



Neutral Citation Number: [2023] EWFC 254

IN THE FAMILY COURT

-

Date: 20/12/2023

Before :

MRS JUSTICE JUDD

Between :

P	<u>Applicant</u>
- and -	
M	<u>1st Respondent</u>
-and-	
S & A	<u>2nd and 3rd</u>
(Minors, by their NYAS caseworker)	<u>Respondents</u>

Emily James (instructed by **direct access**) for the **Applicant**
Justin Ageros (instructed by **Beck Fitzgerald**) for the **1st Respondent**
Abigail Bond (instructed by **NYAS**) for the **2nd and 3rd Respondents**

Hearing dates: 4th – 8th December 2023

Approved Judgment

This judgment was handed down remotely at 10.30am on 20th December 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MRS JUSTICE JUDD

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.

Mrs Justice Judd :

1. This is an application by the father for child arrangements orders with respect to two children, S and A who are of secondary school age.
2. The parties began their relationship when they met abroad in 2008. The father is from Eastern Europe and the mother is British. They have never married. They lived together in the West Country until their separation when the youngest child was only two. The father moved to live abroad where he has remained ever since, working for the an international organisation.
3. After he moved abroad, the father had contact in this country when he came over on visits. Problems soon developed, however, leading him to issue an application for a child arrangements order in 2016. The mother made allegations of domestic abuse and issued an application for a non-molestation order. A fact finding hearing took place in 2017 at which His Honour Judge Rutherford made a number of findings adverse to the father. The judge found that the father had made vile comments about the mother and had said unpleasant things about her in front of the children. This had made the children very uncomfortable. In his judgment the judge noted that whilst the father made some admissions about his behaviour, he remained largely unrepentant. The judge did not find that the father had embarked upon a deliberate campaign of harassment and controlling behaviour against the mother but he did accept that the mother had perceived it to be so. He found that it had undermined the mother to the detriment of her care of the children, and that the children had been made to feel anxious and pressurised about contact. He made a non-molestation order.
4. At a subsequent welfare hearing the judge made orders for contact, noting that the quality of contact had improved over the course of the proceedings. In the first instance the contact was to be supervised, leading gradually to unsupervised contact the following year (2018).
5. What followed after that order was made is the subject of some dispute. The father said that the mother did not support contact and that accordingly the arrangements were not adhered to. The mother says that the father upset the children during video contact and then failed to move forward at the children's pace. She said he did not abide by the arrangements and failed to do such things as to book the supervisors or confirm his attendance.

The current proceedings

6. This application was issued in 2020, almost four years ago. The children were joined as parties in October 2020 and a Guardian from NYAS was appointed to represent them. In June 2021 Melanie Gill, Psychologist, was appointed to conduct a global psychological assessment of the family. Her report was filed in February 2022, and she responded to some questions in early April 2022.
7. On 20th April 2022 the mother filed an application to remove Ms Gill's evidence from the case or to have it reviewed by Professor Wang. This application was also made in another case in which Ms Gill had been instructed which was the subject of an appeal before the President of the Family Division, reported as *Re C (Parental Alienation:*

Instruction of Expert) [2023] EWHC 345 (Fam). The proceedings in this case were adjourned pending the outcome of that case, and reinstated thereafter. It led to a considerable delay.

8. The outcome of *Re C* was that the President determined that the decision as to whether a particular individual was an ‘expert’ was one for the family court hearing a particular case; it was not for the court to prohibit the instruction of any unregulated psychologist. He noted that the generic label ‘psychologist’ was not protected and could be used by any individual whether registered or not. This is distinct from the title of ‘clinical psychologist’ which could only be used by those who are validly registered under the regulations. The court must therefore work with the current, potentially confusing scheme but ‘must do so with its eyes wide open to the need for clarity over the expertise of those who present as a psychologist but who are neither registered or chartered’ ([96]).
9. As a result of the decision in *Re C* the mother withdrew her application for Ms Gill’s evidence to be excluded but has continued to submit that the court should not rely on her conclusions.
10. The case was listed for final hearing before me although by this time many months had elapsed. This means that these proceedings have taken over three years. The effect of all of this on the children, let alone the parties themselves, is of very great concern.
11. Since 2020 the children have had contact with their father, supervised by an organisation called Family Ties. The contact visits have taken place in the community in Bristol, clustered around days that the father is able to take leave from his job. They have also had video contact with him in the intervening periods.

