IN CONFIDENCE

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment no person other than the advocates or the solicitors instructing them and other persons named in this version of the judgment may be identified by name or location and that in particular the anonymity of the child[ren] and members of their [or his/her] family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Case No: ZE20P50126/ ZE20F00253/ ZE20P00711/ ZE23P50113
Neutral citation number: [2023] EWFC 246 (B)

IN THE EAST LONDON FAMILY COURT

Hearing dates: 30th & 31st October 2023 and 1st, 2nd & 10th November 2023
Judgment given on: 8th December 2023

Before :

District Judge Coupland

- -

Between :

M

Applicant

-and-

F

1st Respondent

-and-

Child A

2nd Respondent

-and-

Child, B, Child C & Child D
(through their NYAS caseworker)

3rd-5th Respondents

Representation:
Mr Peat of counsel represented the Applicant
Ms Katambala, solicitor, represented the 1st Respondent
Ms Megarry of counsel represented the 2nd Respondent Child
Ms Nicholes of counsel represented the 3rd-5th Respondent Children

1. I am concerned with proceedings relating to four children: Child A (aged 14), Child B (aged 10); Child C (aged 8); and Child D (aged 7). These are private

law proceedings between the mother, M, and the father, F. For ease, I shall refer to them as the mother and the father throughout this judgment. This has been the final hearing of these proceedings.

2. The mother has been represented by Mr Peat (and by Ms Scanlan for the handing down of this judgment), the father by Ms Katambala, Child A, who is separately represented from his siblings, by Mr Megarry, and the younger three children by Ms Nicholes (and by Ms Lomas for the handing down of judgment), on the instructions of the NYAS Caseworker. Ms Hughes, instructed by Local Authority 1 attended on the first day of this final hearing to assist the Court but Local Authority 1 are not parties to the proceedings.

3. Child A becoming separately represented has happened very late in the day as a result of him seeking to be separately represented. He is competent to provide instructions and it seems to have become clear in the week before the final hearing that Child A's views conflicted with those of the NYAS Caseworker in respect of what final orders the Court should make.

4. As agreed with all parties previously, I briefly met with Child A before the final hearing and a note of that meeting has been shared with the parties. This meeting was conducted in accordance with the published guidance on Judge's meeting children. Child A's new solicitor was present to take a note. I made it clear to Child A that the purpose of the meeting was not to gather evidence and that everything we discussed would be noted down and shared with all parties, including the NYAS Caseworker and both of his parents.

5. This final hearing took place over five days and I heard evidence from the mother, father and the NYAS Caseworker. The allocated social worker for

Child A attended on day one but after hearing from the parties, I concluded that I did not need to hear evidence from her. The younger three children now live in Local Authority 2 with their mother and are not subject to any Local Authority intervention. Child A remains living with his father in Local Authority 1 and is the subject of a child in need (CIN) plan.

6. In October 2022, I conducted a fact-finding hearing to deal with allegations made by each of the parents against one another. Following this hearing, I delivered a very lengthy judgment, which forms part of the bundle. I say now that this judgment can only be understood fully by reading the judgment from the fact-finding hearing. That judgment provides the necessary background and the context for this judgment. At the conclusion of the fact-finding hearing, I dismissed the father's allegations against the mother. I found a number of the mother's allegations to be proved as set out in that judgment. Those findings included that the father had been abusive towards the mother, that he has behaved in a coercive and controlling manner and that he had tried to manipulate and undermine the children's relationship with their mother, particularly in the case of Child A, and had encouraged Child A to make a false allegation against his mother.

The background

7. It is not necessary to repeat the background to these proceedings again here and I am not going to do so. It is however worth setting out what has happened since the fact-finding hearing.

8. Child A has remained in the care of his father. As ordered previously, Child A was seeing his mother and his siblings every Sunday and until very recently,

that was happening. It is fair to say that the mother has had some concerns about what Child A has said to his siblings during contact and about him potentially painting a negative picture of the mother to the younger children. Having said that, contact has been going ahead and seems, broadly, to have been positive. A few weeks ago however, the mother and Child A had a disagreement over WhatsApp after Child A accused the mother of abusing his siblings. For the avoidance of doubt, I made no findings that the mother posed a risk to the children; Local Authority 1's involvement with the three younger children ended in the summer of 2023; and Local Authority 2, where the younger children now live, have not found it necessary to take any safeguarding measures. There is nothing from the younger children's schools to suggest that they have any concerns about the mother's care of the children either. What has happened, however, is that in July 2023, Child C appears to have suddenly messaged his father, unexpectedly, alleging that his mother had hit him. These messages were not in the bundle but were apparently shared by the father's solicitors with the parties previously. I have only been provided with a copy during the hearing. The conversation then continues, including the father saying: *"don't tell anyone that you text me"*

9. It appears that the father reported this issue to the Local Authority in September 2023. The matter was investigated, and no further action taken. The father does not seek a finding that the mother assaulted Child C. The mother firmly denies the allegation and is concerned about how Child C came to send this message given that, as far as she knew, Child C did not have the father's contact number. It would seem to be in the context of this allegation that Child A then accused his mother of abusing his siblings. There seems to be a dispute

as to when the contents of these messages were shared with the parties. The NYAS Caseworker has confirmed, through counsel, that she received them from the children's solicitor in early October 2023.

10. The message exchange between Child A and his mother from a few weeks ago is contained in the bundle. In this exchange, Child A clearly accuses his mother of being abusive. The mother makes it clear that this is not the case and reminds Child A that, as his mother, he should respect her. She says that he cannot continue to go to contact anymore if he does not show her some respect. Child A then replies by saying that no-one can stop him seeing his siblings. It is not clear what he means by this but following the exchange, contact stopped. The mother says that she has tried to message Child A on several occasions since that time to reassure him that she loves him and wants to see him and to make it clear that the Sunday contact sessions are still open for him to attend but Child A then blocked the mother and so is no longer communicating with her.

11. Child A has continued at the same school, which is a state school that he attends every day as a full-time student. The father seeks an order that Child A should move to a private school and says that Child A has been bullied at his current school over many months. There was clearly an incident of bullying earlier this year but there is now a disagreement between the parties as to whether this was a 'one off' incident that was dealt with, or whether it is an ongoing problem. The father and Child A, through his counsel, say that it is. The mother says that she has spoken to the school regularly and they have not

mentioned it again. The NYAS Caseworker was not aware that it was an ongoing issue, and it has not been raised at Child A's CIN meetings.

12. The father's proposal now is that Child A should attend the new private school and that Child A's paternal aunt will pay the fees. The position on this has changed throughout the final hearing. I was initially told that Child A's aunt would pay the fees on the basis that Child A will only attend school two days a week and would work from home remotely for the other three days. This would be cheaper than him attending school every day in person. Just prior to the NYAS Caseworker beginning her evidence on day four however, I was told that the aunt had now agreed to pay for Child A to attend full time.

13. The younger children have remained in the care of their mother since the fact-finding hearing. Earlier this year, the mother moved with the children to Local Authority 2 and the children started a new school. The mother did not communicate this decision to the father until after the move had taken place. She says this is because there is a restraining order in place to protect her from the father and she did not want him to have her new address or know what school the children were attending until she had moved and had explained the situation to the new school. The father does now know the details of the school.

14. The younger children were supposed to be having contact with their father every fortnight in a contact centre. Given the findings I made previously, I considered this to be a safe arrangement for the children and the mother in accordance with Practice Direction 12J, but I did not consider unsupervised contact could be regarded as safe. The contact has not been consistent. At

times, the father says that he has not been able to afford the contact centre fees. At other times, he says the mother has cancelled contact; the mother accepts this has happened on one occasion, and one occasion only, when she was ill. Between May and October 2023 for example, there was no contact at all. The most recent contact session was on 14.10.23 and the notes of the various contact sessions that have taken place are in the bundle.

15. The father has previously been assessed by the Local Authority for his suitability to engage with the Positive Change Service (PCS) course in light of my findings. On two occasions, he was assessed as being unsuitable for the course because he did not accept that he had abused the mother. The first assessment was in April 2021, before the fact-finding hearing had taken place. The second assessment was in November 2022, just after I had given judgment at the conclusion of the fact-finding hearing. More recently however, the father has been accepted on to the course. In September 2023, he completed the two-day Early Repair Course, and he has since started the PCS course. This is a twenty-week course and is therefore likely to be completed around March 2024.

