IN THE OXFORD FAMILY COURT

Case No. OX23P00315

Neutral Citation Number: [2024] EWFC 128 (B)

Courtroom No. 1

St Aldates
Oxford
OX1 1TL

Friday, 22nd March 2024

Before:
HER HONOUR JUDGE OWENS

B E T W E E N:

F

and

M

MS M AMONOO-ACQUAH appeared on behalf of the Applicant
MS L BENNETT appeared on behalf of the Respondent
MR G CRAWLEY appeared on behalf of the Children, through their Guardian, NYAS

JUDGMENT

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

HHJ OWENS:

1. I am dealing with private law proceedings, those proceedings concern three children. They are A who is aged 15, B who is aged 13 and C, who is also aged 11.
2. I have started with the children rather than the adult parties because I think it is important that everybody, not just in this particular case but generally in private law proceedings, remember that the Court has a statutory requirement for the children's welfare to be its paramount concern. The welfare of the parents is not the Court's paramount concern.
3. The adult parties to these proceedings are the applicant, the children's father, F and the first respondent, the children's mother, M. The children are themselves parties to these proceedings. Having been joined as parties, and NYAS invited to act as Guardian, given the lack of capacity on the part of Cafcass (the first port of call ordinarily in terms of the court seeking for a Guardian under Rule 16.4). The children were joined, and the case was assigned towards the end of last year with NYAS being appointed as the Children's Guardian.
4. As I noted earlier in the course of oral submissions, the appointment works slightly differently, where it is NYAS, it is NYAS as the body that is the Guardian appointed by the court, pursuant to Rule 16.4. NYAS allocate a case worker, it is not the case worker though who is the individual guardian. In this case, Melanie Chambers, has been allocated as the case worker.
5. Proceedings in this case actually commenced with F's application in July of last year. There were cross-applications by M in July 2023, within days, I think, actually of F's application. Technically, F made the first application and hence he is listed as the applicant in terms of the order of those participating in the proceedings.
6. The parents married in 2007 and separated in January 2023. The private law proceedings that I am dealing with have involved an extraordinarily high level of acrimony between the parents. It is that level of acrimony and the serious allegations that were being made by both of the parents in respect of each other's conduct, that led to the court joining the children and appointing a Guardian.
7. The matter had been proceeding towards a contested fact-finding hearing, having considered properly the provisions of Practice Direction 12J, because the allegations that were being made were, on any reading, allegations that potentially, directly, could have impacted on the welfare outcome for the children concerned in these proceedings.

8. I would note from my involvement in these proceedings, that there did seem to be, despite serious allegations being made, a tendency in earlier hearings, on the part to some extent of both of the parents, to try to compromise matters without the need for a fact-finding hearing. The court can understand that desire, on a human level in terms of not wishing to put anybody through the gruelling process that a fact-finding hearing would inevitably be, despite the best efforts of the court in deploying, for example, the provisions of Practice Direction 3A and 3AA, in terms of participation measures. However, the proceedings became, to some extent, protracted, partly because of that attempt to resolve matters without the need for fact-finding, in circumstances where allegations continued to be pursued and, in my view, perhaps, without proper regard to Practice Direction 12J. That led to the matter being timetabled before, what should have been a fact-finding hearing, in the early part of this year and with a pre-trial review listed to try to ensure that that was an effective hearing and very much at the 11th hour, led to the parties seeking, again, to compromise matters without the need for a fact-finding.

9. By that point, what had changed was that Ms Chambers, as the NYAS case worker, had produced a very detailed, and in my view an expert, analysis of what the issues in the case were and what was in the welfare interests of the children, taking into account all of the necessary Checklist headings under section 1 of the Children Act, 1989.

