Neutral Citation Number: [2024] EWFC 366 (B)

Case No: GU21P07190

IN THE FAMILY COURT
SITTING IN GUILDFORD

Date: 15/11/2024

Before :

DISTRICT JUDGE PAUL BISHOP

- -

Re C (A Child) (No contact)

Between:

T	**Applicant**
- and -	
Z	**Respondent**

- -
- -

The **Applicant** was not represented.
Ms Sophie Kay (instructed by **Ms Laura Nokes of Owen White & Catlin LLP**) for the **Respondent**

Hearing dates: 25-27 September 2024

- -

APPROVED JUDGMENT

DISTRICT JUDGE PAUL BISHOP:

INTRODUCTION

1. This is the final hearing in a case concerning a child, C, aged 8. His parents met in 2014 and married before the birth of C. The father, who is anonymised to 'T' but referred to as 'F' for father in this judgment, issued an application for a child arrangements order on 12 October 2021. He provided no detail as to the order sought and claimed a MIAM exemption as he was in prison. He now seeks direct contact with C.

2. The mother, who is anonymised to 'Z' but referred to as 'M' for mother in this judgment, seeks an order for C to live with her and for there to be no direct or indirect contact between C and F. She also seeks to restrict F's exercise of his parental responsibility, an order under section 91(14) of the Children Act 1989 to last until C is eighteen years old, and findings in relation to alleged breaches of F's Restraining Order.

Background

3. F was arrested and detained in Spring 2020. He was subsequently convicted following entering guilty pleas to engaging in controlling and coercive behaviour in relation to M over a period of four years, three counts of assault by beating (M, C and a non-subject child C2) and threats to kill M.

4. At the sentencing hearing, the judge said in relation to the first charge that F had made threats to M including knee capping her, holding swords and knives to her and threatening to kill her. F is said to have punched M frequently and to have been extremely jealous of her having any contact with other men and threatened to disfigure her if she did. He is said to have threatened to take C to [country 1] and to have made several extremely disturbing and violent sexual threats to M, including threatening to cause internal injury with broken glass.

5. The prosecution submissions at the sentencing hearing, unopposed by defence counsel, went further, reciting threats to disfigure M by throwing acid in her face and to mutilate her face, describing explicitly the way he would do so. F was said to be fascinated by arson and how weapons could pierce the skin, having described to M what damage a crossbow might do.

6. The prosecution also refer to a cupboard shown to the police upon F's arrest at the family home holding various weapons including crossbows, knives and a machete.

7. The judge found that F's persistent action, including use of multiple methods of controlling and coercive behaviour, over a prolonged period, was intended to maximise M's fear and distress as well as intended to humiliate and degrade her. Furthermore, C was in fear of violence, suffering very serious alarm and distress, which has had a substantial effect on M.

8. In relation to the assault of M, F head-butted her causing physical injury.

9. In relation to the assault of C and C2, both very young children at the time, F punched them in their stomachs. The judge said that they were clearly in pain and fear as they started screaming.

10. In relation to the threats to kill M, after M confronted him about hitting the children, F aimed a loaded crossbow at her head.

11. F was sentenced to three and a half years in prison and made subject to an indefinite Restraining Order, prohibiting direct and indirect contact with M, attendance at any address where she may reside or place of work, contact by any means with the children save for supervised access arranged and supervised by social services, attending any place where the children may reside or their schools, and related geographic restrictions. The case is described by the prosecution an exceptional case, where it was clear that the M and the children should have no contact with F.

12. Reference was made to F having no previous convictions in the UK, but having cautions for possession of an offensive weapon and possession of class A and class C drugs. Reference is made to F having been imprisoned in [country 2] for trafficking heroin and in [country 1]. The Cafcass safeguarding letter dated 14 December 2021 records extradition from the UK to [country 1] in 2015 in relation to a conviction for trafficking heroin and cocaine. F told the Cafcass section 7 report author that he had been sentenced to eight years in prison in [country 2] and that he served four months in prison in [country 1].

13. F was released from prison in early 2022 on licence.

Procedural history

14. The first family court hearing was listed in May 2022 but adjourned at M's request for a short period on medical grounds. For reasons I am unaware of, the first hearing was not subsequently listed until 24 February 2023. I reserved the case to myself and directed various disclosure, a risk assessment from F's probation officer, that F undergo drugs testing, a report from Cafcass under section 7 of the Children Act 1989 and statements from the parties in response. I ordered that there be no direct or indirect contact between F and C until further order.

15. M has been permitted to attend remotely throughout proceedings on the basis of F's convictions and the Restraining Order. I was told that her address and geographical location are confidential and that she had changed her appearance such as to be less recognisable. She was permitted to have her camera switched off except during her oral evidence, during which I could see her but F could not. Two police officers were in attendance at all hearings in the court building attended in person by F, at the request of the police who informed the court that F, "*has made threats to his probation officer about preparing for war and preparing to take people down in the Justice system, specific to his next attendance at court*." F was also accompanied by support workers from his supported housing unit at some hearings.

16. Cafcass produced the section 7 report after some delay on 30 June 2023, and the next hearing took place on 14 July 2023. I directed a one-day final hearing to take place in September 2023, and disclosure of the transcript of the criminal court sentencing

hearing. M alleged breach of the Restraining Order and I directed witness statements on this issue for a potential fact finding during the final hearing.

17. Two weeks before the hearing, having been told that the Cafcass officer would be unavailable on 18 September 2023 and that the police required further information to complete enhanced checks on F, I directed that the final hearing be relisted.

18. What was listed was instead a pre-trial review before a circuit judge, unbeknownst to me (but as was by then the usual listing policy in advance of final hearings). The judge directed a two-day final hearing before any judge, perhaps not being aware that the case was reserved to me, M not being represented by her usual counsel, Ms Kay, who has otherwise represented M throughout.

19. The final hearing was then listed in April 2024. Despite case 'flags' recording that the case was reserved to me, that all hearings must be held in a full court room, not judges' chambers/hearing rooms, and noting that the police had requested to be informed of all hearings, an oversight led to this being listed before another judge, in her chambers/hearing room and without the police being informed. As a result, the judge would have been alone with F in a small room for the duration of the trial. In the event, the judge was unwell and the hearing did not go ahead. The case came back to my attention as a result and I listed a directions hearing the following week. I directed updating statements and listed the hearing for 25-27 September 2024.

20. Security concerns came to the fore following the serious attack on His Honour Judge Perusko in November 2023. The HMCTS protocol for managing potentially violent people was updated in January 2024 and I directed that a risk assessment be completed. Following Mr Justice Peel's decision on 19 March 2024 in *A Local Authority* v *D and Others* [2024] EWFC 61, F was asked by the court office whether he had the technology to enable him to attend the final hearing remotely. I was informed that he did and was content to do so, and the hearing was accordingly listed as a fully remote hearing. Whilst remote hearings are in some respects more difficult and may take up more time, I am satisfied in this case that F received a fair trial and that a fully remote hearing balanced the competing rights of both parties, particularly under Articles 6 and 8 of the European Convention on Human Rights and was a proportionate response to the potential threat. An extra day was provided in the trial timetable to accommodate the remote trial and what was anticipated at that stage to be an oral judgment.