The issues

12. As well as seeking final orders, the parents both seek findings against the other. The father asks me to find that the mother has been obstructive to the children spending time with the father in accordance with the order of 1.11.17. He says that the mother has failed to positively promote him to the children, that she pursues allegations of abuse against him which have been previously been determined by the court, and that she makes unfounded allegations against him of emotional abuse and coercive and controlling behaviour in order to obstruct his relationship with the children. He also alleges that she has knowingly communicated her negative views about him and contact arrangements to the children, thereby alienating them. In the alternative, he invites the court to find that her views have been communicated unconsciously, but with the same result.
13. As a result of the mother’s alienating behaviours, it is submitted, the children have suffered emotional harm.
14. For her part the mother has filed a very detailed schedule of findings sought against the father. They essentially encompass what she has alleged in her witness statements. In paragraph 1 she asserts that the father’s behaviour towards the children has caused them to feel anxious, upset, lied to and pressured, causing the relationship to break down. There are twenty specific examples given of the behaviour alleged which, for

the sake of brevity, I will not set out here. At paragraph 2 she alleges that the father has undermined and is hostile to or about third parties to, or in front of the children. There are fourteen examples which follow which relate to such matters as being confrontational to the contact supervisor, being rude about the contact supervisor, and making derogatory remarks about the mother. Paragraph 3 alleges that the father has undermined the 2017 order and placed pressure on the children in respect of contact arrangements, with ten examples. Paragraph 4 alleges that the father has continued to be emotionally abusive, intimidating and threatening towards the mother, and is coercive and controlling (seventeen examples). Paragraph 5 alleges that the father is financially abusive and controlling (five examples). At paragraph 6 it is alleged that the father has no insight into the impact of his behaviour on the children's wellbeing and relationship with him (three examples).

15. The children currently have contact with their father in the community, supervised by Family Ties. As the father lives abroad this is spread over a five day period every three months or so when he is here at half term and the school holidays. There is also video contact on Sundays which is not supervised. The mother agrees to the continuation of that contact, but suggests that for the moment at least the video contact reduces in frequency. She does not agree that there should be unsupervised face to face contact at the moment, and submits that the father should undertake work to address his abusive conduct prior to any intervention involving the children. In particular she proposes that the father undertakes a Domestic Abuse Perpetrator Programme (a DAPP). The mother offers to undergo some training and support for herself. She does not agree with the proposal for the family to undertake a Parenting Apart Programme (PAP) as proposed by the Guardian as she does not consider that it replicates the specific work around domestic abuse as provided for by the DAPP.
16. The father is willing to undertake the work recommended by Melanie Gill and NYAS. Indeed he has already undergone a number of therapy sessions with a psychiatrist. He proposes that contact becomes unsupervised every six weeks, from Friday to Sunday evening or Monday morning. He submits that supervision is unnecessary in principle and is fuelling the children's anxiety. There are, he says, no risks posed by him which require supervision, and it simply endorses the mother's narrative that there are reasons to be anxious around him when there are not.

The law

Welfare

17. When determining child arrangements the welfare of each of the children is my paramount consideration, taking into account all the matters set out in the welfare checklist. I must have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child. Also, pursuant to s1(2A), I am to presume, unless the contrary is shown, that involvement of a parent in the life of the child will further the child's welfare.

Domestic Abuse

18. Domestic abuse is defined in paragraph 2A of Practice Direction 12J as follows:

“(2) Behaviour of a person (“A”) towards another person (“B”) is “domestic abuse” if—

(a) A and B are each aged 16 or over and are personally connected to each other, and

(b) the behaviour is abusive.

(3) Behaviour is “abusive” if it consists of any of the following

—
(a) physical or sexual abuse;

(b) violent or threatening behaviour;

(c) controlling or coercive behaviour;

(d) economic abuse (see subsection (4));

(e) psychological, emotional or other abuse;

and it does not matter whether the behaviour consists of a single incident or a course of conduct.

(4) “Economic abuse” means any behaviour that has a substantial adverse effect on B’s ability to—

(a) acquire, use or maintain money or other property, or

(b) obtain goods or services.

(5) For the purposes of this Act A’s behaviour may be behaviour “towards” B despite the fact that it consists of conduct directed at another person (for example, B’s child).”

19. Coercive and controlling behavior are defined at paragraph 3 PD12J as follows:

““coercive behaviour” means an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten the victim;

“controlling behaviour” means an act or pattern of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour;”

20. PD12J paragraph 4 provides:

“Domestic abuse is harmful to children, and/or puts children at risk of harm, including where they are victims of domestic

abuse for example by witnessing one of their parents being violent or abusive to the other parent, or living in a home in which domestic abuse is perpetrated (even if the child is too young to be conscious of the behaviour). Children may suffer direct physical, psychological and/or emotional harm from living with and being victims of domestic abuse, and may also suffer harm indirectly where the domestic abuse impairs the parenting capacity of either or both of their parents.”

