Neutral Citation Number: [2020] EWFC 78

Case No: TR17C00181

IN THE HIGH COURT OF JUSTICE

FAMILY DIVISION

FROM THE FAMILY COURT AT TRURO

In the matter of the Children Act 1989, ss. 34, 91(14) and 100
And in the matter of the Inherent Jurisdiction of the High Court

Date of formal hand down: 17 December 2020

Covid-19 Protocol: This judgment was handed down by Mrs Justice Roberts remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be on Thursday, 17th December 2020, at 10.30 am.

Before :

THE HONOURABLE MRS JUSTICE ROBERTS DBE

Between :

A LOCAL AUTHORITY — **Applicant**

- and –

(1) X (acting through her litigation friend, the Official Solicitor) — **Respondents**

(2) Y

(3) Z (a Child) through his Guardian

(No. 2: Contact and Injunctive Relief)

Mr Simon Green, counsel (instructed by **A LOCAL AUTHORITY**) for the Applicant

A representative of John Boyle Solicitors (on behalf of the Official Solicitor) for the First Respondent

The Second Respondent, **Y**, appeared in person prior to disengaging from the hearing

Mr Hugh Cornford, counsel (instructed by Ralph and Co Solicitors LLP) for the Guardian

Hearing dates: 18, 19 and 20 November 2020

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Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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 Roberts:

The applications before the court

1. In the context of ongoing care proceedings, this hearing was listed for consideration of the local authority's applications for further injunctive relief which is sought in order to provide security for the current community placement of a young mother and her seven year old son, Z. A full care order was made earlier this year at the conclusion of a lengthy fact-finding hearing. At the same time, Z's father has made an application whereby he seeks a review of the current contact arrangements for his son. This is my supplemental judgment in relation to these three extant applications.

The background

2. On 5 May this year (2020) I handed down my judgment in long running care proceedings which involved Z, the only child of X ('the mother') and Y ('the father'). Z was then six and a half years old and had been involved in litigation concerning his future for more than half of his young life. The case was complex and had a number of unusual, if not unique, features. One such was the profound disability of Z's mother's in terms of her very limited ability to communicate with the outside world. She had been born in Cambodia to impoverished parents. Since birth, she has been profoundly deaf and for many years had no formal or recognisable speech. She and Z's father married abroad in 2013 having met in Cambodia at a time when she was a very vulnerable young woman who had received more or less no formal therapeutic intervention to address her disabilities.

3. In the context of the local authority's application for a full care order in respect of Z, I conducted a full fact-finding hearing over the course of several days in January and February this year (2020). I do not intend to rehearse in this judgment the background or the matters which led to the institution of the public law proceedings. My judgment is reported as *A Local Authority v X, Y and Z* [2020] EWFC 36. Z's mother was represented throughout those proceedings by the Official Solicitor having been found to lack litigation capacity.

4. I made a number of findings at the conclusion of that hearing which included findings in relation to physical and sexual assaults perpetrated by Z's father which had caused injuries to his wife. Alcohol was almost certainly a trigger for some of these incidents which had on occasions been witnessed by Z. The parties had by then separated. Removal of Z from his family through adoption was not part of the local authority's care plan. It was an agreed basis of the final care plan that Z should remain in the primary care of his mother from the security of an assisted shared lives placement. There was to be regular contact between Z and his father on an unsupervised basis albeit that the local authority would share parental responsibility because of the mother's particular vulnerabilities in caring for their child. It is right to record at the outset that, since the proceedings commenced in 2017, Z's mother had made significant strides forwards in terms of the improvement in her communication skills. The local authority had put in place a package of therapeutic and other support with which she had fully engaged. As a result the young woman who emerged at the final hearing through many hundreds of pages of evidence was a very different individual from the one with whom the local authority was engaged at the outset of these proceedings. I am told that her progress has continued in the months since the last hearing and that is one of the most heartening aspects of what has been, in many respects, a difficult piece of litigation.

5. At the conclusion of the February hearing, I made a care order in the local authority's favour and endorsed its final care plan for M. The father sought to appeal that order. On 20 July 2020, Baker LJ dismissed his application for permission to appeal on the basis it was totally without merit. Notwithstanding the detailed and careful manner in which his Lordship explained in his written ruling the reasons for the court's decision, the father subsequently attempted to appeal that dismissal. These steps in the litigation have obviously delayed the resolution of the issues which remained outstanding and which flowed from the foot of my mainframe judgment which was made available to the parties in early April and formally handed down at the beginning of May 2020.

6. On 23 January 2020 the local authority applied for an order pursuant to s. 91(14) of the Children Act 1989. On 15 April 2020, it issued a further application for an injunction restraining the father from entering a restricted and defined area in the local environs of the home which Z shared with his mother and their 'shared lives carer'. In terms, these applications were designed to provide a period of respite from ongoing litigation

and to protect the ongoing availability and security of that placement as a future home for the two of them.

7. Against the background of his pending appeal, the Covid-19 pandemic impacted on the contact arrangements between Z and his father. Y applied for a review of those contact arrangements and an increase in the time he was permitted to spend with his son.

8. These are the applications with which I have been dealing over the course of the last two days.

9. Before turning to the substance of the applications before the court, I propose to make some general observations about the father's conduct of this litigation. These reflect, and reinforce, much of what I said in my earlier judgment but they provide context for what follows in this judgment.