16. During the summer of 2023, the mother took the younger three children on holiday to Country 2 as planned, and Child A joined them there. The father had previously planned to take Child A to the USA but that did not happen, although they did go to Country 3, apparently without the mother being told of the change of plan in advance.

The Law

17. I make it clear that, at all times, the children's welfare is my paramount consideration and I have kept that at the forefront of my mind at all times.

18. To assist me in determining what is in the best interests of the children's welfare, I must have regard to the welfare checklist as set out in s.1(3). I will come on to address the relevant points in the welfare checklist, as they apply to this case, later in this judgment.

19. I also remind myself that, in accordance with s.1(5), I should not make an order unless I consider that doing so would be better for the child than making no order at all. I further remind myself of the general principle in s.1(2) that any delay in determining the issues before the Court is likely to prejudice the welfare of the child concerned.

20. It is important for me to consider the presumption in s.1(2A) that, unless the contrary is shown, the involvement of each parent in the life of the child concerned will further the child's welfare

21. The court must take into account all of the evidence and consider each piece of evidence in the context of all the other evidence and look at the overall canvas. Evidence should not be assessed in separate compartments. The judge must assess and evaluate the evidence in its totality.

22. I remind myself of the children's and their parent's right to family life under Article 8 of the European Convention on Human Rights and any order I make must constitute a necessary and proportionate interference with those rights.

23. As this is a case in which I have made findings of domestic abuse from the father to the mother, I must consider Practice Direction 12J and so any order

for contact between the father and the children must be safe for both the children and for the mother in light of the findings that have been made.

24. I am invited by the mother to make a non-molestation order in her favour. I have dealt with the law relating to that later in this judgment.

25. The mother seeks an order that the father pay her costs of the fact-finding hearing. The law in relation to that is also dealt with later in this judgment.

Positions of the parties

26. The mother invites me to make an order that Child A shall live with both of his parents. She accepts that, in accordance with his wishes, he will continue to be with his father for the vast majority of the time, but she accepts the reasoning of the NYAS Caseworker as to why a shared 'live with' order would be in the best interests of Child A's welfare. She seeks an order that Child B, Child C and Child D live with her, and should only have fortnightly supervised contact with their father. The mother opposes the application for Child A to change school. She seeks an order that the children's surname be formally recorded as M's surname, largely because of difficulties in renewing their Country 1 and Country 2 passports, which remain in the name of M's surname. The mother also invites the Court to make a non-molestation order in her favour to provide protection from the father, due the current restraining order expiring next month, and she seeks an order that the father be ordered to pay her legal costs incurred for the fact-finding hearing.

27. The father invites me to make an order that Child A lives with him. He says that is what Child A wants and says that this reflects what is happening in

reality for Child A. He does not object to an order for Child A to spend time with his mother. As regards the younger three children, the father would ideally like a shared 'lives with' order with the mother and would like to have unsupervised contact with the children but he takes a realistic position in recognising that the Court may find it difficult to consider unsupervised contact given that he has so recently commenced the PCS course and has many more sessions ahead of him. The father invites the Court to permit Child A to change school and opposes the mother's application for the children to all be known as M's surname. He opposes the mother's invitation for the Court to make a non-molestation order and opposes her application for costs.

28. Child A seeks an order that he lives with his father. He says that he will only spend time with his mother if this is now professionally supervised, despite contact never having been supervised previously. Child A is clear that he does wish to continue having regular contact with his younger siblings. Child A would like to change school and does not want to use the M's surname. He is clear that he wishes to continue to be known as F's surname.

29. The NYAS Caseworker, on behalf of the three younger children, recommends that there should be a shared 'lives with' order to both parents in respect of Child A. She does not recommend or see any need for contact with his mother to be supervised. The NYAS Caseworker does, however, have concerns about how the mother can manage contact between Child A and the younger children, and is of the view that she requires support with this. The NYAS Caseworker recommends a 'live with' order to the mother for the younger children and until such time as the father completes the PCS course and there

is evidence of shift in his level of acceptance and insight into his previous behaviours, does not support any unsupervised contact. The NYAS Caseworker is of the view that contact must therefore remain supervised and suggests this takes place on a fortnightly basis. The NYAS Caseworker does not, on balance, support Child A changing schools at the present time. On the issue of the name change, the NYAS Caseworker is of the view that the children should continue to be known as F's surname on a day-to-day basis but she does support the children being able to access their Country 1 and Country 2 passports, and so does not object to them legally being known as M's surname for that purpose.

The evidence

30. As I have already referred to, I have considered all of the evidence within the Court bundle, which runs to just over 1000 pages. For the avoidance of doubt, I of course did not hear any further evidence about the allegations and findings that were made previously. I also make it clear that I was not invited by any party to make any further findings at this welfare hearing. It is not necessary to repeat large amounts of the written evidence in this judgment.

31. The mother gave evidence first. She confirmed that her application to change the children's name was because she wanted to renew the Country 2 and Country 1 passports, which are in the name of M's surname. The mother said that at some point during her relationship with the father, he changed his name from M's surname to F's surname and she signed something, most likely a deed poll document, agreeing to the children's names being changed to F's surname too. The mother says that she was coerced into this. The mother

explained that she has spoken to the Country 2 and Country 1's embassies who have confirmed that in order to renew the passports, they will require a copy of the deed poll document. Previous directions have been made for the father to provide this information, but he has not done so and is now asking the mother to agree to a new deed poll. The mother explained that she had explored this possibility but because a deed poll was completed previously, she has been told that she needs to contact the company who assisted them previously, but she does not know who that was and the father says that he cannot recall this either. Even if a deed poll document is provided, the mother says there is no guarantee that the passports will be renewed as this then becomes a legal matter that has to be dealt with through the Country 2 and Country 1's courts.

32. The mother was clear that her application is not an attempt to undermine the father or to somehow remove him from the children's lives. Her view was that a technical/administrative change of name is unlikely to have any significant impact upon the children's welfare. The mother accepted that she has not travelled to Country 1 very much in the last ten years, but she nevertheless feels it is important that the children hold Country 1 passports as it is part of their identity and they should be able to travel freely to a country, of which they are a citizen, without having to apply for a visa.

33. The mother was also concerned that, having spoken to the UK passport office, they had indicated that each child's passports must all have the same name on them, and the mother was therefore concerned about the validity of the British

passports, given they are in the name of F's surname, whereas the Country 1and Country 2 passports remain in M's surname.

34. When asked about the father spending time with the children, the mother was clear that this should be on a supervised basis in a contact centre because of the findings that the Court has made and the abusive behaviours that her and the children have been the victims of. The mother felt that contact would need to remain supervised until the father changes his behaviour and there is evidence provided of this. The mother confirmed that she still has concerns that the father is coaching Child A and providing a negative narrative of her to him, a recent example being Child A's allegation that the mother has abused his siblings. She said that she was also concerned by comments that the father made to Child C during the most recent contact session, which is reflected in the contact note. The mother firmly rejected any suggestion that she is behaving in a vindictive manner by insisting on supervised contact.

35. The mother is clearly and understandably upset about the situation with her relationship with Child A. She said that she wants to start spending time with him and she was willing to work with the Local Authority, attend mediation and felt that one-to-one contact might assist. The mother was however clear that she is Child A's mother, and it is her job to ensure that boundaries are in place. She was clear that Child A should not be allowed to speak to her however he wants and cannot be disrespectful towards her, which is what led to the recent disagreement between them.

36. The mother was very clear that she will not attend supervised contact with Child A. She felt this would send the wrong message and there is, of course,

no safeguarding reason for contact to be supervised; the Court has never found that the mother poses any risk to any of the children. The mother accepted that Child A has a positive view of his father and believes that she has been abusive towards his siblings, which she described as being "very sad". The mother accepted that given Child A's age, she could not change his views, but she was concerned about what he would say to his siblings, and she is, of course, very distressed that Child A holds such views. She feels that she tolerates a lot of what Child A says to her, but she cannot allow him to make false allegations and comments about her posing a risk to the younger children. The mother accepted that Child A may, at this time, refuse to engage in unsupervised contact but she was also clear that, in the past, Child A has refused contact for periods of time before agreeing to it again. The mother therefore accepted that their relationship is in difficulty but did not accept it has completely broken down, although they are not currently speaking, and Child A has blocked her number.

