Neutral citation: [2024] EWFC 69 (B)
Case No: BH22P00361

IN THE FAMILY COURT AT BOURNEMOUTH & POOLE

Bournemouth Combined Court
Courts of Justice
Deansleigh Road
Bournemouth
BH7 7DS

Date: Wednesday 31 January 2024

RE V AND W (CHILDREN: WELFARE)

Before:

MR RECORDER VEAL

- -

Between:

A FATHER — **Applicant**

- and -

A MOTHER — **Respondent**

- -
- -

MS EMMA HARMAN (instructed by **Ellis Jones Solicitors LLP**) for the **Applicant**
MR STEPHEN LUE (instructed via **Direct Access**) for the **Respondent**

- -

JUDGMENT

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RECORDER VEAL:

1. The court continues to be concerned with V, who… is now 5 years old, and W, who… is now 3 years old. The children's mother is A and their father is B. I am going to refer to them as "the mother" and "the father" respectively.

2. The father issued these proceedings on 29 June 2022, at which time he sought a prohibited steps order and a child arrangements order. The mother issued a cross-application on 1 July 2022.

3. A prohibited steps order made on 4 July 2022 by Deputy District Judge Lowe (as she was at the time) remains in force. That prevented the mother from removing the children from the UK or from applying for passports or other travel documents for the children until further order.

4. For the period until June 2023, a chronology of the proceedings was set out in a judgment that I gave on 23 June 2023 at a conclusion of the fact-finding hearing, and that judgment is to be considered alongside this one: *Re V and W (Children: Finding of Fact)* [2023] EWFC 233.

5. Additionally, on 5 July 2023, I gave a judgment dealing with certain welfare issues which should also be considered alongside this judgment. On that occasion, the case was timetabled through to a directions or early decision hearing on 14 November 2023.

6. At that November hearing, the mother invited the court to extend the proceedings. I refused to do so and listed the case for this final hearing, which has taken place on 26, 30, and 31 January 2024.

7. I will come back to some of the intervening procedural history, which is of some importance. I have read, however, a very full bundle of documents and I have been very ably assisted during the course of the hearing by counsel for the parties and by the father's solicitors who have undertaken much of the preparatory work. I have heard evidence from both parents, an expert psychologist called Dr F and, given that this is a Practice Direction 36Z case, the author from Cafcass of the child impact reports who is called Ms G.

8. It is important, given the need for there to be a record of the position as at today's date, and to enable future work to be undertaken by and with the family, that I give a fairly full judgment. To that end, I am proposing to direct a transcript at the end. However, the fact that I do not mention something in this judgment does not mean that I have not fully considered everything. It is impossible, in fact, to refer to absolutely everything that I have heard and read.

9. The parties' positions, in summary, are these. The father seeks a final order that V and W live with him and have only indirect contact with the mother. He says that the mother does not accept the court's findings and that she continues to perpetrate abuse, with which he struggles. Until the mother addresses her own abusive behaviours, he says, there is no direct contact which is safe. He also seeks that the prohibited steps order dated 4 July 2022 and the s.91(14) order dated 12 October 2023 continue, and that the non-molestation order made on 5 July 2023 be extended.

10. The mother sought, at the hearing on 14 November 2023, an order, as I have said, that the proceedings be extended in order to give her time to engage in a Domestic Abuse Perpetrator Programme and that supervised contact continue in the interim. The court declined that application, and her primary position today is that her contact with the children does not need to be supervised at all. That is in slight contrast to the position as set out in her final evidence dated 17 January 2024, in which she says she was seeking a final order for shared care which mirrored that ordered on 21 July 2022. However, it was submitted to me today that, if the court is not in agreement with the mother, then the mother seeks for supervised contact to continue at this stage. The mother opposes any application for no contact and she does not view indirect contact as being able to meet the best interests of the children, whether in the short, medium, or long-term.

11. There is no dispute in relation to the jurisdiction of the court. V and W are habitually resident in England and Wales. It is also undisputed that both parents have parental responsibility for the children.

Legal framework

12. Turning to the law, in my judgment of 23 June 2023, I set out the legal framework in some detail and so I am not proposing to repeat all of that again.

13. The main principles in respect of welfare are derived from s.1 of the Children Act 1989. The issues for the court focus primarily on V and W and their needs. I keep firmly in mind that in determining questions about their upbringing, it is V and W's welfare that is the court's paramount consideration.

14. Any questions about their upbringing are questions that the court should try and resolve without delay because delay is known to prejudice children's welfare. I should not make orders unless I can conclude it would be better for V and W than not making an order. Subject to any questions about risk of harm, the presumption is that the involvement of both of their parents in V and W's lives will further their welfare.

15. When coming to the conclusions that I do, I have regard to certain welfare considerations set out in s.1(3) of the Act.

16. I remind myself that Art.8 of the European Convention on Human Rights is engaged and so any order that this court makes has to be weighed against the rights of those affected to respect for their private and family life and their home.

17. In paragraph 24 of the judgment that I gave on 23 June 2023, I said this: *"When parents live separately, the starting point is that children should remain in contact with the parent that does not administer their day-to-day care. That starting point is, of course, always subject to the question of children's welfare. Making an order for no direct contact is a serious and draconian order."*

18. That starting point has been considered in case law and that reminds me that: *"I should not make an order for no contact unless I am satisfied that it is both necessary and proportionate to do so, and that no other less radical form of order will achieve the essential end goal of being in the children's welfare interests whilst also promoting the involvement of both the mother and the father in V and W's lives."*

19. Briefly touching on some of the authorities, then, when considering the issue of necessity, in a case called *Re O (A Minor) (Contact: Imposition of Conditions)* [1995] 2 FLR 124, the Court of Appeal referred to the wide discretion that the court has in regulating contact. It said that it was almost always in the interests of the child to have contact with the parent with whom he or she does not live, and the court should not readily accept that the child's welfare would be injured by direct contact.

20. In a *Re C (A Child) (direct contact: suspension)* [2011] EWCA Civ 521, Munby J (as he then was) reinforced those points. He observed that contact between a parent and their child is to be terminated only in exceptional circumstances, where there are cogent reasons for doing so, and where there is no alternative. Contact is to be terminated only if it would be detrimental to the child's welfare.

21. Domestic abuse is not, in itself, a bar to direct contact but has to be assessed in the circumstances as a whole. Part of that requires the court to consider whether contact can take place safely, for example, if it is supervised. A case called *Re M (Children) (Contact refusal: appeal)* [2013] EWCA Civ 1147 reinforces that point. In that case, the expert evidence was that supervised contact was possible and so the question was whether the risks could be sufficiently guarded against by careful and professional arrangements for setting up the contact and for close supervision during it.

22. Where direct contact is not possible, however, indirect contact is highly desirable and the Court of Appeal in *Re O*, to which I have already referred, set out that the duty to promote that falls on both parents.

23. The court therefore has a duty to apply the principle in s.1 that the welfare of the child is paramount, and to take into account all relevant considerations in each individual case. In family proceedings, the court should be aware of expert evidence relating to the potential emotional harm that could be suffered by children who are exposed to domestic abuse.

24. Although there is no *prima facie* assumption that there should be no direct contact between a parent and a child in cases where allegations of domestic abuse are proven, the effect on V and W in this case, and the parent with care of them, the behaviour of the parties towards each other, and the motivation of the parent seeking direct contact are all factors that should be taken into account by the court when determining what order to make: *Re L (A Child) (Domestic Violence)* [2001] 2 WLR 339 (CA).

25. Those authorities provide information which assist the court in approaching the issues which are now expressly set out in Practice Direction 12J at paragraphs 35 - 37. The relevant revision to the practice direction, it is important to note, took effect in 2017, after all of the cases to which I have just referred were decided.

26. Paragraph 35 says, *"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."*

27. Paragraph 36(1) says that, *"In the light of the findings of fact… the court should apply the individual matters in the welfare checklist with reference to the domestic abuse which has occurred and in any expert risk assessment obtained."*

28. Paragraph 36(2) sets out certain considerations in respect of harm which are mirrored then in paragraph 36(3) when considering control of the risk of that harm. It says this:

> *"(3) The court should make an order for contact only if it is satisfied-*
>
> *(a) 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*
>
> *(b) that the parent with whom the child is living will not be subjected to further domestic abuse by the other parent."*

29. Paragraph 37 then goes on to consider particular factors which need to be considered where findings of domestic abuse have been made.

30. As I have said, alongside the issue of necessity is that of proportionality. The court has to determine that question, which is more than a mere exercise of discretion, by reference to the rights under Art.8 of the European Convention on Human Rights which I have already described.

31. If any authority for that proposition were needed, it can be found in *Re B (A Child) (Care Proceedings: Appeal)* [2013] UKSC 33*; Re A (A Child) (Intractable Contact Dispute: Human Rights Violations)* [2013] EWCA Civ 1104*;* and *Re J-M (A Child) (Contact proceedings: Balance of Harm)* [2014] EWCA Civ 434. The context is informed by the Strasbourg jurisprudence, for example the decision in *Glaser v UK* [2001] 33 EHRR 1 and that in *Kosmopoulou v Greece* [2004] 1 FLR 800.

32. I directed myself comprehensively in relation to matters of evidence in the judgment that I gave in June 2023. The principles that I set out there apply equally to this hearing and I do not propose to rehearse them.

33. It is important to say, though, that I appreciate that witnesses lie for a variety of reason, for example, shame, misplaced loyalty, fear, or distress. It does not follow that just because somebody lies about one thing that they have lied about everything else: *R v Lucas* [1981] QB 720.

34. I have heard evidence from an expert psychologist, Dr F, and the author of the most recent child impact reports, Ms G. I have reminded myself that opinion evidence is to be considered in the context of all of the other evidence: *A County Council v K, D & L* [2005] EWHC 144 (Fam); *Tower Hamlets v MK* [2012] EWHC 426 (Fam). I have firmly in mind also the bounds of the expertise of Dr F and the professional witness who gave evidence in this case: *Re S* [2009] EWHC 2115 (Fam).

The evidence

Procedural history

35. As I have said, the fact-finding hearing concluded on 23 June 2023. The subsequent procedural history is important, and I make no apology for setting that out.

36. I set out, in my fact-finding judgment of 23 June 2023, how Cafcass's recommendations and the court's determination of whether a fact-finding hearing was

necessary or proportionate was linked to the parties reporting that the shared care arrangement was not working. I made a series of findings that the mother had perpetrated abuse against the father, the children, and the paternal grandmother, and also that she had made false allegations against the father. I made a finding that the father was only likely to have proposed shared care at all in order to keep the peace and that that was therefore linked to the findings made against the mother. I also made a finding that the mother had used these proceedings to perpetuate her abuse of the father.

37. After I had finished giving my judgment in relation to the factual findings, it was immediately submitted on behalf of the mother that child arrangements should revert to the shared care arrangement which had been in operation prior to the fact-finding hearing. That had first been ordered on 21 July 2022. My welfare judgment on that day therefore identified, amongst other things, that to revert to that shared care arrangement would involve the court ignoring the findings it had just made within the fact-finding hearing. That would then have been inconsistent with s.1 of the Children Act 1989 and the scheme of Practice Direction 12J. The court made an order that, in the interim, the children were to live with the father. Contact between the children and their mother has, since the end of that hearing, been professionally supervised by social workers.

38. On 3 July 2023, a position statement was filed on behalf of the mother. That made it plain that the mother did not accept any of the court's findings except for that in relation to allegation 1(f), and that was only accepted to an extent. There were other matters in respect of which there was also some limited acceptance by her.

39. On 5 July 2023, I expressed some concern about the mother's lack of acceptance of the court's findings against the backdrop of the lack of insight or remorse that I had referred to in my judgment at the end of the fact-finding hearing. The court directed a psychological assessment on that occasion, and that has since been produced by Dr F and is dated 25 October 2023. I gave other case management directions in order to take the matter through to a hearing on 14 November 2023.

40. At the same hearing, the mother renewed her application that child arrangements should revert to the pre-fact-finding hearing shared care arrangement. I refused that application, again for the same reasons that I had given on 23 June 2023. I indicated that, once evidence about the welfare issues which the court had directed was available, perhaps there would be reason to review interim child arrangements. After I gave judgment on 5 July 2023, the mother dispensed with the services of her legal team and applied for permission to appeal.

