this was his attempt to address this concern. I have struggled to determine the motivation behind the call. The fact it was recorded turned out to be of limited relevance given the concession that the father had been recording all calls. I do not however struggle to conclude that it was misguided insofar as it attempted to open up a new approach to parenting on the part of the father. The combination of the form of communication (not direct face to face); the subject matter (a potentially embarrassing subject for a 9 year old boy), and; its timing (shortly after the hearing) combined to reduce its potential for developing the role of the father. He would have been much better commencing this approach in face-to-face contact and in a gradual manner. I appreciate the point as to information losing its relevance as time passes but this is the position the father faces and he needs to work sensitivity within its constraints. I accept the evidence of the mother that this was upsetting for L, however I am not persuaded this amounted to the father seeking to undermine the mother. I would finish this section by reference to Ms Austin's evidence of the father expressing frustration as to the lack of progress of contact. I accept he has expressed such frustration but it falls short of evidencing hostility to the mother.

44. **Working with professionals:** Historically the father has demonstrated real problems when working with professionals. I will not labour the point which is clearly set out in the judgments of the Recorder. Does the evidence suggest a shift in approach? In my view there can be little doubt in this regard. The father has managed a working relationship with Ms Austin over the last 3½ years without difficulty. She speaks positively of his attitude and relationship with her. This is significant. This was not a time limited period and on any view it must have been difficult for the father to accept. Yet there is no evidence of the anger, real frustration, or, belittling behaviour previously identified. The mother makes the fair point that this suggests the supervision is working and should continue. However, I think it offers more insight than this. It does indicate progress in mindset or at least containment on the part of the father such that he can work with an environment neither of his choosing or consistent with his case. To a lesser extent the father demonstrated equal composure with Ms Timmis. She had no complaint as to his engagement with her. Perhaps related

to this point is the father's engagement with the Court. During my period of involvement he has been polite and measured in his engagement. A point of note relates to the reality that he is no longer issuing an ultimatum to the Court of contact on his terms or no contact. Whilst he did make this point at the PTR (in this regard I consider his recollection is at fault) he did not maintain such a position at final hearing. The use of an ultimatum has been a consistent theme of previous hearings. It is both unhelpful to the Court and illustrative of poor focus on the needs of the children. The fact it is no longer deployed demonstrates some progress.

45. **Breakdown in contact:** The mother raises concern as to the risks of breakdown in contact and draws upon the history of the case. She is entitled to do so given there have been significant periods during which contact has been effectively suspended with consequential harm to the children. However, at this time I draw little assistance from the same as I view them as being explicable in the context of the time. Contact for instance broke down on one occasion out of disagreement between the father and previous supervisor. This would appear to be an unlikely event in the current climate. A second breakdown closer to the time of parental separation is equally unhelpful.
46. **Prospect of making allegations:** In my judgment this is a central factor. A finding of a real likelihood of such conduct will balance heavily against the development of contact as sought by the father. For reasons given such conduct would have a significant and harmful impact upon the children magnified by their sensitivity to the issue. If it occurred in the context of the Court having permitted unsupervised contact then the children will likely lose faith not only in their father but in the whole process ~ a process which is there to safeguard them. They will question what purpose there was in obtaining their views, only then to abandon such views to their disadvantage.
47. I have commented on the particular impact on I. In such a case it may not be possible to simply return to the previous status quo and as such the relationship between father and children may be irrevocably sundered. The mother says the father given opportunity will feel unable to contain himself. The father points to the recent past as demonstrating his capacity to take a child focused approach. The mother points out this was in the context of supervised contact.
48. On one side I bear in mind my findings above as to the father being unreconciled to the findings of the Court. I also bear in mind the failure to undertake rehabilitative work. This means the Court has to have an open mind to the potential of problematic behaviour. I appreciate the purpose of the work was to deal with the findings (rather than the non-findings) but I do not consider one can divorce the two. The allegations can be seen as part of the control and abuse in any event. One would have hoped that productive work would have re-set the father's attitudes and would have left him in a much different place in which the allegations could be assigned to history. This has not happened. I reflect on my findings as to the father's frustration with the mother and the potential for him to act to hurt or punish her. This deserves consideration as a factor. I bear in mind a decision in the father's 'favour' is not the end of matters and there may well be room for further discussion and disagreement as to additional future developments. This leaves the possibility of future opportunities when the father may feel aggrieved with him resorting to making allegations. I also bear in mind

that the concern is not limited to making or repeating allegations. It extends beyond this to generalised hostile and undermining behaviour.

