



Neutral Citation Number: [2022] EWFC 127

**IN THE FAMILY COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 02/11/2022

**Before :**

**MRS JUSTICE KNOWLES**

**Between :**

**A Local Authority**  
**- and -**  
**F and Others**

**Applicant**

**Respondent**

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**Mr Nick O'Brien** for the local authority

**Mr Guy Spollon** for the father

**Mr Mark Cooper** for the mother of P, the eldest child

**Miss Tracy Lakin** for the children via their children's guardian

Hearing date: 19 October 2022  
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**Approved Judgment**

This judgment was handed down remotely at 10.30am on 2 November 2022 by circulation to the parties or their representatives by e-mail and by release to the National Archives

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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.

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**Gwynneth Knowles J:**

Introduction

1. In early 2020, AB was murdered by her husband, CD. With the assistance of two of his brothers, CD hid AB's body so that its whereabouts were unknown until late 2020. At that time, AB's body was discovered, buried in woodland. CD was found guilty of AB's murder by a jury in early May 2022 and in June 2022, he was sentenced to life imprisonment with a minimum term of 18 years before he is eligible to be considered for parole.
2. AB was the mother of two of the three children with whom I am concerned and the step-mother of the third. Those children are: P, a boy of 14 years; Q, a boy of 8 years; and R, a girl of 6 years. Q and R are the children of AB and CD and P is the child of CD and his first wife, GH. All three children are placed together in foster care under interim care orders made on 7 April 2020 following the arrest of CD. I shall refer to CD as "the father" and to AB as "the mother".
3. The applications before the court were as follows:
  - a) the local authority sought care orders for each child on the basis of plans that they live in long-term foster care. The children have lived with their current foster carers since August 2021 and it is intended that these carers should be their long-term carers;
  - b) the local authority sought permission pursuant to s.34(4) of the Children Act 1989 to refuse contact between the children and their father;
  - c) the local authority sought the court's leave to invoke the inherent jurisdiction pursuant to s.100(3) of the Children Act 1989 and, if granted leave, for the court to authorise and/or declare (i) that the local authority need not consult with the father on decisions about his children's care and well-being; (ii) that the local authority should provide the father with limited information by way of twice yearly written reports on the children's progress without disclosing details of the whereabouts of the children's foster home or schools; and (iii) that it was lawful for the local authority to exercise its powers pursuant to s.33(4) of the Children Act 1989 to prevent the father exercising his parental responsibility so as to obtain information or make decisions about the children's care;
  - d) and the local authority sought an order pursuant to section 91(14) of the Children Act 1989 providing that any future application made by the father to either vary the orders made at this hearing or to seek other orders under the Children Act 1989 would require the permission of the court before any such application could proceed.
4. The applicant local authority was represented by Mr O'Brien; the father by Mr Spollon; GH by Mr Cooper; and the children through the children's Guardian by Miss Lakin. I am grateful to all the advocates for their assistance and, in particular,

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indebted to Mr Spollon and his instructing solicitors who worked hard to assist the father, having only been instructed on 6 October 2022. Each of the advocates said all they could have done in support of their respective cases.

5. I read the court bundle prepared for this hearing together with the position statements prepared by each party and heard oral submissions. This case was very familiar to me as I had case managed it since allocation to me on 12 October 2020. Prior to the hearing, I met with P in the presence of one of his foster carers and his solicitor and, at the hearing, I permitted the father to address the court unsworn. At the conclusion of the hearing on 19 October 2022, I indicated that I would reserve judgment for a short time.