37. On the issue of Child A's schooling, the mother's concerns were the proposal for Child A to spend at least some of the week learning remotely (the court was only informed after the mother's evidence that the paternal aunt was willing to fund Child A attending full-time) and because she was concerned about potentially becoming liable for the fees. The mother rejected the suggestion that she has not been involved in Child A's schooling recently and said that she has been to parent's evenings and in contact with the school regularly. She said that she was concerned about the impact on Child A socially of learning remotely and therefore reducing the amount of direct contact with his peers. The mother said that she was aware of the bullying

allegations from earlier this year, but the school had not shared any more recent concerns with her about this issue. It was suggested that, in fact, Child A does not socialise very much at school but the mother, again, said she was not aware of that and, in any event, felt the best way for Child A to learn was to attend school in person.

38. I then heard from the father. He said that he previously used the deed poll document to obtain the children's British passports but had since lost this and was unable to recall very much else about the process to obtain those passports. He does however query why the mother now wants to renew the children's Country 1 passports given that she has not travelled there for more than a decade. He said that he previously changed the children's names to F's surname because that is the name used by most of his family members, although he had been known as M's surname until January 2019. He said that throughout 2023, he has been trying to obtain a copy of the deed poll or to resolve the issue but had not been successful in doing so, despite making various enquiries, including just prior to this final hearing when he applied for further copies.

39. It was pointed out that in his final statement, the father said that false allegations had been made against him, despite the court having made clear findings against him. The father accepted that but said the mother had made other false allegations against him. He said that the mother had been negatively affected by some of his actions, such as "swearing". He said that he is now undergoing therapy for issues relating to depression, but that his therapist has not seen the fact-finding hearing judgment.

40. As regards his communication with Child C, the father said that Child C must have already known his number, which is how he was able to message him. The father said that he did not regard this text message conversation as being a form of unsupervised contact and said that he told Child C not to tell anyone about it because he was worried that Child C would get into trouble and that the mother may hit him. The father did not accept that telling Child C not to tell anyone was an attempt to influence or control Child C.

41. As regards Child A's schooling, the father said that the Local Authority are fully aware about the concerns around Child A being bullied. He said that the NYAS Caseworker would have been aware of this too if she had spent more time speaking to Child A's school. The father accepted that Child A is doing well at his current school and is attending regularly but maintains that because of the bullying and Child A's education generally, he would be better off at a private school. The father maintained that Child A has a place reserved at the new school, despite the NYAS Caseworker having spoken to the school and being informed that any offer would depend on the GCSEs that Child A is studying and the curriculum.

42. As regards the father's contact with the younger children, he accepted that many sessions have been missed, and said this was partly due to the children being away and sometimes due to financial difficulties. The father confirmed, however, that he could commit to fortnightly contact in the future, would be able to fund this in a contact centre and would be able to confirm his attendance in advance.

43. The father was asked about his views of the NYAS Caseworker, who he believes is biased against him. It was suggested that the father has used his influence to also turn Child A against the NYAS Caseworker and that his comments and behaviour at a recent CIN meeting were also inappropriate. The father did not accept any of this and said Child A can form his own views. The father maintained his position that the NYAS Caseworker has been racist towards him and has made unsubstantiated comments about him being involved in drug trafficking, despite this not being mentioned in any of her reports or by any other professionals involved in this case.

44. Finally, I heard from the NYAS Caseworker. She confirmed that having read the updating evidence and hearing the evidence of the parents, her recommendations were unchanged. She was clear that she felt a joint 'lives with' order was in Child A's best interests because it was one of the only ways to convey to him that his mother does not pose a risk to him. The NYAS Caseworker was clear that the younger children should live with their mother for the reasons set out in her final analysis and because of the ongoing risk of emotional harm posed by the father, as set out in the PCS report. The NYAS Caseworker was clear that any contact centre for contact between the father and the younger children needed to be NACCC accredited and needed to understand why contact was supervised, and what the risks are. The NYAS Caseworker confirmed that she had already drafted a proposed set of expectations around contact and was clear that the father must now commit to contact and confirm his attendance in advance. She felt that fortnightly contact would be the right starting point at this time.

45. The NYAS Caseworker said she will be making a referral to the Early Help team at the Local Authority 2 for the younger children because she remains concerned about the risk to them from their father and she felt that Local Authority involvement is required to support them. She was particularly concerned about the text messages exchanged between the father and Child C. The NYAS Caseworker was concerned that the father still thinks it appropriate to discuss such matters with the children and continues to draw them into parental conflict. If the father was concerned for Child C's well-being, the NYAS Caseworker would have expected him to take immediate safeguarding action.

46. On the father's allegations of racism and her comments about his involvement in drugs, the NYAS Caseworker confirmed that she had mentioned to the father a trip she had taken to Country 3 many years ago, where she encountered some difficulties, but rejected any suggestion that she was somehow discriminating against the father because of his nationality. Furthermore, the NYAS Caseworker confirmed that she has no concerns around drugs at all and this is not referred to in any of the evidence.

47. As regards the children's names, the NYAS Caseworker felt that if the younger children are to continue being known as F's surname on a day-to-day basis then she does not take issue with them being known as M's surname legally for the passport renewals and did not consider this to be a pressing welfare issue. The NYAS Caseworker was clear that the Country 2 and Country 1 passports should be renewed for the children.

48. The NYAS Caseworker accepted the position with Child A was more difficult because of his expressed wishes on this issue and she was concerned about how he might react, and whether he would accept, the court ordering that he be known by a different name, even if it is just for legal reasons.

49. It was put to the NYAS Caseworker that she holds an overly critical view of the father but does not challenge anything that the mother says or does. The NYAS Caseworker rejected that and referred to the findings made by this court previously. She said she remains very concerned about the risk posed by the father and, in particular, his influence over Child A, which distorts Child A's view of his mother. It was suggested that the NYAS Caseworker had not taken the allegation of Child C being slapped by his mother seriously. The NYAS Caseworker rejected that too and pointed out that a referral was made to the Local Authority, who took no further action. The NYAS Casework again reiterated that, as found by the court, the mother has been a victim of domestic abuse and she was concerned that this had been absorbed by the children because of their father's conduct. The NYAS Caseworker accepted that she had not observed contact between the father and the younger children but had read the notes and was of the view that observing some short sessions of closely supervised contact was unlikely to have assisted in formulating her recommendations.

50. As regards the situation with Child A and the mother, The NYAS Caseworker explained that she had spoken to the mother about this. The NYAS Caseworker confirmed her concerns that "Child A is being used as a pawn", that this will never end and that all of the children remain at risk from their

father. She said that the mother was being put in a difficult position because of Child A's accusations and so she had made the decision to pause contact. The NYAS Caseworker acknowledged that the relationship is difficult but was clear that Child A is a victim and has a distorted view of his mother because of the actions of his father. The NYAS Caseworker felt that Child A and his mother were both the victims of emotional harm, and that the current situation is not satisfactory. She remains concerned that Child A is so aligned with his father and regards his mother as posing a risk, which places the mother in a difficult position as she tries to consider and balance the needs of all of the children. The NYAS Caseworker did not think it was right for Child A to be commenting on his mother's parenting of his siblings.

51. The NYAS Caseworker was clear that she does not support Child A's suggestion that all contact between him and his mother should be supervised. She was concerned that this would simply reinforce and perpetuate the false narrative that the mother somehow poses a risk to Child A, which she does not. The NYAS Caseworker felt the focus should be on Child A enjoying spending time with his mother and encouraging emotional warmth between them, rather than insisting on unnecessary supervision. The NYAS Caseworker said that some work with Child A and the mother might be of assistance but also pointed out that there have been periods of many months in the past when Child A has refused contact, but it has then restarted, including Child A going on holiday abroad with his mother. The NYAS Caseworker therefore did not believe the relationship has necessarily broken down completely and was hopeful that it will be rebuilt once again.