10. This father is a complex individual. I have previously expressed concerns that he was "losing his grip on reality". That was a view which was endorsed by Baker LJ in the Court of Appeal. Y, the father, is entitled as of right to legal representation at public expense. He is now 76 years old and is unemployed. He claims that he has been reduced to a position of personal insolvency as a result of these proceedings in that he has lost the opportunity to open a restaurant business in which he proposed his wife would prepare and provide the food. He has consistently refused to take up the opportunity of legal representation despite being encouraged to do so by the court on numerous occasions. There is no doubt that Y is an intelligent individual. He has a number of professional qualifications (primarily in engineering) which he deployed to good effect in his earlier working life. For most of the marriage, this couple led a fairly peripatetic existence sailing around the Far East and earning a living which appears to have been a fairly 'hand to mouth' existence. Until the separation they were living in privately rented accommodation. I understand that the father is now dependent upon state benefits.

11. His insistence on conducting this litigation in person has made this complex litigation much more difficult than it needed to be in terms of managing the timetable and the evidence. The father has produced what probably amounts to thousands of pages of written material over its course. The material he has provided for the purposes of this

hearing has been extensive. It is all written in the same vein and in the same format. It is littered with direct invective against this court, the Court of Appeal, the local authority, its social workers and lawyers, and the entire family justice system. Despite the volume of this material, it has one consistent theme which is repeated several times over. The material is annotated in a manner which suggests that it is intended to copy in many named individuals and entities from the Lord Chief Justice of England and Wales to the Cambodian Embassy in London and the Children's Commissioner.

12. Its theme is consistent. This father does not accept the judgment of this court or that of the Court of Appeal. He alleges a collusion or conspiracy between the judiciary and the local authority which is designed to support the interference of the local authority in his family life. He does not accept that his wife no longer wishes to live with him. Any such views which she may be expressing are, he alleges, the product of her "captivity" by the local authority which has been deliberately engineered to isolate her from him and friends. He maintains that he and/or those friends should be given the opportunity to persuade her that she does not understand the consequences of the views which I am satisfied she has been communicating clearly to her social worker and her shared lives carer. He seeks to engineer an outcome for his family whereby they leave this jurisdiction to live with other members of X's extended family in Cambodia with Z, free from any further interference in their family life on the part of the local authority. This is apparently to be achieved from the foot of "a massive damages claim" which this father expects to receive from the local authority as a result of a claim he is proposing to advance in respect of a violation of his human rights. He appears to believe that this court will be instrumental in organising some form of settlement meeting at which his (as yet unissued) claim will be compromised. From the foot of that financial settlement, the family will then move to Cambodia to begin a new life together. (He told me on a previous occasion that he would not insist that his wife lived with him if she did not wish to continue within the marriage following a move to Cambodia.) He told me during his 'opening statement' at the beginning of this hearing that he was in touch with international lawyers in the Far East and had already initiated legal action against me and the local authority. He told me he had contacted various media outlets in the United Kingdom and had delivered a 'dossier' to the local police force in relation to criminal prosecution of those he blamed for interference in his family's life.

13. The father's engagement in this hearing followed a similar trajectory to his lack of engagement in the substantive fact-finding hearing in January and February. On that occasion, he attended court and invited me to declare a 'mis-trial'. When I indicated that the hearing was going ahead, he and his McKenzie friend left the court building and refused to return despite my encouragement and subsequent invitation that he should do so given that important decisions for Z were being taken. So, too, did this hearing begin with a formal application by the father that I should recuse myself from any further involvement in these proceedings. I allowed him to read a prepared statement for the first 25 minutes of the hearing. He has since circulated copies of that statement to me and the legal representatives for the local authority, the Official Solicitor and the Guardian. It follows the same themes and patterns reflected in previous iterations of similar documents sent to this court and the Court of Appeal.

14. I delivered a short judgment in respect of that recusal application which I refused. Y then indicated that he would take no further part in the proceedings. At my invitation, counsel drafted an email which was sent to him shortly thereafter. It sought his input / specific proposals in relation to the level of contact which he was seeking. It sought to address any particular reasons which he might wish to advance in relation to how his life might be impacted by the exclusion order which the local authority was seeking to impose around the immediate environs of the home which Z shares with his mother in the X area of the county. It sought to elicit whether he needed to enter that area for purposes other than the regular handovers at Z's school at the beginning and end of each period of contact. None of these issues had been addressed by the father notwithstanding that he was directed to file evidence in relation to them. He has had notice of the applications for many months.

15. I followed up on that email with an email of my own to the father sent through my clerk on the first afternoon of the hearing. I stressed to him that I was willing to consider any representations he might wish to make in writing notwithstanding that he had refused to give any oral evidence at the hearing. I said this in my email:

> "You will by now have received an email from […] my clerk drafted by counsel at my invitation. That email poses a number of questions in relation to the applications which are currently before the court. Had you engaged with the hearing and given oral evidence, these are questions which you would have been

asked. Your responses are important: they will assist me to determine what orders should be made at the conclusion of these proceedings. Notwithstanding your reluctance to participate because you lack confidence in this court to deal fairly with these matters, your engagement on these two aspects will help me to make decisions for [Z's] benefit. Whatever else we disagree about, I know you have his interests at the forefront of your thoughts. I am proposing to proceed with the local authority's evidence this afternoon as I have limited time in which to deal with this case. It has been assigned two days of court time as you know. All the evidence I shall hear is in the electronic bundle which you have been sent for the purposes of today's hearing. If you decide to rejoin the hearing this afternoon, you will be entitled to put your own questions to these witnesses. I encourage you strongly to do so.

