



Neutral Citation Number: [2021] EWFC 47

Case No: MA20P01291

IN THE FAMILY COURT

Sitting Remotely

Date: 07/06/2021

Before:

THE HONOURABLE MR JUSTICE MACDONALD

Between:

Z

Applicant

- and -

Z

First Respondent

-and-

X and Y

**Second and Third
Respondents**

(By their Children's Guardian)

-and-

The Governor of one of Her Majesty's Prisons

**Fourth
Respondent**

-and-

The Secretary of State for Justice

Intervenor

The Applicant appeared in person

The First Respondent appeared in person

**Mr Peter Rothery (instructed by McAlister Family Law Solicitors) for the Second and
Third Respondents**

Meena Phull (of the Government Legal Service) for the Fourth Respondent and Intervenor

Hearing dates: 24 May 2021

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic. Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email. The date and time for hand-down is deemed to be at 10.30am on 7 June 2021.

THE HONOURABLE MR JUSTICE MACDONALD

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in it) to be published on condition always that the names and the addresses of the parties and the children must not be published.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

Mr Justice MacDonald:

INTRODUCTION

1. In this matter I am concerned with the welfare of X, now aged 16 and Y, now aged 14. X and Y are the son and daughter of NZ, the applicant in these proceedings (hereafter the father), and SZ, the First Respondent in these proceedings (hereafter, the mother). Both parents appear in person. X and Y are represented in these proceedings by Mr Peter Rothery of counsel through their Children’s Guardian. For reasons that I will come to, both the Governor of the prison in which the father is presently incarcerated is a party and the Secretary of State for Justice intervenes in these proceedings. For the purposes of this hearing, Ms Meena Phull of the Government Legal Service appears on behalf of the Fourth Respondent and Intervenor.
2. The father is currently serving a sentence of imprisonment at [named prison] following a conviction for sexual offences. In these proceedings the father applies for a child arrangements order allowing him contact with X and Y. In his application form dated 5 June 2020 the father requests an order permitting both direct and indirect contact with the children. At this hearing however, the issue is whether an order should be made with respect to indirect contact. Such indirect contact is supported by both the mother and by the Children’s Guardian for reasons I shall come to.
3. This matter was reallocated to me on 23 March 2021 following a hearing on that date before HHJ Singleton QC. At that hearing the Governor of the prison appeared by counsel and indicated to HHJ Singleton QC that, with respect to the indirect contact then being recommended by the Children’s Guardian, which recommendation the court was minded to endorse by way of a child arrangements order, Her Majesty’s Prison and Probation Service:

“... oppose contact between the father and the children and indicated to the court that if an order were to be made, the Prison could not confirm at today’s hearing that such an order could be facilitated in accordance with prevalent considerations of public protection, prison policy and procedure.”

In light of this position, at the hearing on 23 March 2021 HHJ Singleton QC joined the Governor of the prison in which the father is serving his sentence as a party to the proceedings.
4. The Governor of the prison having indicated that the prison might not facilitate contact notwithstanding the same being ordered by the Family Court pursuant to s.8 of the Children Act 1989 following a determination that such contact was in the children’s best interests, upon the matter being reallocated to me I also invited the Secretary of State for Justice to intervene in the proceedings. That invitation having been helpfully accepted, the matter came before me on 28 April 2021 for directions with a view to listing the matter for legal argument on the question of the power of a prison governor to refuse to facilitate and/or comply with an order made by the Family Court relating to contact between a child and a parent serving a custodial sentence that the Family Court has assessed to be in the child’s best interests. In the event, at the directions hearing on 28 April 2021 Mr John Waite of counsel representing the Fourth Respondent and the Intervenor and Mr Rothery on behalf of the children were able to agree, to the satisfaction of the court, the legal principles that apply. For the purposes of this hearing,

Mr Waite and Mr Rothery have produced an agreed note of the law for which the court is grateful and which I address further below.

5. The matter now comes before the court for determination of the father's application for a child arrangements order to facilitate indirect contact. Whilst all original parties to the proceedings under the Children Act 1989 are agreed that an order should be made, given the issues raised by this case it is appropriate that I provide a judgment setting out the court's reasons for endorsing that agreement with respect to the making of a child arrangements order pursuant to s.8 of the 1989 Act.

BACKGROUND

6. The father was arrested in 2011. It is clear from the papers that, from the children's perspective, they left the family home for school and, when they returned, their father was gone. They were initially told that he was working in Africa and would then go on to Australia. They have had no contact with him for ten years.
7. In 2012 the father was convicted of two counts of raping a female child under the age of thirteen, three counts of sexual assault on a female child under the age of 13, two counts of assault by penetration of a female child under the age of 13, one count of distributing an indecent photograph or pseudo photograph of a child and four counts of possessing an indecent photograph or pseudo photograph of a child. The offences involved the sustained sexual abuse of a female child, aged eleven years, known to the father over a period of approximately eighteen months. The father's offending behaviour came to the attention of the police as part of a wider operation to interdict the sexual abuse of children. The statement of the Prison Probation Officer contains a detailed account of the nature and extent of the father's offending as revealed by the police investigation, including an analysis of the convictions with respect to indecent images, which 20,407 images ranged from Level 1 to Level 5 on the COPINE scale. The father had no previous convictions.
8. Upon conviction the father was given an extended sentence of 26 years, comprising 20 years imprisonment with an extended 6 year licence. The father's eligibility date for parole is 2 April 2025, his conditional release date is 2 December 2031 and his licence expiry and sentence expiry date is 1 December 2037. The father was also made the subject of a Sexual Offences Protection Order which prohibits him from have any contact with any child of the family under the age of 18 without the approval of any supervising local authority or further order. It also prohibits any unsupervised contact or communication of any kind with any other child under the age of 16 years without the consent of the child's parent or guardian who has full knowledge of his sexual convictions and with the express approval of social services in the area. The statement of the Prison Probation Officer, contains the following extract from the sentencing remarks made by HHJ John when sentencing the father:

"I begin by making it clear that having conducted the trial and seen you give evidence I am satisfied that you are a devious, manipulative and determined man. Whenever it suited you, you chose to blame your co-defendant. You show not a shred of remorse and paint yourself as being a victim of a miscarriage of justice. Nothing could be further from the truth. Like many paedophiles you are quite unprepared to confront your offending. ... Each of the offences is aggravated by a background of coercion, as demonstrated by

the grooming process and the other serious sexual offences. The first also by threats by you, as well as by [the victim's] mother, to prevent her from reporting your abuse.... I agree with the Probation Officer's view that you pose a significant risk of serious harm to members of the public, specifically of sexual, emotional and psychological harm to children across the age spectrum with this risk not being gender specific.... Despite your age and lack of previous convictions I have absolutely no doubt that you do pose a significant risk of serious harm to the public by the commission by you of further specified offences. The risk of serious harm is, of course, risk of either physical or psychological harm or both... By reason of these convictions you are liable to the notification requirements for sex offenders for the rest of your life.”