21. I have been reminded of the Court of Appeal authorities with respect to domestic abuse, including Re H-N and Others (children)(domestic abuse: findings of fact hearings) [2021] EWCA Civ 448 Kv K [2021] EWCA Civ 468 and Re L (Relocation: Second Appeal) [2017] EWCA Civ 2121 ([61]) including what was said by Peter Jackson LJ:

“It is equally important to be clear that not all directive, assertive, stubborn or selfish behaviour will be ‘abuse’ in the context of proceedings concerning the welfare of a child; much will turn on the intention of the perpetrator of the alleged abuse and the harmful impact of the behaviour”.

Fact finding

22. When determining factual issues, the burden of proof lies upon the person or body making the allegation, and the standard of proof is the balance of probability. Findings of fact must be based on evidence and not speculation or suspicion, and the court must take into account all of the evidence in a case. Furthermore the court must consider each piece of evidence in the context of all the other evidence. It must not be assessed in separate compartments.
23. The roles of the court and the expert are distinct, and it is the role of the judge to weigh up the medical evidence together with the other evidence in coming to a conclusion.
24. The evidence of the parents is of vital importance, and will weigh heavily in the balance. I bear in mind that people do not always tell the truth about things in court, especially in cases where they are frightened or distressed, or ashamed of conduct which does not form part of the allegations against them or at least falls short of them being guilty. Sometimes people lie out of misplaced loyalty, to bolster a true case or for no reason that anyone can discern. The fact that someone has lied about some matters does not mean for one moment that they have lied about others. A lie should never be considered as direct proof of guilt.
25. These principles are all derived from case law, summed up by Baker J as he then was in Re JS [2012] EWHC 1370 (Fam) and thereafter in Re A (A Child) [2020] EWCA Civ 1230, Re H-C (Children) [2016] EWCA Civ 136 and Re A, B and C (Children) [2021] EWCA Civ 451.

The evidence

26. There is a great deal of written evidence in this case, including lengthy statements and attachments, contact notes, and recordings of video contact, all of which I have read (and heard).

The parents

27. Just as in his written evidence, in his oral evidence before me the father continued to blame the mother for problems with contact. Although he clearly said that he was very grateful to the mother for giving birth to the children he said that the challenge for him was that she was preventing him from doing his duties as a parent. He did accept that it was his wrongdoing which affected his relationship with the mother, but after that said 'I really can't take much blame'. He said he apologised to the mother and asked her for forgiveness for what had happened in the past.
28. The father gave extremely long answers to questions, mostly trying to take the opportunity to argue his case. Often he did not seem to listen to what he was being asked and pressed ahead to give me his own views. I also noted that he would swing from alleging at one minute that the mother was very hostile to him to then acknowledging that she had good reason to be angry with him and despise him. He also said at various points that he is not the man he was, having had about a year of therapeutic work. He said he had addressed his issues '*caused by [M]'s behaviour*'.
29. Very notably he struggled to answer questions about the effect of his behaviour in the past upon the mother and the children. His first response to a question posed on behalf of the mother by Mr. Ageros was '*I really can't tell*'.
30. Such acknowledgment as he gave about his past behaviour seemed to me to be superficial. He plainly holds the mother responsible for the problems in contact and believes that it is she who needs to change. In my judgment he demonstrated a significant lack of insight into his conduct and the effect of it on others. He minimises the findings made against him in 2017.
31. Just like the father, the mother used her answers to questions to set out her case more generally, which made her answers very long and somewhat unfocussed. Unlike the father, she did listen to the questions, albeit she then wished to give a great deal of contextual detail. Her answers to questions were reflective and she was quick to acknowledge the positives in contact, for example that the father was physically affectionate to the children and that contact goes well when he is responsive to them. I noted at one point she agreed emphatically that the father is '*emotionally warm*' and that there is definitely an attachment and bond between him and the children.
32. She also acknowledged that it was very sad to hear how the children spoke to their father in some of the recordings, and that their behaviour had been rude. Whilst I bear in mind the risks of over-reliance on demeanour, I found that the mother presented as a more compelling witness than the father. My assessment of her was very similar to that of Judge Rutherford. She demonstrated thoughtfulness and insight into the needs of the children, and her attitude towards the father was wary and sad but not hostile.