I appreciate that you may wish to take some time to formulate your responses to the questions which counsel have posed in the email you received over the lunch adjournment. I am likely to be asked to hear submissions tomorrow if you decide not to give evidence yourself. Whilst your written response to those questions is not sworn evidence and may therefore affect the weight I can give them, I am willing to receive those responses in order to consider them alongside the other evidence which has been put before the court. However, if you wish me to take any such responses or representations into account, I will need to receive them by 10am tomorrow morning (Thursday, 19 November) so that counsel and [the solicitor for the Official Solicitor] can consider them prior to making their closing submissions to the court."

16. The father's response to that email was sent to the court at 09:56 the following morning. It was, in effect, a reiteration of all the complaints rehearsed in his opening statement. It included the following reference:

"7. I believe, My position statement and my opening statement at the hearing yesterday sets out the only legal way out of this mess and does not result in YOU and many others involved with these proceedings being prosecuted. Allow THE TRUTH TO BE REVEALED TO THE 2 PRINCIPLE *[sic]* SOURCES OF EVIDENCE [X/Z'S MOTHER] AND CAMBODIAN FAMILY in a family meeting as I have proposed and let family decide its own future as required in law.
8. Arrange a meeting between [the local authority] and [me] to agree a settlement package.
9. If you persist in allowing [the local authority] to continue defying the law and peverting the course of justice I believe you could ultimately find yourself imprisoned.
…….
11. I believe this case can be described as an extreme case of PEVERTING THE COURSE OF JUSTICE and could attract a life sentence.
12. This hearing is the last chance to settle this case amicably in ALL PARTIES INTERESTS and to do so QUIETLY without it exploding in the public domain and International media."

17. It is against that background that this hearing has proceeded in the absence of the father. It is yet another demonstration of his failure to engage with these proceedings save in circumstances where he seeks to use them as a platform for ventilating his grievances against the family justice system and everyone involved in these proceedings.

(i) The father's application for a variation of the existing contact arrangements

18. The arrangements which are currently in place involve staying contact between Z and his father on alternate weekends. Y lives approximately 50 miles away from the shared lives placement which is home to Z and his mother. Z attends school locally and his father collects him from school on alternate Friday afternoons at 1.30pm. They return to Y's home and spend the weekend together before the handover on a Sunday afternoon at 5.00pm. The handovers take place at the school and Z is collected by the shared lives carer who takes the child home to his mother.

19. The local authority is willing in principle to be flexible about additional contact during school holidays and half-terms. I heard evidence from SF, the social worker assigned to Z. She knows him well and has built up a good relationship with both Z, his mother and the shared lives carer. She told me that she visits Z at home every six weeks or so. She also attends the regular statutory review meetings which are held every six months. Her written evidence tells me much about the good progress which Z has made at school. He is working hard and appears to have flourished against the background of the stability which the shared lives placement has brought to Z and his mother.

20. SF agreed during the course of her oral evidence that Z's relationship with his father is important to him and he enjoys the time they spend together at weekends. She has spoken to Z's teachers who have observed his delight when his father comes to collect him on Friday afternoons. The only concern which Z has voiced related to an occasion over a recent half term when the local authority inserted an extra weekend into the schedule. Z told his teacher that "three weekends were too much" because he missed his mother.

21. SF told me that she had tried to engage Y both by email and telephone to discuss contact and seek his views on how it should proceed. She had been unable to elicit a response.

Since Y has not engaged in any of the regular review meetings, it has not been possible to have any meaningful discussion with him about how, and in what manner, contact should develop.

22. The local authority plans to move towards a period of a week in terms of holiday contact during the Summer of next year and is open to agreeing with Y that there should be increased contact over other school holiday periods, including half-terms. However, in terms of the pattern of alternate weekends during term-time, its view is that Z needs to spend time at weekends with each of his mother and his father. I am told that he has a number of commitments during the week after school. He attends martial art sessions twice a week and is keen to join a local football club. With these commitments and homework during the school week, he does not have the opportunity to enjoy very much leisure time with his mother during the week and his weekends with her are important. With X's increasing sense of confidence and independence as her communication skills improve, she is able to undertake a number of activities with Z at weekends outside the home they share. I heard about trips to the local parks and the shopping centre. Z enjoys these occasions and I have no doubt that they are beneficial for Z just as they are for his mother. Her social development over the course of recent months is one of the few bright lights in this litigation. As her confidence has grown, she has started meeting other mothers at Z's school. She shops for her own clothes and has begun to integrate in her local community. She has become a part of Z's school community and it is important that she continues to develop these connections. Spending time with Z at weekends is part of that development and I recognise that it would be detrimental to Z were he deprived of these opportunities.

23. In terms of what Y seeks to achieve by his present application, I look to what he has said in his 'opening statement'. This is what I collect from that statement.

    (i) Z desperately needs the stimulation, education and love which he can provide and which he is missing in his mother's care.

    (ii) Z does not need 'constant interrogation and conditioning' against his father; he needs a family, not carers.

    (iii) Z needs his parents to be friends. The court has an obligation to achieve this for Z by reuniting his parents if only as friends. For these purposes,

a family conference which includes the extended Cambodian family is essential.

24. In this context, I was disturbed to read and hear during the course of oral evidence that Y has been discussing with Z his 'plan' that, notwithstanding the conclusion of the care proceedings, the family should be reunited with a view to a long term move to Cambodia. In the eyes of this seven year old child, that must be a confusing and worrying message to hear. It demonstrates to me the extent to which his father lacks insight into his son's need for emotional and physical stability in his life. It is further evidence of his inability to accept the decisions made by this court and the Court of Appeal. Z is emerging from a period of chaos and instability. Over the course of the last few months he has become much happier and more settled. He has had to deal with a number of moves in the last two or three years following his parents' separation. Y will of course say that it is the court which has brought about that state of affairs because of its unwarranted (and, on his case, illegal) interference in his family's life. My judgment and the facts as I have found them to be are now a matter of public record. I do not repeat them here.