9. The father has consistently and vociferously professed his innocence of the charges of which he was convicted. The father makes clear that he is seeking to appeal his conviction, albeit I note that it is now nearly ten years since he was convicted and that, to date, no permission to appeal has been granted. There have been no concerns regarding the father's behaviour in custody or in respect of his compliance with the custodial regime (which documents provided by the prison contend should not be taken as a lack of risk of reoffending).
10. In May 2012 public law proceedings were issued following a section 37 report having been prepared dated 10 April 2021, a copy of which is before this court. That report indicated that the mother was meeting each of the children's needs to a high standard. On 18 May 2021 Her Honour Judge De Haas QC made what appeared to be a final order prohibiting the father from having contact with X and Y. That order recited the mother's agreement not to promote any contact, direct or indirect, between the father and the children without the prior agreement of children's services. Further, the order of Her Honour Judge De Haas QC also contained the following order against the mother's *solicitors*, the enforceability of which I will consider further below:

“[5] The mother's solicitors, on her instructions, will contact in writing the prison authority with a request that there be no further contact by [the father] with her, the said children and maternal grandmother.”
11. In 2017 a Child and Family Assessment was undertaken by the local authority in whose area the children currently reside following the father making a request to the prison on 16 May 2016 to be allowed contact with the children. That assessment, dated 9 January 2017, recommended that indirect contact take place between the children and the father under the supervision of a third party. Whilst the local authority sought to suggest that this recommendation for indirect contact was based on the very narrow fact of the children not knowing the reason that their father was in prison, I agree with the Children's Guardian that this is a rather revisionist version of history and one that is not reflected in the 2017 assessment, which makes no mention of this being the rationale for the local authority's recommendation of indirect contact.
12. Following the Child and Family assessment undertaken by the local authority in January 2017, the prison undertook a multi-agency risk assessment with respect to the issue of contact. The court has before it a document authored by the Head of Public Protection at the prison detailing the outcome of the Inter-Departmental Risk Management Team assessment on 8 February 2017. Within this context, and

notwithstanding the recommendation of the local authority, the prison refused to permit *any* contact between the father and the children. The reasons provided to the father for this decision were as follows:

“The Inter-Departmental Risk Management Team (IDRMT) has sought the views of Children’s Services in considering your application for Level 3 contact with your two children. These views were required given the restrictions set out in the Sexual Harm Prevention Order (SHPO). An assessment has been completed by Children’s Services which does not recommend direct contact, telephone calls or photographs of your children. The Prison Service have made attempts to gain clarification from the Family Court regarding the Family Court Order which is currently in place, in relation to contact between you and your wife and children, the Family Court confirmed that there has not been any further Orders which supersede the Order made in 2012. As such, it is the decision of the IDRMT that you remain Level 1 Full Restrictions with your children, this decision will be reviewed annually. The IDRMT advises that you seek legal advice if you wish to challenge the Family Court Order and/or SHPO.”

13. The document prepared by the Head of Public Protection makes clear that the foregoing decision was based on account being taken by the Inter-Departmental Risk Management Team of the following matters:
 - i) The father was subject to restrictions defined within a Sexual Offences Preservation Order dated 22 February 2013 prohibiting him from having any contact with any child of the family under 18 without approval of any supervising local authority or further order.
 - ii) The order of Her Honour Judge De Haas QC of 18 May 2021 remained in force but was ambiguous. The mother had not complied with the terms of the order of Her Honour Judge De Haas QC of 18 May 2021 in that she had not written to the prison authority with a request that there be no further contact by the father with her, the children and the maternal grandmother and it was unclear if this constituted a breach of the order.
 - iii) A lack of clarity as to the manner in which letterbox contact would be managed in circumstances where the local authority would not undertake that role and the prison did not have the requisite skills to act as an independent third party for the transmission of indirect contact.
 - iv) In circumstances where father’s views with regards to his index offence had not changed, that he continued to deny offence and had declined to engage in programmes which may assist to reduce his risk, notwithstanding that can be completed whilst maintaining innocence and that his views are supported by the mother, reducing her ability to act as a protective factor for the children, there has been no discernible reduction in risk.
 - v) Pursuant to the provisions of the Public Protection Manual, the prison had the authority (subject to a risk assessment) to restrict communications between an offender identified as a person posing a risk to children.

14. Within the foregoing context, it is apparent from the document provided by the Head of Public Protection that the prison made significant efforts to ascertain whether the order of HHJ De Haas QC dated 18 May 2012 remained in force, to clarify the terms of that order and to clarify whether contact between the father and the children would constitute a breach of that order. The document prepared by the Head of Public Protection asserts that Her Honour Judge De Haas QC “declined to provide further clarification of the order” but that [the local authority] expressed concerns about the enforceability of the order made against the solicitors then acting for the mother. Having considered the terms of the order made by HHJ De Haas QC on 18 May 2012 it is difficult to see how that order is one that can be considered enforceable as against the mother. At the very least it would appear that the order caused some confusion, with at least one school considering the order prohibited the *mother* having any contact with the father (an order that the court would not have had jurisdiction to make under the Children Act 1989).

15. On 17 June 2020 the father made a further application to the prison to be permitted contact with the children. The documents provided to the court by the prison suggest that the recommendation was that the decision regarding the father’s request be deferred pending the outcome of the proceedings before the Family Court. However, on 8 October 2020 the outcome of a further Inter-Departmental Risk Management Team Meeting was recorded as follows:

“The IDRMT discussed [the father’s] application to review his child contact level from level 1 to level 2. All previous decisions and reasoning including SOPO and Court order specifically prohibit contact with any child of the family without the consent of the supervising local authority. Whilst [the father] is currently challenging this via the family court, the hearing has not yet been held. The POM [name given] has reviewed his time in custody, and with regards to his index offence his views have not changed, he denies offence and declines to engage in any programmes which may assist to reduce his risk, even those that can be completed whilst maintaining innocence. There has been no discernible reduction in risk. The team agreed in the absence of any further direction from the family court, that [the father] has not reduced his risk, nor has there been a change to the family circumstances that would indicate that it would be in the best interests of the children to warrant an increase in the contact levels.”

16. The Children’s Guardian prepared a report dated 19 October 2020. That report recommended that indirect contact should now be considered in line with the recommendation made by the local authority in its Children and Family Assessment in 2017. The *context* underpinning the recommendation of the Children’s Guardian is set out in her report as follows:
 - i) Neither X nor Y have had any contact with their father since he was arrested in December 2011. The children explained that they had gone to school one morning and when they came home their father had gone. At first they were told their father was working away but later came to know he was in prison.
 - ii) The children are aware of their father’s convictions, that he is in prison for a long time, that their mother believes their father to be innocent and that their parents are hoping to pursue an appeal. X acknowledged this when speaking to the

Children's Guardian but stated that she is not sure what to think. Y said he does not know if what the father has been convicted for happened or not, and that he is not sure.

- iii) X described the impact of not being able to see or have contact with her father as meaning her memories of him are vague, it makes her sad not being able to tell him what she has been doing, missing him and wanting to see him. Y stated that he does not really remember his father and does not know what he looks like now. He said it really affected him when he was younger and Father's Day was always difficult.
 - iv) When asked to articulate the risks of contact, X stated that, having seen a list of what he was charged with, the risks are that she is under 18, she is female and that she might be persuaded by him to do things and might be groomed. Y stated that people are worried "because of what [the father] was sentenced for" and also "because we are children".
 - v) Asked if she had a message for the Family Court judge, X said "it's a long time not to see a parent. Legally he is guilty, and I don't know if he's innocent, but it's been difficult for me for it (a father) to be taken away from me, I would like a chance to see him again." Y said "any contact would be great even letters or phone calls at first. I would really like to see him in person".
 - vi) With respect to the supervision of any contact, X wanted her mother to undertake that task and did not want a social worker to do so, on the grounds it was "private".
17. Within the foregoing context, the welfare *rationale* underpinning the recommendation of the Children's Guardian that the indirect contact recommended by the local authority in 2017 be the subject of further consideration is set out in her report as follows:
- i) The children had not had *any* contact with their father since the day of his arrest some ten years ago. They had no opportunity to say goodbye to him and have no "closure" at the present time.
 - ii) In light of the position taken by the mother and the father with respect to the father's convictions, there are clearly risks associated with any form of contact between the children and their father. The Child and Family Assessments of 2014 and of 2017 and the s.37 report of 2012 express concerns regarding the mother's ability to protect the children in light of her views were the father to be the subject of early release.
 - iii) The children appear to have a rather idealised view of their father at present and may be less aware of the risks he poses as he and their mother believe he is innocent and therefore imprisoned unjustly and if innocent poses no risks to them at all.
 - iv) Within this context, the balance between the risks presented and contact taking place is a very fine one.