41. On 18 July 2023, the mother then issued an application to vary the order that I had made on 5 July 2023. By the time of the hearing of that application on 26 July 2023, she had instructed new solicitors and they had retained counsel. At that hearing, it was submitted again that child arrangements should revert to the shared care arrangements which had been operated by the parties prior to the fact-finding hearing. Again, that application was refused for virtually identical reasons to those which I had given on 23 June and 5 July 2023. I have examined the wider aspects of the mother's application in a written ruling that I gave on costs on 20 December 2023. In essence, the court's conclusion was that the vast majority of the mother's application was

misconceived and the only aspect which was arguably not without merit was related to handovers before and after contact.

42. On 26 July 2023, the mother then issued an appellant's notice in respect of the order of 5 July 2023. On 1 August 2023, she lodged an appeal of the judgment and order of 23 June 2023 and, on 25 September 2023, she issued an appeal of the order of Recorder Sharp KC dated 8 March 2023. Those appeals were all disposed of at the permission stage by an order of Russell J dated 9 October 2023, who certified them as being totally without merit.

43. One of the issues raised by the mother in those appeals was that her allegations of abuse against the father had not been determined. That was principally because, at the time of the hearing on 8 March 2023 and throughout the fact-finding hearing when the mother was legally represented, she told the court that she did not pursue them. However, the court did necessarily touch upon or dispose of some of her allegations on 23 June 2023, when considering those made by the father, including her allegations of coercion and control and her allegation of rape. That was something expressly recognised in the order of Russell J.

44. On 18 August 2023, the mother made a further application which the court dealt with on paper. She referred to the contact notes prepared by the social worker supervising contact and raised concerns about the children's behaviour. She suggested that a further child impact report should be produced and I agreed with that latter point and directed that that be done. Accordingly, the court has an addendum child impact report which is dated 7 November 2023 produced by Ms G.

45. On 4 September 2023, the mother applied for a review of various welfare issues which I summarised in the schedule to the order that I made on 6 September 2023. Her principal submission appears to have been that child arrangements should revert to the shared care arrangement. I directed Cafcass to consider whether a r.16.4 guardian should be appointed within the child impact report, which is something that the mother contended was needed. The mother also applied for disclosure of CCTV footage, which I dismissed, and I directed that the principal issues be considered at the hearing already listed on 14 November 2023. I also warned the mother that the court was considering making an order pursuant to s.91(14) of the Children Act 1989.

46. On 12 October 2023, the mother issued an application seeking a prohibited steps order to prevent the father from taking the children away during half-term and for a variation of handover arrangements. That was heard on 19 October 2023, and both elements of the mother's application were dismissed. At the hearing, the mother, who represented herself on that occasion, again applied for child arrangements to revert to the shared care arrangement which had existed prior to the fact-find hearing. Once again, I gave a judgment explaining why that application failed to give proper consideration to the outcome of the fact-finding hearing and why, the psychologist's and child impact reports not having been received at the time, the application was premature. I did, however, make the s.91(14) order as canvassed in the recitals to my earlier order because I was becoming increasingly concerned about the number of applications being made by the mother in circumstances in which I had found, on 23 June 2023, as I have said, that the mother had made false allegations and perpetuated this litigation as a form of abuse.

47. On 8 November 2023, the father then made an application for a specific issue order to permit him to enrol W in nursery. He said that, essentially, the mother had previously agreed that, and that she had done an about turn in terms of that agreement.

48. On 10 November 2023, the mother applied for permission for the expert, Dr F, to give oral evidence at the final hearing and also for one of the contact supervisors… who has been assisting the family. At the hearing of those applications on 14 November 2023, I refused the application for the latter in that the court has comprehensive contact notes before it.

49. At the hearing on 14 November 2023, the mother was represented by counsel and her primary position was, again, that child arrangements should be as before the fact-finding hearing. However, by the time of the hearing, the further evidence from Dr F and the child impact report from Ms G had been filed and neither of those reports supported the mother's application. As I have already said, I refused to extend the proceedings on the mother's application. For reasons I gave at the time, on balance, I reduced the amount of supervised contact between the children and their mother from three times a week to twice each week.

50. By the time of the hearing, the mother's written questions put to Dr F had not been answered and so the mother's application for her to give oral evidence was adjourned. The mother applied on 10 January 2024 to restore the application and the court subsequently gave permission for Dr F to give oral evidence at this hearing, having in mind the decision in the case of *Griffiths v TUI UK Limited* [2023] UKSC 48, which had been decided subsequent to the November hearing.

51. In the meantime, I had resolved a costs issue by order dated 20 December 2023 in accordance with directions I gave at the November hearing. I gave a written ruling on costs which is to be considered alongside this judgment. On 2 January 2024, the mother then applied to set that order aside. I dismissed the set aside application on 16 January 2024 and certified it as being totally without merit.

52. On 8 January 2024, the mother applied for an order that police disclosure be sent directly to her, on the face of it, because she did not trust the father's solicitors to have sent her the complete disclosure. She also applied for disclosure of CCTV footage. I granted the former application at the mother's expense but declined the latter by order dated 10 January 2024.

53. On 10 January 2024, the mother then also applied for disclosure of documents from Dr F. I granted that application on paper on 12 January 2024. Dr F then applied to set aside parts of that order. It appeared from Dr F's letter that the mother had not disclosed Dr F's stated reasons for not being able to disclose some of the material when the mother had made her original application. I recorded that fact in the order that I then made on 16 January 2024.

54. On 17 January 2024, the mother then applied again for disclosure of the CCTV footage as well as a recording played to her in an interview under caution with the police. That application was dismissed on 19 January 2024 and certified as being totally without merit. I will come back to an application made by the father on 23 January 2024 shortly.

The evidence at this hearing

55. I have referred to the evidence that I have heard during the course of this hearing. I have read Dr F's report dated 25 October 2023, her answers to the mother's written questions sent on 21 December 2023, and I have listened to her oral evidence.

56. I have read three child impact reports produced by Ms G and I have also heard oral evidence from her. As a result of some questions asked of Ms G during the course of her oral evidence, she has produced some documents setting out a proposed transition plan and a view as to how the children can be told of the potential outcomes in these proceedings.

57. I have also received statements from the mother and the father and they have each given live evidence to the court.

58. Both the mother and the father gave evidence in a way which was emotional. I have directed myself in the context of the hearing in June 2023 as to that. It is to be expected that they were emotional during the course of giving their evidence given the significance of the issues in this case. Considering what they said, though, it seemed to me that both parties expressed themselves ably and the mother had the assistance of an interpreter. It was evident to me that both parties are clever people, and both had submitted witness statements which presented their thought processes logically. What struck me about their oral evidence was that, whilst the father's thought processes remained clear, in contrast the mother's live evidence was peppered with inconsistency.

59. I am proposing to consider each party's or each witness's evidence individually.

The father

60. Starting with the father, the father told the court that, after the fact-finding hearing, he considered that the judgment would be a wakeup call for the mother and that her abuse would stop. However, the father describes in his evidence what he characterises as a constant chipping away by the mother at his parenting. For example, she would ask to know who was looking after the children, or she would raise issues in relation to insect bites or minor injuries. He acknowledges that, on one view, that these questions can be viewed as reasonable, but he says that he understood them to be the mother's ongoing attempts to undermine his parenting, maintain control over him, and to gain an advantage for herself in these proceedings.

61. The parents had been using OurFamilyWizard as a parenting app but, he said, when notifications came through, he would feel a sense of panic. He would find himself fretting over the contents of messages or replies which would be a distraction from caring for the children and about which he would sometimes seek advice from his solicitors or a counsellor.

62. About six weeks after the fact-finding hearing, he decided he could not cope with this anymore, and he informed the mother that correspondence would need to be sent via his solicitors. The mother's reaction to that was to allege that he was then in breach of the non-molestation order. She demanded that he correspond via

OurFamilyWizard. The relevant part of the non-molestation order is set out, however, in these terms:

> *"The [mother]… must not telephone, text, email, or otherwise contact or attempt to contact the [father], including via social networking websites or other forms of electronic messaging, except (a) in the event of an emergency relating to the children, (b) in relation to matters concerning child arrangements or the children's welfare, when communications must be sent via the OurFamilyWizard application, or (c) otherwise through the applicant's solicitors."*

It is apparent from that, therefore, that he was not in breach of the non-molestation order.

63. The father said he felt that even contact notes had been weaponised against him. The father accepted that the contact arrangements have settled down and that that particular concern has not been prevalent lately. However, he pointed to the notes as an example of how contact supervision does not protect him from allegations being made by the mother. He said he is on edge prior to every handover and goes through a mental checklist to ensure that there is no risk of any angle being used by the mother to make another allegation. It was suggested to him that he could just let things go and move on with the support plan that the mother proposes but he disagreed that it was that easy. He suffered years of abuse and he said he does not trust her.

64. The father also describes being affected by the barrage of applications made by the mother within the proceedings and how those have triggered his anxiety. His solicitors have protected him from some of the impact of that, but I understand that a consequence of that is that the mother has made complaints against his solicitors. I understand that she has demanded that they withdraw from acting for him altogether. The father considers that the court's oversight, in one sense, provides a level of comfort but even that is not enough. The mother's behaviour, in his eyes, has become more dangerous since the fact-finding hearing, if anything, rather than less.

65. The father told the court that he did not think he could have been more violated than to have had to lay bare the intimate details of his personal life at the fact-finding hearing. However, and I will come back to the details shortly, he said that he was overwhelmed to have discovered shortly before this hearing that the mother had obtained his confidential therapy notes. He said it was as if the mother were "hardwired into his nervous system," causing him fear. He felt that as things stand, the window for her abuse of him remains open and that he cannot heal.

66. The father's view was that when the mother wants something, she will go after it. She has no regard for the consequences and she has destroyed lives, including his. She has no respect for anything or anyone and she plays by her own rules. He was not confident that the mother did not present a risk of physical harm to him now that the parties' relationship was at an end given what had happened before it did end. The father considered that the mother is out to get him.

67. The father was asked about the change of circumstances for the children after the fact-finding hearing when contact had become supervised. The father said that W has always been quite clingy. In his statement, he says that there were concerns when V,

in particular, but also W were reluctant to go to contact. When asked about it, the father thought he did give emotional permission to the children to enjoy their time with the mother.

68. The father accepted that, apart from the contact on 8 September 2023, supervised contact has been broadly safe for the children. The father thought it was a worry that on 8 September 2023, when there was a difference of view about handover arrangements, even despite the presence of the contact supervisor, the mother did not prioritise the children's welfare when she felt she was losing control of the situation. She presented in a heightened emotional state and talked over the contact supervisor who recorded that V's welfare did not appear to factor into the situation. That was an issue which brought the parties back to a further hearing, as I have already said.

69. Apart from that, the father recognised from the contact notes that the children had had a nice time at contact and that it had been positive for them. From the description he gave, it appears that V would speak to the father about things done during contact although I am bound to say I was less clear that V would necessarily speak about the mother herself. The father said that he has tried to support supervised contact and protect the children from the adult conflict. The father described that the children are doing well now. W, he said, is talking more and more. He disagreed, when it was suggested to him, that all of that was to his credit and that he was resilient in supporting that contact. He said instead that he had tried to put a brave face on everything but actually, he feels broken by it all.

70. The children, he said, were continuing to suffer indirectly from the mother's abuse. He said that he recognised that he needed to be a "fit for purpose" parent for V and W. He has support from his family, for example, the paternal grandmother and the paternal aunt, and also his therapist. He said that he saw his family members roughly three times a week each.

71. The father said he wants to keep talking about the mother to the children. He has been looking at doing some life story work for them, including around their links to [the mother's native country] and putting in place memory boxes. He described that he will try and use… words [from the mother's native language] when speaking to them from time to time. He said he has considered family therapy and has been advised that play therapy would be particularly helpful for V but also for W. He has already investigated the availability of local providers.

72. The father was asked about how he would navigate any sense of guilt which he were to feel about V and W losing their relationship with their mother, that the impact of the change on them would make his life harder, and how that, in turn, would impact his own ability to heal. He referred to the steps that he would take to minimise the impact and that he would source therapeutic work for himself and for the children. He recognised that there were welfare risks whichever route the court were to direct but he agreed with Ms G's view that the least worst outcome would be for indirect contact only.