52. The NYAS Caseworker said that she was concerned about Child A possibly changing school and moving to some level of remote learning. She said that she is concerned that he presents as lonely, isolated and controlled by his father, and that he may miss out socially if he moves to a new school.

My assessment of the evidence

53. My impression of the mother's evidence was largely in line with my impression of her at the fact-finding hearing. I found her evidence to be straightforward, clear and honest. I did not gain the impression that she was trying to mislead the court, a good example being when she said that the change of name application was motivated by her desire to renew the children's passports but that she had no desire to change the children's day to day names, which could remain as F's surname. I found her evidence to be genuine and believable.

54. My assessment of the father's evidence was also largely in line with my assessment at the fact-finding hearing. I found a lot of his evidence to be evasive and defensive. I do not, for example, accept that he did not know he should not be communicating with Child C by text message, and I do not accept that his decision to tell Child C not to tell anyone else about the communication was an attempt to protect Child C. In my judgment, the father knew full well that he should not be secretly communicating with Child C and his decision to ask Child C not to tell anyone was an attempt to cover-up the communication. If the father was so concerned, he would have taken immediate action. In my judgment, there is no evidence of any shift in the father's outlook or insight based upon the evidence that I heard, and I retain

significant concerns about the risk of emotional harm that he continues to pose to the children.

55. I found the NYAS Caseworker to be a very helpful witness. The NYAS Caseworker is an experienced and knowledgeable Guardian. She seemed to me to have an excellent and full grasp of the issues in this case and, importantly, her analysis and conclusions considered the previous findings of the court. The father has suggested that the NYAS Caseworker was biased towards him and has suggested that this may be, at least to some extent, because the NYAS Caseworker is racist. For the avoidance of doubt, I do not accept that submission at all. The NYAS Caseworker's analysis and recommendations are, in my judgment, entirely based on her professional assessment of each of the children's welfare and in trying to strike the balance between keeping the children emotionally safe, while ensuring they have a relationship with both parents and with one another. It is a complex analysis to undertake but, in my judgment, the NYAS Caseworker's recommendations are clear and well-reasoned. I note very clearly that despite the father's assertions, the NYAS Caseworker has always supported contact taking place between the father and the younger children, despite the risk of emotional harm, and has never suggested that Child A should be removed from his care, again despite the obvious concerns about the risk of emotional harm to Child A.

Welfare findings

56. I again remind myself that the children's welfare is my paramount consideration. It is therefore necessary to consider what each of the children's

welfare needs are and I do that by reference to the relevant parts of the welfare checklist.

57. I now turn to the welfare checklist in s.1(3) of the Children Act 1989

58. a. The ascertainable wishes and feelings of the children concerned (considered in the light of their age and understanding) –

59. Child A is now 14 and is separately represented. He is clearly an intelligent and articulate young person who is very capable of expressing his own feelings. Child A has been consistently clear that he wishes to remain living with his father. He does not want a shared 'lives with' order involving his mother. In fact, for the past few weeks, Child A has made it clear that he wants no contact with his mother. His position, communicated through counsel at this hearing, is that he now only wants supervised contact with his mother in a contact centre, but he wants to see his siblings when they see his father. Child A wishes to change school in accordance with his father's application and says he has been bullied at his current school, and he wants to continue to retain F's surname.

60. At Child A's age, his wishes and feelings are inevitably going to carry some significant weight. It is quite possible that Child A will 'vote with his feet' and will not do what he does not want to do. I accept that and I consider his wishes to be very important. Having said that, they must be considered in the context of the findings I have made previously. Child A's wishes cannot be considered separately from those findings and have to be seen in the context of the other evidence. As I found last year, Child A's relationship with his mother has been undermined and adversely influenced by his father. Child A remains in his

father's care and his views continue to be aligned with those of his father. While I accept these are Child A's expressed views, when considered in the context of my findings, I do not consider that they should be solely determinative of any final decisions I make in relation to his welfare. In my judgment, Child A's views needed to be considered with caution because of his father's influence.

61. Child B is aged 10, Child C is 8 and Child D is 7. They are therefore all much younger than Child A. That does not however mean that their views are not important. They all have some understanding of these proceedings, and it is clear to me that they would like to spend more time with their father and that they all value their relationship with him. There is a need to respect all of the children's wishes, while also ensuring that they remain safe and protected from any risk of harm.

62. b. Physical, emotional and educational needs; -

63. Child A is of an age where he is becoming more independent in meeting his own basic needs. He does still need his parents however to support his educational and emotional needs. That means ensuring that he attends school and gains the educational and social benefits of doing so. I consider that Child A's emotional needs would be best met by him having a close and consistent relationship with both of his parents, and he requires his parents to be able to focus on that over and above everything else. Child A's relationship with his mother has clearly become strained and he needs help and support to assist him in rebuilding that relationship over the coming weeks and months.

64. Child B, Child C and Child D, as younger children, are dependent on their carers to meet all of their needs. That includes their basic care needs, their emotional needs and their educational needs. I note that Child B will be starting secondary school next year. I consider that it will be in the best interests of all of the children to have a relationship with both of their parents, so long as that is safe and can keep them protected from harm. Efforts must be made to find that balance for the children.

65. c. Likely effect of any change in circumstances –

66. There is no suggestion that there should be any significant change of circumstances for any of the children at present. While the Local Authority, the NYAS Caseworker and the mother all have concerns for Child A in the care of his father and he remains under a CIN plan, there is an acceptance that seeking for him to move away from his father's care is not realistic. Child A is very clear that he wishes to remain with his father, and I accept the views of the professionals, particularly the NYAS Caseworker, that attempting to change that is likely to cause Child A emotional harm as it would be completely contrary to his views and there is a real possibility that he would simply refuse to go. It must be remembered that as things stand, he is choosing not to see his mother and is saying that he would only agree to do so in a supervised contact setting. In those circumstances, I consider that attempting to change Child A's care arrangements for him to live his mother would be likely to cause him emotional harm. Although I continue to have considerable concerns for Child A, and I hope the Local Authority will continue to work

with him and support him, I consider that an attempted move to his mother's care would have a significant and adverse emotional impact on him.

67. For the younger children, it is agreed by all parties that they should continue to spend the majority of their time with their mother. The father would like unsupervised contact with the children and would like a shared 'lives with' order but accepts that until he has completed the PCS course, that is not realistic. Given the findings that I have made and the outstanding work that the father needs to complete, I think the father has taken a realistic position on this issue and I do not consider that I could possibly order unsupervised contact at this stage when there is so much work that he still needs to do. I do not consider that such an arrangement would be safe and would, in my judgment, be likely to cause the children emotional harm.

68. d. Age, sex, background and any characteristics the court considers relevant –

69. The children are all full siblings and that is extremely important. They share the same cultural identity and background, and it is important that they all grow up to understand their heritage. From everything I have read and heard, all four of the children are bright, intelligent and articulate with huge potential. It is important that they are supported and cared for by their parents with a view to maximising that potential.

70. e. Any harm that the child has suffered or is at risk of suffering –

71. I again refer to my findings. I have found that the father has sought to negatively influence the children against their mother, which is especially the case with regards to Child A. After considering the report from PCS and the

report of the NYAS Caseworker, it seems to me that the father continues to pose a risk of emotional harm to the children at this time. Until such time as he has completed the PCS course and there is some further assessment regarding his engagement with this course and the progress he has made, it seems unlikely that the risk will have sufficiently reduced.

72. Based on the evidence available now, it appears that little has changed since the fact-finding hearing. I am concerned by the father's response to the text message from Child C. Child C is eight and the father's response that the mother should not have hit him, in circumstances where the father had such little detail about what Child C was alleging, is concerning, and risked inflaming the situation. I am concerned that the father also considered it appropriate to tell Child C not to tell anyone that Child C had contacted him. This is encouraging Child C to be secretive, and I am concerned that this is another example of the father behaving in a controlling manner. This is completely inappropriate and given my findings, it concerns me greatly that the father continues to engage in this sort of conduct. A far more appropriate course of action, if the father was genuinely concerned, would have been to have encouraged Child C to tell another adult or for the father to report the matter at the time.