25. Y's statement at (i) above also tells me how little he knows or understands about Z's life at home with his mother and the progress which she has achieved over the course of the last two years. Despite her disabilities, I am entirely satisfied from everything which I have heard and read in this case that she provides Z with an abundance of love and, to the extent she can, appropriate stimulation. In terms of his education, his school reports are excellent. He is making good progress and is happy and settled in a safe learning environment where all his educational needs are being met in an age appropriate way. His father has much to contribute in this context. I accept that there are things which he and Z can do together which Z's mother cannot do. I have recognised the many benefits which contact with his father brings to this child. It formed the basis of the local authority's final care plan and it is the reason why the social workers who support contact have persevered in their determination to make contact work despite their difficult professional relationship with Y.

26. Y's expressed views about contact also tell me how little he appreciates the very significant strides of progress which X has made to date. In my mainframe judgment I

expressed my disappointment that Y refused to engage at all in the final hearing and thereby missed the compelling evidence which was put before the court in relation to that progress. I appreciate that he has been denied the opportunity to spend time in her company since the separation but the absence of contact between these parents reflects not only safeguarding concerns but Z's mother's own wishes. At no point has Y accepted that his marriage has broken down nor does he recognise his own contribution towards that breakdown. I recognise that there is little I can say in this judgment which will develop that understanding and insight since Y continues to believe that the fracture of that relationship has been 'socially engineered' by this court.

27. On behalf of the Guardian, Mr Cornford has helpfully produced a schedule of all the references to contact made by Y in the material he has produced since the hand down of my earlier judgment. It is clear from this that the main thrust of his application is for weekly contact on an ongoing basis for the reasons which I have set out above. He has also asked for at least 50 hours each week. The document he produced on 10 November 2020 shortly before this hearing refers to Z's need to have 'quality time with his father each week until these proceedings are at an end'. This latter reference appears to relate to the 'conclusion of the family meeting' which Y is anticipating as the platform for a court-endorsed move to Cambodia. He wishes to be allowed to meet with Z's mother in order 'to normalise contact arrangements between parents in [a] friendly environment' without 'forcing parents to fight each other'. (I have not adopted the capitals and expletives which framed Y's original written submissions on this aspect of his application.)

28. On balance I am persuaded that Z's need to see and spend time with his father outweighs the concerns I have in relation to the potential for emotional manipulation of this child by his father. Y has refused to assist the court and I know not what he might have said were he to have answered questions about the discussion(s) he appears to have had with Z about a future move to Cambodia as a reunited family. That he is fixated upon, and driven by, this course is clear from the written material he has submitted to the court. He needs to understand that these discussions do nothing to reassure Z; they merely confuse this child who currently looks to the security of his home with his mother and the roots he is putting down within his school and local community.

29. I recognise the benefit which flows from the current regime of alternate weekend contact with his father and that must continue unless there is a very significant change in circumstances which is inimical to Z's welfare. To an extent, the maintenance of that contact on an ongoing basis lies within this father's gift. I would wish to see contact developing over the course of school holidays and half-terms and I am told that forward planning on the part of the local authority already embraces this extension. Whilst Z finds it difficult to maintain concentration for extended periods of indirect contact on Skype, this form of contact should be supported and developed at the child's pace. I recognise it to be a useful support for the periods of direct contact which Z will continue to have with his father on alternate weekends. Because of Z's need to spend time at the weekend with his mother, I am not persuaded that this is a case where he should be deprived of that opportunity. It would not meet his needs nor would it be in his longer term interest to spend every weekend with his father. I accept the evidence which is before the court that he missed his mother when, recently, he spent three consecutive weekends with his father. His attachment to his mother is secure but he is not yet at the stage where he can cope with leaving her every weekend. It is clear from the way in which Y has framed his application for contact that he regards the arrangements as a holding position for whatever time remains before his anticipated move as a family to Cambodia. That will not be happening given the orders which I have made in this case. Y needs to recognise the reality of his son's lived experience of his life moving between his parents' two homes. He can make contact a much more meaningful experience for his son once he accepts that reality.

30. He has referred in his written material to Z's 'fear' of the social workers and his attempts to 'barricade' the door of his flat to prevent them from entering his father's home whilst he is there. I have to balance that information against the evidence I heard from SF who told me about the delightful little boy who greets her very happily when she makes her regular visits to see him at home with his mother. She described how he loves to play hide and seek and his evident delight when she 'finds' him. I cannot know how Z behaves in his father's home and he has not been prepared to engage with this hearing so as to give me that insight. To the extent that Y is adding to his son's confusion and sense of uncertainty by referring to a move to Cambodia (and I am satisfied that he has had these discussions with his son), he may be contributing to Z's anxiety.

31. Section 34 of the Children Act 1989 imposes a clear duty on local authorities to facilitate contact between children in care and their parents. I am satisfied that the local authority is intending to promote contact between Z and his father in accordance with the current plan for alternate weekend staying contact supplemented by additional periods of staying contact during holiday periods. I would like to see that direct unsupervised contact run in parallel with regular weekly Skype contact as soon as Z feels ready to have that contact. I understand that X does not wish to facilitate that contact but I am satisfied that the shared lives carer is willing and able to assist in this respect just as she manages the bi-weekly handovers on Sundays at the school. It is much to her credit and that of Y that they have managed to preserve a civil working relationship so as to ensure that these handovers appear to run smoothly and without incident.