73. The father agreed with the recommendation that he undertake, in accordance with Dr F's recommendation, therapeutic work for himself. The father agreed that it is positive that the mother has tried to be admitted to a Domestic Abuse Perpetrator Programme. The father considered that, once the mother has undertaken therapeutic

work, if she were assessed again, and if the assessment were positive, he would look at reintroducing contact. He said that the work he would do in terms of keeping V and W's memories of the mother alive and positive would allow that introduction to be as seamless as possible. He wanted to support V and W to have a relationship with the mother in the future but that they themselves would need to be supported in order to ensure their welfare throughout that process.

The mother

74. Turning to the mother's evidence, it is relevant that the mother gave her evidence during the hearing after oral evidence had been given by Dr F and Ms G, whose evidence I will come back to and summarise shortly.

75. In her statement dated 17 January 2024, the mother asked for a shared care arrangement. During her oral evidence, the mother told the court that she just wants a role in V and W's lives. She said, at one point in her evidence, that she did not consider herself to be a risk to the children or to the father. She appeared in re-examination to accept that she was a risk to the father based on Dr F's evidence and, in consequence, indirectly to the children. However, she did not consider that the children were at direct risk of harm from her.

76. If the court were not to sanction unsupervised contact, the mother puts forward a proposal for a safety plan. That was set out by counsel in outline form, namely that she seeks a final order for supervised contact twice each week until such time as she completes an appropriate Domestic Abuse Perpetrator Programme and the therapeutic intervention advised by Dr F. She agrees to the continuation of a s.91(14) order, although invites the court that that be extended for as little time as possible, recognising that Dr F's evidence was that the therapeutic work would take at least fifteen months to complete.

77. She agrees not to contact the father directly or indirectly except for information sharing via the contact supervisors. She has set out that she would give an undertaking that she will not make any false allegations in respect of safeguarding matters to anyone or any professional educational institution, medical institution, or the police where it is motivated by a desire to undermine the primary care of the father. It was also expressed to some of the witnesses in cross-examination as an undertaking to not unreasonably raise safeguarding issues. The mother has offered to agree a list of activities that she would agree the children can engage in. She has confirmed also that she is content for the prohibited steps order to remain.

78. The mother told the court that she accepts that the father is caring for the children well. She says that he ensures that they go to school and encourages them to engage in extracurricular activities.

79. There are a lot of positives about the mother which the court has firmly in mind and weighs in the balance. She and the father co-parented V and W for much of their lives. Because she has been having supervised contact with the children since June 2023, there is a wealth of evidence before the court about her parenting in terms of contact notes. From that, the court can see that she clearly loves V and W and that they love her. She has an ability to cater for their physical, emotional, and developmental needs. Her […] heritage is an important factor in V and W's own lives

and she is better placed, on any view, to support them with that than anyone else. She is committed to caring for them throughout their lives and has been abundantly clear about that within the context of these proceedings.

80. The court necessarily also considers, in the context of Practice Direction 12J, the findings of abuse made against the mother and the effect which the court recorded that that was liable to have had on V, W, and the father. More time has been spent considering those issues within the evidence and more time is necessarily devoted to them within this judgment but the court, I want to emphasise, does not lose sight of those positive matters that I have just outlined.

81. In the judgment that I gave in June 2023, I set out the findings that I made then. We are now some seven months down the line. I understand that, on reflection, perpetrators of abuse can and do show introspection and development of their understanding into the impact of their abuse. They may be able to show an ability to address their behaviours.

82. When the court starts to consider the insight of the mother in this case, into the abuse which she has been found to have perpetrated, it has regard to the position statement that she filed on 3 July 2023 after the fact-finding hearing, what she described to Ms G, which is contained in the child impact report dated 7 November 2023, and what is set out in her most recent witness statement dated 17 January 2024. Also, the court considers the contents of the position statement produced by her counsel at the start of this hearing and her oral evidence.

83. In the position statement for the hearing on 14 November 2023, the mother said this:

> *"The mother accepts some of the findings made by Recorder Veal. What the mother accepts is detailed in the Cafcass report. The mother has had additional time to reflect on the findings of the court. The mother is deeply remorseful and sorry for the hurt that she has caused the father. The mother regrets the damage her behaviour has caused to the father. The mother wants to work with the relevant professionals to improve her behaviour and be a better mother for the boys in order to be able to coparent in a child focused manner with the father."*

84. Those sentiments are repeated within the mother's most recent witness statement and she told the court in examination-in-chief that she recognised that the father and the children were victims in this case.

85. I have been keen to discover what the mother tells the court that she is remorseful and sorry for.

86. What she accepted in her written evidence is that, on 31 July 2019, this is allegation 1(c), the mother now admits to having an argument with the father. That was something which she had not accepted in July 2023.

87. In respect of allegation 1(f), on 17 December 2020, the mother now admits to slapping the father's face but not causing any injury. In July 2023, she also confirmed that she did not accept having minimised that particular incident.

88. In terms of allegation 1(g), the mother admitted to Ms G only one occasion of throwing a mug and she said that that was because the father was trying to have sex with her. That is contrary to the finding made by the court. In July 2023, she maintained that the time when glass was smashed in the driveway that that was an accident, again contrary to the court's finding.

89. Allegation 2(a), the mother admits that the parties had heated arguments at times in front of the children, that she called the father a mummy's boy on occasion, and that she believed the father was emotionally enmeshed with the paternal grandmother. The mother has continued to deny getting into a rage and entering uncontrollable screaming frenzy, hurling abuse at the father or at his mother, or sometimes in front of the children, as the court found.

90. In relation to allegation 3(a), the mother admitted only to calling the paternal grandmother a narcissist and telling V that the paternal grandmother is a narcissist and that she had destroyed their family. In July 2023, she appeared to accept that she was overly anxious but continued to blame the paternal grandmother for causing or exacerbating that.

91. The mother set out in her statement that she recognises that those matters which she admits have caused the father emotional harm, such as feelings of anxiety, emotional pain, or diminished self-esteem.

92. The mother did not accept any of the other findings of the court. She started to change her mind about that in the witness box during the course of this hearing but then said that she did not consider that the various things had happened but that she accepted that the court had made the findings. She then confirmed that what was set out in paragraph 2 of her statement dated 17 January 2024 remained her position.

93. The findings which she did not accept included findings of physical abuse, for example, in December 2018 when the father was driving and when the children were in the car (allegation 1(a)). The court found that that exposed the whole family to a risk of serious harm. In her most recent witness statement, she continues to refer to the holiday which followed that journey as being a happy one, as if that were somehow to cause the court to change its mind now as to the finding it made after the mother gave very similar evidence at the hearing in June 2023.

94. In fact, the mother continued to deny that any of the other allegations of physical abuse of the father, or that of the paternal grandmother, and the many examples of her highly unpredictable and dysregulated behaviour, were true. The fact that she does not accept that, in relation to the physical abuse she did accept in December 2020, injury was caused does, in my judgment, suggest either that she continues to minimise the impact of her behaviour or that she was testing the waters to see what minimum level of acceptance would enable her to move matters forward within these proceedings.

95. In her written evidence, the mother did not accept that her coercive or controlling behaviour, for example, the attempts to isolate the father from his family or the children, or of threats to remove the children from the jurisdiction. In her oral evidence, she then appeared to accept that she had been coercive and controlling. That is at odds with what she told the police in terms on 6 September 2023. She told

the court that she has had time to reflect since the fact-finding hearing and that is why she has now accepted the allegation. I remained unclear why she said she did so for the first time during her oral evidence yesterday rather than, for example, in the statement that she prepared two weeks ago.

96. She told the court she did not intend to use the children as a weapon but accepted the finding made by the court to that effect. She accepted that the court had found that she had attempted to distance the father from his family but said that she had not intended to do so. The mother did not accept that her temper could go from zero to one hundred in very little time at all, or that, at the relevant time, she appreciated that her behaviour was sometimes dysregulated or irrational. She said that she never intended to punish the father but accepted that the court has made the findings that it has.

97. In her most recent witness statement, the mother continued to deny making the false allegation of rape, but told the court that that is because the allegation made to the police was one of sexual assault in connection with coercive and controlling behaviour and so she did not lie to the police. Her statement then said this:

> *"Although the court found that what I described was not rape, I did not lie to the police. Since it is not rape, I no longer believe that W was born as a result of rape."*

98. Considering that statement and, assuming for the moment that the police was investigating something other than rape, or that the difference in terminology would have made a difference to the finding made at the fact-finding hearing about her false allegation which, for the avoidance of doubt, it would not, the court is really troubled by the statement that the mother no longer believed that W was born as a result of rape because the court had found that what she had described to the police was not rape. Taking that logic through to its conclusion, what she presumably believed, when writing her statement, in consequence, is that W was born as a result of what she says she described as sexual assault and not what the court actually found, which was that the sexual intercourse was consensual.

99. In her oral evidence, in examination-in-chief, she told the court that she did not consider that W was born of rape and that she was remorseful. She said she was scared at the time she made the report to the police and that she now regrets having said it.

100. In cross-examination, she was asked whether she accepted having lied to the police. The question was asked twice. She said both times that she accepted that the court had made a finding to that effect rather than answering the question. She accepted telling the police that W was the product of rape and said that she did so because she was scared. She did not accept the court's finding that she made the allegation to retaliate for the report made to the police of the assault on the paternal grandmother. She said she made the report because allegations of coercive and controlling behaviour had been made against her and because she was scared of losing the children. She told the court that she was really sorry and that she did not think about the consequences that the report may have had on the father at the time that it was made. She was unclear about when she had first appreciated what those consequences

of her actions had been but said that she could see the impact of them from the reports produced for the court since the fact-finding hearing.

101. In her oral evidence, the mother told the court that she was sorry for the false report of assault made by her in June 2022. She did not accept that it was an act of punishment but, again, that she had been scared. When asked why she did not simply say to the police that she was worried about the children's whereabouts, she told the court that she simply made a bad choice.

102. The mother told the court that she was sorry about the impact of her abuse on the children. I was not clear from her evidence what she was saying about the impact on the father. For example, Ms G reported that the mother had told her that she was concerned that V and W were not safe in the father's care due to his mental health. The mother said she did not understand how that comment had got into Ms G's report although she appeared to understand that the father's reported symptoms had resulted from her actions.

103. The mother continued to deny assaulting the paternal grandmother. The mother considered that the children would have been scared on 9 August 2021 to have witnessed her dysregulated behaviour at the father's workplace but she did not agree that there would have been any lasting impact. She said that she understood that the abuse she perpetrated against the father would be liable to make him less emotionally available to the children, and that his anxiety about what the mother may think of little things, like when W jumped off the bed and twisted his ankle, would potentially result in the children missing out on opportunities in life.

104. The court needs to try to work out what to make of the mother's evidence. It is internally inconsistent in a number of key respects. The court does not lose sight of the fact that the mother has not had legal representation at every stage of these proceedings but, set against that, is the fact that her evidence is her own, that she is clever, and that she has her own legal training.

105. I have set out also just some of the concerning examples of what the mother has sought to do in the run-up to this hearing, which was to try to relitigate the findings which she maintained that the court had got wrong at the fact-finding hearing. In the context of other allegations, she has tried to adduce new evidence or has resubmitted evidence which was already before the court at the fact-finding hearing as new evidence, such as text messages dated 12 August 2019. I gave a case management ruling about my approach to that at the start of the hearing, so the parties could be clear about the court's views, and that needs to be considered alongside the judgment that I give now. That further evidence was submitted by the mother despite the fact that the preparation for the fact-finding hearing was carefully managed at a time when she was legally represented, despite her unsuccessful appeal, and despite her apparent understanding that the welfare determination at this hearing is based on the factual matrix established at the fact-finding hearing. I was told by counsel representing her, in the position statement submitted on the night before this hearing started, that the mother sought recitals to the order that I would be making today to redress the injustice which she perceived that she had suffered as a result of the findings made in June 2023.