EVIDENCE

Professional evidence

Local Authority

21. The local authority disclosure includes an assessment completed soon after F's arrest in 2020 in which M reports the same and other similar behaviour from F towards her

and the children as raised in the sentencing remarks referred to above. It refers to F having had previous children removed from his care as a result of his substance misuse and that of his then partner.

22. A further assessment followed shortly before F's release from prison, in which C is said to recall that his father had punched him in the stomach and that "*he is worried that he will do it again to him should he come out of prison*."

23. F is said to have violated the Restraining Order whilst in prison by sending what is elsewhere said to be 36 letters to M and/or the children. This is said to be a "*strong indicator that he does not understand the impact of his behaviours on the children's wellbeing. There is a likelihood that he might subject [M] and the children to post separation violence*." A safety plan was recommended.

24. It is also apparent from this report that whilst in prison F reported to social services that M uses illicit drugs and is letting a man known for drug use into the home. No further action was taken.

C's additional needs

25. I have seen a report on C by a developmental paediatrician following an appointment in 2022 as part of an Education, Health and Care Needs Assessment (EHCNA). C is said to have traits of ASD and ADHD and to need further assessment, and to have severe anxiety and sleep difficulties.

26. In what appears to be shortly after in 2022, C was assessed by an educational psychologist as part of the EHCNA process. C's experience of domestic violence is said to underpin the initial difficulties that he had on entry to school and to explain the way he presents and the support he continues to need. A range of difficulties are identified and C is said to be hypervigilant and quick to become dysregulated by relatively minor triggers and in need of a high level of adult support. It is said that:

"*Difficulties moderating responses to stress and perceiving non-threatening situations as stressors is a common response children exhibit when they have experienced trauma, and for [C] these difficulties are apparent in the classroom*."

27. Following a further appointment with the developmental paediatrician in early 2023, C was added to the ADOS pathway (for autism assessment), referred to CAMHS for anxiety and emotional problems, and provided medication for his sleep difficulties.

28. Although M asserts in her oral evidence that C has been diagnosed with ASD and ADHD, this is not apparent from the disclosure. At the end of the hearing permission was sought, and granted, for any further evidence in this regard to be filed and served. Nothing has been forthcoming.

29. I have also seen C's 2024 EHCP review, which records C's needs as set out in the expert evidence above. He is currently receiving 17 funded hours of 1:1 support at school.

F's medical evidence

30. F disclosed a 2023 letter from his NHS psychologist. F was referred by his GP with a diagnosis of PTSD and struggling with his mental health. The psychologist subsequently diagnosed complex-PTSD, although he did not commence treatment until early 2023. By the date of the letter F had had six sessions of CBT. Reference is made to a referral for a psychiatric appointment, requested by the probation service. No update on either service has been made available to me.

31. F provided hair samples in 2023 which tested negative for cannabis, cocaine, opiates, spice and alcohol. F claims to have been drug free since 2017.

Risk assessment

32. The Probation Service provided a risk assessment of F in 2023, generally and in relation to contact with C. The Cafcass safeguarding letter also refers to liaison with F's probation officer who had told Cafcass that F had expressed some negative attitudes towards M whilst in prison and the probation officer was concerned for M's safety, believing that F will attempt to have contact with M and C despite the Restraining Order and that he poses a high risk to them.

33. Whilst F's engagement is said by the Probation Service to have been positive, he is said to have held negative views about the Building Better Relationships (BBR) programme, required by his licence. At the time of the report he had not started this and I understand that he never did so. The Cafcass section 7 author refers to this as a Domestic Abuse Perpetrators Programme (DAPP).

34. F is said to be able to reflect on his past behaviour and to regret the actions which led to his recent prison sentence, and to be ashamed of his behaviour.

35. He is said to have completed a number of courses, including level 2 counselling, addiction, suicide prevention and exercise and nutrition, and to be focusing on a level 3 counselling course, hoping to train to be a recovery coach and support others who are going through addiction.

36. F is said to understand why the Probation Service would assess him as high risk and why they would have concerns about his previous behaviour. The risk towards M, C and C2 is said to be high, due to F needing to understand his risk factors and the need to develop healthy relationships. Harm is assessed as being of a physical, psychological, or emotional nature, which it is said could result in serious harm being caused. The risk to the children is said likely to occur if they witness violent or aggressive incidents against their mother and the long-term psychological impact this would have on them.

37. It is said that risk would increase if F were to have unsupervised contact, or if he were to relapse into drug use, or if his PTSD symptoms become unmanageable and he is not engaging in treatment, or if there is not a favourable outcome to the current proceedings.

38. F's risk towards future partners and their children is assessed as high (on the basis of previous behaviour). The risk would be of a serious violent or emotional nature. The risk to children is of direct violence or emotional distress from witnessing incidents involving violence or aggression.

39. F is said to be a medium risk to probation staff. He is said to have shared extreme views at times and there is concern about his offence involving storage of numerous weapons.

Cafcass section 7 report

40. Ms X of Cafcass provided a welfare report under section 7 of the Children Act, dated 20 June 2023. Ms X is no longer in the service of Cafcass and so, as is usual practice, Ms Y, a service manager, gave evidence at the final hearing.

41. C volunteered to Ms X, "*Why would I want to see my dad? He punched me in the stomach*." He reported knowing that his father hurt his mother. Later in the same session with Ms X he said, "*Maybe I would like to meet my dad. Maybe*." This is said to be consistent with M telling Cafcass that C is sometimes curious to meet F and occasionally talks to her about this.

42. Ms X urges a great deal of caution in terms of considering any contact between F and C, given the high level of violence that C was witness to and the assessment of the risk to M if she were to come into contact with F.

43. F is commended by Ms X for stopping using drugs. He is noted to have sought out appropriate support from his GP, therapist, keyworker at the housing unit, the CMHT and from Reverend A of his local church.

44. He is reported to have said that M is a good mother and to have presented as loving C and being desperate to see him. However, Ms X says that she had to manage his expectations which she thought were quite unrealistic in parts.

45. She reports that F accepts his wrongdoing and in part blames his behaviour on becoming mentally ill and paranoid as a result of using drugs. F also tells Ms X that he and M were doing drugs together and that M was having an affair. He claims that M does not fear him on the basis of letters she sent him in prison.

46. Ms X concludes that it would not be in C's best interests to have direct contact with F. She expresses concern that if the court ordered supervised contact F may discover the location of M and C through things C discloses. She was also concerned that, if the court does not order direct contact, F may "*take the law into his own hands*", or relapse in his drug use or mental health. She notes that F has not undertaken the BBR/DAPP programme offered by the Probation Service.

47. Although it is not reported by Ms X that F alleges alienating behaviours from M, she states:

48. "*I did not get the sense at interview that [M] denigrates [F] to [C]. Indeed this is self-evident given that [C] told me that he would 'maybe' like to see his father. She described worrying about what and how much to tell [C] about the past – she describes being determined to make sure that [C] does not grow up to follow in his father's footsteps in terms of offending behaviour*."