73. I am also concerned that the father then decided to discuss this incident with Child C at supervised contact. Again, I am concerned that the father decided to use his time with Child C, who is a young child, to discuss allegations that Child C has made against the mother. It seems to me that the father still has much work to do to reflect on the court's findings and develop insight into the

impact that his conduct and actions have had upon the children, and why the professionals and, indeed the court, continue to be concerned about the risk he poses.

74. For the avoidance of doubt, I do not consider that the mother poses a risk to these children and there is no evidence that she does. I made no findings against the mother at the fact-finding hearing and have not been invited to do so at this hearing. There is no Local Authority involvement and the children's schools have not raised any concerns about her. In the NYAS Caseworker's detailed analysis, she does not raise any concerns about a risk to the children from their mother.

75. 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 –

76. I have no concerns about the mother's capacity to meet the children's needs. All of the children lived with their mother for the majority of their lives. In recent years, Child A has moved to live with his father and the younger children did briefly do so too, before returning to their mother's care. All of this is dealt with in my previous judgment. For the avoidance of doubt, I do consider that the mother can meet the children's needs. The father has raised concerns about the mother's decision to move address and the younger children's schools and while I would usually expect a parent to notify and liaise with the other parent about such a move, the findings in this case and the restraining order that is in place do provide some justification for the mother taking that decision without prior consultation. I note that the father does now know where the children are at school.

77. While I accept that the father can meet the children's basic care needs and is able to provide for them materially, I remain extremely concerned about his capacity to understand and meet their emotional needs. I was concerned during the fact-finding hearing that the father continued to justify and attempt to excuse his actions, which I found to have undermined the children's relationship with their mother. The father, it seems to me, would be unable to promote or encourage the children to have a relationship with their mother and I am concerned about what he might say to the children, or in the presence of the children, about the mother if he was to have unsupervised contact with them. Such actions would, in my judgment, lead to the children being exposed to further emotional harm.

78. g. Range of powers available –

Child Arrangements Orders - Child A

79. I have already set out that in line with Child A's wishes, he should continue to live with his father, and no-one challenges this. The issue for me now is whether I should make a 'live with' order to the father and then whether I should make an order or no order for Child A to 'spend time' with his mother, or whether I should make a shared 'lives with' order on the basis that Child A will still continue to spend most of his time with his father. I am aware of Child A's views that he wants to live with his father only but for the reasons I have set out, those views must be treated with a high degree of caution. As things stand, Child A is closely aligned to his father and I am concerned that he regards his father, despite my findings, in an elevated role to his mother. As I have already concluded, it is best for Child A to be able to have a

relationship with both parents. Child A is currently refusing to see his mother, but he has done that before, and contact has then resumed. As recently as August 2023, Child A travelled abroad to Country 2 with his mother and siblings and seemed to have an enjoyable time. It is most unfortunate that his current position is that he will only agree to supervised contact.

80. I have listened carefully to the evidence of the NYAS Caseworker on this issue and, on balance, I am persuaded that it is in the best interests of Child A's welfare that there is a shared 'lives with' order. Child A needs to understand that his mother does not pose a risk to him or his siblings and that it is perfectly safe for him to spend time with her. The suggestion that any contact with his mother should be supervised has no foundation in any of the evidence whatsoever and seems to be a position that Child A has adopted very late in the proceedings. I do not accept the suggestion that if contact is not supervised that it will never happen. Child A has, throughout the proceedings, spent time with his mother unsupervised. I accept that it has not always been plain sailing, but it was happening up until a few weeks ago and it was only at the outset of this final hearing that I was told by counsel, on Child A's behalf, that he was now insisting on supervised contact. I hope that once these proceedings conclude and the dust settles, Child A will again agree to see his mother. I would urge Local Authority 1 to urgently consider what support they can provide around this issue. This could be in the form of some reparative work between Child A and his mother through family therapy or something similar, or perhaps providing some support the next time they see each other. For the avoidance of doubt however, this does not need to be professionally supervised and I do not consider supervised contact is necessary or in Child

A's best interests. It would put him and his mother under an unnecessary spotlight and create an artificial environment for their relationship, when such intrusion if not justified.

81. I will therefore order that Child A should live with both of his parents. Child A shall be with his mother every Sunday, with the precise details to be agreed on a week-by-week basis, and at any other dates and times to be agreed in accordance with Child A's wishes and feelings. I accept that this will mean that the amount of time Child A spends with his mother will fluctuate from time to time. Child A will live with his father at all other times. It will be a matter for the mother to decide whether to include the younger siblings in any time that she spends with Child A, depending upon what support she feels she requires to manage that.

Child Arrangements Orders – Child B, Child C and Child D

82. For the three younger children, I must decide whether they should live with their mother and spend time with their father or whether there should be a joint 'live with' order. The situation with Child B, Child C and Child D is different to Child A. I have already highlighted my concerns about the risk of emotional harm posed to the children from their father. I am concerned that this risk remains present, and the father still has much work to do, starting with the PCS course, before it could be regarded as safe for him to spend time with the younger children unsupervised. In those circumstances, contact must remain supervised in a contact centre, which is not disputed. At this stage, it is impossible to say how long that supervision will need to remain in place for, but it will be at least until the Spring of 2024 and quite possibly longer. The

reality is that the younger children do not live with their father and have only been seeing him on a supervised basis for a long time now, and even that arrangement has not been consistent. In my judgment, it is in the best interests of Child B, Child C and Child D's welfare to know they have a safe, settled and stable home with their mother, and that they can spend time with their father in the safe environment of a contact centre on a consistent basis for the time being.

83. It is crucial that the notes from those sessions continue to be shared with the mother. In terms of the contact venue, this simply comes down to what is best for the children and in my judgment, their travel time should be kept to a minimum. A venue midway between where the parents live would seem sensible and I would be grateful if NYAS could assist the parties in making the relevant referral, once a suitable venue has been agreed. I will allow seven days for that agreement to be reached and I understand that the father and the NYAS Caseworker have each identified a possible venue already. Given my findings and the fact that the mother is responsible for the day-to-day care of the children, the father will need to continue to meet the costs. Furthermore, the father will need to confirm, at least five days before each session, that he has booked the centre and will be in attendance. If he does not do that then the session will not go ahead as it is simply not fair on the children and the mother to be left wondering whether the planned contact will go ahead or not. I hope that, in the future, the father will be able to spend time with the children outside of the contact centre but that depends on his engagement and progress with the PCS course, that he has very recently started, and an assessment at the end of that course as to the progress that has been made. I will give a direction

for both this judgment and the judgment from the fact-finding hearing to be shared with PCS course provider so that they are fully aware of the issues in this case.

Child Arrangements Order – sibling contact

84. I have already set out above that the children need to have a relationship with one another, which is as important as their relationships with their parents. Given my previous findings and my concerns about the influence of the father on Child A and, in turn, Child A's impact on his siblings, this is a difficult issue and a balance needs to be struck between promoting the sibling relationship, while protecting the younger siblings from potentially being turned against their mother. As I have already indicated, the younger siblings could join in with any time that the mother and Child A might spend together in the future, but this depends on Child A agreeing to spend time with his mother, and upon the mother feeling able to manage the younger children being present too. I endorse the suggestion that Child A can join in with contact between the younger siblings and their father at a contact centre. This will be in a safe, professionally supervised setting. The venue will need a copy of the PCS report of the father and a redacted copy of my judgment from the fact-finding hearing. This will, I hope, ensure that the centre is fully aware of any risks and can take appropriate steps, quickly, to intervene if necessary. That safeguard of professional supervision does, in my judgment, strike the right balance between allowing the siblings to see one another regularly, which is so important for all four of them, while also keeping them safe.

Child A's school

85. Turning then to Child A's schooling. I have listened carefully to the arguments advanced in support of him changing school and remaining where he is. I am not particularly concerned about the financial side of things. Ultimately, the mother can make it clear to the school that she is unable to contribute towards the fees and can refuse to sign anything that says to the contrary. The school would then have to decide whether to offer Child A a place. I also make it clear that the point about Child A going to a private school and the message this might send to the other children that living with the father means more privileges than living with the mother, is not a significant issue. Ultimately, I have to consider the children's individual welfare needs as individuals, as well as a sibling group. If I concluded that it was in the best interests of Child A's welfare to move to a private school, then any concerns about the message that may send to his younger siblings would not be a good enough reason to prevent that change from occurring.