106. One of the other things that the mother seemed to think that the court got wrong was what she perceived as its failure to determine her allegations of abuse. As I have already said, her appeal in respect of the non-resolution of her allegations of abuse was unsuccessful. The mother has, on one view, persisted in attempting to make allegations against the father or, on another view, attempted to redress the balance portrayed in the evidential picture before the court. However, what the court cannot get away from is the fact that her ultimate proposal for child arrangements has been, at every stage since the fact-finding hearing until she gave evidence yesterday, for shared care. In my judgment, that alone tends to confirm that her decision in March 2023, that it was neither necessary nor proportionate for her allegations against the father to be resolved, was the right one then, and remains the right one now.

107. It was said by the mother that the court was wrong to have identified, for example, that the CPS had taken the decision to charge her in respect of coercive and controlling behaviour in October 2021. I have checked the contemporaneous police disclosure whose terms are slightly different to the more recent disclosure. Whilst I accept that the referral to CPS was made by the police on 28 October 2021 in relation to a prospective charge for coercion and control, it remains correct that a decision was later taken in November 2021 by CPS to charge the mother with the offence. It was only because the father retracted his complaint at about the same time that the police ultimately decided to take no further action, presumably on the public interest test rather than on the evidential test pursuant to the Code for Crown Prosecutors.

108. However, even if the court had been wrong about that, what the mother's position appears to ignore is that, applying the appropriate standard of proof, this court made its own findings that the mother had been coercive and controlling of the father. On balance, it seems to me that this is one example of which there are many of the mother, to use her own words, "cherry-picking" parts of the evidence which, taken out of context, supported her position in a way which was liable to be misleading. I have reached that conclusion, on balance, not least because the court directed itself specifically in para.185 of its June 2023 judgment, which is the very next paragraph to that with which the mother takes issue, as to the approach that it took. The court could not have been clearer.

109. I have already referred to what the mother said in her statement of 17 January 2024 about her understanding now that W was not born as a result of rape. It may be thought that there is consistency between that example and the CPS charging decision issue in terms of the mother advancing something of a tenuous argument by shoehorning it through a narrow view of the evidence. However, in contrast to that approach taken by the mother, the court has to look at the broad canvas, taking a holistic view of the evidence.

110. Since the fact-finding hearing, the mother denied, in her oral evidence yesterday, that she had raised a concern about bruising to V's leg on 25 August 2023 and his back on 27 August 2023 as recorded in the contact notes. She said that she understood that children get bruises and that the children had sustained bruises when she had had care of them, that she was not concerned about the father's care, and that, had the court agreed that the contact supervisor could give evidence, all of this misunderstanding could have been cleared up. However, that is at odds with her statement dated 4 September 2023 in which she stated, in terms, that the injuries sustained by the children in the father's care were only witnessed by him, and that he had not provided

any explanation to her. There was a small bruise to V's bottom which the mother pointed out to the contact supervisor on 5 September 2023. She said that that was not raised as a concern, although I struggled to understand her evidence in terms of what other context it was likely to have been raised in connection with. On 8 September 2023, the mother pointed out bruises also to V's shins.

111. The mother accepted that she had said, in her application of 4 September 2023, that the father was alienating the children from her and that the only barrier preventing him from completely alienating the children from her was these proceedings. She told the court that she had simply been concerned about the lack of information that she had been receiving about the children and that this was not an attempt to punish the father.

112. On the 6 September 2023, the mother was interviewed by the police in respect of its ongoing investigation of an allegation of sexual assault. The police disclosure records that the mother provided documents to the police which I understand had been obtained from the disclosure in the Financial Remedy proceedings, which she says showed that the father was tracking her movements. At one point in her oral evidence, she seemed to accept that she had made a counter allegation of coercive and controlling behaviour against the father, but then later denied that she was pursuing an allegation but, instead, that she was simply defending herself.

113. In the child impact report in November 2023, Ms G recorded that the mother had told her that she had made counter allegations of coercive and controlling behaviour against the father and that the mother wondered whether the judge would change the findings that he had made if the father were later to be found guilty of an offence. The mother told the court that this was simply Ms G's opinion and did not reflect what she had, in fact, told Ms G. In her latest statement, the mother said that she had not made any new allegations to the police. That, in my judgment, is manifestly wrong. In my judgment, what Ms G recorded was the truth of the matter.

114. Of further concern is that, despite the fact that the court dismissed, on 6 September 2023, the mother's application for disclosure of the parties' historic therapeutic records, her most recent statement had exhibited to them copies of the father's records from a therapist who treated the father named Ms H. The same therapist had treated the mother separately and both parties together, as I understand it, and so different consents would have been needed for the release of different classes of records.

115. On 25 November 2023, a request was sent to the therapist from an email account which bears the father's name with a request for disclosure of his records for the period from September to December 2019. After asking for signed consent forms and a form being provided, the therapist then provided the records via the same email address. The father was clear that the email account was not his and that he had not consented to the release of the records. When asked by the father's solicitors to provide an explanation as to how she had come by the father's confidential records, the mother responded to them on 22 January 2024 saying:

> *"I have received these notes by post. They are addressed to me. There was no return address in the envelope. I hope that clears things up."*

116. However, it did not clear things up because the therapist confirmed that email had been the sole method of communication, and the mother's explanation was at odds with that. The father's position was that the mother had fraudulently obtained his records.

117. On 22 January 2024, the mother then wrote to the court about this issue saying:

> *"The father's solicitor is making serious allegations against me which the father must prove. I object to the father's objection to including in the bundle the documents that I have already submitted to the court."*

118. That is a reference to her having exhibited those records to her witness statement. She went on to refer to the fact that she had submitted her own notes to court appointed expert, Dr F, in September 2023 but the father had not. She went on to positively assert that the email sent from the email address bearing the father's name was sent by him and that the same email confirmed that he had attempted to obtain her notes from the therapist. She then went on to accuse the father's solicitor of not being honest with the court.

119. On 23 January 2024, I therefore directed disclosure of the correspondence from the therapist which had led to the release of the father's therapeutic records. I have referred to what that correspondence reveals. The therapist also provided a screenshot of one of the emails to show that one of the emails, when viewed on her phone, looked like it was written in […] which, of course, is the mother's native language.

120. On the first day of this hearing, the mother, through her counsel, admitted that she had set up a fake email address in order to obtain the father's confidential records from the therapist. I comment that the consequences of that did not, of course, only impact the father. Her actions also caused the therapist, whom I understand is retired and seriously ill, to breach the Data Protection Act 2018 and the therapist has therefore had to report herself to the Information Commissioners Office. In a case management ruling that I gave on the first day of this hearing, I did not admit the records into evidence because they remain as irrelevant to the welfare determination today as they did when I refused disclosure of them last year. The court has appointed a psychologist as a single joint expert to provide an up-to-date picture, and it has directed Cafcass to produce a child impact report. This hearing was not an opportunity to relitigate the fact-finding by the back door.

121. When asked in cross-examination what her motivation had been in unlawfully obtaining the father's records, the mother told the court that she had wanted the court to see how the father treated her throughout the relationship. She said also, however, that she did not consider him to be a bad man or a bad father. She accepted that her behaviour had been wrong and extreme and why the father may be thinking, "What is she going to do next?" The mother was asked whether she had been thinking about herself, and she said that she was thinking about the children and the fact that she was facing an order for no contact. She said that she had been scared and that it was a bad choice.

122. However, if she was scared about potentially losing her relationship with the children and that is evidence which she gave on multiple occasions, it is of real concern that the mother's default mode is to raise the temperature, to try and deflect blame and, in

the process, to have little or no regard to the harm that she does to others. Far more rational, in my judgment, would have been to respond in a way which works through the concerns and nips them in the bud, rather than escalating them, telling lies and, only when faced with overwhelming evidence at the point at which final decisions are being made, to admit wrongdoing. That is exactly what happened at the fact-finding hearing in relation to the false allegation of assault made in June 2022.

123. Coming back to the exhibits to her statement and the case management ruling which I gave at the start of this hearing, the mother said that she opened a confidential letter addressed to the father from his accountant by mistake and only realised that it was not for her when she started reading it. However, she told the court that she did not stop reading it. She was asked variously why she had then tried to use the letter in the Financial Remedy proceedings, why she exhibited it to her statement in these proceedings, and whether she agreed it was abusive. Her answer was simply that that was not what she had been trying to do.

124. On 25 January 2024, V's school provided a document to the father which was disclosed. That was admitted into evidence. The father says that he was called into school for a meeting last week. He went to see V's teacher on 24 January 2024 after school. The teacher told him that she had had concerns about V and that, in particular, a female figure raising her voice would particularly affect V and that, when the number of pickups from school by the mother was reduced, they were starting to see changes in V for the better.

125. The document which the school has produced paints a picture of V's presentation in September 2023 and contrasts it with the school's assessment of him in the last month or so. The document speaks for itself to an extent. I would summarise the difference as showing a child, in September 2023, who appeared worried, distracted, disengaged, and withdrawn. He was said to physically flinch or appear to shrink if voices were raised by a teacher in class or if somebody came up behind him unexpectedly. The school's description of V now is of a child who is gaining in confidence and who engages far more with peers and school staff.

126. When the document was disclosed to the mother, she attended at V's school at 7.20 a.m. on 26 January 2024, the first day of this hearing. The father told the court that, when he dropped V off, the teacher had indicated to him that the mother had been into school to speak to the staff. The father said he did not say anything more in front of V, but he felt afraid that the mother had been there and was upset about it.

127. The mother told the court that she was not expecting the letter and was shocked to have seen its contents. She had had a meeting with V's school in September 2023 and had thought that he was okay. She did not know what V had been going through and thought that he was doing well. The mother said that she went to the school on the morning of the hearing to confirm that the document had come from the school because it had been received by her from the father's solicitors, along with an explanation from them that the father had been called to the meeting that he had described with the school. The mother said that, in contrast to her position prior to the fact-finding hearing, the mother had since been less involved with the school on a day-to-day basis.

128. She said she went to the school early on 26 January 2024 to avoid the possibility of running into the father. It was not, however, clear to me why the mother went physically to the school, rather than telephoning, if all she needed to know was about the provenance of the document. She said she did not think to telephone and that she simply wanted a role in the children's lives. I do not need to make a finding about this, but I doubt, given the mother's past presentation when she perceives that she is being challenged, that it was simply a question of her wanting to calmly check that the document had come from the school.

129. When asked in examination-in-chief why the court should trust the mother now, the mother told the court that she understood now that this is her last opportunity. She said she takes total responsibility for the way in which she has behaved, that she has been scared about what may happen, that she is sorry, and so she asks the court to trust her. She did not accept in cross-examination that she lacked remorse or that she was instead being vengeful.

Dr F

130. Turning to Dr F, in her live evidence it is fair to say she remained broadly true to her written evidence.

131. Dr F's opinion is that the father currently meets the criteria for PTSD. In addition, she considers that he displays some symptoms of complex PTSD, as a result of the domestic abuse he has suffered, but does not meet the diagnostic threshold for that. That was because his symptoms present within the context of these proceedings rather than in his relationships with others or wider life functioning. Dr F does not consider that the father experiences any other psychological or mental health condition.

132. So it is that Dr F considers that the increased perception of threat, the affective dysregulation that the father experiences, and the period of time it takes the father to calm following those periods of distress, are attributable directly to the abuse that he has suffered at the hands of the mother, in these proceedings and, indeed, any contact that he now receives from the mother. The latter includes emails from his solicitors or via OurFamilyWizard, for example. He refers to the mother's behaviours as relentless. Dr F raises a concern about the mother's use of these proceedings to continue to perpetrate abuse.

133. Dr F makes the point that empirical evidence almost unilaterally demonstrates that adverse mental health consequences, following exposure to coercive and controlling behaviour, are equal to or more severe than mental health consequences following physical abuse alone. The court's findings were, of course, that the mother perpetrated both forms of abuse. Dr F did not consider that the evidence of the text messages about the father having damaged the mother's telephone or make-up bag in 2019 changed her views, although she accepted that she did not know the context.

134. Dr F has assessed the father as experiencing early maladaptive schema surrounding unrelenting standards and self-sacrifice. He sacrifices his own needs excessively in order to help others. I comment that that is consistent with my own conclusion, which I reached at the fact-finding hearing, that he only agreed to a shared care order initially in order to cooperate with the mother despite the abuse of which he must have been aware.