Background

6. I have summarised the background which is pertinent to the issues in this case.
7. The father was born in Z and is now 44 years old. He reports that his parents are dead and he has 12 siblings, most of whom continue to live in Z. Two of his brothers live in the UK, another brother lives in Germany and another brother lives in Italy. The father left Z and came to the UK where he claimed asylum though this claim was initially refused.
8. According to GH, she met the father on the internet when she was aged about 16 or 17. They began a relationship and GH fell pregnant quickly. P was born when she was 18 years old. GH converted to Islam and changed her name, adopting the father's surname. The couple married in December 2008. The birth of P and his marriage to GH enabled the father to seek fresh consideration of his claim for asylum on the basis of his right to a family life pursuant to Article 6 of the European Convention on Human Rights. The father and GH lived together until 2010 when they separated, subsequently divorcing in 2011. The father left P with his mother and appears to have had no contact with him until summer 2014, having moved some distance away from where both P and GH lived.
9. Sadly, GH had huge problems caring for P and he was the subject of a child protection plan from June 2012 onwards. In November 2013, P was removed from his mother's care, having experienced significant physical and emotional neglect, and was placed with his maternal grandmother. In March 2014, P was then placed in foster care as his maternal grandmother was seriously ill. She died in August 2014. By that time, the local authority then involved with P had decided that P could not return to his mother's care. Coincidentally, the father contacted the local authority at that time to ask about P and was subsequently assessed to care for P himself.
10. In the meantime, the father had remarried. The mother was born and raised in Z and married the father there in August 2012. Q was born there and in September 2013, the family moved to the UK. I note that by this time the father had been granted asylum so that the mother entered the UK on a spousal visa.
11. The local authority's assessment of the father as a carer for P was positive and in January 2015, P was permitted to live with his father and the mother. P's contact with GH was to be letterbox only and monitored by the local authority. It appears that very little, if any, contact between P and his mother took place once he began to live with

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his father. By April 2015, P was considered to be happy and settled in his father's home and there were no concerns for his welfare.

12. In 2016, the mother gave birth to R. Prior to the father's arrest, the family were not known to the local authority with respect to child welfare. I also record that, in May 2015, GH gave birth to Y, a half-sister to P. Y was placed with foster carers immediately after her birth and placed for adoption in June 2016.
13. Though the family were not known to the local authority, this was not a happy home. The sentencing judge was sure that the father had been violent to the mother, as P described in his evidence for the criminal trial, by slapping her on occasions with an open hand and pulling her hair so that this treatment made her cut it short. The mother had contemplated taking her own life and she said in notes made prior to her death that the father had frequently threatened to kill her. The sentencing judge was sure the father had indeed made those threats. It appears that the day before the mother was murdered, the mother and the father had a significant argument in the family home which was witnessed by the children. I note that, since about August 2021, P, Q and R have spoken to their carers, and to social workers about both the abusive relationship between the mother and the father and their own experience of threatened and actual violence at the hands of both the mother and the father.
14. On a date in early 2020, the father murdered the mother and disposed of her body with assistance from two of his brothers. On the following day, the father told the police that the mother had gone missing and told P to tell the police that she had gone out jogging and had never returned. On 4 April 2020, the father was arrested on suspicion of the mother's murder and the children were placed in police protection that same day. On 6 April 2020, the children were removed to another foster home where they remained until August 2021. That placement broke down following the children reporting misconduct by the foster carers. Fortunately, the children's respite placement became their present placement.
15. The father was charged with murder on 8 April 2020 and remanded in custody. Owing to media reporting, the children were informed by their social worker on 14 April 2020 that the police believed the mother had died. The children received bereavement counselling though this ceased at the children's request. On 18 May 2020, the father pleaded not guilty and the criminal trial was fixed to start on 16 March 2021. In late 2020, the mother's body was found and that discovery, together with the forensic testing which followed, substantially delayed the criminal trial. In August 2021, P and his siblings began to talk about events in the family home both prior to and after the mother's disappearance. P was interviewed by the police and gave a statement about what his father had asked him to do following the mother's disappearance. At the criminal trial, P gave oral evidence and was cross-examined on behalf of the father.
16. The father maintained his not guilty plea at the criminal trial but did not give evidence in his own defence. Both he and his two brothers were convicted unanimously by the jury. In his sentencing remarks, the judge stated that he was sure the father intended to kill the mother because (a) he had covered up what he had done; (b) he had made previous threats to kill the mother; and (c) he lacked any true remorse for what he had done. The judge noted that the father had given no explanation accounting for the mother's disappearance and had told the author of a pre-sentence report that he did