The contact supervisor

33. The contact supervisor from Family Ties also gave oral evidence. Her observations are important because she has been involved in contact for a long time and she has developed a good and trusting relationship with the children. She said she had witnessed a warm bond between the father and children, and said that some of the contact had been very good. He is attentive towards them and provides good food. Her criticism of the father was in his management of difficult conversations with the children, saying that he would never stop or deflect the discussion, even when it was very upsetting for the children. She said at one point that the father would go 'on and on' and had done this on a visit in December 2022 even though he could see that the oldest child was crying. Whilst the children had become more able to tell their father when he was upsetting them, he does not always listen. She had given him advice about his behaviour, which had often led to an improvement in subsequent visits.
34. The supervisor always collects the children for contact and she said that the mother is always encouraging to the children. She had seen nothing in what the mother said or in her demeanour to suggest any anxiety or hostility.
35. I found the evidence of the contact supervisor to be careful and well balanced. What she said is supported by the observations she made and recorded in the contact notes. There are lots of reports of good interaction between the father and A in particular but they are interspersed with other occasions when the father caused the children to become distressed by pressing ahead with conversations that made them uncomfortable and distressed. On more than one occasion the father persisted in putting forward his views or failed to shut down a line of discussion even though he could see that S was beginning to cry.
36. The contact supervisor believes that contact over recent weeks has improved and (as she said to the NYAS worker) she was optimistic that the dynamic between the father and children could progress. She was willing to assist with supported rather than fully supervised contact.

Melanie Gill

37. Ms Gill's report runs to some 100 pages including appendices. She explained her interview and observation methods in significant detail followed by her summary of findings and recommendations in relation to both parents and the children. Her assessment is based upon what she describes as attachment science and the detail of the report and her findings are couched in highly technical language. It is not at all easy for a lay person to follow.
38. In assessing the parties Ms Gill relied upon their responses within a series of structured interviews including the Adult Attachment interview, (which she said was known as the DMM or Dynamic Maturational Model of Attachment), the Meaning of the Child Interview, the Parent Development Interview (coded for Parental Reflective Functioning), and a Schema questionnaire. Age appropriate questionnaires were used for each of the children. She filmed each of the parents remotely with the children and said that she examined the interactions using 'assessment techniques of frame by frame observational analyses based on work by Beatrice Beebe, micro expression

analysis, assessment of parental attunement from Video Interactive Guidance, and the CARE-Index’.

39. The quotes below give a further flavour of the report so far as the assessment of the mother is concerned:

“There was a positive correlation in the results of [the mother’s] attachment assessments, and her schema inventories. Her adult attachment interview reflected her use of a number of related patterns of compulsive ‘A’ strategies which are affected by unresolved traumatic loss in relation to her maternal grandmother who she was very close to”.

“[the mother] also has complex unresolved trauma from [life events concerning her mother] such that [the mother’s] whole life and family relationships changed negatively. This continues to affect how she manages her relationship with the children particularly in the context of their contact with their father”.

“The unresolved trauma has been re-triggered and exacerbated by the hostility and highly adversarial dynamic with [F] over the last few years to the level of post-traumatic stress engendering the mile use of transitory type ‘C’ functioning (preoccupied, deceptive and exaggerated emotions, cognitions and behaviour) which was only apparent in parts of the Meaning of the Child interview and in some correspondence by email and phone with me. This pattern of functioning was not reflected with her schema assessments providing further evidence that it is intermittent and in response to specific triggers”.

40. Ms Gill concluded that the mother was ‘projecting the traumatic fear from her childhood onto the children within her current functioning’ and believed that the children were being harmed by almost any sort of contact with their father. The children have been affected vicariously. Ms Gill states that S is becoming ‘alienated’ from her father as a result of a combination of the mother’s unconscious behaviour and some negative experiences with the father.
41. So far as the father was concerned, Ms Gill concluded that he had unresolved trauma from emotional neglect by his parents’ absences in childhood and his father’s anger and use of physical punishment. She concluded that he was suffering from trauma in a depressed form from the ambiguous loss of his children. She recorded that at one point in the interview the father said the mother was the only one to blame, and that she was a pathological liar and a fascist. He saw the mother as highly deceitful, and this has endured since the relationship broke down and this continues to adversely affect his ability to engage positively with the children. Ms Gill stated that at times he was chronically unable to regulate his emotions and became distressed and angry as a result of repudiatory behaviour shown by the children. Ms Gill recommends that he undergoes individual therapy, of a type described by her as schema therapy.

42. Ms Gill concluded that both the children and the mother were in a dynamic which was likely to increase the negativity towards [F] without specialist intervention. She said that the situation facing this family could be helped but it required both parents to reduce the level of animosity between them no matter who is to blame. She recommended a package of intervention to help the family.
43. There were some conventional interviews with the parents and children, but there is little information about those in the report save for some short excerpts which are difficult to follow. Absent from the report is any reference to the findings of His Honour Judge Rutherford, the observations of contact or the wider evidence in the case. It is not unusual in my experience for an expert to interview the parents and conduct psychological testing before reading the papers, but it is unusual for there to be so little reference to the wider context in the overall assessment. Notwithstanding Ms. Gill's assurances that she had read all the papers and took all the evidence into account, I consider that her assessment was narrowly based on her own interpretation of the results of the structured attachment based interviews she carried out rather than upon the evidence as a whole.