135. Dr F refers to V and W having been exposed to domestic volatility and, by extension, that both parents have failed to protect them or prioritise their needs. For the father, his ability to care for and safeguard the children in the future, Dr F says, is intrinsically linked to his remaining outside of an abusive relationship. In addition, the proceedings and relationship with the mother are likely to be retraumatising for the father in Dr F's opinion.

136. She made recommendations for therapeutic intervention for the father, ideally trauma specific input such as Eye Movement Desensitisation and Reprocessing. I understood her recommendations to be broadly as follows. If there were to be no contact in the future, EMDR for the father would be best when the father has space in which to address his own needs. If contact between the mother and the children continues, family therapy would be helpful until the father is ready to access EMDR. She thought that the father could engage with that psychotherapy in the long term and that there was not a pressing need for it. Dr F did not consider that the Freedom Programme would be a substitute for the therapy that she recommended.

137. Dr F did not consider that the father had to make any changes from a psychological perspective in order for him to be able to care for V or W.

138. The key point that Dr F makes in relation to the father's psychological presentation is that in her opinion, any contact between the mother and the children is likely to exacerbate the father's symptoms of PTSD and complex PTSD. That is informed by the gravity of the abuse perpetrated by the mother and the lengthy period of time over which it was sustained. Although the impact on the father would be greater if contact were to be unsupervised, Dr F's conclusions are that, by remaining involved in court proceedings or where mandated to have any form of contact, whether direct or indirect, with the mother, his abuser, there is a lack of ability for the father to exercise autonomy in his life or in the lives of V and W. Lack of agency, lack of autonomy, and a perception of constraint, Dr F says, is a central feature of coercion and control and, in her opinion, likely to exacerbate the father's symptoms. That, therefore, includes even taking the children to contact where he knows the children would be spending time with the mother.

139. Dr F explained that handover locations were not, in fact, raised by the father as being particularly triggering, as opposed to examples of communications between the father and mother or the children having contact with the mother. She thought that even communications with the contact supervisor would remain problematic for the father, because he continues to have fear associated with contact being used against him, for example, if normal bumps and bruises are noted during contact by the mother.

140. Dr F's conclusion is that the mother presents a significant risk of harm to him and that it would not be appropriate for the father to have any contact, whether direct or indirect, with the mother. She considered that the best outcome for the father would be an order for no contact between the mother and the children and the court needing to look at it in terms of what the father would need to do to protect himself.

141. She considered it outside of her remit to comment on the impact on the children. Having said that, Dr F referred to the hypervigilance of V referred to in the recent letter from the school as being consistent with her experience of children or indeed adults who have been exposed to domestic abuse and more likely than, for example,

his simply responding better to male role models. She describes those sorts of victims as if they are waiting for something bad to happen.

142. An issue put to Dr F is whether she had performed a full assessment of the mother, given that she had not completed all of the psychometric assessments. What Dr F said about that is that the mother undertook enough of the tests to enable a full assessment to be performed, and the two which the mother did not undertake would have provided perhaps more information but were not essential to the assessment.

143. Dr F's opinion is that the mother's personality features histrionic and narcissistic personality traits. She did not go so far as to make a formal diagnosis of a personality disorder but described it as a significant personality pathology. I understand Dr F to mean that the mother is likely to have an egocentric view of herself and experiences egotistic self-involvement. Dr F refers to a sense of entitlement, a perception that the mother needs to compete with others for a share of people's attention, the potential for impression management, and a tendency of the mother within the assessment to portray herself as the victim and deny offending behaviour which she may have displayed. I note that there is some consistency between Dr F's conclusions and my own non-expert observations within my judgment of 23 June 2023.

144. There was some discussion about the mother having been diagnosed with a generalised anxiety disorder by her GP. She has been prescribed medication for that. Dr F was clear that the mother's personality dysfunction, including the mother being in competition with others, may result in the mother experiencing anxiety. She did not seem surprised that the GP had prescribed antidepressants but referred to the mother's personality dysfunction as needing to be addressed as a probable source of the issue.

145. Dr F confirmed during the hearing that the mother having set up a false email account in order to obtain the father's therapy notes from his therapist in breach of the Data Protection Act 2018 was an extreme example of her personality traits, of her being willing to step far beyond reasonable boundaries and engage in unlawful behaviour. She thought it had similarities, too, to stalking behaviour. Of the email to the court dated 22 January 2024 in which the mother alleged that the father had set up a false email address or tried to obtain the mother's records, Dr F referred to consistency with her view that the mother projects her less desirable behaviours onto others, in the same way as she referred to the paternal grandmother as a narcissist. When considering the mother having gone to the school at 7.20 a.m. on the morning of the first day of the hearing, Dr F considered that that was an example of the mother's tendency to behave impulsively instead of being able to contain her discomfort.

146. During the assessment, the mother largely described the findings of the court as inaccurate and denied that she was the perpetrator of the abuse found. Dr F considered that the mother's expressed remorse needed to be treated with caution, potentially as an attempt to manipulate the outcome of these proceedings. That view was reinforced by the recent actions in obtaining the therapy notes and the email to the court of 22 January 2024 in which the mother overtly says that the father and his solicitors are lying. Dr F thought that that was inconsistent with the mother's expressed remorse. Dr F considered, therefore, that the mother would be unlikely to be eligible for a perpetrator programme due to her lack of insight into the impact of the physical and emotional abuse that she has inflicted.

147. Examples of the lack of insight to which Dr F refers are helpfully set out in paragraph 8 of her report. Those include, at the one end of the scale, the fact that the children were exposed to arguments between the parents and, at the other, the view that the mother maintained that W was conceived as a result of rape. Dr F was not satisfied either, in a similar way that I was not, that the mother genuinely believed, as set out in her most recent witness statement, that W was not conceived as a result of rape. She referred to the terms of that statement as being "smoke and mirrors." She recognised that the mother had changed her position but was not satisfied that she shows true insight. That was also true when considering other findings which the mother admits.

148. The mother went so far as to tell Dr F that she intended to seek another fact-finding hearing in order to put to the court the multiple allegations that she wished to make against the father. Dr F was concerned that the mother, in speaking to Cafcass, was prepared to twist her observations of the father to portray his psychological presentation as a basis for the children not being safe in his care.

149. Dr F reached the conclusion that the risk that the mother currently poses in terms of Intimate Partner Violence, which she referred to as IPV, is in the moderate elevated range. That was because there was not much evidence of her behaviours before the parties' relationship. She referred to mother's exposure to the father and the paternal grandmother being lower now which she said does not mean that the risk of physical abuse can be said to be higher. However, taking into account the evidence since the conclusion of the fact-finding hearing, Dr F was concerned that there was clear evidence of continuation of IPV related behaviour through the proceedings.

150. Dr F explained that it is to do with control. When the mother loses control, she must regain it at all costs, even if that means a lack of respect for boundaries. That was a theme which permeated her evidence and provided the context for the mother's position that she is fighting to have care for her children. For example, it was consistent, Dr F thought, with the high number of applications made in these proceedings, and including the application that Dr F needed to make herself. She considered that the mother believes her behaviour to be rational, and that it is also to do with survival, whereas others, including the court, have understood that same behaviour to be irrational. She referred to it as being the mother's narrative, and that she is justified in her own mind because she believes that she has been wronged and has a need to seek vengeance. The mother's behaviours, Dr F considered, were ongoing. Her assessment was therefore that the mother presents a high risk of future perpetration of IPV or domestic abuse, and at particularly elevated levels through coercive control. I accept all of that evidence which it seemed to me was logical and well supported.

151. Dr F did not believe that the mother does not love her children, but her opinion was that the mother did not understand that she has caused them harm. When considering the risks to V and W, Dr F considered that there was not only a risk flowing from exposure of the children to violence and volatility and the increased risk of mental health and behavioural problems which may flow from that, but also an inherent physical risk. An example she used is the finding about the assault of the father whilst he was driving. Dr F referred also to the risk that the mother would use the children as weapons, for example, through co-opting them into a negative narrative around the father and the paternal family.

152. Another example of risk flows, in Dr F's opinion, from the mother's personality pathology and the impact that it has on her ability to prioritise the children's needs above her own. In that respect, she refers to the contact notes of 8 September 2023, when what the mother considered she deserved appeared to eclipse her ability to put V's needs first. Dr F acknowledged that that was perhaps an isolated issue in the contact notes, but it was an example of an occasion on which the mother was challenged, in particular when she felt in competition with the father, and that is when things go awry.

153. Dr F concluded, therefore, that the mother's raised level of risk requires special management strategies, including, at the very least, an increased frequency of monitoring. That is currently undertaken by contact supervisors, which Dr F considered protected against overt or direct risks to the children. An enhanced level of intervention might include, she thought, the therapeutic input for both parents and, if there were to be a criminal conviction of the mother, there would be likely to be monitoring of the mother by His Majesty's Probation Service through imposition of license conditions, *et cetera*. In the absence of that, Dr F thought that monitoring would be more difficult.

154. In the longer term, Dr F makes a recommendation for intensive psychotherapy, specifically schema-focused therapy, for the mother. That was the number one priority for the mother, she said. However, Dr F has reservations about the mother's capacity to engage meaningfully with that therapy at the moment due to likely resistance flowing from suspicion of external influence, her primary interest in her own needs or an inflated sense of self, and a lack of acceptance of any need to make change. Once any schema therapy starts, Dr F considered that it may take at least twelve to fifteen months to complete. Dr F said that there was a risk of destabilisation during the first three months of therapy and so one would not expect to see positive change in that period and, indeed, she said she would expect to see the opposite.

155. Dr F was clear that the mother is a bright woman. She does not need psychoeducation. She needs psychotherapy. Dr F said that she simply does not understand the impact of her domestic abuse.

156. Dr F was told that the mother had changed therapist in December 2023 in order to seek out the therapy that Dr F had recommended. Dr F agreed that that was a positive step taken by the mother and she made recommendations that the judgment from the fact-finding hearing and Dr F's report be provided to that therapist.

157. In terms of output at the end of therapy, Dr F explained that a difficulty is that the best context for the therapy itself is that it be undertaken in an entirely confidential environment because if the mother in this case knows that the therapist is going to produce a report at the end of it, there is a risk of disguised compliance within the therapeutic relationship. That does not therefore easily lend itself to reports being made back to court by the treating clinician. Dr F said it has to come back to behaviour, and whether we are seeing different behaviour. She was asked how the court can distinguish between appropriately motivated change and disguised compliance. What Dr F said about that is that it is tricky, but one has to look at patterns of behaviour. It would involve evidencing that the mother had engaged with therapy and a lack of offence paralleling behaviour. One way of measuring that, she

said, might be to instruct a further independent assessment with no reference being made to the treating clinician.

158. Dr F referred to there being little empirical evidence for the success of Domestic Abuse Perpetrator Programmes, in particular for women, which is why she thought that the in-depth psychotherapeutic one-to-one work was preferable. She thought that the mother may defeat the purpose of a Domestic Abuse Perpetrator Programme through her impression management. In other words, the mother would be liable to do whatever it took for the boxes to be ticked. Given her pattern of deceit, Dr F was not satisfied that the fact that the mother has tried to enrol on to a programme equates to genuine remorse or an understanding of a need to effect change. It might show, she said, a willingness to turn up and do the work. Whether it is evidence of motivation to make change or will, in fact, elicit change to reduce risk is different. She was clear that she was not saying that the mother should not do a programme but described it as being like applying a plaster to a septic wound. It might cover it up but at the same time it may not target the root of the problem which may require antibiotics. Dr F describes the psychotherapy as the antibiotics.

159. In relation to the proposal of an undertaking that the mother would not raise safeguarding issues unreasonably, Dr F repeated her concerns about the mother not adhering to boundaries in the past. It was not enough that there could be a threat of no contact if she did not stick to her undertaking. Dr F highlighted the point that the evidence is that that threat has been present since the fact-finding hearing and it has not been a sufficient deterrent to prevent the mother's abusive behaviours even very recently. Similarly, if a s.91(14) order were made, Dr F described that as an extrinsic motivator and not intrinsic to the mother's motivation to change. In other words, she said the mother needs to hold an internal belief that she needs to make and effect change, in order for that change then to be sustained.