- v) Against the risks identified, the children are settled and well cared for and there is no evidence that the mother presents a risk of sexual abuse or inappropriate behaviour.
 - vi) The Child and Family Assessments of 2014 and of 2017 and the s.37 report of 2012 confirm that the mother was acting to safeguard the children and no further action needed to be taken.
 - vii) Each of the children is now much older and better able to understand the reasons the father is in prison. They have some understanding of the offences for which their father was convicted and the risk he might try to “groom” them or sexually abuse them.
 - viii) The local authority recommended indirect contact, supported by a third party, in 2017.
 - ix) By reason of his incarceration without hope of release until after both children have attained their age of majority, the risk of the father causing the children harm by way of direct physical or sexual assault is reduced.
 - x) Within this context, given the weight of the children’s views and the emotional impact already sustained by them, if supervised appropriately, there may now be a situation in which some form of contact such as indirect contact could take place which would protect Y and X from any harm but would allow them to understand and have some form of contact with their father.
18. Within the foregoing context, the Children’s Guardian recommended that consideration be given to indirect contact. In making this recommendation, the Children’s Guardian further opined that the children would require preparatory work before indirect contact, and certainly before any direct contact, could take place in order to understand fully that, just because their mother and father maintain his innocence, this does not necessarily make him innocent as the convictions remain in force, together with the implications for them and their family in the future if they are to maintain a relationship with him. In her final statement dated 7 January 2021, the Children’s Guardian observed as follows with respect to this work:
- “[The social worker] has undertaken work with the children on two occasions to complete her report and appears to have included the direct work as suggested within my last report to aid the children’s understanding of the impact on them not just now but in the future as adults of re-establishing a relationship with their father who presents a significant risk to children and what this may mean for them or any other children and the safeguarding they would need to undertake.”
19. In making her recommendation, the Children’s Guardian also expressly recognised the safeguarding role of HM Prison and Probation Service:
- “[68] As there are of course safeguarding issues in respect of [the father] given his convictions, he continues to deny any involvement or responsibility in those events, the prison’s assessment of his risk and any limitations they will seek to place on contact will also need to be taken into account as they

also have a duty to safeguard as they appear to have done in 2017 and did not follow through with any indirect contact at that time despite the recommendations of the Local Authority.”

20. On 21 October 2020 HHJ Singleton QC directed disclosure of a s.37 report authored by the local authority which issued proceedings in 2012. HHJ Singleton QC also directed the local authority in whose area the children currently reside to undertake a report pursuant to s.7 of the Children Act 1989 setting out the view of the local authority’s position with respect to the father’s application for a child arrangements order, confirming that it would be in a position to undertake preparatory work with the children or providing an explanation it would not. That report, dated 17 December 2020, authored by [the social worker], is before the court and makes the following recommendations in the context of the social worker’s conclusion the mother would not be able to safeguard the children in circumstances where she does not accept the father’s convictions:

“[8.4] When indirect contact under the supervision of a third party was recommended in 2017, X and Y were unaware of their father’s offences. Their views and wishes were different to what they are today. Although [the mother] had informed the children at the time that their father was in prison, they were confused about the circumstances behind his imprisonment. They are reported to have initially been told by their mother that he was dead before disclosing to them that he was in prison. Both children have doubts around their father’s convictions. This would indicate that doubt has been planted in their heads. What remains unclear is whether either or both children would choose to place their father in more trouble if he made any advances towards them. Although the Local Authority had recommended indirect contact in 2017, the prison did not have facilities to supervise it. As such, this recommendation is unachievable as prison conditions remain the same – sensors are unable to pick up on language that is not sexualised. The Local Authority therefore recommends no contact between the children and their father until they are 18 years old and old enough to make their own independent decisions.”

21. On 17 December 2020, the Prison Assessment and Intervention Centre confirmed that the RM2000 (a statistically derived risk assessment tool for adult males convicted of sexual offences) indicated that the risk presented by the father was categorised as low. I pause to note that at paragraph [2.4] of the National Offender Management Service Public Protection Manual 2016 a low risk is defined as “current evidence does not indicate a likelihood of causing serious harm”.
22. The Children’s Guardian provided a further statement to the court dated 7 January 2021 in which the Children’s Guardian, having regard to the matters set out in her report, recommends two-way indirect contact by way of letters between the children and their father three times per year at Easter, during the Summer and at Christmas, with that indirect contact to be supervised, which will suspend any letter exchange that it considers inappropriate. The Children’s Guardian further recommended that an order providing for such contact be supported by a signed written agreement between the parents as to the contents of any such letters, such written agreement to be prepared by the Children’s Guardian. That agreement has now been prepared and has been signed by both parents.

23. In a short statement dated 8 February 2021 [the social worker] confirmed that the local authority now agree with the proposals made by the Children’s Guardian for contact between the children and their father. The statement of [the social worker] does not articulate why the local authority has changed its recommendation as between the date of the Section 7 Report on 17 December 2021 and [the social worker’s] statement dated 8 February 2021. The statement does make clear however, that the local authority is very concerned that the court understand that it does not see itself as having a role in supporting the children in the context of indirect contact.
24. On 1 March 2021 the Prison Probation Officer, filed a statement indicating that the prison was not in agreement with the contact proposals advanced by the Children’s Guardian. The Prison Probation Officer advanced the following objections to that proposal on behalf of the prison:
- i) There has been overemphasis on the fact that the father is a serving prisoner in high security conditions and as there is a level of monitoring of his mail, the likelihood of him causing harm to children is controlled and managed by surveillance.
 - ii) There is no evidence that the father has addressed his offending behaviour to develop internal controls or an understanding of the impact of harm caused to the victim and children in general.
 - iii) There is no evidence that the mother will be protective and vigilant to potential harm to their own children should contact take place.
 - iv) The father’s convictions and the circumstances surrounding them disclose a wide spectrum of sexual offending, evidence of sexual preoccupation, sexual interest in children, risk taking behaviour, an apparent lack of regard or understanding of the impact on children and evidence of trying to encourage others or expose others to sexually abusive behaviour.
 - v) The father is not motivated to engage with programmes and does not recognise any problematic areas (thinking, behaviour, relationships, lifestyle, attitude) linked to conviction that he needs to address.
 - vi) The risk of harm to children remains high; therefore, safeguards need to be in place to protect children from harm as well as controls need to be in place to ensure that the father does not have the opportunity to offend.
25. In a statement dated 12 March 2021 the Children’s Guardian detailed the arrangements she proposed for the supervision of indirect contact. Namely, that that task be carried out by [named organisation], an organisation run by an Independent Social Worker, which organisation would undertake the supervision of correspondence passing between the father and the children. The statement of the Children’s Guardian further makes clear that on 10 March 2021, the local authority had confirmed, via [the social worker], that the local authority had previously utilised the services of [named organisation] and found them to be satisfactory. Within this context, and subject to not having to provide funding, the local authority agreed that indirect contact should be supervised by [named organisation].