NYAS

44. The final witness was the NYAS caseworker. She is a former social worker and experienced Guardian. The caseworker observed contact on a number of occasions and expressed concern that little had changed over the period of over two years with respect to contact. I have set out her recommendations above, which did not change materially during the course of her oral evidence. In particular she said that whilst she recognised the damaging effect on the children of the prolongation of these very long proceedings, on balance she considered that it was right for these proceedings to be adjourned to allow the parents to undertake a parenting apart programme. She was rather more neutral on the need for the father to undergo a DAPP, but did state that if he was to do this, it should take place alongside the PAP. She recommended that the contact continue to be supervised and then supported.
45. The caseworker agreed with a number of propositions that were put to her to the effect that the children were getting mixed messages about contact from their mother, not deliberately but as a result of a number of matters such as the mother leaving the car when the father came over to speak to the children during one contact, the mother and children moving home without telling the father and the children moving school, the children being permitted to decide not to answer their father's telephone calls, and the mother saying that she had an important appointment and that she could not attend mediation. She broadly accepted the assessment of Ms Gill.

Discussion

46. In 2017 His Honour Judge Rutherford found that the father had been extremely verbally abusive to the mother. His abuse of her included saying such things as *"when you die I will have the children.... You're the doctor, you know how people die"* and *'I'm going to sort you out, so that when you compare yourself to your mother, she's going to look in a healthy state. Because you deserve it. Have a lovely weekend'*. He called her a bitch, and described her as a monster, a manipulator, and crazy. On an occasion in contact he told the children *'do you think I'm going to feed your mum*

with my money...she has stolen from me'. He said to the Cafcass Officer that 'people like her [ie the mother] should not exist'.

47. The judge found that the father's behaviour had left the mother fearful and anxious and the children anxious, conflicted and pressurised around contact. This, he found, was damaging to the children's relationship with the father and to the mother and children's wellbeing.
48. The judge specifically noted that the father was unrepentant about calling the mother names such as bitch, or '*uber bitch*'. The judge rejected the father's case that the mother had waged a deliberate campaign to prevent him from having contact. He said that allegation was either a deliberate fabrication or made as a consequence of frustration. He said that '*if the father can truly see the inappropriateness of his past behaviour and can ensure it is not repeated then that will be a very good start*'.
49. At the welfare hearing a few months later the judge made an order providing for contact to continue to be supervised but with the supervisors gradually pulling back so that, by the following year, the father's contact would be unsupervised. The father accepted that he must not criticise the mother to the children, discuss the legal proceedings or speak negatively about their British heritage. He offered undertakings to that effect. At that time, the father's behaviour in contact had markedly improved, as had the quality of contact, which had gone well.
50. In my judgment the problems that emerged with contact in 2018 must be seen in the light of the findings and outcome of the previous proceedings. Not only did the judge make findings adverse to the father at the fact finding hearing, but he also made positive findings at the welfare hearing about the mother and her willingness to promote contact. At paragraph 19b he went as far as to say '*were she not prepared to promote it then I have little doubt that we would not be in the happy position that we are today*'.
51. Despite the improvement in the quality of contact the past could not simply be erased. There was a lot of mistrust, and the children were still sensitive to the father's behaviour and wished supervision to continue. Ms Barwood, the Cafcass Officer, stated that if things moved too fast S might refuse to go to contact.
52. In my judgment problems with contact that developed in 2018 were the result of the children becoming upset about things that were said by the father, particularly during the video contact. I accept the mother's evidence about this. Whilst there are no transcripts or recordings of the video contacts in early 2018 I bear in mind that there is independent evidence of the father's behaviour causing the children distress before 2017 and again later. It is not difficult to believe that the sort of conduct that has been described on those occasions also occurred when there was nobody but the children present, particularly because the father lacks insight into the effect of his behaviour on other people.
53. There are undoubtedly times when the children's adverse reactions seemed to be disproportionate to anything that had actually happened (for example during the direct contact in March 2018) but this is not surprising in the light of the history. I do not think that it demonstrates the children are being unduly influenced by concern for their mother.