Ms G

160. Turning to the evidence of Ms G, in her child impact reports, she has undertaken a comparative analysis of the advantages and disadvantages of the various options before the court: shared care or unsupervised contact; supervised contact; and no contact. Ms G's recommendation in her written reports, which she confirmed was supported by her manager, was for a live with order to be made in favour of the father and no contact, even indirect, between the children and the mother.

161. Ms G was criticised because she had observed none of the contact sessions between the children and the mother. She did not accept that criticism, making the point that it was questionable as to whether that would have added value given the impact on V and W of yet another professional being introduced to them when contact was already being observed by an independent social worker and was positive. Ms G was clear that she had read the notes and there were no real concerns which arose from them.

162. When the shared care arrangement was in place, Ms G accepted that the school had reported no concerns in relation to the children's general physical or emotional presentation. However, there is, she said, a significant impact on the welfare of children witnessing domestic abuse, even when they are young. It was therefore important that V and W were protected from dysregulated behaviour from the mother and emotional distress from the father. Although she did not consider there to be a

material risk currently of V picking up on emotional negativity from the father, Ms G explained that the children need their primary care givers to be emotionally attuned as an absolute priority.

163. Ms G thought that some of the behaviour of V reported by the school in the document produced in the last few days was likely to be as a result of the domestic abuse that he has been exposed to, for example, the reported behaviours of him physically flinching and trying to hide himself. She thought also thought that there could be some other causes of some of the behaviour, including the change of circumstances brought about by the change in living arrangements in June 2023, but accepted that there was nothing in the letter from the school which pointed to problems being experienced by V with his peers or others.

164. At the moment, Ms G referred to there being a lot going on in terms of the welfare risks for the children. She was doubtful about the expressions of acceptance of the court's findings made by the mother. For example, that the mother no longer believed that W was born as a result of a rape. She agreed, for example, that creating a false email account and obtaining the therapy notes was significantly concerning. If the father was having thoughts about how far the mother would be prepared to go, Ms G thought that that would impact on his emotional availability to the children, whether by virtue of his being distracted or distraught in front of them. She was concerned also about whether the mother would take steps to influence the children, although she did accept that that is mitigated by supervision of contact and there has been no real indication of that happening so far throughout the contact notes.

165. However, Ms G said there are a lot of unknowns about what will happen after the oversight of the court is lost. At the moment, the court and the father's solicitors are a protective factor for him and the children, and emails from his solicitors are only a stressor for the father because of the mother's behaviours. Once proceedings are concluded, the contact supervisor may not be able to hold the ring and manage the same behaviours from the mother.

166. Ms G did not see how supervised contact would work without there being some level of communication between the parents. There would still be indirect contact between the parents, even if an independent social worker were involved in supervising contact. She gave an example of perhaps V sustaining an injury and the need for that to be communicated between the parents. Presumably also, there would be a need for any changes in child arrangements to be communicated between the parents in some way.

167. If the father were to be impacted further and put in a position whereby he was not able to care for the children, Ms G thought that a carer other than either of the parents could be needed for them. Her view was, therefore, that there was a high risk to the children of contact continuing.

168. Ms G considered that the best outcome for the children would include their having a father who was emotionally available to them. She described that as a priority. It would not assist the children to have a father who was hesitant, hypervigilant, or holding back. She said that the father should be in a position to repair and become resilient. He needs emotional space to heal. She thought that that would also give V

space in which to repair, and space for the mother to undertake the work recommended by Dr F and Ms G herself.

169. In her child impact report, Ms G referred to the continuation of supervised contact being inappropriate because of the lack of an exit plan. I asked some questions about where the idea that an exit plan is required came from in that, in my experience, the court does order supervised contact on an open-ended basis, for example, in care proceedings. Ms G told the court ultimately that it was a matter of Cafcass policy. On one view, the mother undertaking a Domestic Abuse Perpetrator Programme, whether that be a programme which she paid for herself or a perpetrator programme directed after any later criminal conviction, Ms G thought, would provide an exit plan. Ms G considered that, if the mother were to have accepted the findings made by the court and had she been eligible, therefore, for a Domestic Abuse Perpetrator Programme, Ms G could have given consideration to inviting the court to direct supervised contact. However, it was principally because of the lack of acceptance by the mother of the findings, and the lack of insight, that Ms G had concluded that supervised contact could not be safely directed, but that was primarily based on her assessment of the welfare risks rather than the need for an exit plan.

170. Ms G took the view that the safety plan proposed by the mother would not adequately manage the issue around communications between the parents. The undertaking from the mother not to unreasonably raise false allegations in relation to safeguarding issues or undermine the father's parenting was a measure which she doubted would work because she identified that the mother had struggled already to abide by rules.

171. Ms G acknowledged that there were risks to the children if they were to have no direct contact with the mother. She said that the starting point is that there should be contact but, Ms G said, in this case, the welfare benefits of that were outweighed by the risks, even given that the risks are currently managed to an extent by supervision of contact.

172. Ms G did not accept that she had minimised the risks to the children which would flow from that outcome or the long-term impact, including the potential loss to the children of a sense of their identity and heritage, that they may feel rejected by the mother, and that the children's emotional presentation in school could be affected, including the potential for their educational attainment to be impacted. Ms G considered that the impact on the children could be mitigated by support from V's school and presumably W's nursery, which is a safe space. She accepted that fifteen months is a very long time in the lives of children of V and W's ages, but the priority is their welfare throughout their childhood and therefore, in the immediate future, to take steps to protect them from their needs being affected by the impact of the mother's abuse on the father.

173. When asked about whether the risks could be mitigated by the court making an order for indirect contact, Ms G initially disagreed. She said she struggled to see how the father would cope when receiving the letters to the children from the mother given Dr F's views. Given the children's ages, she identified that the contents of the letters would need to be checked even if the content were appropriate. The need to check the letters would continue to expose the father to harm and it was for those reasons that she was not even supportive of indirect contact.

174. Ms G accepted that the children may be aware of the conflict between their parents and that there is a possibility of them blaming the father for loss of their relationship with the mother. She did not agree that she had failed to consider the emotional fallout, but Ms G thought that that would need to be managed.

175. When asked what narrative should be given to the children given her recommendation, I am bound to say that Ms G's evidence was somewhat unsatisfactory. She said in the witness box that she would need to think carefully about that, but that Cafcass would work alongside the parents and the school. After a decision is made, she explained that standard practice is that Cafcass would sit down with those involved in the children's lives and agree a way forward. She thought the school could provide emotional support to V and that W was not too young for life story work either.

176. What I considered unsatisfactory about Ms G's evidence was that she was recommending no contact, whether direct or indirect, which represents, on any view, a real interference with the Art.8 rights of the mother and the children, and the court needed to know what the transition plan might look like and what sort of narrative was to be provided to the children before it could make an informed assessment about, for example, the impact of the change of circumstances on the children. When I asked Ms G about whether indirect contact could be supported by third parties, for example, V's school or paternal family members, she thought that that would control the risks associated with that potential option.

177. I therefore sent Ms G away at the end of the first day of the hearing to consider those matters. She made enquiries about the support that V's school could offer to him which includes facilitating indirect contact and providing and ELSA for him. In fairness to her, her view was that, in those circumstances, indirect contact could be ordered and she produced some draft storyboards and letters to the children. Although she starts from a mistaken belief that supervised contact is currently three times a week, she has proposed a transition plan whereby supervised contact with the mother would be reduced over a period of about three weeks, whilst work is being done with the children in the meantime about the narrative given to them, in order to prepare them for the changes ahead.

178. The father told the court that he was worried about Ms G's transition plan. The father's concern was what would the mother do during those final contact sessions. He described that the mother was somebody who "has to win." She could inflict verbal or physical abuse on the children.

179. In terms of the proposed draft letter to the children, the father wondered whether the independent social worker already known to the children could share that with them rather than Ms G. The mother, in her evidence, said that the letters were not enough to explain to the children the consequences of a no contact order. She said she would feel a sense of loss and grief and that the children would not understand why they were not having contact with her anymore. She thought that V and W would be angry with her because it is all her fault.

180. Ms G was clear that she was not saying that there could be no contact for the rest of the children's minorities. She said that the outcome depended on the mother's engagement with the work that she has been advised to undertake. She thought, at a

stage in her evidence when she was still recommending no contact at all that, for example, the reintroduction of indirect contact could be reviewed after fifteen months if the mother had undertaken the schema-focused therapy.

181. Ms G considered that the fact that the mother had already engaged with the therapist was positive, but a residual concern was that the mother had shown no indication that she has reflected on the outcome of the findings made by the court and shown the level of understanding that she needs to. That the mother had tried to engage with a Domestic Abuse Perpetrator Programme could also be seen as a positive but, again, Ms G said that is undermined by the absence of an acknowledgement that the mother's behaviour needs to change or an acknowledgement of the impact of her abuse and the fact that the mother has continued to act in a deceitful way.

182. Although the mother says that she is genuinely remorseful, Ms G said she struggled to believe what the mother was saying given the terms of her email dated 22 January 2024. There has to be some level of acceptance and insight before the mother can make progress, but the issue is that she does not accept some of the more significant findings and, against that, she continues to behave deceitfully. Ms G considered that the mother had not achieved the requisite level of insight. Ms G, for her part, said that she would support the making of a s.91(14) order for a period of eighteen months to two years.

Analysis and conclusions

183. Having described the evidence in that way, the court steps back, taking a broad view of the information before it, considering the principles set out in the Children Act 1989, and in Practice Direction 12J.

184. Thinking about the welfare considerations in s.1(3) of the Act, the first of those is the ascertainable wishes and feelings of the children considered in the light of their age and understanding. V and W are 5 and 3 years old respectively. They rely on their primary caregivers to meet the vast majority of their day-to-day needs. They therefore need to receive care which is both stable and predictable. It is perfectly apparent from the evidence that I have heard and read that each of the parents loves their children and that that is reciprocated. It is reasonable to assume, as the law sets out expressly, that V and W would wish to have the best possible relationship with each of their parents provided that it is safe.

185. Considering the children's physical, emotional, and educational needs, and the parents' capacity to meet those, there is no real dispute that the father is able to meet the children's basic needs. He has been doing so, in practical terms, as their primary caregiver since June 2023 and there is no evidence to suggest that he has not provided parenting which is good enough. In my judgment, the mother's position in relation to her own allegations of abuse against the father must be the same now as it was at the time of the hearing in March 2023. In other words, that it was neither necessary nor proportionate for her allegations to be resolved in order for the court to be able to make welfare decisions in this case. She has, after all, proposed on multiple occasions since June 2023 that the shared care arrangement continue, including in her most recent witness statement. In her oral evidence, she accepted that the father was a good father. On balance, she would have said none of those things had she considered that the children were at any material risk of harm in his care.

186. There is no doubt in my mind that the mother is, much of the time, also able to meet the children's welfare needs, although the contact notes necessarily reflect behaviour in what is something of an artificial environment because the mother's parenting is being watched. I accept, given what I know about the whole of V and W's lives, that she has provided parenting which is good enough quite a lot of the time. I have reflected on other positive aspects of her as a mother. However, the position is informed by the findings made by the court against the mother in June 2023.

187. I do not go over all of the detail again but, on occasions, she exposed the children to risks of physical and emotional harm by reason of her coercive, controlling, or dysregulated behaviour. On those occasions, she failed to prioritise the children's welfare and was consumed by her own involvement with herself. As a result of her actions, the children were exposed to conflict between their parents, which is known to cause potentially long lasting emotional harm to children as well as immediate safety risks. Her abuse has included trying to remove the father from the children's lives or to minimise his involvement.

188. Given that, for the reasons I have already set out, the mother does not accept anything more than occasional verbal abuse directed at the father and one slap which did not cause actual injury, in my judgment, the mother's insight into the abuse which she has been found to have perpetrated is not as well developed as she contends for.

189. The court has to consider today what relationship the mother can safely have with the children. I did not consider that the shared care arrangement could safely continue on 23 June 2023, on 5 July 2023, or on the later occasions when the mother applied for child arrangements to revert to that shared care arrangement. My analysis at this time is reinforced by the evidence that the court has received since.

190. Dr F identified the father, the children, the paternal family, and the mother's future partners as potential victims of the mother's abuse. She assessed the risk of the mother perpetrating domestic abuse or IPV in the future as high for reasons which were well founded, in my judgment, when viewed in the context of the evidence as a whole.