49. Ms X records that, "*this situation is very finely balanced between an order for no contact and indirect contact*" and that, "*any undue stress and strain on [M] is indirectly harmful to [C] as he relies on his mother for all his day to day care*."

Nonetheless, she concluded that (subject to varying the Restraining Order) it was possible for there to be letterbox contact three times a year, which she considered was the only safe form of contact. Even then post would need to go to a professional address (such as a solicitor she says) to reduce the risk of F finding out where M and C reside. She says that M could put the letters in a box for C to access as he wishes, after screening the letters and ensuring no recording or tracking devices are present.

50. Lastly, she thought a section 91(14) order would be premature, unless there is further evidence of stalking type behaviours by F or further convictions.

51. Further Cafcass letters report that Children's Services are unable to facilitate letterbox contact and Cafcass suggest a contact centre or a PO Box.

The parties' written evidence

52. I have considered all the written and oral evidence in reaching my decision. I set out below only that which I consider particularly relevant.

The father's written evidence

53. In his statement dated 20 February 2024 F alleges that M is a "*covert narcissist*" which he says is "*a genuine personality disorder requiring equal intervention as my PTSD*." He suggests that M's behaviour is motivated by resentment towards him and inflicting psychological and emotional damage upon C and that "*these traits align with a psychopathic lack of empathy and refusal to acknowledge the harm caused to others*."

54. He alleges that M is alienating C against him and that her manipulation is causing C to believe destructive false narratives. He alleges he was set up by M in relation to falsely alleged breaches of the Restraining Order and had violence threatened against him by a man he says M had an affair with.

55. M is said in this statement to have, "*an underlying fear should truths emerge contradicting the narrow narrative she has put forth*." F had been warned by me that I considered similar comments which he made in court on 14 July 2023 could be considered threatening (he told the court that he had information that would get the mother in trouble but did not want to use it).

56. In his statement dated 25 August 2024 F alleges that M sent his adult daughter (AD) in [country 1] pictures of her newborn children and her partner. This statement includes a section entitled "*Exploitation of [M's] vulnerabilities*" which alleges M to have a history of mental health issues stemming from childhood trauma.

57. This and the previous negative commentary about M runs contrary to a later assertion in the same statement that: "*I hold no ill will towards [C's] mother and am wholly dedicated to fostering a peaceful and supportive environment that prioritizes [C's] wellbeing above all else*."

58. In a further statement dated 19 September 2024, F seeks that he be permitted to call Reverend A to give evidence at the final hearing. He includes a statement from Reverend A given to the police in 2020. In it, Reverend A says that M expressed fear

that F would kill her for calling the police (leading to his arrest in 2020) and saying that he believed that F is capable of this.

The mother's written evidence

59. In her statement dated 11 July 2023, in response to the section 7 report, M says that she does not think that the suggested letterbox contact can take place safely. Neither her solicitor nor the Probation Service are able to assist (after their respective engagements end). She is concerned that F may find out where she lives, whether through the administration of a PO Box, or through tracking devices. She says that he has made such threats and tracking devices were seized when he was arrested. She is concerned about the content of any letters being harmful to C or to herself, saying that previous letters sent to C were indirectly for her.

60. In her updating statement dated 21 August 2024, M says that in the week before the final hearing listed originally in April 2024, F told AD that if she had contact with C he would kill her.

61. M also talks of her fear of F, leading her to hand a letter to her solicitor on the first day of the hearing scheduled in April setting out her last wishes as she was "*so scared that [F] might try to come and kill me after the hearing*." In her statement, she also details the extensive security measures that she has at home.

62. In a statement dated 18 September 2024, responding to F's updating statement of 25 August 2024, M says:

> *"I was incredibly upset, anxious and scared when I received the applicant's updating statement. He uses every opportunity to discredit me and blame me. The applicant still fails to recognise the harm he has caused to myself and his son. The applicant has not taken accountability. His application is meant to be about [C] but much of his statement focuses on me and how I am conspiring against him.*
>
> *I find the applicant's letter intimidating and very concerning. I am very worried that if there is any indirect contact, the applicant will use the letters to threaten me like he is doing in his statements. The applicant is using this statement to manipulate me. I am scared by them and find them very distressing. The abuse is continuing, and his statements show that it is likely to continue. He will use a letter to get to me. It is concerning to me that the applicant is writing statements like these even under the spotlight of proceedings. If letters are inappropriate and threatening, this is going to have a significant impact on me and therefore [C]*."

63. Referring to F knowing of M's newborn children and her partner, M states that she did not send such photos to AD and so he cannot have got them from her. She says, "*I also find it very scary and intimidating that he is telling me how much he knows about me and my family and detailing it in his statement when it is not relevant to his application*." She suggests that this is intended to intimidate her before the final hearing.

The parties' oral evidence

The father's oral evidence

64. F presented as visibly wound-up by the questions from M's counsel and had to be repeatedly reminded by me to keep to the point. Throughout his evidence F sought to assert again and again that he is a changed man and that M carries part of the blame for his behaviour due to the alleged affair. These assertions are not supported by the wider evidence.

65. In reference to describing M as a narcissist, F told the court: "*I didn't call her just a narcissist, but a 'covert narcissist'. My thing is psychology, I study this stuff, she fits the diagnosis and I'm trying to help her here*." Asked if he was qualified to describe M this way he said, "*I've been around them. I've researched, I'm qualified through experience*."

66. In relation to sending letters to C, F noted that M has reported in her statements C saying that he will "*scribble them out*". He said that for this reason there is no point in sending letters, suggesting though that C has been 'alienated'.

67. Asked about his acceptance of perpetrating domestic abuse against M and C, F said that whilst it was his fault it was "*due to reactive abuse, itself a form of psychological abuse*." In other words, due to M's alleged mistreatment of him.

68. Asked about his refusal to engage with the Probation Service BBR/DAPP course, F said:

"*I've done five accredited courses. I can facilitate a BBR. I know everything about it. I have studied it. I am creating one myself, as a victim of domestic abuse and a perpetrator, as the probation one is not effective; it's a waste of money*."

69. In relation to his having taken a level 2 domestic abuse qualification, a course for professionals not perpetrators, F said that he was going to apply it to himself and conduct his own CBT therapy.

70. Asked about having the word 'Revenge' tattooed on his chest he initially denied this, saying that it was a dragon, but then admitted having had such a tattoo on his stomach, which has been covered over with a dragon.

71. For the first time in these proceedings, during his oral evidence F claimed that AD had also sent him a picture of C in school uniform and that he had worked out which school C attended from the logo on his school bag. When asked the name of the school he claimed not to remember. The same response was given to the colour of the uniform, but he said, "*I Googled it so could look it up*."

72. In response to the suggestion that he included information about M's newborn children and partner in his statement and raised knowledge of C's school for the first time today to intimidate and frighten M, F said, "*no it's to show she's not afraid and knows he wouldn't harm her*."