10. It was very clear from that report that the wishes and feelings of the children, in particular, which of course, as is clear in section 1(3) of the Children Act, is by reference to their ages and understanding, those wishes and feelings were extremely clear and, in essence, boiled down to the children not wishing to have, in fact, any contact with their father. In addition, regardless of how those wishes and feelings came to be, from Ms Chambers' analysis, it was clear that whatever the outcome of any fact-finding exercise conducted by the Court, it was difficult to see what work could be undertaken with the children, within a timeframe that was appropriate for them and achievable within the court proceedings, to change that position in relation to the children. I would stress that is my analysis.

11. What that led to, is that the parties, and in particular, I think initially the credit has to go to F, for accepting that in those circumstances, it was not in the welfare interests of the children to seek to pursue his allegations, which essentially boil down to alienating behaviours, the preferred term, taking into account the case law, on the part of M. Equally, credit must go to M for not seeking to pursue findings in relation to abusive behaviours, her allegations in

broad summary, by F. Again, in light of those strongly expressed wishes and feelings on the part of the children.

12. I therefore agreed at the last hearing, that it was not necessary or proportionate, having regard to Practice Direction 12J, for the Court to proceed to conduct a fact-finding exercise, in light of the contents of the NYAS report, which included some admissions on the part of F in relation to his behaviour. However, very unfortunately, and in a way that I think I indicated both then and will reinforce now, in my view, is not in fact in compliance with the expectations of the overriding objective of the Family Procedure Rules, the parties failed to deal with remaining issues within a timescale that enabled the Court to conclude matters within the time available for the court hearing on the last occasion.

13. I therefore made directions setting down provisions for limited written submissions. Such limitation being necessary and proportionate given the extraordinary length of some of the documentation that has been produced at points by the parties and advocates in previous parts of the proceedings. With a view to a time-limited hearing being conducted this morning with short oral submissions being made by each advocate for each party to supplement those written submissions.

14. I was somewhat surprised, therefore, to be faced this morning with a request for further time, and whatever the rights and wrongs of how that arose, that is why I underline, yet again, that in my view, there has been less than optimal compliance with the expectations of the overriding objective, because it did risk, yet again, a repetition of what happened on the last occasion which is that parties took time trying to broker some form of agreement, only to run out of court time, yet again. As a result, I had to impose a guillotine in terms of the time for discussions prior to the hearing commencing and required parties to come in at the end of that time limit whether or not agreement had been reached.

15. What that resulted in was, really not significant movement, in reality, from the position set out in the parties' written submissions. In addition, issues that had been agreed previously in broad outline remained as agreed in broad outline and issues that were in dispute, remained, broadly speaking, in dispute.

16. In detail, in terms of the issues that I have to consider, dealing with the undisputed aspects, firstly. There appears to be a consensus amongst all parties, and that includes NYAS, in terms of the child arrangements order, setting out where the children should live. That is an order that the children should live with their mother, M.

17. There is a broad agreement, again, in relation to the aspects of a child arrangements order, in terms of indirect contact. I think it is axiomatic, as well, although I do not think it is specifically addressed, that there is also agreement, broadly speaking, that there should be no direct contact under that child arrangements order.

18. I am having to use the term "contact", even though the Children Act itself talks in terms of "spends time with", and the reason I am having to use the term "contact" is because of the distinction between direct and indirect contact.

19. The indirect contact, again, there is a broad agreement that that needs to be on a limited basis and that it is limited to letters and cards. The frequency and the detail of precisely who is involved in receiving those letters and cards is in dispute.

20. In relation to the applicant father's case, he seeks for a frequency of indirect contact that was actually the amended recommendation by the NYAS case worker at the last hearing, which I think is seven times per year. I think her recommendation was actually six to seven times per year, but I think it has been taken to be seven times per year from the submissions that I have got from Ms Amonoo-Acquah, plus an additional indirect contact in relation to each of the children's birthdays, which is what leads us to the maximum indirect frequency of contact as addressed by Ms Amonoo-Acquah on behalf of F of up to nine times per year. In addition, that calculation was also adopted by Ms Bennett, because if you are talking about the children in terms of the birthday on top of that, then you are obviously talking about A's birthday in addition to the seven times per year and then you are talking about B and C, of course, which gives you, in terms of the mathematical calculation, nine.