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not think the mother was dead and that the body which had been found was not that of the mother. The sentencing judge identified a variety of aggravating features, one of which was taking advantage of P by asking him to say something which was untrue. Additionally, the father had laid a false trail by sending messages from the mother's phone to his own and taking money from her bank account in an attempt to suggest that she was still alive. The false trail included the father taking the children on a trip, saying that he was looking for the mother. The mother's murder was also aggravated by the domestic context in that she was killed by the husband who was supposed to protect her and had been subjected to domestic violence and threats. Her body had been interred in a deep grave by the father and his brothers in order to avoid its discovery. Finally, there was clear evidence of attempts to conceal communication with the father's family abroad at about the time the mother was killed and her body disposed of.

17. To date the father has not appealed his conviction or sentence though I understand he intends to do so. In his final evidence within the care proceedings, the father rejected the jury's verdict and repeated his denial of responsibility for the mother's death. He asserted that, if the mother was still alive or if she had been killed, this would be the responsibility of her family. In effect, he also called P a liar.
18. The care proceedings have been much delayed by the need to await the outcome of the criminal trial. On 14 July 2020, Mr Justice Keehan determined that any fact-finding in the family proceedings should take place after the outcome of the criminal trial. I note that the father has had no direct contact with the children since he was arrested and the local authority have had permission to refuse contact between him and the children since September 2021. I listed a final hearing on 28 March 2022 and, on 20 May 2022, reduced the time estimate in the light of the father's conviction. The final hearing took place remotely so that the father could attend from prison.
19. On 5 October 2022, the first day of the final hearing, the father was without legal representation, having parted company the previous day with both counsel and his instructing solicitors. He told me that he had instructed new solicitors to mount an appeal against his conviction and to represent him in these proceedings. I directed their attendance on the following day. On 6 October 2022, a representative from the new solicitors instructed by the father attended before me and was able to confirm that the father could be represented at a final hearing relisted on 19 and 21 October 2022. I adjourned the proceedings to that date and made clear to the father that there would be no further adjournment of these proceedings if he once more parted company with his new legal team. The hearing was comfortably accommodated on 19 October 2022 without the need for further attendance on 21 October 2022.

Positions of the Parties

20. The father conceded, by virtue of his conviction for murder and incarceration in prison, that he was not - absent a successful appeal against conviction - in a position to care for the children. Accordingly care orders were inevitable. He was aware that the children wished to remain in their present placement and made no submissions to the contrary. He recognised that steps might need to be taken and/or orders made to support the children's current placement and prevent it being undermined or put at risk. He was extremely anxious to work with the local authority so that he could be permitted to have contact and a relationship with his children. The father was also of

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the view that the children should continue to have a relationship with their wider family.

21. Mr Spollon did not oppose the threshold findings sought by the local authority and the making of final care orders based on a plan for the children to remain in long-term foster care. The father understood that the court would make some protective orders in this case but, nevertheless contended that the local authority's proposals for letterbox contact every six months should be revised so that such contact took place every three months. With respect to the orders sought pursuant to the inherent jurisdiction, the father was worried about being side-lined and deprived of information about the children's welfare. He sought updates about that every three months rather than the six months proposed by the local authority. Mr Spollon accepted that, adopting a realistic position, the father was in some difficulty in opposing both the inherent jurisdiction orders and the order pursuant to s.91(14) of the Children Act 1989.
22. In his address to me, the father told me that he loved and cared for his children and that they were his first priority. He was ready to do whatever was needed as long as that was in their best interests. I asked him what he understood of the children's feelings given his conviction for the murder of their mother about which they were aware. The father told me "*they lost me and I lost them*" but also added that P had not been given the right information. He stressed that the children loved him but lost him as a father because of what had happened. He became upset towards the end of what he was saying to me but stated that the children's mother was dead and that he knew nothing about that.
23. On behalf of GH, Mr Cooper supported the local authority's plan for P. This envisaged that, in accordance with P's strongly expressed wishes, GH would have direct contact with him in the very near future and would be involved with and consulted by the local authority with respect to P's care.
24. On behalf of the children, Miss Lakin supported the orders sought by the local authority. With the agreement of the other parties, she proposed that the children's files contained a memorandum setting out the orders made in this case together with the recitals about how the father's contact was to be organised. This would ensure that, thereby fully informed, the Independent Reviewing Officer would be able to review these matters at the child in care reviews which take place every six months.