73. He then said, "*I will make this simple, in the digital age, I would find where anyone lives*."

74. In relation to threatening to harm AD if she had contact with C, in the week before the final hearing listed originally in April 2024, F accepted this but suggested it was a joke.

75. Asked about restriction of parental responsibility, F initially said that he trusted M to make decisions about C, but he "*remains [C's] father and will be there if he needs him*". However, taken to the prohibited steps orders proposed by M's counsel, F disagreed with the proposed orders and suggested that a mediator be used if M needed to contact him with concerns about C.

76. When it was suggested that the decision on restricting parental responsibility would follow a decision on no direct contact, whether or not there was any letterbox contact, F returned to a similar defensive position taken in his earlier oral evidence. He could not see that he might not be allowed direct contact given that there are he says, "*no safeguarding issues. I have the insight, have made lots of progress, clear for years, done everything a man can do*." He again threatened exposure of matters he says M is seeking to hide saying this time, "*somethings I should go to Scotland Yard about, but I don't want to get [M] in trouble*." I intervened and told F that I must assume that I have all relevant information at this point and, if not, and if there is a safeguarding issue in relation to C arising out of unspoken allegations, then he must report them to social services and/or the police.

77. F was asked whether he agreed to a section 91(14) order being made in this case. The effect of such an order was explained to him, but he did not provide a definitive answer beyond "*I have proven everything to the court*".

The mother's oral evidence

78. In her oral evidence M presented as highly fearful of F and determined to keep him out of her and C's life. I found her evidence to be credible and supported by the available evidence.

79. Asked by her own counsel, Ms Kay, about F's oral evidence she said that she was extremely concerned that F claimed to know C's school and felt that C would need to move schools again as a consequence. She said that she found F saying that he could find out anyone's address terrifying. She denied having sent any pictures to AD of either her newborn children and her partner, or C in school uniform.

80. On letterbox contact, M said that she was concerned F would watch a PO Box in an attempt to find her and that similar risks were present in attending a contact centre for C to be shown letters by professionals. She was also concerned about the distance (of a centre that had been proposed), cost and how C, given his additional needs, would cope with this. She thought that even if a contact centre reviewed a letter as inappropriate and did not show C, she would still be aware of the content and F would still be able to control her life and make her miserable.

81. As for simply receiving letters and putting them in a box until C is 16 or 18 years old, as C has expressed that he does not want such contact currently, she felt this was not fair on her and might still be used to track her. She thought that she would spend the lead up to, for example, Christmas worrying about the next letter coming and if it would upset C.

82. F was prohibited from asking questions directly of M and so had been invited to provide a list of questions for me to ask her. He provided one question, which I broke down into multiple parts, and what amounted to a short statement, which I read and

asked such questions of M as arose. That statement set out what F described therein as, " *... the truth that has been kept in the dark, and it is essential to understand the full context of what happened, in order for this court to make a fair decision that benefits [C's] wellbeing and future*." It concerned M's alleged affair with a man that F knew from his time in prison in [country 2] and what F considers to be a long-held plot between M and this man to have F locked up. When questioned, M denied any truth in these allegations.

83. In relation to restriction of parental responsibility, M told the court that if there is a medical issue with C she cannot contact F due to the Restraining Order (in fact, she can contact F, it is just that F cannot respond, given the Restraining Order.) She said that she cannot, for example, ask him permission to change school, given that she seeks that the school details remain confidential. She confirmed that she only seeks orders in relation to parental responsibility if the court refuses to order direct contact.

Cafcass oral evidence

84. Ms Y is a very experienced Cafcass officer and gave well thought out and clear evidence. She did not seek to defend the work of Ms X, but rather to carefully consider the report and all of the evidence before the court and draw her own conclusions. She was present throughout F and M's oral evidence before giving her own evidence.

85. Asked what her recommendation was, having seen and heard all the evidence, Ms Y said she thought that letters would be harmful to C, not least as C had expressed the wish not to receive them. She was concerned about the impact of receiving letters on both C and M having considered all the evidence.

86. In relation to a section 91(14) order, Ms Y was very concerned to have heard that F had shown knowledge of M's newborn children, partner and C's school. She said, "*it felt incredibly unfair on M to have raised the school in the course of oral evidence, knowing that it would shock M*." Although Ms Y was not convinced that F in fact knew which school C attends, she considered raising this in the hearing to be abusive behaviour.

87. Given these recent behaviours, Ms Y recommended a section 91(14) order until C is 16 years old. She said that she did not think F would give up easily as he thinks that he is entitled to contact with C despite the significant risks and the harm he caused. Her view was that a section 91(14) order should be made for long enough to give the family respite and should extend into C's teenage years. She did not accept the suggestion that the order should extend to age 18, given C's vulnerabilities, as she thought that it is difficult to know what his needs will be by age 16.

88. Asked questions by F about alienating behaviours, Ms Y considered that C's rejection was justified; his negative experiences had led to him not wanting to see F. She noted that C has expressed an interest in F – something that she said was not usually present if there are alienating behaviours, as an alienated child usually shows no curiosity about the other parent, instead they reject them wholeheartedly.

89. F told Ms Y that he sought input into any change of school. Ms Y did not agree. She thought F should have no significant input on a day to day basis and reminded F that

the only reason school change is being contemplated is because he claims to know where the school is. She gave the view that M should be able to select a secondary school without input from F.

90. I suggested to Ms Y that, on the evidence, it is at least possible that M may seek to relocate to [country 2], and social services provided evidence of their concern about the sort of relationships M has historically been involved with. I asked Ms Y to consider whether there should be some scrutiny or safeguarding in relation to any proposal by M to relocate overseas. I suggested that M could perhaps apply to the court to travel out of the jurisdiction for more than one month. Ms Y agreed that significant travel or relocation should be open to scrutiny to safeguard C.

91. In relation to informing F if C has a life-threatening illness or injury (or dies), Ms Y accepted that it was potentially safe for F to be notified by the hospital and that the court could consider this. However, she also gave the view that, given the risk that M may then be subject to an emergency court application by F seeking to see C, at a stressful time for M and C, she should not be required to contact F unless C dies.

92. Asked about F having a copy of C's birth certificate, as nothing was known about the effectiveness of this court's restrictions on passport applications in relation to [country 1] passports, she considered the risk of F having a copy of the birth certificate was too great.

93. Asked for her view on M being required to send F regular updates on C's school progress, health and additional needs, she thought there could be a general update, but that M would probably find it very difficult. She suggested that any update ordered should be yearly at most and limited to information that would not identify M and C's location. She gave the view that once C became aware of his right to privacy, perhaps at age 10, maybe later due to his additional needs, he should be allowed to decide whether anything was shared with F.

94. However, Ms Y accepted that there might be difficulties in sending updates as, for example, F would not be able to notify M of any address change. She did not accept that F could track an email sent to him or that there was significant risk to M in such a one-way conversation. She accepted there was the potential for some risk of emotional harm if C were involved in the updates but clarified that she was not proposing C necessarily be involved in the decision on what information to share, just that he be asked if any information can be shared. Ms Y ultimately changed her initial view, considering instead that the risks outweighed the limited benefits.