191. Working on the basis that the mother loves the children and that her abuse of them has come, by and large, as a result of collateral damage of abusive behaviour directed by her at others, on balance, professional supervision of contact may well provide sufficient control of the risks which she poses directly to them. That is because, on the face of it, the fact of supervision is likely to have some effect in terms of deterring abusive behaviour and, if it came to it, contact supervisors would be in a position to intervene if there were any risk of harm, whether that be some imminent physical threat or some form of emotional abuse, including coercion or control.

192. For the avoidance of doubt, I do not accept Ms G's evidence that there necessarily needs to be an exit plan if supervised contact is to take place, notwithstanding that that was something which the mother accepted would be needed at the hearing on 14 November 2023 and in closing submissions today. There is no reference to the necessity of exit plans in the law that I have considered, and I understood from Ms G's evidence that the need for an exit plan comes from Cafcass policy. Fundamentally, if supervised contact were the only form of direct contact which could be undertaken in accordance with the relevant welfare principles, I do not see why it

would be proportionate for the court to conclude that that type of contact could not be directed on an open ended basis, if needs be, in order to maintain the best level of involvement of the mother in V and W's lives.

193. In my judgment, what the evidence of Dr F, Ms G, and the parties really came down to, though, was whether even supervised contact with the children would, as things stand, present an unacceptable risk of harm to the father such that the court cannot be satisfied that directing such contact would be consistent with paragraphs 36 - 37 of Practice Direction 12J.

194. In that respect, I set out in the judgment that I gave in June 2023 what is said in paragraph 4 of Practice Direction 12J and paragraph 31 of *Re H-N and Others (Children) (Domestic abuse: finding of fact hearings)* [2021] EWCA Civ 448. Those passages make it clear that children can be harmed in a variety of ways, for example, if they witness domestic abuse between their parents; or indirectly if a parent's capacity to care for them is impacted by abuse; perhaps because a child's welfare cannot be prioritised if there is fear of provoking some form of outburst from an abuser; or where there is an atmosphere of fear or anxiety in the home which is inimical to the children's welfare.

195. Dr F's view was that the father's symptoms are likely to be exacerbated if there were contact between the mother and the children. That is particularly likely to be the case if contact were unsupervised, but there is still likely to be an adverse impact on the father if there were to be any contact at all. Once proceedings conclude, protective factors such as the father's legal team will fall away, and he would be likely to have to have an increased level of communication with the mother himself and a need to monitor her behaviours himself. As I understood Dr F's evidence, a reduction in frequency of contact would have not made any difference to her evidence.

196. It was in response to my questions of Ms G about exit plans that there was a brief discussion about open-ended supervised contact being directed in care proceedings. When the court thinks about that, the key difference is that, by and large, those arrangements are underpinned with an order that a local authority shares parental responsibility for the children, perhaps by virtue of a care order. In turn, the local authority has an obligation to keep contact under review but, of course, the local authority in those circumstances is a corporate parent. In private law proceedings, a local authority is not there to hold the ring, and that dynamic review of contact has to be undertaken by the parents themselves. It is well outside the role of contact supervisors to do any of that for the father and, in my judgment, it would be impracticable, even ignoring the expense, for him to employ someone else to fulfil those roles even if, which I doubt on the psychological evidence, that would alleviate the types of symptoms which the father is described as experiencing.

197. That is because, even at its most mundane level, there will always be a need to be some communication between the parents, whether direct or indirect about child arrangements. When one adds into the equation the father's evidence, which I accept, that the mother since the fact-finding hearing has taken issue with handover arrangements, made accusatory remarks about minor injuries which V and W have sustained in a way that children of their age do, and did an about turn on the question of whether W could be enrolled in the nursery and the like, the court can quite readily

see that communications are likely to be perceived by the father as criticisms by the mother.

198. Indeed, the court has had to intervene in some of those issues, which were hard fought at the time by the mother. The father says, and I accept, that he had to stop using OurFamilyWizard because notifications from the app triggered his anxieties and the mother's response to that was to say that he was in breach of the non-molestation order as if, which it did not, that order mandated him to maintain direct communication with her. I agree with Ms G's evidence that the need for communication between the parents cannot be eliminated if direct contact continues and, based on the evidence, that that communication is unlikely to be in neutral terms.

199. In my judgment, therefore, and on balance, Dr F is correct that the likely impact on the father is that his PTSD, and symptoms of complex PTSD, are likely to worsen if the mother is to have even supervised contact with the children. The mother has been found to have posed a significant risk of harm to the father and continues to do so. I am reinforced in my view by the mother's conduct since the hearing in June 2023, in that she shows no sign of accepting her past wrongdoing and has continued to use these proceedings as something of a battleground, for example, by making, since the fact-finding hearing, five interim applications for contact on an almost identical basis and three applications for disclosure of particular CCTV evidence. The court has made six orders in this month alone based on applications made by the mother. Whilst one of those applications, for the giving of oral evidence by Dr F, was to be expected, the others were borne of the mother's mistrust that the information she had received was complete, or of her disagreeing with decisions made by the court. The court certified both of the applications made by the mother to set aside orders made by it as totally without merit.

200. Although, on one view, it might be thought that she is a mother who is fighting, in light of the evidence, to maintain the best relationship that she can with her children, on the balance, I am satisfied that it is more than that and the correct view is that the mother takes issue with everyone who does not see things her way. That is consistent with Dr F's evidence about her psychological profile, the father's evidence that the mother takes every point that she possibly can, however reasonable or otherwise, and the court's view previously that the mother seeks to control outcomes for herself. In turn, in my judgment, those matters both underline her lack of introspection and insight into the findings of abuse that the court has made against her, and reinforce the court's conclusion that she has used the proceedings themselves as a form of abuse.

201. She has continued to do so even since the fact-finding hearing, which ought to have served as something of a wakeup call for her. The mother accepted a small number of the findings, but those were admitted in a mealy-mouthed sort of way and their impact minimised. She maintained her position that she did not accept the majority of the findings of the court until after Dr F and Ms G had given their live evidence within the context of this hearing. She was then fundamentally unclear in her evidence about what she did accept, for example, by saying on a number of occasions that she accepted that findings had been made by the court against her, rather than whether she accepted that the findings were true. That, it seemed to me, was likely to have been borne of an internal dissonance, a lack of the intrinsic belief described by Dr F that she needs to develop, namely that she was wrong to have behaved as she did and that she is ready to face up to her abuse and effect change. When the court considers

whether it is more probable that she had something of an epiphany over the weekend and now shows genuine remorse and insight, or whether she has instead sought to limit damage to herself in her oral evidence, the court is satisfied that it is the latter that is significantly more likely than not.

202. Alongside all of that, the mother has continued to use these proceedings as a form of abuse of the father. The onslaught of applications, and the allegations made against the father in contact notes, to the police and to the court, have been relentless. She has complained about the father's solicitors and demanded that they withdraw from acting, knowing that they are part of his support network. She has continued to behave aggressively and dishonestly. The deceitful and unlawful procurement of the father's confidential therapy notes and her reaction to being caught out is an example of that, and highlights the collateral damage which she has prepared to allow be inflicted, for example, that to the therapist herself.

203. On balance, I remain of the view now, as I was at the end of the fact-finding hearing, that the mother's abusive behaviours remain irrational and unpredictable and that, coupled with that, she has failed to show any capacity for introspection and, in consequence, zero insight into the impact of her abuse. Her sudden expression of acceptance of some of the court's findings yesterday was, in my judgment, a further attempt to control outcomes for herself in these proceedings. How could the father himself manage the mother's egocentric and manipulative behaviours on an ongoing basis? In my judgment, he is unlikely to be able to do so without suffering significant harm.

204. When the court then considers the mother's proposal that a control measure which could be implemented could be for the mother to give an undertaking not to unreasonably raise false allegations regarding safeguarding issues or undermine the father's parenting of the children, the court agrees with the view of Ms G and Dr F that the mother's recent conduct does not inspire confidence. The mother does not have a good track record of operating within boundaries that are set. The evidence of her fabricating an email address to obtain documents in respect of which the court had already refused disclosure is but one example. It is submitted by the mother that she will know, in effect, that this is the last chance saloon, and that if she steps over the mark then direct contact will stop altogether. Dr F's point that the mother has known that that is a consequence that has been on the cards for some months, and yet it has still not deterred her, it seemed to me, is a good one.

205. Looking at it from another point of view, if there is a breach of the mother's undertaking, what would happen? The father would presumably need to issue a contempt application, thus starting a new set of proceedings with all the attendant triggers for his PTSD that goes with litigation. The mother then may seek to defend those allegations, her liberty at that stage being on the line, on the basis that any safeguarding concerns raised by her were reasonable or any allegations made were not untrue. If that were to happen, then before they knew it, the parties would be back in the midst of hotly contested allegations. In my judgment, the undertaking offered provides inadequate safeguard. Fundamentally, the mother's safety plan requires a high requirement for her to operate within boundaries. The court has no confidence that she will. Notwithstanding that she is a lawyer, she is prepared to break the law. She shows very little respect for boundaries at all.

206. The court's conclusions may have been different had the mother not denied or minimised her own past abusive behaviours and shown some green shoots of recognising the impact of them. Although the mother has told the court that she is apologetic and remorseful, that is against the backdrop of her having accepted, based on my earlier analysis, almost none of the findings of abuse made against her, and of her having made new allegations against the father, for example, to the police since the fact-finding hearing. I can see why she told the court in her evidence that she had accepted the court's findings when she had not. I have given myself a *Lucas* direction because I understand that today she is facing the consequences of her actions which include the potential for an order that she may have no contact with her children. However, because of her untruthfulness, I struggle to understand precisely what it is that she says she is sorry for.

207. On balance, I have concluded she has expressed remorse only because she feels that is something which she needs to do in order to support her case, rather than because she genuinely feels that she has something to apologise for. As it is, she appears to be not much further forward now than she was at the hearing on 5 July 2023 and, in my judgment, she remains very close to the start of her own journey. I do not need to resolve the question as to whether the mother shows sufficient insight or holds sufficient intrinsic understanding of her abuse to be eligible to be accepted on to a Domestic Abuse Perpetrator Programme, although Dr F and Ms G do not consider that she does.

208. It is to the mother's credit that she started to engage with a therapist in accordance with Dr F's recommendations. In relation to both of those things, there is a lengthy period of time before change will be brought about and evidenced. In the short term, Dr F's evidence was that the therapeutic input would be likely to cause the mother's presentation to unravel before things improve.

209. What is of importance is how the ongoing impact of the mother's abuse on the father could, in turn, affect V and W. What Dr F said was that the father's ability to care for V and W was intrinsically linked to his remaining outside of an abusive relationship. I accept that evidence and, in my judgment, consider that there is every reason to conclude that that would include separated parents in a coparenting relationship where the mother, as here, has continued to perpetrate abuse. That is consistent with Dr F's other conclusions that contact was likely to be harmful to the father, and that that had a consequence for V and W associated with his lack of autonomy in respect of parenting decisions. Ms G's views about the risks posed to the children due to the impact on the father's ability to provide stable care was consistent with the principles in paragraph 4 of Practice Direction 12J and paragraph 31 of *Re H-N*.

210. If the father's symptoms worsen rather than improve, I agree with the observations of Ms G, which were logical, that that undermines the father's capacity to parent V and W. If the father's parenting were to fall below a standard which is good enough, in consequence that may mean for the children a need to source caregivers who are not either of their parents. On Dr F's evidence, the father's own state of emotional wellbeing is likely to worsen all the time that he has to maintain communication with the mother, as I have said. What he therefore needs, and what the children need, in my judgment, is for the father to have the time and space to heal and, for example, to carry into effect the therapeutic recommendations of Dr F.

211. However, with that comes additional responsibility for the father. In order to explain my view in that respect, Dr F recommends therapeutic work with which the father could engage in order to develop his own decision-making within the relationship dynamic. In my judgment, my understanding of her views about the father being re-traumatised underlines the need for the court, firstly, to end these proceedings without delay, and, secondly, to take steps to manage the interface between the mother and the father because therapy, she said, was complementary of those steps rather than a substitute for them.