Care Orders

25. I have considered the proposed threshold document prepared by the local authority. On the basis of the certificate of conviction, I can conclude on the balance of probabilities that the father killed the mother and was responsible for hiding her body for six months. I am satisfied that this behaviour caused or was likely to cause significant harm to the children as they were deprived of both their primary carers and suffered emotional trauma arising from the mother's disappearance and the subsequent discovery that she had been killed. I am also satisfied on the balance of probabilities that the children were exposed to harm from incidents of domestic abuse in which they were either struck by the adults caring for them or in which they witnessed adults assaulting each other and their siblings.

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26. Those matters satisfy the threshold criteria in section 31(2) of the Children Act 1989. I approve the local authority's threshold document dated 5 October 2022 which should be appended to the final orders made in this case.
27. There is only one realistic option for the children's care, namely long term fostering. Following a parenting assessment, GH accepted she was not in a position to care for P. The father also accepted that, by reason of the life sentence imposed on him, he could not look after the children. The maternal family have been assessed and rejected and I note that there has been no challenge to those assessments. Members of the paternal family and friends have also been assessed and rejected by the local authority and those assessments have not been challenged either. In early October 2022, the father sought to put forward another of his brothers as a potential carer for the children but, by 19 October 2022, the father no longer suggested that the proceedings be adjourned for further assessment of this brother as a long-term carer for the children. Indeed, the father accepted that the children should remain with their current carers as this was what was in accordance with their wishes and feelings.
28. In this case, there were no competing care options for the children which required me to undertake a holistic analysis of each of them, with the children's welfare as my paramount consideration and by applying the welfare checklist set out in s.1(3) of the Children Act 1989. Nevertheless, I have carefully considered the local authority's care plans and final evidence together with the helpful report of the children's Guardian. Those documents make clear that all three children are settled and happy in their current foster home. They all wish to stay with their current carers and their carers are committed to them for the long term. This option represents the least change to the children's current circumstances. Long term fostering also recognises that the children will retain a link to both their maternal and paternal families. Contact with their father and with other relatives will not be straightforward and, for the foreseeable future, is likely to require considerable support from and management by the local authority. That factor underscores the desirability of a long term fostering arrangement for these children.
29. I am satisfied that I should make care orders to the local authority with respect to P, Q and R and I approve the plan for them to remain in long-term foster care.

Contact

30. Contact between these children and their father and for P with GH is not straightforward. I deal first with P's contact with his mother, GH. At the commencement of these proceedings, P was adamant that he did not wish to see his mother but, with the passage of time, P's wishes and feelings changed. He now recognised that his father may have prevented contact between him and his mother and had come to understand that his mother had always loved and cared for him even though she had not seen him for many years. P now wished to establish a relationship with his mother and was very keen to meet with her. For her part, GH recognised that her past care for P, the extended period of separation and the trauma that he has experienced mean contact should proceed with caution. Contact between them may throw up challenges as P tries to make sense of what has happened to him and where the truth lies about his family relationships. Both P and GH will need a great deal of support from the local authority as they re-establish their relationship. No order is

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necessary to regulate that process as GH is accepting of the local authority's plan that contact should proceed at P's pace and with professional support.