95. Ms Y agreed that the full proposed list of orders sought by M to restrict F's exercise of parental responsibility were necessary and proportionate, save for removal from the jurisdiction for periods of one month or more.

THE LAW

Fact finding

96. The legal principles to be applied in the fact-finding exercise are well established. See, for example, *BY v BX* [2022] EWHC 108 (Fam).

i) The burden of proving the facts relied upon is on the person seeking the finding. It is not for the other party to establish that the allegation(s) are not made out: *Re B (Care Proceedings: Standard of Proof) [2008] UKHL 35*

ii) The standard of proof is the balance of probabilities. If a fact is proved it happened, if it is not proved it did not happen and must be disregarded – the so-called binary consequence: *Re B*

iii) As a matter of common sense, the court can take into account inherent improbabilities in deciding whether the standard of proof has been met: *Re B*

iv) Findings of fact must be based on evidence, not on speculation: *Re A (A Child) (No. 2)* [2011] EWCA Civ 12

v) The court must take into account all the evidence, considering each piece of evidence in the context of the other evidence – surveying a wide landscape.

vi) The evidence of parents and other carers is of the utmost importance and the court must make a clear assessment of their credibility and reliability.

vii) It is common for witnesses to lie in the course of investigation and hearing. They may do so for a variety of reasons – shame, misplaced loyalty, fear and distress being examples. It does not follow that because they have lied about one matter they have lied about everything: *R v Lucas* [1981] QB 720.

viii) There is a different but related question of witness fallibility, which is a matter of reliability rather than credibility. The court should bear in mind that recall of events by a witness is a process of fallible reconstruction which may be affected by external influences and supervening events, moulded by the process of litigation and the drafting of lawyers, with past beliefs being reconstructed to make them more consistent with present beliefs and motivated by a desire to give a good impression: *Gestmin SGPS SA v Credit Suisse (UK) Ltd & Anor* [2013] EWHC (Comm).

ix) Consideration must be given to the weight that can properly be attached to hearsay evidence, particularly given that there is no opportunity to test such evidence by cross-examination: *Re W (Children*) [2010] UKSC 12.

Children Act 1989

Welfare

97. As set out in section 1 of the Children Act, C's welfare is the court's paramount consideration. The court must have regard to the general principle that any delay in determining the application for a child arrangements order is likely to prejudice the welfare of the child. The court must not make a child arrangements order unless it considers that doing so would be better for the child than making no order at all.

98. The court is to presume, unless the contrary is shown, that involvement of a parent in the life of the child concerned will further the child's welfare, 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.

99. In making an order under section 8 of the Act, a court shall have regard in particular to the factors set out in section 8(3), the 'welfare checklist':

"(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; and

(g) the range of powers available to the court under this Act in the proceedings in question."

Domestic abuse

Family Procedure Rules Practice Direction 12J

100. PD12 J is engaged as M and C have experienced domestic abuse perpetrated by F. I note in particular that the court must (paragraphs 5, 36 and 37 in relevant part):

i) Consider the nature of any allegation, admission or evidence of domestic abuse, and the extent to which it would be likely to be relevant in deciding whether to make a child arrangements order and, if so, in what terms.

ii) Ensure that where domestic abuse is admitted or proven, any child arrangements order in place protects the safety and wellbeing of the child and the parent with whom the child is living, does not expose either of them to the risk of further harm and is in the best interest of the child.

iii) Apply the individual matters in the welfare checklist with reference to the domestic abuse which has occurred and any expert risk assessment obtained. In particular, the court should in every case consider any harm:

a) which the child as a victim of domestic abuse, and the parent with whom the child is living, has suffered as a consequence of that domestic abuse; and

b) which the child and the parent with whom the child is living is at risk of suffering, if a child arrangements order is made.

iv) Only make an order for contact if it is satisfied:

a) that the physical and emotional safety of the child and the parent with whom the child is living can, as far as possible, be secured before, during and after contact; and

b) that the parent with whom the child is living will not be subjected to further domestic abuse by the other parent.

v) Consider the conduct of both parents towards each other and towards the child and the impact of the same. In particular, the court should consider:

a) the effect of the domestic abuse on the child and on the arrangements for where the child is living;

b) the effect of the domestic abuse on the child and its effect on the child's relationship with the parents;

c) whether the parent is motivated by a desire to promote the best interests of the child or is using the process to continue a form of domestic abuse against the other parent;

d) the likely behaviour during contact of the parent against whom findings are made and its effect on the child; and

e) the capacity of the parents to appreciate the effect of past domestic abuse and the potential for future domestic abuse.

vi) In every case where a finding or admission of domestic abuse is made, or where domestic abuse is otherwise established, the court should consider whether an order under section 91(14) of the Children Act 1989 would be appropriate.

101. In *F v M* [2023] EWFC 5, the father was found by Hayden J to have coercively controlled the mother throughout the relationship and to have raped her. The father's conduct during the relationship, resulted in the child being exposed to emotional harm.

102. By the final hearing, the parties had agreed indirect letterbox contact once a year as recommended by the Cafcass officer (who subsequently changed their recommendation in the witness box).

103. Finding the father's absence of empathy, warmth or sentiment towards the children to be striking, Hayden J found that:

"(31) Analysed in this way, it is impossible to identify any benefit that indirect contact might bring to these children in this case. By contrast, it is easy to see how it might be unsettling and potentially harmful to the security of both the mother and children. After reflection in the witness box, the Cafcass Officer decided that this was a case where indirect contact was not appropriate. Though M, through her previous counsel, had been prepared to agree to an order for indirect contact, it was plain that she was doing so in an attempt to avoid conflict. ...

(32) Ultimately, at the very end of the hearing, F decided that he would not oppose an order for 'no indirect contact'. For reasons which are clear from the above paragraphs, the case requires a judgment to be given. Moreover, there are occasions where it is necessary to recognise a disagreeable truth. There is, sometimes, though very rarely, a parent who has nothing to offer a child and whom the child is better off without. This is such a case. When children are received into the care system and subsequently adopted, indirect contact is invariably ordered, though on a very limited basis. This recognises that though parents will not have been able to provide a satisfactory standard of care for their children, the children continue to be loved and their parents have an important contribution to make to their evolving understanding of their lives. The decision not to order any indirect contact has to be seen in this light, truly to understand how uncommon the order is and why. My comments in respect of this father are not ones that any Judge makes lightly. Judges do well to avoid emotive terms, but equally, where a clear finding requires to be made, it cannot be concealed in abstruse and cryptic language, which might only serve to soften or occlude the message. My conclusion accords exactly with that of M and her family. In the light of all they have experienced, it seems to me that they are entitled to know and in unambiguous terms, that their assessment of this father is, in my judgement, entirely accurate."