54. The problem then became compounded by the father becoming frustrated. He was unwilling adapt the direct contact arrangements so as to allow the supervision to continue longer than was envisaged by the 2017 court order. He placed emotional pressure on the children, for example by telling A on a Skype call at the end of March/beginning of April 2018 that they (the children) had been mean to him, and that S was behaving as she was because of the mother. Rather than examine his own conduct and how he could make things better, the evidence shows that he tried to place the responsibility on others, notably the mother. He concluded that the fact that he had a good relationship with his other son L (who has a different mother) meant that he could not be blamed (for the most part) for the problems he was having with S and A.
55. In fairness to the father he did not stoop to the level of verbal abuse of the mother that he had before 2017. The earlier exchanges about contact were directed through his solicitors. In an early email he offered assurances that he would not act angrily towards the children in contact. His dismay at the thought of the children refusing to come to contact when it cost him so much to come to this country, rent accommodation, pay for the supervisors and organise nice outings, was understandable. He explained to the mother in March 2019 that it was not good for the children to have an image of their father *'humiliated, powerless, and without any integrity, stripped of all his rights.....a father you can just toss around as you please, as if he were a toy. Also I am not prepared to sacrifice my integrity and so do something I think is wrong for the children, something you can impose through sheer brute power just because of the current logistical situation'*. Additionally he tried to come up with some alternative suggestions about contact, such as that he should come and see the children in the family home with a third party present.
56. Nonetheless, as time went on the father's frustration only worsened, as was apparent in his messages. The gap between the parents about contact arrangements became wider and the father increasingly sought to place all the responsibility for the problems he was having with the children onto the mother.
57. Added to this there have continued to be occasions during contact where the father has behaved in a way that has really upset the children. This happened as recently as October 2023. It is true that the children have been rude and challenging to him at times (as demonstrated by the recordings of video contact) but the genesis of this is the fact they do not believe that their father is listening to them.
58. I do not doubt there were things that the mother could have done better. She has been anxious about the contact, and it is only to be expected that the children will have picked up on this. She acknowledged as much herself, particularly so far as the video contact was concerned. I further accept that the children may have received some subtle messages from the mother and others (for example the school) reinforcing their anxiety about their father. Examples of this are the mother telling them about their half-brother, the father not being told that the family were moving to the country in the lockdown and not being kept informed about the change of schools, and S being given support at school. Most parents in the position of the mother would be anxious and protective of the children, and I accept that this was the case with this mother. I accept her evidence that she did not know how to raise the move and change of schools with the father without eliciting an angry response and that she was worried that he might seek to block this through the court.

59. Melanie Gill's opinion is that the mother's own functioning and behaviour is in part affecting the attitude of the children towards contact. This is based upon her findings within her attachment assessments of the family. I have already commented on the narrow focus of her report. Ms Gill's opinion must be placed alongside all the evidence in the case, which in my judgment clearly demonstrates that the mother's behaviour and responses are not the principal or even a significant cause of the contact problems. The principal cause is the conduct of the father.
60. In his cross examination of Ms Gill and final submissions, Mr Ageros challenged Ms Gill's qualifications, as a non-registered psychologist, to conclude that the mother was suffering from post-traumatic stress. He also challenged Ms Gill's decision to accept her original instructions to carry out cognitive assessments of the family and to consider whether either of the parents was suffering from a psychiatric or psychological condition. Ms Gill defended her conduct and methodology. She argued that post-traumatic stress is not the same thing as 'post-traumatic stress disorder', accepting that the latter is a diagnosis which she is not qualified to make. She also said that whilst she was not qualified to diagnose a psychological or psychiatric disorder she was trained to recognise the absence of such. Had she thought that any of the parties in this case to be suffering from such a condition she said she would have consulted a suitably qualified colleague.
61. Many of the issues about Ms Gill in this case replicated those which arose in *Re C*. With respect to Mr. Ageros' submissions and following on from the decision in the Court of Appeal, I have concluded that I should make no further comment on those matters. It is not necessary for me to do so, Ms Gill is not represented, and this is not the appropriate forum.
62. An unfortunate consequence of Ms Gill's report was the way the father responded to it. He read it a partial way, seeing it as firm support for his belief that the mother was alienating the children from him. He emailed the mother in May 2022, shortly after receiving the report, to complain about A's behaviour in contact saying '*As you are aware, I firmly believe that the children continue to be led and pushed against their father, despite my being a positive character in this unbearable saga you have perpetuated for years with crystal clear parental alienation – a conclusion reached by an independent expert*'. This is one of many similar messages and is a theme which has run throughout the proceedings.

Findings

63. It will be clear from what I have said above that I do not make any of the findings sought by the father against the mother. I reject the proposition that she has obstructed contact, failed to promote the father to the children or alienated them in any way.
64. As to the findings sought by the mother, I find that the father's behaviour towards the children has caused them to feel anxious, upset, confused and pressured, and as such led to the problems in his relationship with them (paragraph 1). As to detailed factual findings sought in support of this I find them all proved save for the following details. I do not find that the father used presents to control the children((vi)). The buying of presents seems to me a case of the father somewhat understandably spoiling the children in contact. I did not hear evidence about (viii), and I do not find the TikTok

allegations (ie? that the father contacted the children on TikTok and lied about it at (ix) and (xv)) proved as it seems to me the evidence is confusing.