86. I am however concerned about the plans for Child A to actually attend the proposed new school. It is clear to me that this issue was not considered properly in advance of the hearing. I was initially told that Child A would be learning remotely for three days of the week, which then became one day a week and then, by the end of the hearing, became him attending full-time. The father's position on this seemed to be shifting as the evidence unfolded and I was then told, on the last day of evidence, that Child A's aunt had belatedly agreed to fund his full-time attendance. In my judgment, taking Child A out of his current school, which he attends five days a week, and moving him to a school where he physically attends for anything less than full-time would be contrary to his best interests. The obvious point to make is that Child A will

miss out on the hugely important social side of going to school. While Child A says that he does not really get much benefit from socialising at school presently, I am not convinced that reducing the amount of time that he has an opportunity to socialise and mix with his peers is in his best interests, particularly in circumstances where he spends most of his time with his father and the findings that I have made. It was suggested that Child A may find it easier to socialise and make new friends at a new school. That might be the case, but it equally may not be; it is far too speculative to make a decision based on that.

87. A further and significant issue is the impact on Child A's education. Child A is in Year 10, the first year of his GCSEs. He is now more than halfway through the first term. The NYAS Caseworker has spoken to the proposed new school and they have said that any offer of a place there depends on the GCSE subjects that Child A is studying and the syllabus being followed, because they would need to be the same at the new school. No-one knows if that is the case. Child A's current school expect him to achieve very good GCSE results and from everything I have read, he is a very bright and intelligent 14-year-old. I am concerned that moving Child A to a new school, at such a critically important time in his education, is not in his best interests. There is a real risk of significant disruption to his education and no guarantee of whether the new school would be able to now guarantee a place given the subjects and syllabus that Child A is studying.

88. While I accept that there have certainly been concerns about bullying, I still remain unclear if this is an ongoing issue or not. There is clearly conflicting

information about this, and it does trouble me that the father issued the application for a change of school so late in the day. If bullying was an issue then I am unclear why the application was not made prior to the school summer holidays or why it was not raised at the hearing in July 2023. It seems to me that the Local Authority need to have a frank discussion with the school about this as part of the CIN work and establish whether it remains an issue or not.

89. For all of those reasons, in my judgment, it is not in the best interests of Child A's welfare to move to this new school proposed by the father. It may be that, in the future, Child A will benefit from going to another school, either a private school or state school, once careful consideration and research has been undertaken, but in my judgment, his educational needs will be best served by him remaining where he is for the time being. Despite the concerns raised about Child A's level of socialisation and bullying, all of the evidence suggests that he is doing very well at school.

Change of surname

90. The next issue is the passport issue and the change of name. This is a welfare issue, although somewhat unusually, the mother does not object to the children keeping the F's surname surname on a day-to-day basis but seeks an order that the M's surname surname should be the children's legal name for the purpose of renewing their passports. The situation is complicated because the children are all currently entitled to at least three passports: British, Country 2 and Country 1n. They appear entitled to Country 3 passports too. The British passports are all valid and in the name of F's surname. The Country 2 and

Country 1 passports, which have expired and need to be renewed, are in the name of M's surname. The deed poll document has been lost and so there is no documentary evidence before this Court, which could then be provided to the relevant passport authorities, to evidence that the children's names were ever lawfully changed from M's surname to F's surname, although both parents accept this did happen and the children have been known as F's surname for around four years.

91. In my view, Child A's wishes on this issue must be respected. He lives with his father and wants to share his father's name. At almost 15, he regards his surname as part of his identity and does not want it changed, even just to assist with a passport renewal. In fact, Child A has indicated that he does not seek to have a Country 1 passport as he has no intention of travelling to Country 1, although if he was to change his mind, there would be nothing to stop him applying for such a passport. It seems to me that Child A is clearly capable of understanding this issue and forming a clear view in respect of it, which is what he has done. I do not consider that in light of his strong wishes, it would be in the best interests of his welfare to order that he must be known as M's surname, even just for the purpose of a passport renewal. While I do consider it important for Child A to know and understand his background and identity, which includes the fact that his mother is a national of Country 1, he is old enough and bright enough to already understand that. In such circumstances, the balance comes down in favour of Child A's wishes on this issue and he will therefore continue to be known as F's surname. The mother's application for him to be known as M's surname is refused.

92. The position on the younger three children is, in my judgment, different. These children live with their mother and are all still at primary school. They will all clearly know what their name is and will understand that they share this with their father, but there is no suggestion that, on a day-to-day basis, this should change. I say now that if the mother was asking the Court to make an order that the children should be known as M's surname on a day-to-day basis then I would have significant reservations. That is not, however, what she is asking. She is fully agreeable to the children continuing to be known as F's surname at school and so there will be no change for the children 'on the ground' in respect of their name. What she seeks is an order that they be known, legally, as M's surname, so that she can renew the Country 2 and Country 1 passports. The mother says this will allow them to travel to Country 1 without a visa and will promote the children's sense of identity, background and heritage because they are dual nationals and need to have the opportunity to understand and benefit from that. She also rightly points out that M's surname was, in fact, the father's previous name. In my judgment, the balance here comes down in favour of the mother's application as being in the best interests of the three younger children's welfare. I emphasise that they should continue to be known as F's surname on a day-to-day basis but in order for them to obtain their Country 1 and Country 2 passports, they shall be legally known as M's surname. As a matter of note, the fact that the deed poll has been lost means there is no documentary evidence that the names were lawfully changed to F's surname in any event, and M's surname is the name on their birth certificates. It may be that the British passports will need to be

changed to M's surname when they are due for renewal but that is something that the mother will have to deal with then.

93. Passports

94. An issue has been raised as to who should hold the passports. Child A seeks to hold his own passports and says they should be in his possession. With respect to holding his current, British passport, I accept Child A's position. Child A is approaching 15 and by all accounts, is a responsible young person. As I understand it, the only valid passport that he has is the British one and he should have that in his possession. As regards the expired Country 1 and Country 2 passports, I see no value in them being handed over to Child A. They cannot be used because they have expired. I appreciate that Child A may not want them renewed and given the issue with his surname, it may be difficult to renew them in any event, but the time may come when he does want them renewed and so it seems to me that the mother should therefore hold the expired passports in a safe place in the event that an application does need to be made in the future to renew them.

95. Child A has indicated that he would like to apply for a Country 3 passport. He is entitled to this by virtue of his father being a national of Country 3. I cannot see any welfare reason why Child A should not be able to apply for a Country 3 passport. For the same reason that I think the children should be able to have Country 1 and Country 2 passports, which all relates to their understanding of their background, identity and heritage, I think Child A should be able to apply for a Country 3 passport if he so wishes.

96. For the younger children, the mother should hold all their passports. I have ordered that the children live with her and she therefore has permission to remove the children from the jurisdiction for up to 28 days without an order of the Court. Given the order I have made in respect of the time that the children spend with their father, he does not have permission to take the younger children out of the jurisdiction. It therefore stands to reason that the mother should hold the passports of Child B, Child C and Child D until they are of an age where the mother takes the view that they are old enough to look after their passports themselves.

97. I do not know if there is any plan for the father to apply for Country 3 passports for the younger three children, but it appears they are entitled to such passports and if they were ever obtained, they must immediately be passed to the mother to be held with the younger children's other passports.