104. In the subsequent case of *Ms X v Mr Y* [2023] EWHC 3170 (Fam), Lieven J also ordered no contact on facts closely aligned to the present case. The father in that case was convicted of controlling and coercive behaviour and sentenced to 30 months in prison. She described the evidence in that case as overwhelming that for the children to have contact with the father would cause them significant emotional harm as:

"(49) The F has been highly abusive of the M, as is proven by the fact of his criminal conviction and the very significant sentence that that the Crown Court imposed.

(50) Further, the probation report makes clear that he has neither shown any remorse for his conduct, nor any understanding of the impact that it has had, and continues to have, on the M and the children. His response appears to be to deny that he committed the offence and have no insight into his conduct. ...

(51) The Probation Service has assessed the F as being a high risk both to the M and to his current partner. I place great weight on their assessment, given that they will have had extensive contact with the F both before and during his imprisonment.

(52) 1 also place great weight on [the Cafcass officer's] assessment that the F having any contact with the children would be emotionally damaging to them, given his past and present conduct.

(53) For all those reasons I conclude not merely that the children should live with the M but that the F should have no contact, whether direct or indirect with the children. I have very little doubt that if I ordered indirect contact the F would use that to find the M and then to try to manipulate or frighten her into giving contact with the children. The negative impact on the M would, on the facts of this case, be harmful to the children."

Parental responsibility

105. Section 2(8) of the Children Act states that "*the fact that a person has parental responsibility for a child shall not entitle him to act in any way which would be incompatible with any order made in respect to the child under this Act*". Section 3(1) defines parental responsibility as "*all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property*".

106. A parent married at the time of the child's birth is automatically granted parental responsibility. That parental responsibility cannot be removed. An unmarried parent may be granted parental responsibility under section 4 of the Children Act. That parental responsibility may be withdrawn by an order of the court.

107. In either case, the court has power to restrict the exercise of parental responsibility by making a prohibited steps order, defined in section 8(1) as "*an order that no step which could be taken by a parent in meeting his parental responsibility for a child, and which is of a kind specified in the order, shall be taken by any person without the consent of the court*". The court may also make a specific issue order, defined in the same section as "*an order giving directions for the purpose of determining a specific question which has arisen, or which may arise, in connection with any aspect of parental responsibility for a child*."

108. The Family Court Practice 2024 ('the Red Book') [2.225[5]] outlines the key principles relevant to applications to terminate parental responsibility (of an unmarried parent) as follows – which no doubt have a bearing on the restriction of the exercise of the parental responsibility of married parents:

"(a) the significance of parental responsibility is the contribution to a child's welfare that status confers on the adult concerned. The concept of parental responsibility describes an adult's responsibility to secure the welfare of their child which is to be exercised for the benefit of the child not the adult;

(b) if the circumstances are such that the court would not conceivably make a parental responsibility order where one does not already exist, then the circumstances are likely to indicate that parental responsibility could be properly terminated (Re P (Terminating Parental Responsibility) [1995] 1 FLR 1048;

(c) the court should consider that it is appropriate to terminate parental responsibility where there is no element of the bundle of responsibilities that make up parental responsibility which the father could in present or foreseeable circumstances exercise in a way that would be beneficial for the child (CW v SG (parental responsibility': consequential orders) [2013] 2 FLR 655); and

(d) where the Art 8 rights of a parent conflict with the Art 8 rights of a child, it is the rights of the child that take precedence (Yusuf v The Netherlands [2013] 1 FLR 2010)."

109. As in the present case, the father in *F v M* [2023] EWFC 5 was married at the time of the children's birth and so was automatically granted parental responsibility, which cannot be removed through section 4 of the Children Act. Hayden J observes in this regard that:

"(7) … whilst I find this anomaly of legal status to be profoundly uncomfortable, I do recognise that the contemplated protection for the applicant parent and children is to be found in the regime of Prohibited Steps Orders and Specific Issue Orders which the Children Act affords. Thus, whilst the legal status of a married father remains intact, it can be stripped of any potency to reach into the lives of the mother and children. His ability adversely to affect the welfare of either may be effectively prevented. This was the approach endorsed by Sir Andrew McFarlane P in Sheikh Mohammed v Princess Haya [2021] EWHC 3480 (Fam)."

110. Later the same year in *Re A (Parental Responsibility)* [2023] EWCA Civ 689, the Court of Appeal considered this issue further. Sir Andrew McFarlane P giving the leading judgment refused a declaration of incompatibility with the right to respect for private and family life under Article 8 of the European Convention on Human Rights. Moylan LJ and Dingemans LJ agreed. In doing so, they effectively endorsed the orders made by Russel J in the judgment under appeal, restricting but not extinguishing the father's parental responsibility:

"(14) On the basis of the findings that she had made, Russell J was readily persuaded to make extensive orders under CA 1989, s 8 giving to the children's mother the right to exercise parental responsibility exclusively, and without reference to their father. The substantive order, made on 7 July 2021 ['the prohibited steps order'], which is a combination of specific issue and prohibited steps orders, states that the mother 'is expressly permitted to make all decisions and give parental consent unilaterally without reference to, without informing, and without consulting with [the father]'. A non-exhaustive list is then given of decisions which are to be exclusively taken by the children's mother, including matters concerning the children's names, travel, which country they are to live in, education and medical treatment. The order goes on to state plainly that the mother is not required to engage with the father 'in the exercise of any aspect of parental responsibility'.

(15) The July 2021 order prohibits the father from removing the children from the care of their mother, or from any educational, medical or other institution to which she has entrusted their care. He is prohibited from requesting (or getting others to do so on his behalf) any information about the children's schooling or health. The order directs that he is to have no contact by any means with the children. …"

Section 91(14) of the Children Act 1989

111. Section 91(14) sets out that, "*On disposing of any application for an order under this Act, the court may (whether or not it makes any other order in response to the application) order that no application for an order under this Act of any specified kind may be made with respect to the child concerned by any person named in the order without leave of the court.*"

112. Section 91A provides further provisions (inserted by the Domestic Abuse Act 2021), in particular:

"(2) The circumstances in which the court may make a section 91(14) order include, among others, where the court is satisfied that the making of an application for an order under this Act of a specified kind by any person who is to be named in the section 91(14) order would put—

(a) the child concerned, or

(b) another individual ("the relevant individual"),

at risk of harm.

(3) In the case of a child or other individual who has reached the age of eighteen, the reference in subsection (2) to "harm" is to be read as a reference to ill-treatment or the impairment of physical or mental health.

(4) Where a person who is named in a section 91(14) order applies for leave to make an application of a specified kind, the court must, in determining whether to grant leave, consider whether there has been a material change of circumstances since the order was made."

113. Practice Direction 12Q sets out key principles of section 91(14) orders, including in relevant part:

"(2.1) Section 91(14) orders are available to prevent a person from making future applications under the 1989 Act without leave of the court. They are a protective filter made by the court, in the interests of children.

(2.2) The court has a discretion to determine the circumstances in which an order would be appropriate. These circumstances may be many and varied. They include circumstances where an application would put the child concerned, or another individual, at risk of harm (as provided in section 91A), such as psychological or emotional harm. The welfare of the child is paramount.