31. Contact between the children and their father is fraught with complexity. All three children have requested face to face contact with their father. I accept the assessment of the children's Guardian that, for Q and R, this is a reflection of their loyalty and love for their father as well as an indicator of their lack of awareness of the long-term implications of their father's behaviour. They want to see a father that they know they love and of whom they have numerous happy as well as more frightening memories. The situation is more complex for P who gave evidence against his father at the criminal trial and who has an understanding of the impact of domestic abuse on the family. From my meeting with P, it was clear that he had a moral standpoint on the crime for which his father had been convicted. He understood that, in murdering his stepmother, his father had deprived him and his siblings of their family life as well as taken the life of another human being. P wanted to see his father to tell him how angry he was and how much his father's behaviour had affected him, his siblings and others. P told me that he wanted to see his father every couple of months or so.
32. I note that Q and R have been told that the mother is dead and that the father was responsible for this. They do not know a great deal more of the details. Q believes that his father works for the police and may be in prison for a speeding ticket. He is very muddled about what has happened to his mother. It is unclear to me whether R understands that her mother is dead or that her father is responsible for this. All three children require skilled work to help them come to terms with what has happened and, in accordance with their respective ages and maturity, need to know the truth about their mother's death. I understand that the children have been re-referred to Winston's Wish, a charity which assists children who have been bereaved.
33. Turning to the father, he continues to maintain that he is not responsible for killing the mother despite overwhelming evidence to the contrary. Whilst he told me that he would do whatever was needed for the children, this plainly, on the basis of what he said to me, does not – at the moment – extend to acknowledging his guilt for the mother's death. I consider it more likely than not that he would continue to profess his innocence to the children when they seek answers from him about why he is in prison and what happened to their mother. That narrative has the potential to be acutely damaging, distressing and confusing for all three children and would in my view undermine the children's stability. I doubt that even very sophisticated supervision of contact could prevent the father from asserting his innocence to the children.
34. I have thought very carefully whether P should be able to see his father in the absence of both Q and R. I accept that there may come a future time when a contact visit of this sort may be feasible, probably after the conclusion of the appellate process by which the father seeks to overturn his conviction. A visit before then runs the risk of being damaging and counter-productive. Any visit for P to talk to his father and confront him with difficult truths will require the most careful preparation and support for both P and his father before, during, and afterwards. My view is that a separate visit for P is, at the moment, not indicated and that it may also have the potential to damage the sibling relationship since Q and R would be unlikely to understand why they were not permitted to see their father but P was allowed to do so.



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35. The local authority sought permission to refuse direct contact between the children and invited my approval of its plan for the children to have indirect contact with their father every six months by way of an exchange of letters/cards. That exchange will be informed by letters to the father outlining the progress the children have been making in their foster home, at school and otherwise. Orders pursuant to s.34(4) of the Children Act 1989 are permissive orders which allow the local authority to adjust how contact takes place in accordance with the needs of the child and not with the demands of an adult. They give the necessary flexibility in the difficult circumstances in which these children have been placed by the actions of the father. The arrangements for contact will be reviewed every six months and, if necessary, adjusted in line with what is in the children's best interests.
36. Contact between the children and their wider family is governed by the qualified duty to promote contact under paragraph 15(1) of Schedule 2 to the Children Act 1989. The local authority will assess whether contact with the paternal family is in the children's best interests should a request for contact be made by the family. The same applies to the maternal family.
37. I make the order sought by the local authority with respect to each child and approve the arrangements for contact set out in the care plan.