21. That is not agreed by the mother, who actually, I think, her case is that it should be at a frequency that was the original NYAS recommendation, as contained within the NYAS case worker's report, rather than the revised recommendation.

22. In terms of the positions in relation to the other aspects, just so I can go through those, what is also sought by the mother, and there are some elements that are agreed and some elements that are in dispute, in relation to this request, is a prohibited steps order, which is not agreed in respect of a restriction preventing F from going to any school, home or the children's GP, or anywhere where the children are living and to cover provision in terms of what F can and cannot do, if he happens upon the children out in the wider community, drawing upon the wording of a previous agreement at the end of Family Law Act proceedings.

23. The mother also seeks for that prohibited steps order to restrict the exercise of F's parental responsibility in terms of limiting his access to information about medical records in relation

to the children. Having just said records, I think it actually not just records, it is medical records and information pertaining specifically to their mental health.

24. The necessity and proportionality of a prohibited steps order in relation to restricting the father going to school, home or GP or restricting what he should and should not do within the community if he happens upon the children, is not agreed by F. In addition, the NYAS position in relation to that is that the undertaking that is offered on behalf of F as a more proportionate response to the welfare issues that have given rise to consideration of this, is proportionate and appropriate in the welfare interests of the children.

25. In relation to the restriction of his parental responsibility, NYAS's position in terms of that is different to the earlier part of the prohibited steps order about not going to the school, home, or GP, etc. NYAS's position in relation to the restricting of information in terms of the children's mental health records and information, is that that is appropriate, it is necessary and proportionate and is in the welfare interests of the children.

26. It is also, I think, for the avoidance of doubt, not in dispute that M may relocate to a different city or area and enrol the children in new schools. I will need to clarify, it just occurs to me, whether, because obviously, it is open to a party to move by consent without the need for a court order and the court actually normally only needs to make an order if there is a dispute in relation to this. If that is wholly agreed between all parties, and that includes NYAS, because as I say the children are parties through NYAS, then it would not fall to the court to need to make an order in relation to that, that is simply recorded by way of a recital on the face of the order.

27. I think it is also now agreed, in terms of generally, the provision of information to F by M in relation to the children, in the exercise of both her parental responsibility for the children, but also to enable him to receive information as a parent with parental responsibility, that that will now take place via a non-paid for app. In addition, I think agreement has been reached in relation to the specific app concerned, which I do not need to specify in the court judgment, bearing in mind, one of the others reasons for my producing an *ex tempore* judgment in the way that I am in this case, is that in due course, when it has been anonymised, the expectation is that it will be published in anonymised form. That will include the removal of any geographical indicators, such as the relocation, for the avoidance of doubt.

28. In terms of the other aspects, either disputed or not in dispute at this stage, the court, on the last occasion, given the information contained within the NYAS report and, as I noted

earlier, the extraordinary level of parental acrimony in this case, raised the question of consideration of an order under section 91(14) of the Children Act, in light of the provisions within section 91A of the Children Act and Practice Direction 12J, but also Practice Direction 12Q, in considering such orders. Such orders, of course, not functioning as an absolute bar to future proceedings, but potentially introducing a gatekeeping step by the court prior to further proceedings commencing in relation to the children.

29. In addition, the revision that Section 91A has created in relation to such orders is that such orders can now be made where a court is satisfied that the resumption of proceedings, in relation to either an adult party to the proceedings or the children, could pose a risk of harm to that adult party or the children purely by the resumption of the proceedings, and I think the position we are now at, in relation to that last issue, is that in fact, all parties now agree that the evidence in this case, supports a conclusion that the children need a break from disputes about them and that there should, therefore, be a 12-month order under section 91(14) preventing any further application.