(2.3) These circumstances can also include where one party has made repeated and unreasonable applications; where a period of respite is needed following litigation; where a period of time is needed for certain actions to be taken for the protection of the child or other person; or where a person's conduct overall is such that an order is merited to protect the welfare of the child directly, or indirectly due to damaging effects on a parent carer. Such conduct could include harassment, or other oppressive or distressing behaviour beyond or within the proceedings including via social media and e-mail, and via third parties. Such conduct might also constitute domestic abuse.

(2.4) A future application could also be part of a pattern of coercive or controlling behaviour or other domestic abuse toward the victim, such that a section 91(14) order is also merited due to the risk of harm to the child or other individual.

(2.7) Section 91(14) orders are a protective filter – not a bar on applications – and there is considerable scope for their use in appropriate cases. Proceedings under the 1989 Act should not be used as a means of harassment or coercive control, or further abuse against a victim of domestic abuse or other person, and the court should therefore give due consideration to whether a future application would have such an impact.

(4.1) Sections 91(14) and 91A are silent on the duration of a section 91(14) order. The court therefore has a discretion as to the appropriate duration of the order. Any time limit imposed should be proportionate to the harm it is seeking to avoid. If the

court decides to make a section 91(14) order, the court should explain its reasons for the duration ordered."

114. In addition to the guidance given by PD12J, the tests for making such an order are set out in the Red Book 2024 at 2.340(2) and the case of *Re A (Supervised Contact) (s.91(14))* [2021] EWCA Civ 1749. I note in particular the following additional principles:

i) making such an order is the exception not the rule;

ii) the degree of restriction should be proportionate to the harm it is intended to avoid; and

iii) it is important that the parties, particularly if they are not legal represented (a) understand that such an application is being made; (b) understand the meaning and the effect of such an order; and (c) have a proper opportunity to make submissions to the court.

115. The following part of the judgment of King LJ in *Re A (Supervised Contact) (s.91(14))* is particularly relevant in the present case:

"In my judgment in many cases, but particularly in those cases where the judge forms the view that the type of behaviour indulged in by one of the parents amounts to 'lawfare', that is to say the use of the court proceedings as a weapon of conflict, the court may feel significantly less reluctance than has been the case hitherto, before stepping in to provide by the making of an order under s91(14), protection for a parent from what is in effect, a form of coercive control on their former partner's part."

116. In *F v M*, Hayden J made a section 91(14) order to last until the child reached 18 years old, despite there being no application for such an order, considering that the duration of the order reflected the nature of the identified harm.

117. In contrast, in *Ms X v Mr* Y, Lieven J considered an order for 5 years to be proportionate, "*to allow the M to have a complete break for that period, and for any future court to consider whether the F has changed his understanding of his behaviour and or his actions once released from prison …*".

FINDINGS OF FACT

118. M makes four allegations of F breaching the Restraining Order and intimidating her through indirect contact via AD.

Allegation 1

119. M accepts in her statement dated 25 January 2024 that she spoke to AD about child maintenance and it is plain that AD spoke to F, whether by text or otherwise, resulting in a single text message apparently from F that is forwarded to M by AD. M responded to AD shortly after to say that she no longer seeks child maintenance.

120. F did not deny that this was his text message to AD that was forwarded to M. He told the court that he always sent messages to AD in English, despite speaking to her in

the language of [country 1]. He said that he told her not to forward them to M and was not aware that she had done so. F's texts to AD, exhibited to M's statement, support this.

121. In my judgment, F answered a question about child maintenance asked of him by AD, but without evidence from AD I am unable to establish whether M had intended her discussion on child maintenance to be communicated to F by AD, or whether through it M raised a question of F that required a response. I do not find on the balance of probabilities that F intended to communicate with M by way of his message to AD.

Allegation 2

122. M says in her statement dated 25 January 2024 that she told AD that she had re-sent divorce papers to the address F had given in these proceedings as he had ignored the papers sent to him whilst in prison. Again, it is plain that AD spoke to F, whether by text message or otherwise, resulting in a single text message apparently from F that is forwarded to M by AD, concerned with payment of the costs of the divorce.

123. M responds to AD on the same day to say that she will not pursue the costs. For the same reasons as given in relation to *allegation 1*, I do not find that on the balance of probabilities that F intended to communicate with M by way of his message to AD.

Allegation 3

124. M also suggests in her statement that F told her that he would sign the divorce papers if she agreed to contact between him and C by letter. M says that AD told her this by telephone and that at the time she agreed. It is unclear when this is said to have occurred, but it would appear to be around the same time as the messages above.

125. F told the court that a discussion with AD about contact was unconnected to the divorce conversation. Again, without evidence from AD, or any other supporting evidence, I do not find on the balance of probabilities that F intended to communicate with M by way of the discussions he was having with AD around that time, although it may be that AD had taken upon herself try to resolve this issue.

Allegation 4

126. F does not deny sending AD a message saying that C needs a father and someone who is a positive influence in his life, and calling M a psychopath and narcissist, which was relayed to M by AD. No message is exhibited, there is no evidence from AD herself, and F denies that this was a message intended for M. I do not find on the balance of probabilities that F intended that this message be relayed to M.

127. Although I have made no findings, I note that such findings in the family court are made on the balance of probability that something happened, not to the criminal standard of beyond reasonable doubt required to prove a breach of the Restraining Order in the criminal court. As such any findings would not amount to an actionable breach of the Restraining Order, which in any event (under section 5 of the Protection from Harassment Act 1997 under which the Restraining Order is made) has a defence of 'reasonable excuse' (such as perhaps responding to a question from the protected party).

ANALYSIS

128. C's wishes and feelings as expressed to Ms X, the Cafcass author of the section 7 report, and as reported elsewhere in the evidence by social services and by M, make it clear that an order for contact between C and F is neither C's wish nor in his best interests.

129. The evidence demonstrates that C's physical, emotional and educational needs are being met by his mother.

130. C has considerable additional needs, some of which are said to arise from the trauma he suffered due to F's behaviour. Both he and M live in fear of F. He needs stability and a degree of protection and assurance to minimise that fear and enable him to thrive during his minority.

131. I consider that the emotional need of C to see or know his father is outweighed by the risk of emotional harm that may result from such contact, as discussed below.

132. C suffered direct physical harm from F and emotional harm from witnessing F's behaviour towards M, for which he was imprisoned. C has also suffered indirect harm from the effect that F's behaviour has had on M's parenting capacity both leading up to his arrest and since, including throughout these proceedings. F has continued abusive behaviour towards M throughout these proceedings, including through his pleadings and in his oral evidence.

133. In her oral evidence M presented as highly fearful of F and determined to keep F out of her and C's life. The question for me is whether that is a necessary and proportionate response to the risk F presents to them.

134. The Probation Service has assessed F as being a high risk of physical, psychological, and emotional harm to both M and C, which they said could result in serious harm being caused. They said that the risk would increase if there is not an outcome to these proceedings favourable to F. I place significant weight on their assessment, given that they will have had extensive contact with F.