26. A further meeting of the Inter-Departmental Risk Management Assessment Team chaired by the Governor of the prison took place on 18 March 2021. That meeting considered the report and statement of the Children’s Guardian, the s.7 report authored by Children’s Services and the input provided by the Prison Probation Officer. The minutes of the IDMT meeting record the following concerns:
- i) There were differing views as to the impact on the children of re-establishing a relationship with their father. Some members of the panel considered the children’s increasing emotional maturity to be a protective factor and some noted that teenage years are often emotionally difficult and demanding.
 - ii) There was concern on the part of the panel that the Children’s Guardian had not provided a rationale as to why this was the correct time to reintroduce contact.
 - iii) There was consensus amongst Children’s Services and the IDMT that the mother does not constitute a protective factor for the children, remaining supportive and collusive of her husband’s innocence despite incontrovertible evidence of his guilt.
 - iv) There was a lack of a suitable support structure for the children should they have any concerns or queries regarding their father, with no independent, unbiased adult with whom the children could discuss thoughts and concerns.
 - v) Children’s Services (as I have also noted above) changed its mind on several occasions on the question of contact, with no documented reasons for those changes of position, leading to an inconsistency of view and opinion by one of the key agencies involved in safeguarding the children.
 - vi) Whilst the Prison Probation Service and Children’s Services were in agreement that the use of an external agency to monitor indirect contact was a suitable and robust risk management plan, the IDMT questioned whether the risk presented by the father was at a level that it would be appropriate to manage.
 - vii) There has been no identified reduction in risk presented by the father since his conviction date. In light of the offences detailed in the papers his offending and the risk he poses to children cannot be underestimated.
 - viii) The IDMT considered that it remained unclear why it was in the best interests of the children to resume indirect contact with the father.
27. Whilst the meeting also considered that the father had breached his Sexual Harm Prevention Order by sending to the Children’s Guardian a draft letter that represented the kind of communication he would intend to send *if* were the court to approve indirect contact, it would appear plain that this could not, in fact, constitute such a breach and I understand that this view has since been confirmed by the police. Within this context, the meeting of the Inter-Departmental Risk Management Assessment Team chaired by Governor of the prison that took place on 18 March 2021 reached the following conclusion:

“The panel discussed the proposed contact risk management plan in light of the risk posed by [the father]. The panel unanimously agreed that there has

been no reduction in the risk presented by [the father] to his children. He is considered to be a dangerous and predatory man. The risk of sexual and emotional harm to any child with whom he has contact is assessed as high. Specific risks to his children is (*sic*) the ability to groom and condition the children whilst forming a paternal bond and building a ‘trusting’ relationship, centred around his ‘innocence’ in which both X and Y, any future children, or child contacts / associations are placed at risk either to continued grooming or direct sexual harm. The risk to X and Y is deemed to be higher due to this proposed contact as it will allow [the father] closer contact with the children and hence the opportunity to groom and condition them. The children would need to be permanently on guard and alert to this conditioning behaviour. [The father] was part of a paedophile network in which his criminal activities and fantasies were shared. This further puts at risk any child with whom he may have contact, not only from [the father] but from his criminal associates. To date, it has been agreed that the risk is such that the only possible way to protect the children is by preventing all contact. There has been no reduction in this risk and the risk posed by [the father] remains the same. The panel have therefore agreed, that despite the proposal of a robust risk management plan, that insufficient evidence has been presented that this risk needs to be taken. If [the father] commences offending behaviour work this may sufficiently reduce his risk to allow the proposed letterbox contact to go ahead.”

28. As I have noted, and within the context of the decision reached by the IDMT on 18 March 2021, at the hearing on 23 March 2021 HM Prison and Probation Service was represented by counsel at a hearing before HHJ Singleton QC, at which hearing the Governor and the Head of Public Protection attended to assist the court. At that hearing, through counsel, the Governors indicated to HHJ Singleton that:

“HMPPS oppose contact between the father and the children and indicated to the court that if an order were to be made, the Prison could not confirm at today’s hearing that such an order could be facilitated in accordance with prevalent considerations of public protection, prison policy and procedure.”
29. Following the court hearing on 23 March 2021, the IDMT reconvened on 1 April 2021 to review the decision it had taken on 18 March 2021. The IDMT panel determined that there was no new information that would cause it to alter its decision of 18 March 2021. Within this context, I note that the IDMT considered that additional information received by it with respect to the impact on the children of the situation, in the form of the contents of the mother’s statement in these proceedings, did not cause it to alter its decision as it did not provide any mitigation of risk.
30. Finally, I have considered carefully the statements of both parents. In her statement dated 8 October 2020 the mother makes clear that she fully supports the application made by the father. She considered that the past ten years have been extremely difficult for the children and that they have suffered emotionally in not being able to have contact with, and to build a relationship with their father. The mother emphasises, with respect to the question of safety, that the children are older and have a greater understanding of the severity of the situation, the need to safeguard themselves. She tells the court that the children have had lessons at school and understand grooming and that any form of sexual contact between an adult and a child is wrong, regardless of the source of such

contact. The mother further prays in aid the open and honest relationship she has with the children as a further protective factor. She reminds the court that in two years X will be able to see her father as an adult, and Y two years thereafter. As he has repeatedly made clear, whilst accepting that he must be treated as a convicted person, in his statements to this court in support of his application for a child arrangements order, the father continues to maintain that he is innocent of the crimes of which he has been convicted.

LAW

31. Question of whether children should have contact with a parent convicted of a sexual offense is apt to generate strong views and emotions. Notwithstanding the emotive subject matter however, the task of the *court* is to take an entirely dispassionate approach to the process of determining whether, having regard to each of the children's best interests as its paramount consideration and the welfare factors set out in the Children Act 1989 s.1(3), the court is satisfied that indirect contact between the children and their father is in each of their best interests.
32. Within this context, s.1 of the Children Act 1989 provides as follows with respect to the legal principles that govern the court's determination of the father's application for an order made pursuant to s.8 of the 1989 Act:

1 Welfare of the child

(1) When a court determines any question with respect to –

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

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

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

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

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

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

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

- (e) any harm which he has suffered or is at risk of suffering;
- (f) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;
- (g) the range of powers available to the court under this Act in the proceedings in question.

(4) The circumstances are that –

- (a) the court is considering whether to make, vary or discharge a section 8 order, and the making, variation or discharge of the order is opposed by any party to the proceedings; or
- (b) the court is considering whether to make, vary or discharge a special guardianship order or an order under Part IV.

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

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

- (a) is within this paragraph if that parent can be involved in the child's life in a way that does not put the child at risk of suffering harm; and
- (b) is to be treated as being within paragraph (a) unless there is some evidence before the court in the particular proceedings to suggest that involvement of that parent in the child's life would put the child at risk of suffering harm whatever the form of the involvement.

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

33. Accordingly, in summary, in deciding whether to endorse the consent order that is presented to the court I must have regard to (a) the principle that X and Y's best interests are my paramount concern, (b) the factors set out in the statutory 'welfare checklist' in the Children Act 1989 s.1(3), (c) the principle that no order should be made unless to do so would be better for the subject children than making no order and (d) to the principle that delay is ordinarily inimical to the welfare of each of the children.
34. No party sought to dispute the proposition that family life exists between the children and the father for the purposes of Art 8 of the ECHR. Within this context, having regard to the terms of Art 8(2), any interference in the children's right family life constituted by the order endorsed by the court must be necessary and proportionate.
35. I turn next to the question of whether the Family Court can compel a prison governor to facilitate and/or comply with an order made by the Family Court relating to contact between a child and a parent serving a custodial sentence that the Family Court has assessed to be in the child's best interests. Having regard to the agreed note of the law helpfully produced by Mr Waite and Mr Rothery, I accept the submission of Mr Waite and Mr Rothery the Family Court has no power to *compel* a prison governor to facilitate

the contact which is the subject of a child arrangements order under made under s.8 of the Children Act 1989 and that any other position would be inconsistent with (a) the terms of the Children Act 1989 and (b) the wider domestic statutory scheme relating to the management of prisons and prisoners.