30. That can prevent any application of any kind under the Children Act, it is not just limited to section 8 applications. I appreciate that no applicant has addressed me in relation to the scope of any order that may be prohibited under section 91(14), so I take it that there is no particular submission to limit it, for example, to only a section 8 application. However, in my view, in this case, since the risk to the children is the resumption of any form of proceedings in relation to them, that includes any application for enforcement, for a period of 12 months. Therefore, the order will prevent either an application as a right for an order under section 8 of the Children Act, or an application to enforce under section 79 of the Children Act for a period of 12 months. Although that is a draconian step, because it prevents somebody from making an application without leave of the court, it is necessary and proportionate in a case of this type, with children who have exhibited such concerning behaviour, including self-harm, both indirectly and directly, in my view, as a result of these proceedings.

31. In addition, the balance that is struck in terms of the infringement of both the Article 6 and 8 rights of the adult parents by making such an order, is that it is open to them, of course, to make an application for the court to grant them leave to apply. However, such an application does not automatically mean that proceedings would recommence within the 12-month period from today. It would not necessarily even entail notice to the respondents at that stage. However, any application for leave to apply within the 12-month period

following today's date would have to be supported by written evidence and applying again the provisions of section 91A and perhaps Direction 12Q, would need to set out what has changed since the making of the 91(14) order today to mean that it is specifically in the welfare interests of the children for the applicant to be permitted to apply for an order, either under section 8 or to enforce the orders made today.

32. Therefore, turning next to consideration of Practice Direction 12J. I have noted that, effectively the decision that a fact-finding hearing was not required any longer, in this case, was taken at the last hearing. However, it will obviously need to be recorded on the face of today's order that, as I have noted in my judgment, that is largely as a result of the excellent work undertaken by Ms Chambers in producing her report, and the child-focussed position that each of the parents have taken as a result.

33. In terms of the remaining disputed issues, that it is possible for me to determine those, without revisiting the question of whether a fact-finding needs to be conducted, purely on the basis of what I have in Ms Chambers' report, the limited admissions from F in that report, and the oral submissions that I have heard from each party. However, noting that no findings have been made in respect of either parties' allegations, and those include allegations made by F in relation to alienating behaviours on the part of M.

34. In terms of the prohibited steps order, therefore, about whether F should be prevented from going to the children's school, home, GP, etc. I have a proffered undertaking from F and, I think for the avoidance of doubt, Ms Amonoo-Acquah, has not sought to argue against the undertaking also including provision in relation to F if he happens upon the children in the street.

35. I entirely understand M's concerns in light of the children's expressed views in Ms Chambers' report. However, I noted earlier, the children's wishes and feelings are in light of their age and understanding. They are also, of course, not the sole aspect that the court has to consider in terms of making a decision by applying the Welfare Checklist. There are other relevant headings under the Welfare Checklist in relation to the disputed issue, which, in my view, are as follows:

36. The children's needs, and those needs encompass in this case, a range of aspects. It is clear, as I have already noted, and I think undisputed at this point, that however we have reached this point, these are children who have been profoundly affected by the parental conflict in this case. That impact has been both in terms of their mental health, but also in terms of their physical health, as I mentioned earlier, since it has resulted in significant self-harm.

37. However, they also have a need, in terms of their identity, to maintain a level of knowledge and ultimately, hopefully, relationship with their father, because the reality for these children is also that they are the children of both of their parents. That encompasses with it, both a genetic inheritance, but also a psychological inheritance for each of them.

38. In terms of their other welfare considerations by reference to the Welfare Checklist, of course, risk of harm is another important aspect, given what I have already noted about the impact upon them. However, also there is, in terms of the impact upon them and what they have said to Ms Chambers, clearly evidence that there is a risk of harm to them by virtue of ongoing fear about what might happen if their father were to go to their school, or if they were to come across their father in the street.