32. On this basis, I have been invited to dismiss the application for increased contact. For reasons set out above, I propose to make no order on the application but I would wish to see a clear series of recitals in any composite order which I am asked to approve to reflect the court's expectations in relation to contact as set out above.

The local authority's application for an order pursuant to s 91(14) of the 1989 Act

33. Section 91(14) of the 1989 Act provides as follows:-

> "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."

34. Pursuant to s 91(15) of the same Act, there is an express statutory prohibition in respect of a second, or subsequent, application to discharge a care order in relation to the child concerned unless the court gives permission for such an application to be made. I mention that sub-section because, although Y has not issued a formal application to discharge the care order which I made at the conclusion of the last hearing, it is clear from the material he has submitted that this is what he seeks to achieve.

35. One of the purposes of these provisions is to limit the exposure of a child at the centre of contested proceedings to further unwarranted litigation and to remove him or her from the forensic arena of court scrutiny and intervention. This court needs no persuading of the potential for emotional harm to children locked into proceedings by repeated applications which have no traction on the arrangements for their futures.

36. The purpose of s 91(14) is to limit that sort of exposure. It puts the court in the position of a gatekeeper. An order under this section does not of itself prevent any applicant such a Y from making a further application to the court. It merely means that he must first obtain the court's permission to proceed with the application. In reaching any conclusions about whether or not to grant leave in these circumstances, the court will always have regard to s 1(1) of the 1989 Act which makes the welfare of the child the paramount consideration. That is the criteria which must also be considered when the court is asked to make an order under s. 91(14).

37. The exercise of the court's powers under this section was considered some time ago in *Re P (Section 91(14) Guidelines)(Residence and Religious Heritage)* [1999] 2 FLR 573. In that case Butler-Sloss LJ stressed that, although the power to restrict applications was discretionary, the court must weigh in the balance all the relevant circumstances giving paramount consideration to the welfare of the child. Because it is a power which interferes with the right of a party to make an application and to be heard in matters affecting his/her child, it is a power which must be used sparingly and with care. It is often described as a 'weapon of last resort' although it is a power which is available in appropriate circumstances where there has been no history of repeated and unreasonable applications. In these circumstances, the court will need to be satisfied in relation to two matters. First, the facts of the particular case before the court must go beyond the commonly encountered need for time to allow the child to settle into a new regime approved by the court and/or as a means of reducing animosity between a local authority and a parent. Secondly, the court must be satisfied that there is a serious risk that, without the imposition of the restriction, the child or his primary carer will be subject to unacceptable strain.

38. I am aware that Y will undoubtedly see such an application as a potential infringement of his human rights. The Court of Appeal in *Re P* has made it clear that such an order

is neither an infringement of the Human Rights Act 1998 nor Art 6(1) of the European Convention on Human Rights 1950 because it does not deny access to the court, merely to an immediate hearing.

39. I bear well in mind that the degree of restriction imposed on any future applications in relation to Z must be proportionate to the harm it is intended to avoid. For these reasons the court is obliged to consider carefully the extent of the restriction and the harm it is intended to avoid.

40. The local authority's application is supported by both the Guardian and the Official Solicitor. It is resisted by Y on the following grounds[1]:-

    (i) In cases where there has been a perversion of justice, no judge has the right to restrict a parent from seeking justice for his child.

    (ii) There is no evidence that Y has ever attempted to remove Z from the care of his mother. Any suggestion that he is a risk to either mother or child is 'just vexatious invective by a dishonest [local authority]'.

    (iii) The repeated applications which he has made in the past for the discharge of the care order were motivated by a fear that the local authority planned to place Z for adoption, a position and concept which would have no meaning for his mother who was unaware of such a possibility. As Y explains, the applications and appeals which he accepts he has launched were driven by "the MALFEASANCE in proceedings and deliberate perversion of the course of justice in favour of [the local authority] denying him rights of access to justice OR CRIMINAL MOTIVES by [the local authority] !". He assures me that he has no intention of making further applications to the Family Court which he regards as 'corrupt' and thus likely to dismiss them.

[1] These I have collected from his written opening statement as read to the court on 18 November 2020 on Day 1 of the hearing before he chose to absent himself.

41. On behalf of the local authority, Mr Green accepts that this case is not one which is typical of cases where such applications are usually made. He acknowledges that s. 91(15) and (17) provide a degree of protection from further proceedings. Given that Y's current application for contact was made on 2 September 2020, s. 91(17) would preclude a further application for contact, without the court's permission, until 2021 in any event.

42. Mr Green points to the fact that it is Y's stated intention to take matters further in a number of different directions. He has made numerous applications to the Court of Appeal which have been dismissed and, on at least two occasions, on the basis they were totally without merit. He has made applications to discharge the interim and final care orders at almost every hearing, including this one.

43. On behalf of the Guardian, Mr Cornford submits that the applications in relation to s. 91(14) and the court's inherent jurisdiction emanate from a desire on the part of the local authority and the guardian to preserve the security of Z's current placement. He accepts that s. 91(14) is usually more appropriate in private law proceedings. It is less common in public law proceedings because of the statutory protection provided by s. 31(4) of the 1989 Act. In this case, he submits that such an order is both necessary and appropriate because both X, and though her, Z, require a greater degree of protection beyond the six month statutory period which would otherwise be engaged. In this context, he points to the particular vulnerabilities of X and the sheer force and weight of the approach adopted by Y in these proceedings.