36. Dealing first with the ambit of the Children Act 1989, the court cannot grant a child arrangements order pursuant to s.8 of the Children Act 1989 against a public body. In the circumstances, on the face of the statute the only *potential* route by which the court could seek to bind a public body with respect to an order made under s.8 of the Children Act 1989 would be by imposing conditions on that public body under s.11(7) of the Children Act 1989. However, when making a child arrangements order under s.8 of the 1989 Act, the court is empowered to impose conditions *only* upon those persons referred to in s.11(7)(b). Within this context, a plain reading of the provisions of s.11(7) of the Children Act 1989 demonstrates that the court has no jurisdiction to impose on the Secretary of State for Justice binding conditions with respect to the implementation of a child arrangements order. In *Re M (Judge's Discretion)* [2002] 1 FLR 730 the Court of Appeal, citing the decision of Booth J in *Leeds City Council v C* [1993] 1 FLR 269 held that there was no power to impose obligations or conditions on persons not listed in s.11(7)(b) of the Children Act 1989.
37. This position was reiterated with respect to government agencies by the Court of Appeal in *Re M (Children)(Contact: Enforcement of Foreign Order)* [2018] Fam 230. In that case, the Court of Appeal was required to consider whether there existed in domestic law a power to order supervision of contact by a government agency. In answering that question in the negative, Lady Justice Black (as she then was), held as follows:

“[29] Accordingly, it is necessary to turn to the domestic law and to ask how the courts of England and Wales would enforce an order requiring supervision by a government agency. The short answer, in my view, is that they would not enforce it because, once one has reviewed the various legislative provisions and considered also the scope for the use of the inherent jurisdiction, it becomes clear that such an order cannot be made in this country...

.../

[35] In *Leeds City Council v C* [1993] 1 FLR 269 , Booth J considered the means by which supervision of contact could be ordered under the Children Act 1989 . By the time the matter came before the judge, it was entirely academic, but she nevertheless ruled upon the various issues. The acting stipendiary magistrate, who turned out not to have had jurisdiction at all, had sought to achieve local authority supervision of contact by means of section 11(7)(d) which provides that a section 8 order may make such incidental, supplemental or consequential provision as the court thinks fit. That was held to have been impermissible because the section only allowed obligations to be imposed on the people referred to in section 11(7)(b) , which did not include the local authority...”

38. Within the foregoing context, I am satisfied that it is plain having regard to the language of the statute that the Family Court does not have jurisdiction under the Children Act 1989 to *compel* a prison governor to supervise or otherwise facilitate a child

arrangements order made pursuant to s.8 of the Children Act 1989, notwithstanding that the term “child arrangements order” is defined in relatively broad terms by s.8 of the Children Act 1989 as an order “regulating the arrangements relating to...with whom a child is...to spend time with or otherwise have contact”. The Court of Appeal has made clear on repeated occasions that such a power does *not* reside in s.11(7) or elsewhere in the 1989 Act.

39. Further, I accept the submission of Mr Waite and Mr Rothery that the wider statutory regime governing the administration of prisons and prisoners further demonstrates that it is not open to the Family Court to compel a prison governor to supervise or otherwise facilitate the implementation of a child arrangements order.
40. Parliament has granted to the Secretary of State for Justice control over prisons. Within this context, s.1 of the Prison Act 1952 provides as follows:

“1 General control over prisons

All powers and jurisdiction in relation to prisons and prisoners which before the commencement of the Prison Act 1877 were exercisable by any other authority shall, subject to the provisions of this Act, be exercisable by the Secretary of State.”

41. Likewise, with respect to the superintendence of prisons, the Prison Act 1952 confers responsibility on the Secretary of State for Justice:

“4 General duties of Prison Commissioners

- (1) The Secretary of State shall have the general superintendence of prisons and shall make the contracts and do the other acts necessary for the maintenance of prisons and the maintenance of prisoners.
- (2) Officers of the Secretary of State duly authorised in that behalf, shall visit all prisons and examine the state of buildings, the conduct of officers, the treatment and conduct of prisoners and all other matters concerning the management of prisons and shall ensure that the provisions of this Act and of any rules made under this Act are duly complied with.
- (3) The Secretary of State and his officers may exercise all powers and jurisdiction exercisable at common law, by Act of Parliament, or by charter by visiting justices of a prison.”

42. Finally, s.47 of the Prison Act 1952 empowers the Secretary of State to make rules for the management of prisons. Within this context, prisons are operated in accordance with the provisions set out by the Prison Act 1952, the Prison Rules 1999 (as amended), and the relevant Prison Service Instructions and Prison Service Orders.
43. The jurisdiction in respect of prisons of the Secretary of State for Justice within the statutory framework set out above was confirmed in *R (on the application of O'Brien) v Independent Adjudicator* [2019] 1WLR 1393 in which the Court of Appeal observed at [67] that:

“The first aspect of the legislative context is the Act. Section 1 shows that, subject to the express provisions of the Act, Parliament intended the Secretary of State (and not the court) to have all powers and jurisdiction in relation to prisons. Section 4 shows that Parliament intended the general superintendence of prisons to be vested in the Secretary of State. There is therefore ample statutory authority for the issue of PSIs by the Secretary of State, regulating any aspect of prisons in as much detail as the Secretary of State considers appropriate. The scope of the PSIs is only limited by any express provision to the contrary in the rules ‘for the regulation and management of prisons’ made under the power conferred by section 47(1)...”

44. With respect to the question of contact between a prisoner and a child, and within the foregoing context, Rule 34 of the Prison Rules 1999 (as amended by the Prison (Amendment)(No.2) Rules 2000 SI 2000/2641) provides as follows with respect to communications by a prisoner outside the prison:

“Communications generally

34.— (1) Without prejudice to sections 6 and 19 of the Prison Act 1952 and except as provided by these Rules, a prisoner shall not be permitted to communicate with any person outside the prison, or such person with him, except with the leave of the Secretary of State or as a privilege under rule 8.

(2) Notwithstanding paragraph (1) above, and except as otherwise provided in these Rules, the Secretary of State may impose any restriction or condition, either generally or in a particular case, upon the communications to be permitted between a prisoner and other persons if he considers that the restriction or condition to be imposed—

- (a) does not interfere with the convention rights of any person; or
- (b) (i) is necessary on grounds specified in paragraph (3) below;
 - (ii) reliance on the grounds is compatible with the convention right to be interfered with; and
 - (iii) the restriction or condition is proportionate to what is sought to be achieved.

(3) The grounds referred to in paragraph (2) above are—

- (a) the interests of national security;
- (b) the prevention, detection, investigation or prosecution of crime;
- (c) the interests of public safety;
- (d) securing or maintaining prison security or good order and discipline in prison;
- (e) the protection of health or morals;
- (f) the protection of the reputation of others;
- (g) maintaining the authority and impartiality of the judiciary; or

(h) the protection of the rights and freedoms of any person.”