49. But this should be considered in a proportionate manner with the Court reflecting on the fact that some level of disagreement between parents can be expected and is not of itself such as to be inconsistent with the welfare of the child. The point is it is both unrealistic and unjustified to make progress conditional on evidence of an absence of any hostility. The question for me is as to how it is exhibited and how it is likely to be experienced by the children. In the normal course of events I can expect children to have some degree of resilience to an understanding of unhappiness between their separated parents. But I also bear in mind the evidence of Ms Austin as to her experience of contact. This is valuable evidence as she not only informs me as to observations but does so from a position of real experience. She tells me there has been neither hostility nor undermining behaviour during contact. Further, there have been no allegations, improper questioning or negative response when the conversation includes the mother and grandfather. I bear in mind this is supervised and so cannot inform me as to conduct as when unsupervised but this frankly will always remain the case pending unsupervised contact.
50. I am entitled to factor in the substantial period over which this has occurred and the level of control exercised through the period as being potentially indicative of his ability to contain himself. I consider I should also reflect on the implications were the father to misconduct himself and his understanding of these same implications. I have already noted the likely impact on the children. Does the father have a comprehension of this risk and what does this mean for the likelihood of improper conduct? The father told me he understands such conversation will damage his relationship and have an impact on contact. I accept his evidence in this regard. I accept he appreciates the nature of the stakes were he to so act. This is a material consideration.
51. But is the mother right in commenting on his limited capacity for self-containment. I have commented on the available evidence with respect to the last 3½ years. It seems to me only right to reflect on the Recorder's finding that the allegation was '*malicious*' and known to the father to be untrue. I consider this is a relevant matter. I have to ask myself whether it makes a difference that the father knows the allegation had no merit. I consider it is relevant. It is one thing to struggle to contain oneself in respect of a concern which has been ruled unjustified but is genuinely held. It is though another thing in respect of a matter which is known to be false. I find the likelihood of uncontained behaviour is reduced where the issue is not genuinely believed by the holder.

Conclusions

52. Having set out my analysis I now bring my views together. My primary conclusion is that I consider the risk of uncontained behaviour (allegations and significant undermining behaviour) is on balance limited. I do not consider it is a realistic likelihood that the father will take the opportunity of unsupervised contact to repeat or make allegations. Whilst I bear in mind his unreconciled attitude to the findings I consider he fully understands the implications of so

acting. It is quite clear he loves his children and it is clear he does not want to endanger his contact. The reality is he has maintained extended supervised contact for this very reason. I consider it most unlikely he will jeopardise this given the chance to do so.

53. I accept unsupervised contact may at some level confirm to the children the father's antagonism to the mother but I do not consider this is likely to be so significant as to rule out unsupervised contact. It is possible there may be body language indications but the evidence suggests the children are already conscious of this and this has not had a meaningful impact on the children. The nature of the order I envisage will also limit risk as it will likely be seen as a staging point towards an ultimate outcome rather than the ultimate outcome itself. This will mean the father will continue to be alive to the need to maintain appropriate conduct.
54. Having reached this conclusion I have to reflect on the interaction with the wishes of the children. I can either make the finding but on balance rule against unsupervised contact because the children fear a risk which I find will not likely materialise. Or I can set in motion a process that may cause them some anxiety but will on my findings confound their concerns. I consider it is appropriate to take the second course. The children deserve, indeed need, to know why I have reached this conclusion. I have heard the evidence and I have been able to evaluate the risks. It will help them to understand this. But I consider it would be harmful for the children to allow a fear to be maintained without justification. This is more so where it relates to one of their parents. In reaching this conclusion I make clear I continue to see a role for Ms Austin. Her continuation will mean the children will have an emotional cushion. This will give the mother some comfort as it will remove her justified concerns around having to negotiate with the father.
55. I have therefore reached the conclusion that an order should be made reducing the ambit of supervision. But given the history and given the needs of the children this should be managed with care and this means slowly. The order should have steps within it and each step should be gradual both to reinforce progress but also to meet and settle the children's fears.
56. I am conscious I have departed from the recommendations made by Ms Timmis. I do so in the light of my finding as to risk of the father misconducting himself. Secondly, I have explained how I have evaluated the impact of the children's wishes and feelings. Whilst I respect Ms Timmis' conclusion I do not see such wishes as determinative of outcome where they are able to be confounded in reality. It is clear to me Ms Timmis struggled with the issue (although she reached a clear conclusion) as signified by her active consideration of the alternative proposal. Lastly, I consider she over emphasised the relevance of the father's longer term plans. They may be unrealistic (seeking 2/3rds of the summer holiday) but this does not mean progress itself is unrealistic. I am perfectly able to agree progress whilst ruling out overly extravagant proposals.
57. My conclusion is further supported by my assessment as to the children's self-protective capacity. The position is plainly markedly different from that facing the Recorder some 3-4 years ago. I is now aged 12 and L nearly 10. With their growing maturity comes understanding and insight ~ see paragraph 31 above.