39. To some extent, I think in fairness to all parties, I do not think there is actually a dispute in relation to that. The dispute though, focusses on how necessary and proportionate it is in light of the statutory relevant considerations, but also in light of relevant case law, for the Court to impose a prohibited steps order in circumstances where I am being offered an undertaking by F.

40. The relevant evidence in this case is, in my view, that of Ms Chambers in her report and thus her submissions through Mr Crawley on behalf of NYAS, that actually, as far as the children are concerned, in light of their ages and understanding, it makes no difference as to whether it is a prohibited steps order or whether it is an undertaking. What they need to know, is that there is a level of protection in place.

41. In practical and legal terms, I would also note at this point, that whether it is a prohibited steps order or whether it is an undertaking, actually, the mechanism, were there to be any alleged breach in relation to either of those is probably the same, it is a Part 37 application, because it is not an order in relation to child arrangements, so therefore could not be enforced in relation to an enforcement application.

42. In addition, of course, the section 91(14) order that, as I have noted, is by consent, and I will make, for the avoidance of doubt, for the next 12 months, prohibiting any application under section 8 or in relation to enforcement of the child arrangements order, does not, of course, prohibit an application in accordance with Part 37 of the Family Procedure Rules and Practice Direction 37A, were there to be an alleged contempt by breach of a court order, or by breach of an undertaking to the Court.

43. The undisputed fact is also, of course, that in the context, despite extreme parental acrimony, there has actually only been one message sent by F, in fact, I think a text message to A,

wishing her a happy birthday, in circumstances that were not in her welfare interests. In addition, I do note, of course, that court orders have restricted the basis on which F could have sought to make contact with any of the children. However, this is not a case where I have, on any parties' evidence, during the proceedings, in terms of what is not contested, a pattern of behaviour by F, for example, in breaching court orders or being alleged to breach court orders, that would lead me to be concerned about his ability to comply with an undertaking given to the Court.

44. In all of those circumstances, my conclusion, therefore, in relation to the mother's application for a prohibited steps order restricting F attending the children's schools, GP, home, or any location where the children may be, or how he responds to the children if he happens across them in the community, that application should be refused. In addition, the necessary and proportionate way to deal with the welfare concerns in relation to the children, having fear about what F may do, is dealt with by accepting his undertaking for the next 12 months in relation to that.

45. In terms of the prohibited steps order sought by the mother in relation to the father not receiving, specifically, information and records in relation to the children's mental health. Again, the starting point for the Court has to be the Welfare Checklist in relation to the children. I have already noted that in this case, and again, this is undisputed at this point, the parental conflict in these proceedings has had a profound impact upon the children's mental health. The children's wishes and feelings are quite clear in Ms Chambers' report in terms of their view that they do not wish F to have this sort of information. In addition, I think it is quite clear from Ms Chambers' report that there is a real risk, in my view, as was submitted by Ms Bennett on behalf of M, that again, if the children are not provided with a level of security in terms of this issue, this may expose them to a risk of harm, specifically it risks them disengaging with necessary mental health support and that is an outcome which I am sure none of us would wish to see in this case.

46. It is, quite clear, as I think all parties agree, actually, in terms of the relevant case law, that for a court to restrict the exercise of parental responsibility and in fact I would note in passing, that this is the restriction of the exercise of parental responsibility in connection by both parties in this regard, because a parent with parental responsibility is entitled ordinarily to receive information about this sort of mental health information, records, etc. and arguably, M with parental responsibility is also expected to discharge that in a way that meets the welfare interests of the children and that, per se, without restriction, could include

provision of that information to F as a means of providing him with necessary information about the children and the children's welfare interests.

47. The cases that deal with this sort of issue are normally at the more extreme end, as Ms Amonoo-Acquah has highlighted in her written and oral submissions. However, that is not the same as saying that the case law provides an exhaustive list of circumstances in which a court may deem it appropriate, in the welfare interests of the children, to make such an order.