98. They are the orders that I shall make regarding the children. I now turn to two other matters.

Non-molestation Order

99. The mother invites me to make a non-molestation order in her favour.

100. Non-molestation Orders are made pursuant to s.42 of the FLA 1996, which sets out the following:.

(1) In this Part a "non-molestation order" means an order containing either or both of the following provisions—
(a)provision prohibiting a person ("the respondent") from molesting another person who is associated with the respondent;
(b)provision prohibiting the respondent from molesting a relevant child.
(2) The court may make a non-molestation order—

(a)if an application for the order has been made (whether in other family proceedings or without any other family proceedings being instituted) by a person who is associated with the respondent; or
(b)if in any family proceedings to which the respondent is a party the court considers that the order should be made for the benefit of any other party to the proceedings or any relevant child even though no such application has been made.
(3) In subsection (2) "family proceedings" includes proceedings in which the court has made an emergency protection order under section 44 of the Children Act 1989 which includes an exclusion requirement (as defined in section 44A(3) of that Act).
(4A) A court considering whether to make an occupation order shall also consider whether to exercise the power conferred by subsection (2)(b).
(4B) In this Part "the applicant", in relation to a non-molestation order, includes (where the context permits) the person for whose benefit such an order would be or is made in exercise of the power conferred by subsection (2)(b).]
(5) In deciding whether to exercise its powers under this section and, if so, in what manner, the court shall have regard to all the circumstances including the need to secure the health, safety and well-being—
(a)of the applicant F3. . . ; and
(b)of any relevant child.
(6) A non-molestation order may be expressed so as to refer to molestation in general, to particular acts of molestation, or to both.
(7) A non-molestation order may be made for a specified period or until further order.
(8) A non-molestation order which is made in other family proceedings ceases to have effect if those proceedings are withdrawn or dismissed.

101. Molestation is not defined in the FLA 1996 but various cases have attempted to provide a definition;

102. Sir Stephen Brown, then President of the Family Division in **C v C (Non-Molestation Order: Jurisdiction) [1998] 1 FLR 554** said at 556H: *'. . . there is no legal definition of "molestation". Indeed, that is quite clear from the various cases that I have cited. It is a matter which has to be considered in relation to the particular facts of particular cases. It implies some quite deliberate conduct which is aimed at a high degree of harassment of the other party, so as to justify the intervention of the court.*'

103. Lady Justice Hale (as she then was) gave some further assistance in **C v C [2001] EWCA civ 1625**, when she held that a non-molestation injunction was justified in circumstances where the conduct complained of *'was calculated to cause alarm and distress to the mother'* and *'that is the sort of behaviour, in my judgment, which does call for the intervention of the court.'*

104. McFarlane LJ (as he then was) said in **Re T (A Child) (Non-Molestation Order) [2017] EWCA Civ 1889, [2018] 1 FLR 1457** at [42]: *'When determining whether or not particular conduct is sufficient to justify granting a non-molestation order, the primary focus, as established in the consistent approach of earlier authority, is upon the 'harassment' or 'alarm and distress' caused to those on the receiving end. It must be conduct of 'such a degree of harassment as to call for the intervention of the court' (Horner v Horner (1983) 4 FLR 50 and CvC (Non-Molestation Order: Jurisdiction) [1998] 1 FLR 554).'*

105. S.1 of the Domestic Violence, Crime and Victims Act 2004 makes a breach of a non-molestation order a criminal offence.

106. As set out within s.42 and as repeatedly confirmed in the case law, a non-molestation order must be for a defined period of time.

107. Given the findings that I have made previously against the father and the ongoing conflict and level of disagreement between the parties, I do consider that the mother requires the protection of an order, particularly in relation to the father making threats to her and attempting to contact her. He has previously breached a non-molestation order twice, for which he was

convicted, and although the point has been made that the last finding I made against him related to an incident in 2020, there has of course been a restraining order in place since that time, which has prevented the father from contacting the mother. Given that the father has only just commenced the PCS course and given my concerns about his continued lack of acceptance and insight into the Court's findings, I remain concerned that the risk continues to exist and that the mother does require ongoing protection.

108. It is right that an application could, and I believe has, been made to the criminal court for the extension of the restraining order but it is unclear when that might be processed and given that the existing order lapses in a few weeks, the matter is urgent.

109. Having considered all the circumstances of the case, including my findings of the father's abusive behaviour towards the mother, I am satisfied that she requires the protection of an order and that it is necessary and proportionate for that protection to be provided by way of a non-molestation order. I will make that order in line with the terms of the restraining order, save that the parties may communicate with one another about the children through the local authority, an agreed third party or any other method of communication that is agreed in writing, such as one of the family Apps that are now commonplace. I make it clear that any communication must be strictly limited to issues relating to the children, and specifically that of contact. I consider that the order should be made for a period of two years from the date of this judgment. That will allow time for the parties to, I hope, move on from these proceedings and for the father to complete the PCS course and engage in any

further work or assessment of him that might be required, while providing the mother with the protection of an order. I therefore consider that to be a proportionate duration for the order to last.

Costs

110. Finally, I turn to the issue of costs. The law is very thoroughly set out in the skeleton argument prepared on behalf of the mother, for which I am grateful.

111. The law is summarised at paragraphs 111-129 of the judgment of Arbuthnot J in the case **C v S (Costs) [2023] 2 FLR 128; [2022] EWHC 800 (Fam):**

112. *[111] The law in relation to costs in children proceedings is settled. Section 51 of the Senior Courts Act 1981 gives the court an absolute discretion as to who should pay costs and in what sum. Rule 28.1 FPR provides that the court may make such order as it thinks just.*

113. *[112] The Civil Procedure Rules apply and r 44.2(4) says, so far as it is relevant, that when it considers costs, the court will have regard to all the circumstances, including the conduct of the parties and whether a party has succeeded. CPR r 44.2(5) considers the expression 'conduct of the parties'. I have set out CPR r 44.2 below:*

'44.2 (1) The court has discretion as to—

(a) whether costs are payable by one party to another;

(b) the amount of those costs; and

(c) when they are to be paid.

(2) If the court decides to make an order about costs—

(a) the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party; but

(b) the court may make a different order.

(3) ...

(4) In deciding what order (if any) to make about costs, the court will

have regard to all the circumstances, including—

(a) the conduct of all the parties;

(b) whether a party has succeeded on part of its case, even if that party has not been wholly successful; and

(c) …

(5) The conduct of the parties includes—

(a) conduct before, as well as during, the proceedings and in particular the extent to which the parties followed the Practice Direction – Pre-Action Conduct or any relevant pre-action protocol;

(b) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;

(c) the manner in which a party has pursued or defended its case or a particular allegation or issue; and

(d) whether a claimant who has succeeded in the claim, in whole or in part, exaggerated its claim.

(6) The orders which the court may make under this rule include an a order that a party must pay—

(a) a proportion of another party's costs;

(b) a stated amount in respect of another party's costs;

(c) costs from or until a certain date only;

(d) costs incurred before proceedings have begun;

(e) costs relating to particular steps taken in the proceedings;

(f) costs relating only to a distinct part of the proceedings; and

(g) interest on costs from or until a certain date, including a date before judgment.

(7) Before the court considers making an order under paragraph (6)(f), it will consider whether it is practicable to make an order under paragraph (6)(a) or (c) instead.

(8) Where the court orders a party to pay costs subject to detailed assessment, it will order that party to pay a reasonable sum on account of costs, unless there is good reason not to do so.'

114. *[113] In the family context Wilson J in Sutton London Borough Council v Davies (No 2) [1994] 1 WLR 1317 (at 1319), [1994] 2 FLR 569 (at 570–571), said that a costs order should not be used to discourage those*:

115. *'with a proper interest in the child from participating in the debate'. The 'proposition is not applied where, for example, the conduct of a party has been reprehensible or the party's stance has been beyond the band of what is reasonable'.*

116. *[114] The leading case on costs in child cases is R v R (Costs: Child Case) [1997] 2 FLR 95. The Court of Appeal explained why the practice of not awarding costs in child cases had grown up. At 96–97 Hale J, as she then was, said:*

117. *'The reasons why this practice has developed perhaps fall into three categories. The first is general to all family proceedings and was pointed out by Butler-Sloss LJ in Gojkovic v Gojkovic at 57 and 237 respectively, that orders for costs between the parties will diminish the funds available to meet the needs of the family ...*

118. *The second reason which is given for there being no costs orders in general in children cases, is that the court's concern is to discover what will be best for the child. People who have a reasonable case to put forward as to what will be in the best interests of the child should not be deterred from doing so by the threat of a costs order against them if they are unsuccessful ...*