58. The order I make is based around the current regime of 7 contacts per annum being each half term; Christmas, easter and twice each summer. I understand the contact is between 10am – 4pm. My conclusion is as follows:

- i) The next two contact (Easter and May) should include 4 hours of unsupervised time with 1 hours of supervision at each end of the contact. This will allow the father to engage in an activity and have lunch with the children alone;
- ii) The summer contact (x2) will follow the same pattern but may be extended to two consecutive days to be determined by reference to Ms Austin. The supervised element will be as in May above on each day.
- iii) The same principle will apply in the October Half-Term and Christmas holidays save that the supervision will reduce to 30 minutes at each end of contact.

I judge this proces of development is sufficiently gradual to give the children the confidence they need in their father. The extension into consecutive days follows the position of the mother.

- iv) In February, Easter and May (2020) the contact can further develop such that the two contacts can be joined by an overnight session. However Ms Austin will remain as before. This contact is to remain in the London area
- v) In summer the sessions will increase to 2 overnights. Ms Austin to be involved as above at each end of contact.
- vi) For October Christmas and February (2021) there shall be 3 overnights per trip. Ms Austin as before.

The first overnight will therefore be in 1 years time. By this point the children will have experienced a significant amount of unsupervised contact. I feel the contact must remain in London to give the children extra confidence but I see no reason why it cannot proceed to overnight at that point. Thereafter as explained above the contact will gradually extend by to no more than 3 overnights 18 months from this point. By this time the children will be approaching 12 and 14. I do not extend overnight contact outside of London at this time. I fear it would complicate the process of development.

I accept during this period it would be wise for the father to begin the process of informing the children as to his life in Liverpool. I would suggest the father liaise with Ms Austin in this regard to seek advice and guidance.

- vii) Skype shall continue as currently. I can find no basis for changing this given it is positive for the children and I consider it is likely to be negative to reduce opportunities for contact between direct visits.
- viii) The matter will then be reviewed before me in March 2021. At that hearing I will expect to consider the following matters:

- a) Can supervision now be removed, if not how should it continue?
 - b) Can contact now be increased to a position closer to sharing of holidays?
 - c) I would want position documents from each parent setting out their position as to how things have progressed and their position on the issues above. I would welcome a short letter from Ms Austin as to her view as to how things have gone.
59. I am not going to make a section 91(14) Order at this time on the following basis:
- i) The structure above is intended to be a comprehensive summary of contact over the period subject to agreement to the contrary reached by the parties. As such any application, which will be reserved to me, will need to clearly explain why I should be entertaining further interim consideration. I make it clear I will take a robust approach to any application which fails to understand this point. I may summarily dispose of the application if the situation justifies it. This is a significant factor and comes close to making a section 91(14) order.
 - ii) I accept there are a limited number of areas which may need resolution. There may be issues as to the location of overnight contact ~ I expect the father to take a pragmatic approach in this regard or as to dates (but this has not been an issue in the last period). If this is an issue then I make it clear I may resolve any issues in short order on limited submissions.
60. My judgment is that it would be contrary to the children's interests for there to be a review in the near future. I do not believe they will benefit from further professional meetings. In any event my assessment tells me progress can be made in a careful and staggered fashion consistent with their welfare. I judge the children have the capacity to progress to unsupervised (largely) and then overnight contact at the speed I suggest. Most importantly I assess the same will be safe for them.
61. I am now circulating this judgment and will accept any corrections and requests for clarification received by 4pm on 25 February 2019. I intend to hand the judgment down at a short mention hearing (t/e 1 hour) at the Family Court at Brentford at 12 noon on 28 February 2019. I would ask counsel for the parties to file a draft order for my approval 24 hours before the hearing.

END OF JUDGMENT