48. In my view, on the undisputed evidence in Ms Chambers' report, what is exceptional in this case is the impact on the children, their level of fear about what may happen if this information is conveyed to F, directly leading, potentially, to the children disengaging with necessary therapeutic input. It is that that in my view, which makes it necessary and proportionate in the children's welfare interests, to impose this restriction. It should be a limited restriction, in my view, although I know it was sought as an indefinite restriction. However, in my view, what also strikes the balance in terms of the Article 6 and 8 considerations, as well as the welfare interests of the children, is to time-limit that restriction. In my view, bearing in mind that the court is making a section 91 order for a period of 12 months, that there is an undertaking in relation to the other aspects of parental responsibility for a period of 12 months. However, I think I also have to take into account what we should all realise is now the reality of the situation in terms of how long it may take, not just to access necessary therapeutic support, but for that to actually affect the children in a positive way. Twelve months would therefore be the minimum by reference to the other orders that I am making. However, when I take into account the point I have just made about any delays in accessing support, whether that is in fact NHS support or privately funded, and for the children to benefit from that support, in my view, the period that is appropriate is actually two years.

49. In terms of the frequency of indirect contact and the issues around the detail of whether there is essentially an element of gatekeeping by M of the indirect communications from F. My decision in relation to those aspects is as follows: The frequency of contact, I have a revised NYAS recommendation, that is revised recommendation following discussions at court last time. I accept it is an increase to the recommendation made in Ms Chambers' report. However, both the legal position in terms of that, and the reality in terms of that is that is the current recommendation. The law in relation to the Court considering the recommendation

of a Guardian is actually quite clear that the Court needs very good reason to depart from the recommendation of such a professional.

50. In this case, in my view, there is an inextricable link to the issue around gatekeeping in terms of frequency. In fairness, that is implicit in the submissions made on behalf of M by Ms Bennett because, in essence, her request for indirect communication to be sent to M rather than directly to the children also refers to the children being aware of the communications. In addition, of course, if the communications are gatekept in the first instance by M as is proposed, that, as Ms Bennett submitted, does give scope for M to assess what is going on in relation to the mental health of the child or children concerned at the time, and to take a view as a parent, who of course, would also be in receipt of the necessary mental health information at that stage, about whether it is risking repetition of the sort of incident that arose after the text message that was sent by F to A, and if it is, then not to pass on those communications.

51. In relation to Ms Amonoo-Acquah's submissions, that, of course, the children can have a degree of autonomy and they can decide whether to engage or not to engage with the indirect contact and they will, of course, know the accepted frequency, and that eliminates the risk of harm. Well, of course, regardless of whether M is involved in any element of gatekeeping, I would point out that the children, particularly, in terms of their ages, will have a level of autonomy in any event, regardless of anything M does. In addition, I am sure I can take judicial notice of the number of times in private law proceedings, that parents fail to grasp that, particularly older teenagers, are going to do what they chose to do, regardless of any input from their parent or in fact the court.

52. Again, looking at what I have from Ms Chambers' report and her revised recommendation it seems clear in relation to the children's strongly stated wishes and feelings, that they do not want any contact, that ordering indirect contact, therefore, is against their wishes and feeling at this stage. However, particularly in relation to the younger children, obviously those wishes and feelings carry slightly less weight at this stage, and clearly for all of the children, the wishes and feelings cannot ultimately be determinative over what the court may order, albeit, as I say, particularly in relation to an older child, the reality may be slightly different.

53. There is, following from that, and again, looking at the content of Ms Chambers' report, potentially, obviously a risk of harm to these children, in going against their wishes and feelings, in ordering any indirect contact. However, Ms Chambers' recommendation, I am very clear about this, it is both in the report and I think, clear in terms of the written

submissions, is that the children's identity needs and ultimately their psychological relationship as well as, potentially, practical relationship with their father, does need to be preserved through indirect contact. In addition, that indirect contact should be at a frequency that does not expose them to a risk of future harm.