119. *The third reason is suggested by Wilson J in the case of London Borough of Sutton v Davis (Costs) (No 2) at 570–571, when he points to the possibility that in effect a costs order will add insult to the injury of having lost in the debate as to what is to happen to the child in the future; it is likely therefore to exacerbate rather than to calm down the existing tensions; and this will not be in the best interests of the child. '*

120. *[115] At 97, Hale J (as she then was) goes on to say: 'Nevertheless, there clearly are, as Neil LJ pointed out, cases in which it is appropriate to make a costs orders in proceedings relating to children. He pointed to one of those sorts of situation: cases where one of the parties has been guilty of unreasonable conduct ...'.*

121. [116] In R v R (at 99), Staughton LJ put the three categories of reasons why costs might not be ordered in a slightly different way:

122. *First, it is said that it would be wrong to discourage parents from putting their views before the court when they may well be helpful to the court. For my part I am not sure that it would be wrong to discourage unreasonable parents from putting unreasonable views before the court ... Secondly, it is said that orders for costs will sour the attitude for future co-operation between the parents. Well, I can see the force of that, but I am not sure that it is of much significance in the present circumstances where there is little prospect of future co-operation. The third point is that if an order for costs is made, it may diminish what was called in argument the cake, the total amount of money that is available for the welfare and support of the child. '*

123. *[117] In R v R the lower court had taken the view that the father's conduct had been unreasonable in relation to the litigation, Hale J said at 98 'Of course, the parties should not be deterred, by the prospect of having to pay costs, from putting before the court that which they genuinely think to be in the best interests of the child, but there have to be limits. Children should not be put through the strain of being subject to claims that have very little real prospect of success, still less should they be put through a quite unreasonable*

involvement in their parents 'disputes ... 'and later at 98: 'The judge in this case was very much the best person to determine whether this was an appropriate case, exceptional though it may be, to order that the father was to pay the costs. In my judgment he was perfectly entitled to do so and there is nothing in the case which could cause us to cast doubt on the exercise of his discretion'.

124. *[118] In Re N (A Child) v A and Others [2009] EWHC 2096 (Fam), [2010] 1 FLR 454 Munby J (as he then was) held at para [20] onwards in relation to the ordering of a party to pay costs in a child case the general rule that costs follow the event does not apply, but 'that principle had always been subject to exceptions, importantly for present purposes where a party has behaved unreasonably in relation to the litigation '(para [21]).*

125. *[119] At para [47], Munby J said: 'the fact that a parent has litigated in an unreasonable fashion may open the door to the making of an adverse costs order; but it does not, of itself, necessitate the making of such an order. There is, at the end of the day, a broad discretion to be exercised having regard to all the circumstances of the case ... Careful attention must be paid to all the circumstances of the case and to the factors which, on the authorities I have referred to, indicate that normally it is inappropriate to make such an order – factors which do not simply disappear or cease to have weight merely because the litigation has been conducted unreasonably. '*

126. *[120] In Re N Munby J made it clear that the father's conduct had come very close to justifying the costs order, but he said he was persuaded 'on balance, that it would not be fair, just or reasonable to make that order, not least – and*

this is an important factor in my thinking – because of the likely effect the making of such an order will have on relations between the parents and thus, crucially, on N '(para [48]).

127. *[121] Another useful case is the Court of Appeal case of Re J (Costs of Fact-Finding Hearing) [2009] EWCA Civ 1350, [2010] 1 FLR 1893, where Wilson LJ held at para [17] that the lower court had been wrong not to adopt a compartmentalised approach to the ordering of costs in relation to a fact-finding as opposed to a welfare hearing.*

128. *[122] Wilson LJ said 'the effect of the direction for a separate fact-finding hearing ... can confidently be seen to be wholly referable to her allegations against the father. There was, in that sense, a ring-fence around that hearing and thus around the costs referable to it. These costs did not relate to the paradigm situation to which the general proposition in favour of no order as to costs applies'. Wilson LJ made it clear that the mother's case in Re J fell into a separate and unusual category and in those circumstances it was appropriate for the father to pay two thirds of the mother's costs of the hearing.*

129. *[123] It was made clear in Re T (Children) (Care Proceedings: Costs) (CAFCASS and Another Intervening) [2012] UKSC 36, [2012] 1 WLR 2281, [2013] 1 FLR 133 that the decision in Re J did not make the award of costs in fact-findings an exception to the general rule of not awarding costs against a party 'in the absence of behaviour or an unreasonable stance '(per Lord Phillips of Worth Matravers PSC, para [44]).*

130. *[124] In the case of Re G (Contact Proceedings: Costs) [2013] EWCA Civ 1017, [2014] 1 FLR 517 the lower court had made an order that the father should pay the mother's costs following a detailed assessment. This was challenged by the father before McFarlane LJ and Sir Stanley Burnton. They reviewed the authorities including the leading case of R v R (supra).*

131. *[125] The court considered whether the father's conduct came within the category of unreasonable litigation conduct. The father had made groundless allegations and fabrications and his actions had driven the court to have to consider matters of detail at every turn which had lengthened the proceedings. He had behaved unreasonably throughout the proceedings.*

132. *[126] In para [16], the court said 'we are tied by the findings of fact that the judge made, and more particularly the findings of motivation that the judge made. She sat and heard the case. She was in the position to form those findings and to come to those conclusions about the father's motivation ... Those are the starting blocks and the building blocks from which we have to consider the exercise of her discretion on costs'.*

133. *[127] The lower court had made a range of adverse findings before the legally aided mother's costs were ordered to be paid. This was despite acknowledging that due to the father's circumstances, the order may never be able to be enforced. McFarlane LJ saw no error in her exercise of discretion and said the question of enforcement was for another court as it would be in any ordinary civil litigation.*

134. *[128] The most recent consideration of the award of costs in children cases is Re A and B (Parental Alienation No 3) [2021] EWHC 2602 (Fam) where Keehan J reviewed the authorities.*

135. *[129] He applied the Re T test in relation to whether there had been reprehensible behaviour or an unreasonable stance taken by the mother in the conduct of the litigation. Keehan J divided the litigation into time periods reflecting the various applications that were made. He found that where the mother had maintained very serious allegations of abuse of her and the children which she later accepted were not true, this amounted to reprehensible behaviour and a wholly unreasonable stance for the mother to have adopted in the litigation. He made a costs order after considering the quantum which he found to be reasonable and proportionate to the issues raised."*

136. Turning back to the facts of this case, the mother says that the situation here is squarely in line with the case law that I have just referred to. She says that the costs of the fact-finding hearing should be 'ring fenced' and that given the outcome of it, and the considerable findings I made regarding the father's conduct towards her, she is entitled for the father to pay her costs.

137. The father rejects that, does not accept that his conduct justifies a costs order and raises concerns about his ability to pay those costs.

138. What I must focus on is whether I should use my discretion to make an order for costs in this case. The issue of enforcement is a separate matter.

139. It is clear, as I have set out throughout this judgment, that I made a number of findings against the father. Nine of the mother's fourteen allegations were either proven or partially proven. None of the father's allegations were proven.

140. I have read back through my judgment, and it is right that I have been critical of the father's approach in a number of respects, including the quality and content of the evidence he provided at the fact-finding hearing. I found the mother to be a far more credible, straightforward and ultimately truthful witness. On some of the allegations, I found the evidence against the father to be overwhelmingly clear, despite his denial of the allegations made. The father's lack of acceptance and insight into his behaviour concerned me greatly.

141. Having considered my previous judgment and the case law, I am satisfied that I should use my discretion and order that the father should pay 70% of the mother's costs of the fact-finding hearing, to be assessed by the Court if not agreed. In my judgment, this fairly reflects the fact that significant findings were made against the father and that none of his allegations were proved, but also fairly reflects that not all of the mother's allegations were fully proved. 70% therefore seems to me to be the right and just figure that the father should pay. If the figures cannot be agreed, an application for the Court to carry-out an assessment will need to be made.

Conclusion

142. That brings a conclusion to these very protracted proceedings. It seems to me that the children and these parents need a break from this very stressful

litigation that has, to some extent, dominated their lives for many years. I hope that everyone can move on with their lives now.

District Judge Coupland

8th December 2023