212. I accept that as evidence of the expert psychologist but the position, it seems to me, is further informed by the legal context, because the welfare needs of the parties' children demand as a starting point, subject to risk of harm, the involvement of the mother in their lives as well as the father. The father does, in fact, in my judgment, need to commit to seeking out therapeutic support which may then enable him in due course at an appropriate point in time to re-establish and facilitate greater involvement of the mother in V and W's lives.

213. Looking to the immediate future, however, the court reaches the conclusion that it is necessary to make an order that there be no direct contact between V and W and the mother. Whilst the court knows that that will represent a significant change of circumstances for the children, the risks of direct contact continuing that I have outlined, on balance, outweigh the impact of the change.

214. The likely effect on V and W of this change in their circumstances will, I have no doubt, be significant. They will certainly feel a sense of loss if the mother is not directly involved in their lives. They are likely to feel hurt and abandoned and blame one or other of their parents, or, worse still, themselves for that. They will lose some of their links to their […] parts of their heritage even if, as the father said, he would himself endeavour to promote that. Whilst I accept the evidence of Dr F and Ms G that some of the observations of V in the document from the school are consistent with the idea that he suffered harm as a result of exposure to domestic abuse, I am very aware that I cannot place great weight on that, given the way in which the document was produced, the fact that the court has not heard evidence from the teacher who produced it and the relatively limited context provided. I do not close my mind to the possibility that some of what is described may have come about as a result of the changes to child arrangements in June 2023. That is, on the face of it, consistent with what the father describes in this evidence about the children's resistance to going to contact in the autumn of 2023. It is difficult to predict to what extent a further change of circumstances will impact the children's emotional and psychological wellbeing, but the court takes the view that it will be extremely difficult for V and W. However, what the document from the school also tends to suggest is that, with proper support, V and, by extension, W can be helped to manage any adverse impact to their wellbeing.

215. I have considered the various factors in paragraph 37 of Practice Direction 12J as I have given this judgment. I have received submissions from the parties and from the mother in particular in respect of the words "as far as possible" contained within paragraph 36(3)(a). On my reading of the provision, the starting point is that paragraph 36(3) is in mandatory terms, namely that contact should be ordered only if I am satisfied of the matters in subparagraphs (a) and (b). As to the latter, I am not satisfied, on balance, that any form of direct contact would not see the father being

subjected to further domestic abuse by the mother. Subparagraph (a) talks of securing the physical and emotional safety of the father and the children "as far as possible" as opposed to "as far as practicable" or something else. That is a high bar. I am satisfied on the evidence that I have heard and read that it would not be possible to secure the father's emotional safety and, by extension, that of the children if there is direct contact. That is for all of the reasons that I have articulated and notwithstanding the mother's proposed safety plan.

216. When weighing up the harm on each side, on balance and in my judgment, the adverse impact of the change for V and W represents an outcome which is less harmful than the potential long-term impact of the father and the children being subject to the impact of the mother's past and continuing abuse through an order for direct contact. Accordingly, the court cannot be satisfied of the matters in paragraph 36(3).

217. However, I do not agree with Ms G's initial view that no contact would be possible at all. She later agreed with me that, if someone other than the father were to field the correspondence, indirect contact could pass between the mother and the children. That would then mitigate or avoid some of the risks to the children which were outlined to me on behalf of the mother, for example, the children being left feeling abandoned by the mother, or that she had perhaps even died. Ms G took my comments on board, and I understand that V's school is able to support him to receive indirect contact from the mother and to check that it is age-appropriate and contains no negative comments about the father and to help him to respond. I understand that ELSA support can be put in place in addition. W is younger and due to commence nursery. So it may be that a family member other than the father can support him if the nursery cannot but, in any event, Ms G's view is that his story board could be shared later given his age. The consequence is that the court is, on balance, able to make an order for indirect contact when considering paragraph 36(3).

218. The father refers to a commitment to undertake life story work with the children to complement Ms G's story boards. He appeared to have thought carefully about how he will keep positive memories of the mother alive for V and W and to have actively investigated what therapeutic input he could source for them and from where. Those are, in my judgment, sensible ways of making some inroads into managing the effects on the children of the change in their circumstances whilst keeping their welfare as a priority.

219. What I have struggled with to a greater extent is what the transition plan should be. Taking account of her misunderstanding, Ms G's suggestion is that supervised contact be reduced to one contact per week after, say, another week of contact remaining at the current levels before that ceasing and indirect contact starting. The father's concern was the mother may use those last few contacts to do something rash and harmful to either him, or the children, or all of them. There is evidence that the mother loves the children and she tells the court that she had not intended to harm him and that, apart from during one contact session in September 2023, she has, during supervised contact, conducted herself appropriately. Set against that is the evidence of her need to have control and her impulsive and extreme behaviour over the last few weeks when control has been lost.

220. On balance, in my judgment, it is important that the supervision of contact has been effective to guard against the immediate risks of harm to the children. I accept that the mother is likely to be in a heightened emotional state as a result of hearing my decision today but, based on the evidence since June 2023, there is nothing to suggest that she would set out to harm the children at contact, whether physically or emotionally. The mother's stated aims are to undertake the work required of her in order to have a role in the future in V and W's lives.

221. Whilst I do not dismiss the father's concerns given the other findings that I have made, considering the scheme of paragraph 36(3) of Practice Direction 12J, as well as paragraph 38, I take the view that the mother should be offered one "farewell for now" contact, during which there will be two supervisors whose costs will be met by the mother, one to support each child. The contact will last for an hour. I do not see that having a succession of reducing numbers of contacts or lengthy contact sessions will assist any member of the family in welfare terms. The mother will be expected to conduct herself appropriately but equally, the contact supervisors must be permitted to end the contact session for one or both children if needs be. The parents should be guided by the social workers as to where contact should take place and what other control measures may need to be implemented.

222. Ms G, at my invitation, sent some draft letters to assist with the messages for the children at the point at which the arrangements change. The precise terms of those can be reconsidered, no doubt, now that the court's decision is finalised. I am content that the parents may make suggestions and that is because they will need to maintain the agreed narrative but ultimately, in the event of any dispute, the social workers' professional views in relation to that narrative will be final.

223. I could see force, in welfare terms, in the father's suggestion that the messages be delivered by the contact supervisor who is an independent social worker known already to the children and whom they like rather than Ms G who, for the reasons she herself articulated, had not wanted to be an unfamiliar face at contact.

224. After that, Ms G suggested that indirect contact take place by way of letters and cards through school or other third parties once every two weeks for one month, and thereafter once each month to include small presents. Ms G tells the court that she can provide support to the mother to ensure that the content is appropriate.

225. When I cross-check the necessity of an order for no direct contact against an analysis of the proportionality of my decision, in my judgment, the outcome is the same. Each member of the family has rights under Art.8 of the European Convention on Human Rights and the court considers what approach is the least interventionist.

226. On one view, maintaining direct contact between V and W and the mother would enable them to maintain a better relationship than if that were to stop. However, in my judgment, that would not paint the complete picture. That is because it would mean either that the children would need to be in the care of their mother with the attendant risks of harm that I have described, including the real potential for the father to be airbrushed from their lives, or that they would need to be in the care of the father who has the capacity to care for them but whose own psychological wellbeing is liable to be diminished by contact with the mother and, by extension, that of the children for whom he cares.

227. In my judgment, the interference with the family's Art.8 rights is less if the children are in the care of the father, although one consequence of that is that the mother's rights are arguably impacted to the greatest extent. The interference is less because, fundamentally, the ball is in the mother's court to make and sustain the changes necessary to cure the problem which she has caused through her abuse. If she addresses her abusive behaviours, and only she can do that, logically the result is to put the family in the best position to improve welfare outcomes in the future. It would, in my judgment, be wrong to put the father or the children in the position of having to address wrongs which they themselves did not perpetrate and which they therefore have no prospect of addressing themselves.

228. The other consequence of the order is that, by ordering no direct contact, the children's Art.8 are seriously affected. However, the court weighs in the balance that which I have just described, namely the impact throughout their childhoods, and the potential for lifelong impact, on the children of the abuse perpetrated by the mother primarily against the father. Set against that is the fact that suspension of direct contact is hopefully to be for a finite period whilst work is undertaken to address that critical risk. In the meantime, indirect contact can continue, and work on V and W's life stories undertaken, thereby maintaining proportionate involvement of the mother in the children's lives.

229. Taking those things together and considering the range of powers available to the court, the court considers it in the interests of the children to make a final live with order in favour of the father today. In addition, it is both necessary and proportionate, in my judgment, to make an order that the existing contact arrangements be suspended and replaced with an order that the mother has no direct contact with the children save for the one farewell contact that I have set out, but that there then be indirect contact instead. The frequency of indirect contact suggested by Ms G appears appropriate. It is agreed that the prohibited steps order dated 4 July 2022 will remain in place in addition, and it seems to me that that can remain in place until further order.

230. In addressing her abuse, the mother will need to show true introspection into the harm she has caused. To that end, and whilst I have given permission previously for her to share the judgment of 23 June 2023 with any providers of a Domestic Abuse Perpetrator Programme, I consider, on balance, the court needs to go further than that. That is because the mother has lied to, and manipulated, the father, the court, and others in order to achieve her own ends. That is consistent with Dr F's evidence, and the court is concerned about the potential for impression management or disguised compliance in any work which the mother undertakes.

231. For those reasons, on balance, I will direct a transcript of this judgment to be obtained at the mother's expense, and will require her to share the judgments of 23 June 2023 and this judgment, together with the report of Dr F, with the providers of any Domestic Abuse Perpetrator Programme or schema-focused therapy, so that they are aware of the known extent of the abuse which needs to be addressed. The evidence of Dr F was that a further assessment by a person other than the mother's treating therapist was likely to be what was needed in order to evidence change. It would be wise to ensure that any report produced specifically addresses what documents the professionals working with the mother have taken into consideration.

232. The s.91(14) order will remain. I have reminded myself of the provisions of s.91A of the Children Act 1989, which was introduced by the Domestic Abuse Act 2021, and the provisions of Practice Direction 12Q. Given the lack of acceptance of the court's findings by the mother or any real insight, and what I have therefore already said about her remaining close to the start of her own journey, given that the abuse has been perpetrated by her since at least 2018 and there has been no let up, given my finding that these proceedings have been used to perpetuate the abuse of the father until this final hearing, given the volume of applications which the mother has made since 23 June 2023, and taking into account what Dr F says about the time needed for schema therapy to result in positive outcomes for the mother and the whole family, in my judgment, the imposition of an order for a further period of three years is a proportionate response to the level of harm which it is seeking to avoid.

233. If the mother undertakes a Domestic Abuse Perpetrator Programme and, more importantly on Dr F's evidence, makes progress in terms of the schema therapy, the court will consider any earlier application for permission appropriately. The purpose of the order is to try and filter applications made prematurely, abusively, or when the evidence of change is not present.

234. The current non-molestation order was made by me on 5 July 2023. I have reminded myself of the provisions of s.42 of the Family Law Act 1996 and the relevant case law, including that perhaps most helpfully set out by Lieven J in a case called *DS v AC* [2023] EWFC 46. On the first limb of the test, the abuse that I found provides evidence of molestation. On the second, the fact that the abuse has continued until now satisfies me that the intervention of the court is required in order to control the behaviour complained of. I will vary paragraph 5 of the current order to make it clear that there should be no contact from the mother, whether directly or indirectly with the father, except through solicitors or professional mediators. Subparagraphs (a) and (b) will be deleted.

235. The order will not prevent the mother from having indirect contact with the children, but she needs to be aware that messages directed at the father in any communication sent to the children may constitute a breach of the order and therefore a criminal offence. The seriousness of the abuse and the length of time over which it has been perpetrated, and the time it is likely to take for the mother to undertake the work required of her, informs the duration of the order which, in my judgment, should also remain in place for another three years.

236. Similarly, the court will not stand in the way of information flowing to the mother from the school or nursery about the children's educational progress. I suggest, though, that the father makes the arrangements for that and that it is one-way communication in that the mother needs to continue to be very careful about communications by her to the school or nursery who would be duty-bound to communicate certain information to the father and the likelihood of that therefore constituting indirect communication to him, although I will hear submissions about that particular point.

237. I understand that the mother has agreed to pay the costs of the father's application dated 23 January 2024. Had she not done so, given her dishonesty, I would have made that order for costs on an indemnity basis.

238. That concludes this judgment.