54. The balance, in my view, is struck by making the order that requires the indirect communications to be gatekept by M, Noting that, as I mentioned earlier, of course, inevitably, because the Court has not made any findings, the Court has to proceed on the basis that no finding is made about M being unable to do that gatekeeping in a way that promotes the welfare interests of the children. The only aspect that I have referred to, at several points in this judgment, at this point, is the parental acrimony that the children have been exposed to, arising from the evidence that I have in Ms Chambers' report and the admissions that F has made in that regard.

55. That is not sufficient, in my view, to enable me to conclude today, that to say that M will not consider those indirect communications from the perspective of the children's welfare needs, in terms of whether they are in a safe place in terms of their mental health at a particular time, to consider whether they wish to read those indirect communications. However, also, in terms of what may be the content of those communications, by reference to whether, again, what she knows about the children at the particular time, may mean that it is not appropriate to hand that communication directly to the child, but for example to wait until they are in a better place.

56. That is not, for the avoidance of doubt, determining anything in relation to M's allegations about F's behaviour because, again, I am not conducting any fact-finding in relation to that and I am not making any conclusion that F will put anything in there deliberately that is inappropriate. However, the inevitable consequence of him having no direct contact with the children and only limited information in terms of what is going on with them, is potentially that inadvertently there may be something in that communication that in the particular moment may mean that it is not appropriate for the children to see that.

57. It is light of that, therefore, my conclusion is that contact, indirectly, should be more frequent that M was asking me to order through Ms Bennett's submissions. It should be in accordance with Ms Chambers' recommendations. Therefore, for the avoidance of doubt, because I think this is the sort of case, with the sort of parties concerned, where detail is going to be important, that that is at a frequency of once every other month, that, I think is the six times a year that Ms Chambers is recommending. Plus, bearing in mind where we

are, we are talking about October of this year being the starting point in relation to that, for reasons that I agree are entirely in the welfare interests of the children in light of Ms Chambers' analysis.

58. That would therefore mean that indirect contact would commence in the month of October, so not before 1 October, would not take place in November, would take in December. However, given the significance of Christmas in December of each year, and given the children's birthdays, in my view there should be in addition to that six-times a year, every other month, indirect contact by way of letters or cards at Christmas and for each of the children's birthdays.

59. That indirect contact is to be via M, and in my view, that arrangement, at the moment, I cannot see a timescale at which I can make an order that it could move from indirect to direct contact. However, given the combination of the other orders that I have made, that needs to be unless otherwise agreed between the parents, or otherwise ordered by the court. For the avoidance of doubt, I am making a section 91(14) order, so it is my expectation that unless something changes, with clear evidence of that change, in terms of the risk to the children of recommencing proceedings, that that indirect contact arrangement will obviously, therefore, be in place for at least the next 12 months. It may be longer, of course, because of the issues in relation to the children, and as I have already noted, the likely timescale in terms of any change in relation to the children's wellbeing as a result of therapeutic input and I am saying that so that both parents can understand and manage their expectations in that regard.

60. I accept, F will be upset and frustrated, because I do accept that it is deeply upsetting and frustrating, on his part, to have his relationship with the children curtailed in the way that my orders will be curtailing it. However, again, I come back to the starting point, which is the welfare of the children regardless of any upset or frustration on the part of a parent. This is about trying to create a pause for the children in terms of issues in relation to them, because, as I have also noted already, on any reading of Ms Chambers' report, these are children who have been profoundly affected, whatever the rights and wrongs of the actions of their parents, by the conflict and the proceedings alone have had a profound impact on these children. My fear is that that will be a lifelong impact on these children, given what I have in the NYAS report. I hope that is not the case, but, as I say, it is important to manage expectations in this regard.

61. I can tell you, as an experienced family judge, and I am sure Ms Chambers may have made this point to each of you as an experienced independent social worker that she is, that given what is described in her report, there is no quick fix in relation to the children. It is going to take considerable time and it may be that the issues are not entirely resolved in relation to these children.