45. Within the foregoing context, pursuant to Rule 34(1) of the Prison Rules 1999 as amended, the Secretary of State retains a discretion to *permit* a prisoner to communicate with any person outside the prison and to receive communications from any person outside the prison. Further, the Secretary of State has the power under s.34(1) of the Prison Rules 1999 to *restrict* such communications where such restrictions are necessary, *inter alia*, on the grounds of public safety or the protection of health or morals and where reliance on such grounds is compatible with the Convention right thereby interfered with and proportionate to the end sought to be achieved. In exercising the discretion to permit a prisoner to communicate with any person outside the prison or receive such communications, or the power to restrict such communications, in the context of contact between a prisoner and a child the following additional provisions will also be relevant.
46. First, s.11 of Children Act 2004 places a duty on prison governors to safeguard and promote the welfare of children, requiring prison governors to carry out their existing functions in a manner that takes into account the need to safeguard and promote the welfare of children.
47. Second, the governor of a prison has a statutory duty under s.325 of the Criminal Justice Act 2003 to assess and manage the risk relating to relevant violent and sexual offenders:

“325 Arrangements for assessing etc risks posed by certain offenders

(1) In this section—

“relevant sexual or violent offender” has the meaning given by section 327;

“responsible authority”, in relation to any area, means the chief officer of police, the local probation board for that area or (if there is no local probation board for that area) a relevant provider of probation services]and the Minister of the Crown exercising functions in relation to prisons, acting jointly.

(2) The responsible authority for each area must establish arrangements for the purpose of assessing and managing the risks posed in that area by—

(a) relevant sexual and violent offenders, and

(b) other persons who, by reason of offences committed by them (wherever committed), are considered by the responsible authority to be persons who may cause serious harm to the public.

(3) In establishing those arrangements, the responsible authority must act in co-operation with the persons specified in subsection (6); and it is the duty of those persons to co-operate in the establishment by the responsible authority of those arrangements, to the extent that such co-operation is compatible with the exercise by those persons of their relevant functions.

(4) Co-operation under subsection (3) may include the exchange of information.

(5) The responsible authority for each area (“the relevant area”) and the persons specified in subsection (6) must together draw up a memorandum setting out the ways in which they are to co-operate.

.../”

48. Third, Rule 4 of the Prison Rules 1999, which provides as follows with respect to the need for special attention to be paid to the maintenance of the relationship between the prisoner and his family:

“Outside contacts 4.—

(1) Special attention shall be paid to the maintenance of such relationships between a prisoner and his family as are desirable in the best interests of both.

(2) A prisoner shall be encouraged and assisted to establish and maintain such relations with persons and agencies outside prison as may, in the opinion of the governor, best promote the interests of his family and his own social rehabilitation.”

49. Within this context, the National Offender Management Service Public Protection Manual 2016 stipulates at paragraph 3.2 of Chapter 5c, entitled Child Contact Procedures, that:

“The Governor (or senior manager with suitable delegated authority) is ultimately responsible for making an assessment of what, if any, level of contact should be permitted”

With respect to the process to be adopted when assessing whether, and if so what level of contact should be permitted, the National Offender Management Service Public Protection Manual 2016 stipulates at paragraph 4.1 of Chapter 5c that, following a multi-agency risk assessment that involves the police, children’s services, the offender manager and, where relevant, the NSPCC:

“Once the multi-agency assessment process is completed, the Governor or a senior manager with suitable delegated authority should make a decision about the appropriate level of contact suitable between the prisoner and the child. This process should not be completed in isolation and should be supported by members of the prison’s safeguarding risk panel or equivalent. This ratification process will vary according to the prison structure and the level of risk presented by the prisoner. In some cases consultation may be carried out by e-mail, while in more complex and potentially high-risk cases a risk meeting will be needed.

The risk presented should be managed proportionately, taking into account the existing safeguards available in custody. In all cases decisions must be based on what is in the best interests of the child and must be properly reasoned and fully recorded on file.

In addition to the information provided by partner agencies (which should include an assessment of the child’s needs, wishes and feelings and the

capacity of the primary carer to protect the child from potential harm), the assessment should also take into account:

- OASys assessment
- Static risk assessment tool for sexual re-offending (Risk Matrix 2000)
- Pre-sentence report
- Previous convictions
- Behaviour in custody
- Progress with offending behaviour programmes

The over-riding principle is that the child's welfare is paramount and any contact must be in the best interests of that child. This may not always correspond with the wishes of the child or of the primary carer. Where there is a conflict between the needs of the child and the carer, decisions should be made in the child's best interests."

50. Within this context, there is a long line of authority demonstrating the court's recognition of the proper location of the boundary between the jurisdiction of the court and the jurisdiction of the Secretary of State with respect to welfare decisions concerning the children of serving prisoners. For example, in *CF v Secretary of State for the Home Department and another* [2004] EWHC 111 (Fam) at [5], Munby J (as he then was) held that, with respect in that case to whether a mother should be allowed to remain with her child in prison after the child had reached the age where the prison required mother and child to be separated:

"[5] Thus in the final analysis it is for the Secretary of State to decide whether or not a baby should remain in prison with his or her mother. Likewise, insofar as that decision requires consideration of the baby's best interests, in the final analysis it is for the Secretary of State to decide where the baby's best interests lie. Parliament has conferred that power and responsibility on the Secretary of State. Rule 12(2) of the Prison Rules makes it quite clear that the decision is one for the Secretary of State: not the mother; not the local authority; not the court."

51. The effect of the statutory regime governing prisons and prisoners is *not* to oust the Family Court's jurisdiction to determine applications for child arrangement orders in relation to applications for contact by serving prisoners. However, the *implementation* of any order the Family Court may make upon such an application is subject to, and cannot displace, the statutory powers of the Secretary of State for Justice to operate the prison system, including communications between serving prisoners and outside persons and, in this case, the management and assessment of the risk posed by serious offenders. The fact that the Family Court has made a child arrangements order providing for contact between a child and a serving prisoner will be a significant and relevant consideration when the Secretary of State, through the prison governor, is exercising his statutory powers in this regard, as will the welfare and risk analysis

contained in any judgment handed down by the Family Court. However, the final decision as to whether and how the *implementation* of the child arrangement order made in favour of a serving prisoner will take place rests with the Secretary of State.

52. Finally, with respect to the question of remedy, a decision by the governor or a prison to refuse to facilitate contact, whether pursuant to an order made by the court or otherwise, is amenable to challenge in the Administrative Court, subject to the normal requirements applicable to claims for judicial review. Thus, in *Westwater v Secretary of State for Justice* [2010] EWHC 2403 (Admin) the father was imprisoned following convictions for sexual offences. The police did not support any contact with his child and children's services and the probation service recommended only written communication. The Administrative Court quashed the decision of the governor that there be no contact by reason of an inadequate assessment of risk and directed that an assessment be undertaken and a new decision made. In *Westwater v Secretary of State for Justice* the court noted that the risk to be assessed will be specific to the subject child and will comprise a unique combination of factors, including the child's own needs, wishes and feelings and the interruption of the child's relationship with his or her parent.
53. Within this context, once this court has made its decision regarding the father's application for a child arrangements order governing contact between the father and X and Y, by applying the statutory regime created by the Children Act 1989, it will be for the Governor of the prison to decide whether, having regard to all relevant factors in the case including the contents of this judgment, the prison will facilitate the implementation of that child arrangements order within the context of legal framework I have summarised above. If the governor decides that the order will not be facilitated, the remedy for the parents and/or the children lies in the Administrative Court by way of an application for permission to apply for judicial review of that administrative decision.

DISCUSSION

54. Having considered the evidence and submissions in this matter, and having regard to each child's best interests as my paramount consideration and to the factors set out in s.1(3) of the Children Act 1989, I am satisfied that it is in the best interests to make the child arrangements order that all parties, including the Children's Guardian, now urge upon the court by way of consent. My reasons for so deciding are as follows.
55. Both of the children have expressed clear views that they wish to have contact with their father. Those wishes and feelings fall to be assessed by reference to both their age and understanding. X is now 16 years old and Y is 14 years old. Notwithstanding their respective ages, the evaluation of each child's *understanding* is of particular importance in this case as that understanding has the potential, if accurate, to be protective in the face of the risks presented by contact with their father. Within this context, both X and Y have demonstrated some understanding of the offences for which their father was convicted and of why he is in prison. X is aware of the father's offences. Y is likewise aware of the father's offences. X told the social worker that whilst she would like to believe that her father is not guilty, the court had found him guilty. Y likewise does not take a dogmatic view, having told the social worker that he does not want to say he is innocent but likewise does not want to say he is guilty, albeit he finds it hard to believe he is guilty as he remembers his father as a calm person who would not hurt anyone.