Inherent Jurisdiction Orders

38. Section 22 (4) of the Children Act 1989 places a duty on a local authority before making any decision with respect to a child whom they are looking after or proposing to look after, to - so far as is reasonably practicable - ascertain the wishes and feelings of the child and his parents. Additionally but not exhaustively, a local authority is under a qualified duty to provide information to a parent about where a child is being accommodated (paragraph 15(2) of Sch 2 to the Children Act 1989) and an Independent Reviewing Officer is also expected to ensure that - so far as practicable - parents are consulted for the purpose of child in care reviews (regulation 36 of Sch 2 to the Children Act 1989). Finally, there are expectations that parents will be consulted about personal education plans for a child in care (paragraph 18 of the statutory guidance entitled "*Promoting the education of looked after children and previously looked after children: Statutory guidance for local authorities*", February 2018). A local authority may decide the extent to which it will restrict the exercise of a parent's ability to exercise their parental responsibility if it is satisfied that it is necessary to do so in order to safeguard or promote the child's welfare (see sections 33(3) and 33(4) of the Children Act 1989). However this does not absolve the local authority of the separate and arguably antecedent duty to consult a parent. Consultation requires the provision of information to enable the consultee to engage meaningfully with the process.
39. Case law has recognised that, in an appropriate case, a local authority may be authorised not to consult and share information with a parent about the child's progress, welfare or upbringing (see, recently in that regard, my own decision in Re X and Y (Children) [2018] EWHC 451 (Fam) and A Local Authority v X and Others [2019] EWHC 2166 (Fam)). However, as I noted in paragraph 52 of Re X and Y, a local authority should only be absolved from its duty to consult and to provide information to a parent in exceptional circumstances. The only way of authorising

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these departures from the local authority's statutory duty was to permit the local authority to invoke the inherent jurisdiction and then to make declaratory orders.

40. Section 100(3) of the Children Act 1989 requires the local authority to obtain the court's permission before making any application for the exercise of the court's inherent jurisdiction with respect to children. Section 100 (4) provides that the court may only grant permission if it is satisfied that (a) the result which the local authority wishes to achieve could not be achieved by either the making of orders otherwise than in the exercise of the court's inherent jurisdiction or making orders for which the local authority were entitled to apply and (b) that there was reasonable cause to believe that if the court's inherent jurisdiction were not exercised with respect to the child, the child was likely to suffer significant harm.
41. In this case, the local authority submitted that the involvement of the father in the children's life for the foreseeable future needed to be significantly restricted as it would be harmful to the children to understand that their father was so involved. It would also cause anxiety to both the carers and the children if the father had information as to the whereabouts of the children's placement, their schools, their healthcare and their counselling/therapy.
42. I decided that I should grant permission to the local authority to apply for the orders it sought because I was satisfied that the grounds set out in s.100(4) were made out. The harm that the children would suffer would be the emotional and psychological harm consequent upon them knowing, either at the time or at some later date, that their father had been given information about their circumstances and that his views about their welfare had been solicited. I cannot exclude the harm which might arise if the father were to use the information given to him by the local authority to undermine the children's placement either directly or indirectly.
43. The father has been convicted of murdering the mother and is not due to be released until all three children are well into their adult lives. Presently he maintains his innocence and has little insight into the profound effect on the children of his actions. They are in care because of what the father has done. Q and R have had their mother ripped from their lives in circumstances where their father has lied about what he did and has shown no remorse. Similar considerations apply to P who is, in my view, doubly burdened by a sense of responsibility for his siblings which he should not have had to shoulder. I find that, in these circumstances, it would be emotionally harmful to the children to know either now or at some later date that their father was involved in the arrangements for their care, as prescribed by both statute and the relevant regulations. For the avoidance of doubt, having undertaken a balancing exercise between the father's right to family life and the children's rights to privacy and a family life, I am also satisfied that these are exceptional circumstances in which the children's rights outweigh those of the father. This is not a case where the local authority proposes to sever all the ties between the children and their father. He is to be provided with limited information to inform his indirect contact but I do not consider that he can constructively participate in discussion about what is in the children's best interests when his selfish, planned and violent actions have comprehensively ridden roughshod over what was in the best interests of all three children.

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44. I make the declarations and orders sought by the local authority with the caveat that, as the local authority accepted, it should provide the father with information if any of the children have a life-threatening health emergency. Likewise, if any of the children have a life-threatening condition which is not an emergency, the local authority should apply to the court without notice to the father if it seeks to withhold the information from him.