62. Therefore, in terms of the decisions that I have had to deal with, I just want to conclude with indicating that despite my having, of necessity, at points to refer to no doubt distressing things for both parents I wish again, to commend them for eventually reaching a position that I think has put the welfare of the children first. I can see, I am not sure that all advocates in front row can see, it is palpably distressing to each parent in terms in being involved in this case and the decisions that I have had to make.

63. I hope this lays the groundwork to enable both of them and the children to move on from where they have been over the last, over a year, in fact, in terms of the timing from when they separated as parents.

64. In addition, to acknowledge that, as I have already said, I do not think it would have been possible for either of them, or the court, to have reached this conclusion without the expert assistance of Ms Chambers, and I am, for one, very grateful for that. I am aware, I am not sure the parents are aware of this, that at various points, the pressure upon the family justice system and as result, the pressure upon agencies such as Cafcass and NYAS, has led to the court being unable to have either a guardian from Cafcass or a NYAS case worker, in fact. Therefore, we are very fortunate that NYAS had the resource to be able to allocate the case worker in this case.

65. That is my determination in relation to the outstanding issues.

66. For the avoidance of doubt, by the way, on the Practice Direction 12G point, I think in terms of what it is appropriate and proportionate for me to cover, I mentioned obtaining a transcript in relation to my judgment, which I will then anonymise. That, I think, needs to be obtained, we need to sort out who is going to do that, and what the implications may be for public funding certificates, if that is appropriate.

67. I need to give permission for a copy of that transcript, a copy of the order and the NYAS report, for the avoidance of doubt, to be disclosed to any professional involved in the provision of education, medical support or treatment or mental health treatment or support, including the provision of counselling services to the children, because although Practice Direction 12G talks about information from within the proceedings, you need specific

permission to disclose a copy of the court order and a copy of the judgment, albeit, the judgment will be in anonymised form, those individuals will clearly, by receipt of the order, be able to work out who the parties are and who the children are, notwithstanding the anonymisation.

68. In terms of whether you need a restriction, which is, I think the application that was being made, my view is that that is not necessary and proportionate, for two reasons.

69. One is, actually, I mentioned earlier about my hope that everybody will move on in relation to this. Applying basic principles, no findings, as I have said more than once in my judgment, have been made in respect of either parties' allegations. Both of you, as parents, I think will now need to reflect on how you change the way in which you behave as parents of these three children going forward and in light of the orders that I have made, and that includes thinking about, for example, what may be disclosed to anybody that you could ordinarily have disclosed under Practice Direction 12G's allowances.

70. If you disclose something that ultimately results in the children being exposed to further risk of harm, that in my view, brings two potential consequences, neither of which are going to be at all in the welfare interests of the children or necessarily in your interests.

71. One is that you could be creating the basis for one of the other parties to make an application for leave to apply, because that could be a change of circumstances, during the currency of that section 91(14) order.

72. The other is, of course, is that you could be risking, yet again, involvement by, for example, social services by way of child protection action on their part. Neither of which, given as I have already noted, the profound impact on these children of being caught up in parental acrimony, would be in the welfare interests of the children at this stage.

73. Therefore, I would urge you to, as I say, outside of this hearing, and once perhaps, things have settled down, to reflect on what you can do differently in the future, because it is clear that your children cannot have a repetition of what has happened to date.

74. In terms of what is conveyed to the children about the outcome of the proceedings, Mr Crawley, I do not know if you want to take some instructions from Ms Chambers, but at the conclusion of the proceedings, of course, the Guardian's role ends. However, there is normally a period of grace following the final hearing, for example, if the Guardian wishes to speak to the children. It is agreed that it is appropriate for the children to know the outcome of these proceedings from Ms Chambers at this stage.

End of Judgment.

Transcript of a recording by Acolad UK Ltd
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