Within this context, the Section 7 report from the local authority concludes that it is evident that the children have an understanding of why their father is in custody, and why they are having no contact with him.

56. Further, both X and Y were able to articulate, in broad terms, why their father presents a risk. Each have undertaken with the social worker with respect to keeping safe and have had detailed discussions in this regard with their Children's Guardian. X has also done work on this issue at school and was able to articulate that abuse occurs, was knowledgeable about its impact and how to raise the issue if concerned. Within the work done with Y on Child Sexual Exploitation he demonstrated good knowledge and a desire to learn, he was aware of its impact and stated that he would report concerns to the Police, a trusted adult or his parent. Y is aware that CSE can be perpetrated by family members, teachers and friends.
57. I accept that the understanding of both children cannot be said to be entirely complete and, to a certain extent, their picture of contact and what it will bring is somewhat idealised at this point in time. Likewise, I am mindful that disclosure of grooming activity by their father would require them to make known information that would get their father into further trouble. But in this context, the court must in my judgment be careful to hold in mind that what is being contemplated is limited, supervised and indirect contact by way of letters a number of times per year. Within this context, and whilst I accept the Prison Probation Officer's view that it important not to over emphasise the protection provided by the fact that the father is in custody, I am satisfied that the level of understanding that the children have demonstrated when expresses their wishes is sufficient, in the context the nature and extent of the contact being contemplated, to permit the court to attach weight to the expressed wishes and feelings of two children aged 16 and 14 respectively.
58. I am also mindful that the s.7 report prepared by the local authority contains an assertion that doubt regarding their father's guilt has been "planted" in the children's heads. However, having regard to the body of the s.7 report such an assertion would appear to have no evidential basis beyond the fact of the children's uncertainty about the past, which might be considered to have any number of explanations. Likewise, the assertion in the s.7 report that the children were "confused" about the circumstances of the father's imprisonment is a peculiar conclusion to draw having regard to the details of the social worker's recordings of what the children have actually said in this regard.
59. With respect to the physical, educational and emotional needs of the children, I am satisfied that, having regard to the wishes and feelings they have articulated and to the stage each child has reached in their development, both X and Y have an emotional need for some contact with their father. Both X and Y are at the stage in their development when they are able to question their identity and explore who they are. At present, whilst each knows they have a father, neither is able to move beyond the conceptual in circumstances where ten years ago he disappeared from their lives with no contact of any type since. Within this context, I note the observation of the social worker that, despite their outwardly happy and accomplished presentation, both children are clearly fighting silent battles and struggling with the secrets of their father's past. Within this context, the social worker identifies in both children the competing feelings of shame and of wanting to confront the truth. Whilst I accept that, in this context, the risk is that the truth given to the children will be manipulated by the father to his own ends, once again, it is important to remember that what is being contemplated

by way of contact is limited, supervised and indirect contact by way of letters a number of times per year. Within this context, I am satisfied that indirect contact by way of closely monitored and limited indirect contact is the proper approach to balancing each of the children's identified emotional need with the risk of harm presented by the father.

60. As to the likely effect on each of the children of a change of circumstances, the change that is contemplated is a move from no contact to limited, supervised and indirect contact by way of letters a number of times per year. Given the challenges that are likely to be inherent for both X and Y in being re-introduced to their father, and the risks identified in contact between the father and each child, I am satisfied that a limited and tightly supervised level of contact is each of the children's best interests notwithstanding that both X and Y have each expressed a desire for face to face contact with the father or for indirect contact at a greater level than has been proposed by the Children's Guardian.
61. With respect to each of the children's characteristics, two matters are in my judgment particularly relevant in this case. First, the evidence before the court demonstrates both X and Y to be articulate, intelligent and well-rounded children. Within this context, both X and Y are, I am satisfied, equipped to benefit from the work that has been undertaken with them by the social worker and the Children's Guardian with respect to risk and to communicate any difficulties or issues that might arise as a result of indirect contact. Second, I am satisfied that in this case it is particularly important to have regard to the fact that X is aged 16 and Y is aged 14. Within this context, and in addition to the emotional need that I am satisfied each child has for a greater understanding of their father and his place in their lives, in less than 24 months X and in less than four years Y will be able to see their father as adults. Whilst both will have at that point reached the age of majority, both will remain young adults. In light of the emotional challenges likely to attach to the re-introduction of contact with their father, I am satisfied that it is both children's best interests that such an introduction takes place now, whilst they have the benefit of agencies who have a statutory duty to safeguard and promote their welfare during that process, rather than both X and Y being required, on reaching 18, to embark on entirely unregulated, unsupported and unmonitored contact with the father as young adults. Further, limited and closely supervised contact at this stage will provide both X and Y with information with which to make informed choices regarding the nature and extent of their future contact with their father when they each attain their age of majority.
62. With respect to the question of harm that the children have suffered or are at risk of suffering, this question has two dimensions. With respect to the harm that the children have suffered, there is no dispute between the parties that the father's offending has caused both X and Y emotional harm. By reason of the father's actions he disappeared from the lives of both children without warning and without further communication, condemning each child to an early childhood of uncertainty and misleading information regarding their father's fate. By reason of the father's offending the children had to move, with loss of friends, peers and contact with paternal side of their family. Both children consider it necessary to guard against revealing their identities to anyone close to them. By reason of the father's actions, the children have grown up without contact with the father for a decade and without a clear picture of why this is the case. As the social worker has observed, this has caused the children significant emotional difficulty and conflict. Within this context, for the reasons I have set out above, I am satisfied

that limited and closely supervised contact is a means of moving now to address this emotional harm.

63. The difficulty presented in this case by that course of action is that the second dimension of harm, that of risk of harm, presents a particularly challenging issue in this case. Whilst the father continues to protest his innocence and states repeatedly that he is seeking to appeal his conviction, he remains convicted and, ten years on, has not been granted permission to appeal. Further, the father has refused to undertake any therapeutic or remedial work in prison related to his offending, notwithstanding that such work does not carry with it an admission of guilt for those who maintain their innocence. With respect to the father, I therefore proceed on the basis that, as a matter of established fact, the father committed grave sexual offences that represented a gross breach of trust, for which he received an extended sentence of twenty-six years and for which he has failed to acknowledge responsibility for or to undertake work in respect of the same. Nothing in this judgment should be taken to suggest that this court doubts in any way the safety of the father's conviction.
64. Within the foregoing context of the nature and extent of the grave offences committed by the father and as detailed in the Prison Probation Officer's evidence, I accept entirely the concerns expressed by the Prison Probation Officer and the IDMT regarding the risk presented by the father in the context of contact with each of the children. Having considered the Prison Probation Officer's evidence, I make clear that this court has a clear understanding of the seriousness of the harm caused by the father's offending and the risk it speaks to. I further accept that offenders with the father's offending profile can be deceptive, emotionally manipulative and denying of facts plainly established on the evidence. Within the context of the nature of his convictions I am satisfied that it is appropriate that the court adopt a *very* cautious approach indeed to father's statements of evidence in these proceedings.
65. In the foregoing circumstances, I am satisfied that the court must proceed in this case from the starting point that *any* contact between the children and their father carries with it a risk of further harm *unless* sufficient safeguards can be put in place to mitigate that harm to the extent that the children can *safely* benefit from such contact. In this regard, in reaching my decision to endorse the consent order advanced by all parties in this case, I have taken account of the following matters that can be said, in my judgment, to mitigate the risk of harm that I have identified in the foregoing paragraphs:
 - i) There is no evidence that either parent has sought to engineer clandestine contact between the children and the father over the past decade, despite the mother maintaining regular, and sometimes daily contact with the father in prison. The prison censors report no known incident of father speaking to the children.
 - ii) There have been no breaches of the Sexual Offences Prevention Order (it having been established that the act of writing a sample letter to the children and providing it to the Guardian with a view to the Guardian providing advice as to content should the court endorse indirect contact did not constitute a breach of the order).
 - iii) There is no evidence that the mother has breached the previous court order requiring her not to allow contact between the father and the children and has ensured that the children have not had any direct or indirect contact with their