44. In terms of the risk to the placement in the event of further applications by Y, Mr Cornford points to the need once again to involve Z's mother with all the difficulties that will entail given that she is highly likely to be a protected party in those proceedings and will require representation through the Official Solicitor. Furthermore, Z will be re-engaged in litigation as a Guardian will need to step back into the litigation arena to represent his interests outside those of his two parents. Any fresh litigation will undoubtedly involve the shared lives carer who is already closely involved in all the practical aspects of supporting X and Z through what is hoped to be the final stages of this long-running litigation. I heard evidence that the carer has already voiced some concerns about the prospects of further litigation involving this family. She takes care

of another vulnerable (and elderly) individual who shares her accommodation and her daughter and grandchild live immediately next door to her property.

45. I accept that this shared lives placement is a very important factor to be weighed in the balance in the context of both applications made by the local authority. It is a very valuable and scarce resource and one which was identified by the local authority only after five previous moves and two temporary placements for Z and his mother. They are both happy and settled in that placement. Each benefits enormously from the support which the shared lives carer is providing. She has made a significant personal and professional investment in supporting this mother. She has learnt to sign and has completed a BSL course for these purposes. She is liked and trusted by X and I have no doubt that this has been a significant factor in the remarkable progress which she has made to date. X is sufficiently secure in that placement to have established the beginnings of an independent social life. She is immersed in many of the aspects of Z's school life and is becoming integrated into a local group of mothers who also have children at the school. She and Z attend a local group which has been set up to assist other deaf and hearing-impaired individuals. She is comfortable with that group of people and I am told that Z has found these sessions helpful in understanding his mother's difficulties and how best he can communicate effectively with her.

46. If anything were to occur which put the stability of that placement at risk, the potential effect on X and Z could be catastrophic in terms of their individual welfare. It is difficult to know where, or how swiftly, another shared lived placement could be found. It is extremely unlikely that an alternative placement would be available in the vicinity which X and Z have now made their home. Any move now or in the foreseeable future would be likely to undermine much of the progress which X has made to date in terms of her integration into the community of the hearing world. Friendships and her social support systems would be lost. Z would in all probability have to leave his school. He and his mother would effectively be left to start again without the support of a trusted carer who has consistently demonstrated the lengths to which she has been prepared to go to support this vulnerable mother.

47. On behalf of Z's Guardian, Mr Cornford submits that Y needs to understand that the end of this road has now been reached. If he is to move on and settle, this is more likely to be achieved if his ability to make further applications is restricted.

48. I do not propose to rehearse in this judgment all the difficulties which engaging in this litigation has caused from this mother's perspective. Those difficulties have been comprehensively set out in my earlier judgment. In the event of further litigation, there would need to be another round of capacity assessments. If she is found to be unable to conduct proceedings on her own behalf, as seems probable, the Official Solicitor would need to become involved on her behalf once again. Taking instructions from this mother and eliciting her wishes and feelings about issues flowing from litigation is (or, at least, was) a complex process involving the intervention of a specialist expert. Inevitably, this introduces delay and further intrusion in day to day family life. Z would once again be the focus of difficult and contentious litigation and I have no confidence in his father to protect him from the impact of the unsettling effects it would have for this young child. The seeds have already been sown through his knowledge of, and involvement in, the father's developing plan to relocate the family to Cambodia.

49. Y has throughout made his intentions clear in relation to yet further attempts to engage in litigation. No one at this stage is asking me to make a general civil restraint order. In my judgment, this litigation has overtaken more or less all aspects of Y's life. I accept that it cannot have been easy for him to have been confined to his single bedroomed flat through months of lockdown with little else to divert him from what he plainly regards as an all consuming course of conduct. He has embarked on a mission to reunite his family and restore Z to a home where he will have access to both his parents. He has shown no insight into the effect on Z of his proposed move to a different country of which this child has no present knowledge and where his future remains completely obscure. He states that he has no desire to separate Z from his mother's care. However this is precisely the solution he was proposing at the final hearing in January when his case was that he should have primary care of Z if X had indeed set her face against returning to the marriage. He does not stop to consider that X may have no wish to return to Cambodia. That was certainly the thrust of what she told Dr A as I recorded in my earlier judgment. X had expressed a wish to visit her family in Cambodia but she recognised the benefits to Z of living in this country and receiving

an English education. In this context Y's emails and statements increasingly lack any coherent rationality. He has in the past taken issue with my description of him as an arrogant man. He has deliberately refused the assistance of lawyers in these proceedings despite the availability of publicly funded legal aid. I am quite sure that he has done so because appropriate legal advice would have prevented him from standing on the platform he has adopted for advancing increasingly irrational and unfounded views about the local authority, this court and the entire family justice system.

50. Weighing all these matters in the round and focussing, as I must, on Z's future welfare and wellbeing as my paramount consideration, I have reached a clear conclusion that an order under s. 91(14) is appropriate in these circumstances. I find that there is a clear and solid risk that the current shared lives placement could be put at risk were Y to seek to launch a further round of proceedings. X and Z need to know that their lives in their current home are secure and will not be interrupted over the coming months and years by a further attempt on the part of Y to change these arrangements. I am satisfied that, on the facts of this particular case, which is in many respects exceptional, the factors which I have outlined above go beyond the need for time to allow Z to settle into the new regime which has been approved by the court. This order is required for reasons which go beyond the need to reduce animosity between Y and this local authority. I am persuaded that there is a serious risk that, without the imposition of the restriction, both X and Z will be subject to unacceptable strain and worry. It has to be remembered that this father is having ongoing and regular contact with his child. The order I am proposing to make will not affect his ability to continue to enjoy that contact and to re-establish a solid and steady relationship with his son. It is entirely compatible with the court's objective to restore and support that relationship in an environment which is free from the pressures of litigation. Y needs to change his focus. He needs to accept that X has no wish to continue a relationship with him and that she is settled and, as far as the court can ascertain, content in her life outside the marriage. To the extent that he seeks to engage with her in the future in terms of raising their son as separated parents, he is much more likely to achieve his objective if he is able to demonstrate that he understands the damage which his current approach to this litigation is causing to both Z and his mother.