65. I also find that there have been times when the father has undermined and is hostile to or about third parties to or in front of the children (paragraph 2). I do not think I need to make findings as to every particular instance as set out there although I do not find that the father deliberately sent messages to the mother on a phone that the children would see (vi). As to paragraph 3 I find that the father placed pressure on the children with respect to contact arrangements and that that he was unwilling to take contact at the children's pace or respect their wishes and feelings.
66. Paragraph 5 alleges that the father has linked child maintenance with the contact and has withheld child maintenance accordingly. There are some explicit messages about this, and so I make the general finding sought although I did not hear evidence about (and make no finding) about the sale of the property referred to (iii). I also find that the father has sought to blame the mother for the problems with contact rather than reflect on his own behaviour (v) although in doing so I am sure he has convinced himself that he is right. I find that the father lacks insight into the impact of his behaviour on the children's wellbeing.
67. I have left paragraph 4 to the end because it is here alleged that the father continues to be emotionally abusive, intimidating and threatening towards the mother, and is coercive and controlling. My finding is that he has sent her repeated hostile and accusatory emails and has been hostile when she tried to rearrange the times of calls. He has accused her of alienating the children from him. I would describe this as intimidating and bullying behaviour. It is also clear from the messages that the father has withheld child maintenance from the mother because of his frustration about contact.
68. I find that the father's behaviour in sending the intimidating and accusatory messages to the mother to be coercive, as there is a pattern to them and they are punitive in their design and tone. I also find the withholding of maintenance to be controlling behaviour.
69. I do not make a separate finding that the father's approach to litigation has caused the mother emotional and financial harm (xxvii) but have made my views about the father blaming the mother for problems which are of his own making clear.
70. The findings that I have made against the father are all relevant to the success of contact. Behaviour such as this is always a matter of degree, and the effect that it has on others will vary according to the particular circumstances of the case. I consider the father's conduct comes within the meaning of domestic abuse pursuant to paragraph 2A (e) of PD 12J. His behaviour so far as withholding maintenance for the children is economically abusive within the meaning of paragraph 4, although of course I recognise that he has devoted a lot of money to the children in the form of the contact arrangements. The father's behaviour in these is not as severe as it once was, and the mother is getting better at coping with it but this still comes within the definition within the rules.

Welfare

71. When determining matters of welfare I wish to emphasise the fact that the descriptions of the father's behaviour that I have set out above is far from the whole story. He also has very good qualities. When he does not focus on himself and avoids placing emotional pressure on the children, contact goes well. He is affectionate and fun, and the children love him. I have no doubt that this is why he has a good relationship with his other son. He lets the children know how much he loves them and of his full commitment. This is something that they will carry with them for all of their lives.
72. Despite being very sceptical about the value of supervision the father has paid a lot of money for supervisors to attend contact and also by funding outings for the children. He treats them and wishes to give them a lovely time. He takes time and care to buy the food that they like. He is very interested in their education.
73. I do not forget that it is not at all easy to be a good parent to children that you do not see very much and when things have got off to a bad start. As Judge Rutherford observed, there are cultural factors here which also affect the father's communication. Many parents will empathise with the experience of being confronted by angry, argumentative and disrespectful children, particularly teenagers. It is especially hard to manage this when you only spend a very limited time together.
74. In order for the children to benefit fully from what he has to offer the father must recognise that the quality of the relationship he has with his children lies in his own hands. He must take responsibility for his actions and understand that his behaviour in blaming the mother for the problems he encounters is corrosive and wrong.
75. I discerned from the mother's evidence she is more confident about the children's ability to manage their relationship with the father as they have got older, and that this is gradually taking the pressure away from her to have to protect them. She recognises the advantage of doing some work to tackle her anxieties.
76. All parties accept that there is a need for some sort of outside intervention in order to improve the quality of contact. The mother suggests that the father undergoes a DAPP, possibly followed by the PAP. The father agrees to the PAP, and states that he is undergoing therapy which have led to him being a very different man to the one he was in 2017.
77. I have found the father to have acted in a way which is abusive. Accordingly I have very carefully considered whether or not it would be of assistance for him to attend a DAPP, the details of which the mother has included as an annexe to her latest statement.
78. Whilst I can understand why the mother has made this suggestion I have decided, on balance, that this is not the way forward here. I think it is likely to lead to delay. I am also not persuaded that it will be sufficiently tailored to the father's or indeed the family's, specific situation.
79. On the other hand, the NYAS caseworker has stated that the PAP can be tailored to specific needs. If it is clear that the PAP will be conducted on the basis of my findings then I believe that this will be the best way forward for this family. I think it would be very helpful for the father to be given advice as to how to manage the video

contact by means of video interactive guidance. I also think it would be helpful for the father to be given advice as to how to avoid confrontational and abusive communication and the mother how to deal with him. I suggest that the professional who provides the VIG is someone other than recommended by Ms Gill to ensure that the mother has full confidence in them.