135. I also place significant weight on Ms X's assessment that a great deal of caution is required in terms of considering any contact between F and C, given the high levels of violence that C witnessed and the assessment of the risk to M if she were to come into contact with F.

136. C is settled and secure in the care of M. To undermine that stability and security is likely to be detrimental to his welfare.

137. To reintroduce F to the family unit through contact with C will undermine the objective of minimising his fear and cause him emotional harm for the foreseeable future. Any benefit he might gain from contact with F is likely to be outweighed by the possible emotional harm to him and very likely emotional if not physical harm to M of any contact with F. There is a significant risk that F would use letterbox contact to continue to direct abuse towards M and to attempt to find C and M's location.

138. C will still have links with the paternal family which will assist him with understanding his identity.

139. Whilst an order for no contact at all is rare, F's conviction for coercive and controlling behaviour (especially in the context of the actual violence to M and the children and threats of severe violence including sexual violence to M as set out in the sentencing transcript) along with F's continued abuse of M throughout these proceedings leads me to conclude that this is a necessary and proportionate order. Any indirect contact will provide a route for F to continue abusive behaviour towards M and to cause C harm directly or indirectly.

140. There is no doubt, even it seems from F, that M is a good mother and is fully meeting C's needs.

141. Whilst it is to F's great credit that he has abstained from drug use for a considerable period (on his evidence since 2017) that is not the only issue of concern. Whilst he deserves some credit for what he describes as his, "*study, research and extensive self-work*", this is undermined by his refusal to engage in the BBR-DAPP programme mandated by his probation.

142. In my assessment, I think it is likely that F genuinely believes he has made sufficient changes. The evidence does not justify that conclusion. He blames M, alleges her to suffer mental illness (which he diagnoses as covert narcissism) and alleges alienating behaviours. This narrative and his actions are wholly contrary to having insight into and effectively addressing his own behaviour, instead he seeks to 'reflect' criticism on M.

143. F has no substantive attachment to C having had no contact since C was 3 years old. Since that date bail conditions and, subsequent to his conviction, a Restraining Order have prevented contact, entirely due to his conduct towards C and M.

144. I have carefully considered the range of powers available to the court. I am satisfied that direct contact between C and F would not be in his best interests as it would risk the stability and security he has living with M. This is due to the risk of emotional harm to C and to M, and the risk of F locating C and M, with the consequent detrimental effect on M's capacity to care for C due to her fear of F.

145. Whilst the Restraining Order is currently a bar to contact between F and M and so prevents F exercising his parental responsibility, that is not its purpose. The Restraining Order has no time limit but may be varied by the criminal court. It would likely have been varied to accommodate any order for contact this court made. Given this judgment, it is to be expected that the Restraining Order will remain as is. Breach of the Restraining Order is an arrestable offence and may lead to up to five years in prison.

146. Nonetheless, I consider that prohibited steps orders and a specific issue order are necessary and proportionate to provide clarity to what both F and M may or may not do in their exercise of parental responsibility for C. In particular, the circumstances are such that the court would not conceivably make a parental responsibility order if F did not already have parental responsibility and there is no element of the bundle of responsibilities that make up parental responsibility which F could in present or foreseeable circumstances exercise in a way that would be beneficial for C.

147. The test for a section 91(14) order in this case is clearly met. Although F has not made repeated applications to date (the present proceedings having run since October 2021), I am satisfied that if F makes a further application under the Children Act that C and M would be put at risk of harm.

148. The court has discretion as to the appropriate length of the order. An order without a time limit usually lasts until the child reaches 16 years of age. Any time limit should be proportionate to the harm it is seeking to avoid. In *F v M* [2023], Hayden J made the section 91(14) order until the youngest child had turned 18. In that case Hayden J had previously made what he described as, "*very serious findings, at the highest end of the index of gravity, within the sphere of coercive and controlling behaviour*", and he considered that the father had found the opportunity to extend his controlling behaviour into the court arena. In the present case I have no doubt that F's behaviour is similar in nature. This conclusion is supported by F's convictions and by the sentencing remarks. Additionally, C has himself been the victim of violence from F.

149. I am of the view that F will apply to the court again, whether to appeal this order or to attempt to persuade the court at a later date that he has changed and so should be permitted contact with C. I am also of the view that the underlying purpose of any such applications will be to continue the abuse of M that has taken place throughout these proceedings ('*lawfare'* in the words of King LJ set out above at §115). In my judgment, it makes little difference to F if this filter on applications remains in place between the ages of 16 to 18. Not least given C's additional needs it may make a very significant difference to him if the 'bar' is lifted on his 16th birthday, in effect inviting further litigation from F at that critical point in his education. The court will not ordinarily make child arrangements orders which end after the child has reached 16 years old, unless it is satisfied that the circumstances of the case are exceptional. Depending on C's additional needs at age 16, it may be possible that he would fall within this exception. For these reasons I consider that it is proportionate to the potential harm that the section 91(14) order remain in place until C is 18 years old.

CONCLUSIONS

150. Having considered all of the documents in the trial bundle and had the benefit of hearing the oral evidence of the parties, I have reached the clear conclusion that C should live with M and have no contact, directly or indirectly with F, and that F should not exercise parental responsibility in relation to C. I also make a section 91(14) order until C is 18 years old.

151. These conclusions align with the professional evidence of Ms Y, the Cafcass officer, save that she recommends a section 91(14) order until age 16. I intend to ask Cafcass to complete life story work to help C understand and make sense of his life in the future.

152. I will make the following orders that restrict the exercise of F's parental responsibility and enable M to fully exercise her parental responsibility without recourse to F:

    i) A specific issue order giving M permission to make all decisions and give parental consent unilaterally without reference to, without informing and without consulting with the Father. M is not required to engage with the father in the exercise of any aspect of parental responsibility. For the avoidance of

doubt, the following is a non-exhaustive list of decisions which are to be exclusively taken by the M:

a) all decisions regarding C's health and any medical and dental treatment;

b) all decisions regarding C's name;

c) all decisions regarding C's travel out of this jurisdiction for any duration less than one month;

d) all decisions regarding C's religion; and

e) all decisions regarding C's education.

ii) By agreement, M shall not remove C from this jurisdiction for any period of one month or more without prior application to the family court.

iii) Prohibited steps orders, with a penal notice, preventing F from:

a) removing C from the care of M, or from any educational, medical or other person or institution to which she has entrusted his care;

b) applying for any passports for C in this jurisdiction or any other jurisdiction;

c) applying for or obtaining (by himself or a via a third party) a copy of C's birth certificate;

d) removing C from the United Kingdom;

e) requesting (or getting others to do so on his behalf) any information about C's address, education, schooling, health and additional needs, including but not limited to from any third parties, school, medical professional, Local Authority, the Police, or any other government body;

f) contacting C directly or indirectly; and

g) communicating with the M directly or indirectly in respect of any matter regarding C.

153. I grant permission to disclose a copy of this order to C's school, GP, any government body, including any local authority, and any other professional working with C for his safety and welfare.