51. The local authority seeks an order which will endure for five years. I regard that as a disproportionate interference in Y's parental and other rights. I bear in mind his age. I bear in mind the fact that an order under this section is not an absolute bar but merely a preliminary hurdle to overcome as a result of the imposition of the need for leave to proceed with an application. In my judgment, an initial restriction of two years is an appropriate response to Y's conduct of this litigation. During that period, he will not be entitled to make any application in relation to the arrangements for Z's care or his contact with Z without first securing the leave of the court. At that point the position can be reviewed. Hopefully matters will by then have moved on and a fresh order will not be necessary.

The local authority's application for an injunction under the inherent jurisdiction

52. The local authority requires the court's permission for any exercise of the court's inherent jurisdiction with respect to a child. Pursuant to s. 100(4) of the 1989 Act, the court can only grant such leave if it is satisfied that:

    (a) the result which the authority wishes to achieve could not be achieved through an alternative jurisdictional route open to that authority; and

    (b) there is reasonable cause to believe that if the inherent jurisdiction is not exercised with respect to the child, he is likely to suffer significant harm.

53. What is sought is an injunction which prevents Y from entering a restricted area which has been marked on a map which is attached to the application. At my request the local authority has supplied a second map which provides some wider context for that area on a larger scale. The town in which X and Z live is a relatively small town with a single shopping centre and three specific areas of public green space. The town is accessed via a one-way road system. The entire circumference of the perimeter to the proposed exclusion zone is 3.7 miles. I am told that it takes approximately 15 minutes to drive around the boundary although no one has yet calculated the internal square area.

54. Importantly, Z's school, which is the venue for contact handovers, is outside the proposed exclusion zone. The contact arrangements will be unaffected by the operation of the proposed injunction. Y's home is approximately one hour's drive away in a completely different part of the county some 50 miles away. He has always collected Z and driven straight home for his periods of weekend contact. There is no evidence that he has ever used the facilities in the town where the mother lives save for one occasion about which I know when he used the cashpoint at one of the supermarkets which falls within the proposed exclusion zone. Because I have been careful in this anonymised judgment not to reveal any information which might reveal the identity of the parties or the location in which each lives, I am constrained in providing too much detail about the potential impact on Y of the proposed order. Suffice it to say that it does not affect his use of any of the major road links between Z's school and Y's own home. There is no impact whatsoever on his ability to access the many areas of outstanding natural beauty in the countryside around his home or the amenities which he might wish to use when Z is staying with him in that home. In terms of the availability of petrol service stations, cash point and shopping facilities, I am satisfied that there are ample facilities within a reasonably short distance of the proposed exclusion zone to enable Y to purchase petrol or food without any unnecessary inconvenience. Within striking distance of his own home, he has access to several major towns and at least one city. There are some beautiful stretches of coastline and many leisure activities within easy travelling distance of Y's home, access to which will remain completely unaffected by the exclusion zone which is being proposed.

55. Y has been aware of this application for over seven months. He has failed to identify any reason why the grant of an order in the terms sought would cause him any particular difficulty or inconvenience. In his opening statement delivered on the morning of the first day of his hearing before his disengagement from the proceedings, he said that the order was unnecessary because he did not know where X and Z lived and had no wish to discover the location of their present home. He stated, mistakenly, that the proposed order would prevent him from attending Z's school. He alleges that such an order would "brand me illegally and dishonestly as a dangerous and violent person".

56. There is an issue as to whether or not Y knows where Z and his mother are living. There is a suggestion in the papers that Z had shown him the road where he lives whilst

being driven in his father's car for a period of weekend contact. During the hearing earlier this year, Y acknowledged that this had happened but he told me that he had since forgotten the location. I have difficulty accepting this.

57. It is quite clear from all the material which Y has put before this court that one of his overriding objectives is to confront X, albeit in the neutral context of some sort of arranged meeting, in order to satisfy himself that she understands the realities of her current situation. It is clear that his agenda has now moved on. He is set upon taking steps, although I know not what these may be, to ensure that his family is provided with the means to leave this jurisdiction and set up a future life in Cambodia. That future life is to be independent of any future involvement of this court or this local authority. Its only role in this plan is apparently to provide the financial means whereby the move will be achieved.

58. Y is an intelligent man. I am unable to accept that, having been told by Z where he and his mother lived, he would simply put it out of his mind. I accept that he has not yet attempted to contact X directly. However there are many instances, recorded in my previous judgment, where he has acted irrationally and without thought for the impact of his actions on Z. In March this year when difficulties arose in relation to his contact with Z in the circumstances of the Covid-19 emergency, he threatened to attend at Z's school in order to remove him. His intention at that point in time was to take Z to live with him "to reside in a safe environment and be educated by me until this critical time is over". Whilst I might be able to make appropriate allowances for this threat in the febrile and anxious early days of the unprecedented circumstances through which the entire nation was living at that time, Y did not stop there. In his email to the local authority, he went on to say this:

> "I will be arriving to collect [Z] tomorrow as normal ACCOMPANIED BY SOMEONE WHO WILL BE VERY INTERESTED TO REPORT THIS STORY OF DELIBERATE EXPOSURE OF AN INNOCENT CHILD TO HIGH RISK OF INFECTION BY CORONA VIRUS ……. THAT WILL OPEN UP A VERY LARGE CAN OF WORMS !!!".
>
> "……IT COULD WELL BECOME A NATIONAL OR INTERNATIONAL STORY !!!".