father (whilst it has been repeatedly stated in the documentation disclosed by the prison that the mother has breached the order of HHJ De Haas QC dated 18 May 2012, I make clear that I cannot accept that assertion in circumstances where the order is plainly incapable of binding the *mother*, being an order that was purportedly made against her solicitors).

- iv) As I have noted, each of the children has undertaken work with the social worker with respect to keeping safe and has had detailed discussions in this regard with their Children's Guardian. X has also done work on this issue at school and was able to articulate that abuse occurs, was knowledgeable about its impact and how to raise the issue if concerned. Within the work done with Y on Child Sexual Exploitation he demonstrated good knowledge and a desire to learn, he was aware of its impact and stated that he would report concerns to the Police, a trusted adult or his parent. Y is aware that CSE can be perpetrated by family members, teachers and friends.
 - v) The contact proposed is by way of limited, supervised indirect contact by way of letters and cards. The father has produced a draft letter for the Children's Guardian that the Children's Guardian considered appropriate in content.
 - vi) Whilst the prison has made clear does not consider it is qualified to assess the probity of correspondence between the children and their father, the limited indirect contact will be the subject of prior inspection and approval by an independent social work organisation before it is the subject of exchange between the father and the children.
 - vii) The father remains incarcerated and will not be able to come into physical contact with the children.
 - viii) In circumstances where it is not yet appropriate to bring the proceedings under the Children Act 1989 to a conclusion (for reasons that I articulate below) both X and Y will continue to have the support of the Children's Guardian during the early stages of the limited, supervised indirect contact.
 - ix) Within this context, the Children's Guardian will, during that initial period, be available to restore the matter to court in the event of concerns being raised by the independent social work organisation supervising the correspondence of by the Children's Guardian.
 - x) Each of the parents has signed a written agreement which closely proscribes their conduct in relation to contact and the breach of which will lead to the cessation of contact and the referral of the matter back to this court.
66. The extent to which the mother represents an additional protective factor in this case, or not, is a more complex question having regard to the evidence before the court. On one side of the equation, as I have observed above, there is no evidence that the mother has sought to engineer clandestine contact between the children and the father or that she has breached the previous court order requiring her not to allow contact between the father and the children and has ensured that the children have not had any direct or indirect contact with their father. Once again, whilst it has been repeatedly stated in the documentation disclosed by the prison that the mother has breached the order of

HHJ De Haas QC dated 18 May 2012, I cannot accept that assertion in circumstances where the order is plainly incapable of binding the mother, being an order that was purportedly made against her solicitors. I am also doubtful that the fact that the mother has complained about the prison refusing to permit contact between the father and the children is a matter that can be said properly to inform an assessment of protective capacity. Finally, the mother has raised the children as clearly well rounded and able children in respect of whom no welfare concerns have been raised whilst in their mother's care. Within this context, I note the conclusion of the Children's Guardian as follows:

“Whilst [the mother] also maintains that the father is innocent and is the victim of a miscarriage of justice and her views have been passed on to the children, she continues to abide by the decisions made in terms of safeguarding and has engaged very appropriately. Despite her views, the children remain somewhat open-minded about their father's guilt or otherwise, but they are still of the clear view that they would wish to have some form of contact with him.”

67. Against the foregoing matters however, there are some factors that will, in any assessment of risk, give authorities pause regarding the extent to which the mother can be relied on to mitigate the risk presented by the father in light of his convictions a decade ago. In particular, the mother remains clear in her view that the father's conviction is unsafe and is assisting him in seeking to secure an appeal. She has maintained a high level of contact with the father. Within this context, the section 7 report concludes that the Local Authority remains unconvinced that the mother would be able safeguard the children against possible grooming by the father in circumstances where she does not believe he is guilty of the charges. I accept that these matters mean that the mother should not be involved in supervising the limited indirect contact. I am further satisfied however, having regard to the additional protective factors that I have summarised at paragraph [65] above, that these matters do not militate against such limited, supervised contact taking place *per se*.
68. In reaching my decision that it is in each of the children's best interests to endorse the consent order advanced the parties in this case, I have also given significant weight to the conclusions of the Children's Guardian. The Guardian has provided to the court a detailed and closely analysed assessment of each child's best interests. That comprehensive and carefully reasoned assessment provides a clear rationale for why it is now in both X and Y's best interests to have some limited, closely supervised indirect contact with their father.
69. Finally, having regard to the matters set out above, I am satisfied that for the court to refuse to endorse the consent order advanced by the parties in this case would constitute a disproportionate interference in each of the children's Art 8 right to respect for family life. Having regard to the terms of Art 8(2) of the ECHR, any interference in that right must be both necessary and proportionate. Within this context, and having regard to the protective factors set out at paragraph [65] above, in my judgment, and in the face of each child's identified welfare needs as summarised above, it cannot be said that it is necessary and proportionate for the court to refuse *all* contact between the children and the father in this case in order to protect them from the risks presented by the father. In circumstances where I am satisfied that a safe means of indirect contact can be arrived at in order to meet the identified emotional need that each child has, I am

satisfied that to deny the children that contact would, given their identified welfare needs, constitute a disproportionate interference Art 8 in their right to respect for family life. Within this context, I am satisfied that having regard to the protective factors summarised at paragraph [65] above, the proportionate course for the court to take having regard to the risks identified is to endorse the consent order advanced by the parties, which, once again, order provides for limited, professionally supervised indirect contact only.

CONCLUSION

70. In all the circumstances, having regard to X and Y's best interests as my paramount consideration and accepting the difficult and emotive context in which the decision falls to be taken, I am satisfied that it is in the best interests of both X and Y to have limited, indirect contact with their father on a closely and professionally supervised basis. In the circumstances, and for all the reasons I have set out above, I am satisfied that it is in both child's best interests for the court to approve the consent order agreed by all parties that there be indirect supervised contact between the children and the father as provided for in that order and under the auspices of the written agreement signed by each of the parents.
71. In circumstances where it is not yet clear whether it will be possible to implement the child arrangements order made by the court in the manner in which the court intends it to be implemented, I propose not to bring these proceedings to an end at this point. I make clear that is *not* in order to influence the decision of the Prison Governor, who has helpfully indicated that he will now carry out a further review of the question of contact, taking into account this judgment, but rather to recognise that if the prison declines to facilitate the child arrangements order made by this court then further welfare decisions will fall to be made with respect to the children.
72. Within this context, I direct that a copy of this judgment be provided to the Governor of the prison and to the Prison Probation Officer. A copy of the judgment should also be provided to the local authority and to the police in circumstances where both will be consultees for the purposes of the further IDMT review that will now take place.
73. That is my judgment.