80. I understand why the mother was concerned about the PAP, but I think she may be more confident about it once she appreciates that it will be conducted on the basis of my findings rather than the outcome of Ms Gill's assessment.
81. I also believe that the parents should try using the Family Wizard App, although this must be voluntary for all concerned. If it causes stress or anxiety for the mother and children in particular, they will be bound to wish to withdraw.
82. During the course of the trial I wondered whether it would be helpful for the father to have some advice about parenting teenagers. It may be useful for him to look into this.
83. It is my firm view that contact between the father and children should continue to be supervised for the time being, but with a light touch so that the supervisor keeps a distance unless she judges that the children need her to be closer. I recognise the father finds this somewhat unnecessary and humiliating, given the fact that he does not pose any physical risk to them, but the emotional pressure he has put on them has caused them a lot of anxiety and upset. If this does not happen whilst the parents undergo the PAP programme the children are likely to be extremely resistant to going no matter how much persuasion is used.
84. It is very important here to reflect upon the children's wishes and feelings as set out in the report of Ms Higgins. As this judgment will be published I will not repeat the words of the letter that S wrote to her (which mirrored what she said in their meeting) but I want to make it clear that in my judgment her views are grounded in her own experience and I give them very significant weight. All family judges must be alert to situations where the views of children are not authentically their own, but here S's views are consistent with the findings I have made. A's views are slightly different as he appears to be less affected by his father's past behaviour. Although S has said she does not want to go to contact, she has said she will go if A goes, and that appears to be an important way in. Ms Higgins emphasized her view that it is very much in S's long term best interests to give her relationship with her father this chance before she reaches an age where she will make all the decisions herself.
85. A particularly difficult issue is whether I should make a final order for supervised contact on the basis that the parents will attend the PAP which should enable them thereafter to come to an agreement about any progression of contact. These children have now been subject to proceedings almost all their lives. S is 14, which is an age where a young person should be able to focus on friends and school work, as well as what goes on at home. I am very concerned about the effects of prolonging these already excessively long proceedings on them.
86. On the other hand, the attempt by the judge to bring proceedings to an end in 2017 did not serve to bring the conflict to an end. The mother told me that whilst she wants the proceedings to be over she is unsure whether, should this happen, the situation will go downhill. The father feels similarly, from his own perspective. Ms Higgins has

recommended, on balance that the proceedings should be adjourned to give these children (particularly S) one last chance to have a proper relationship with her father before it is too late.

87. On a very fine balance I have decided to accept this recommendation. A regime of 'light touch' supervised contact together with engagement with the PAP should protect the mother and children from unacceptable harm at the same time as enabling the children to benefit from a relationship with their father. The court can consider final arrangements once the PAP has come to an end. In the interim the order for contact will be for two consecutive days every holiday and half term, with video contact to remain the same. This can be looked at again at the next hearing.
88. In coming to my decision have not recited all the factors in the welfare checklist here, nor PD12J, but I have kept them firmly in mind.
89. I am asked to make a decision about the funding of the Parenting Apart Programme. It is not cheap. I am very conscious that the father has had to spend a lot of money on legal representation (as has the mother) and of the long term cost to him of the contact arrangements. On the other hand, I have found that he bears the lion's share of responsibility for the problems that have arisen in contact. Neither party has endless resources. In all the circumstances I have decided that the father should pay for the PAP course. This is not a case of needing to give a message to the mother to engage in the programme; I am sure she will, for the benefit of the children. There are considerable arrears of child maintenance too, which will have caused her some further hardship.
90. I have also been asked to make two further decisions about costs and funding. First I am asked to decide that the father should pay the costs of the supervision of contact. That has been the pattern to date. Second, I asked to revisit an earlier decision that the mother should share the costs of Ms Gill's attendance to give evidence equally with the other parties so that the costs should be shared only as between NYAS and the father.
91. I have decided that the father should pay for the costs of supervision of contact. This broadly reflects what has happened in the past, save that the mother made a small contribution until 2022. Having heard this case I have decided that supervision is still required for the time being because of the father's conduct rather than anything else. I accepted the evidence of the supervisor that the mother encouraged the children to go. I do not think it right for her to pay towards it.
92. As to Melanie Gill, I do not think I should revisit my earlier decision. The relevant facts behind her instruction and the need for her to give evidence are multi-faceted. She was engaged at the instigation of NYAS, not the father or mother. Once she had prepared her report it was inevitable that she would have to give oral evidence, and in this regard I do not think it is right to draw a distinction between any of the parties as to their responsibility for this or their liability to pay. Ms Gill did attend remotely in the end which will at least mean the cost is less than otherwise had been thought.
93. Finally I would like to extend my grateful thanks to the advocates in this difficult case. It is sadly rare in private law proceedings for there to be representation on all

sides. This case has been impeccably prepared and presented by all and the advocacy was of the highest standard. This has not only benefited the parties, but the court too.