59. Z's social worker, SF, has filed two written statements in support of the local authority's application for an injunction. Y has been served with a copy of each. He has chosen not to put any questions to SF or challenge the evidence which she has given.

60. SF refers to an email written by Y to the local authority in relation to contact arrangements in which he refers openly to "picking [Z] up from his home in *[name of town]*". Further, he has been seen by the shared lives carer driving in his car past the placement. Whilst he made no attempt to stop outside the home, his presence in the immediate vicinity of the property unsettled the shared lives carer. X's wish to avoid any form of contact with Y has not changed over the months since the final hearing. She is much better able to express herself to the shared lives carer and those around her. I heard evidence from SF that she becomes anxious when contact weekends approach. She is very tactile in an apparently over-protective way with Z when leaving him at school on those Friday mornings and remains anxious until he returns home on the Sunday afternoons.

61. SF is concerned about the vulnerability of the placement were Y to turn up unannounced at the home. She believes there is a prospect of the shared lives carer ending the placement were this to happen. She has had several conversations with the carer who has expressed her worries and concerns about some of the things which Y is saying about his future intentions. The carer recognises an increasing irrationality in his communications with the local authority and she has conveyed to SF her real concerns that the situation appears to be escalating and that Y might do something which would not be in Z's best interests. In this context SF points to one of Y's recent documents to the court. In that document, Y said this:

> "I have truth and justice on my side and **the need to free my wife and son from the oppression of the UK state to determine their own lives**. Not have their lives social engineered by narrow minded social workers and "Experts" who have no idea of life in the Far East."

62. Y will doubtless point to the fact that he has not acted on any knowledge he may have about X and Z's whereabouts. He will point to the fact that he would never do anything to harm Z. I share the concerns which have been expressed by both SF and the shared lives carer. Those concerns have been supported by X's own social worker, KM, who attended court to give evidence at the last hearing.

63. Despite the fact that Y gave the court an undertaking at an earlier hearing on 1 May 2020 that he would not approach X or Z save for the purposes of the contact arrangements, he has consistently refused to sign a written form of undertaking to this effect. I have made an interim order as a holding position but I am now asked to put in place the exclusion order which is sought in order to provide some longer term security for the shared lives placement.

64. I have already explored the potentially disastrous consequences for Y and Z were the security of their current placement to be put at risk. It is not simply a placement: it is a home, and one where they have felt sufficiently secure to put down roots and establish a life within their local community. Y has repeatedly stressed his clear intentions to destabilise this home. His plan to move the family to Cambodia and the ongoing discussions which he claims to be having with third parties (including international lawyers) in order to achieve this end have continued unabated. His efforts towards this end have been unaffected by the clear findings I have made in relation to his conduct towards X. He has no regard for this court or the judgments of the Court of Appeal. He is quite unable to moderate his language and he continues to make threats to all those involved in these proceedings whom he regards to be part of the conspiracy against him and his family. He has become increasingly irrational to the point of losing any sense of reality or proportion. For these reasons I place no confidence in the absence of any approach to date as being a sufficiently protective factor.

65. Any order I make in the context of the present application must be enforceable, necessary and proportionate to the harm identified. That harm in the circumstances of this particular case and the particular circumstances of this mother and son could be incalculable. Any disturbance of the current arrangements for X would in all probability set back much of the progress which has been achieved to date. It would inevitably impact upon her ability to look after Z effectively and safely. That would have highly adverse implications for his welfare. He is securely attached to his mother and continues to look to her to meet most of his day to day needs in terms of emotional warmth and support. I am in no doubt that the injunction sought is both necessary and proportionate. Y has been given the opportunity to explain to the court why its imposition might interfere disproportionately with his Art 13 right to freedom of

movement and to come and go as he pleases. He has chosen to withdraw and has said nothing to assist the court in this context. I suspect that there is nothing which he could say or at least nothing which would tip the balance in favour of elevating those Art 13 rights over and above the security of X and Z's home.

66. Having carefully considered the plan which shows the precise area of the proposed exclusion zone, I am satisfied that it reflects the minimum restriction which is required to keep Z and his mother secure in their present home. Whilst it was a point which I raised with counsel during the hearing, I am satisfied that the restricted area needs to include the three areas of green space which are marked on the map. These are areas which are familiar to X and Z. I am satisfied that X would be quite unable to deal with a chance encounter with Y. She continues to convey to those who know her well high levels of anxiety about any form of contact. The order I intend to make does indeed represent a restriction of Y's Art 13 rights. He will see it as a further infringement of his Art 8 rights. However I am persuaded in this case that it is an interference which is both necessary and proportionate. I propose to make an order which will, in the first instance, last for a period of two years. I hope that by that stage matters may have moved on for everyone and that an extension of the order will not be necessary.

Disclosure of the court's judgment in these proceedings to X's family in Cambodia

67. As I indicated to Mr Green during the course of submissions, I am willing to permit a copy of the anonymised judgment handed down in May 2020 to be disclosed to X's family in Cambodia. It is already available as a published judgment and there is no reason why the family should not see it in order to inform themselves that X and Z are safe and well and living in circumstances which will ensure they remain so.

Order accordingly