Section 91(14) Order

45. The Court of Appeal’s decision in Re A (A Child) (Supervised Contact) (Section 91(14) Children Act 1989 Orders) [2021] EWCA Civ 1749 placed the legal principles engaged when making a section 91(14) order into a modern context. It also considered how the provision set out in s.67 of the Domestic Abuse Act 2021 might impact on the well established guidelines for the making of section 91(14) orders set out in Re P (Section 91(14)) (Guidelines) (Residence and Religious Heritage) sub nom: In Re P (A Minor) (Residence Order: Child’s Welfare) [2000] Fam 15; [1999] 2 FLR 573. Section 67 of the Domestic Abuse Act 2021 has been in force since 19 May 2022 and amended the Children Act 1989 by inserting section 91A which is entitled “*Section 91(14) Orders: Further Provision*”.
46. Section 91(14) provides that “*on disposing of any application for an order under this Act, the court may (whether or not it makes any other order in response to the application) order that no application for an order under this Act of any specified kind may be made with respect to the child concerned by any person named in the order without leave of the court*”. An order pursuant to this section thus acts as a filter restricting a parent’s automatic right to apply to the court for Children Act orders.
47. Section 91A provides as follows:
- (1) *This section makes further provision about orders under section 91(14) (referred to in this section as ‘section 91(14) orders’).*
  - (2) *The circumstances in which the court may make a section 91(14) order include, among others, where the court is satisfied that the making of an application for an order under this Act of a specified kind by any person who is to be named in the section 91(14) order would put –*
    - a. *the child concerned, or*
    - b. *another individual (‘the relevant individual’),**at risk of harm.*
  - (3) *In the case of a child or other individual who has reached the age of eighteen, the reference in subsection (2) to ‘harm’ is to be read as a reference to ill-treatment or the impairment of physical or mental health.*
  - (4) *Where a person who is named in a section 91(14) order applies for leave to make an application of a specified kind, the court must, in determining whether to grant leave, consider whether there has been a material change of circumstances since the order was made.*

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48. The guidelines in Re P are as follows:
- (1) *Section 91(14) of the Act of 1989 should be read in conjunction with section 1(1), which makes the welfare of the child the paramount consideration.*
  - (2) *The power to restrict applications to the court is discretionary and in the exercise of its discretion the court must weigh in the balance all the relevant circumstances.*
  - (3) *An important consideration is that to impose a restriction is a statutory intrusion into the right of a party to bring proceedings before the court and to be heard in matters affecting his/her child.*
  - (4) *The power is therefore to be used with great care and sparingly, the exception and not the rule.*
  - (5) *It is generally to be seen as a useful weapon of last resort in cases of repeated and unreasonable applications.*
  - (6) *In suitable circumstances (and on clear evidence), a court may impose the leave restriction in cases where the welfare of the child requires it, although there is no past history of making unreasonable applications.*
  - (7) *In cases under paragraph 6 above, the court will need to be satisfied first that the facts go beyond the commonly encountered need for a time to settle to a regime ordered by the court and the all too common situation where there is animosity between the adults in dispute or between the local authority and the family and secondly that there is a serious risk that, without the imposition of the restriction, the child or the primary carers will be subject to unacceptable strain.*
  - (8) *A court may impose the restriction on making applications in the absence of a request from any of the parties, subject, of course, to the rules of natural justice such as an opportunity for the parties to be heard on the point.*
  - (9) *A restriction may be imposed with or without limitation of time.*
  - (10) *The degree of restriction should be proportionate to the harm it is intended to avoid. Therefore the court imposing the restriction should carefully consider the extent of the restriction to be imposed and specify, where appropriate, the type of application to be restrained and the duration of the order.*
49. In its analysis, the Court of Appeal in Re A noted that the forensic landscape had changed out of all recognition since the Re P guidelines came into being and drew attention to the advent of social media, the smart phone and email coupled with a significant number of unrepresented parents in private law proceedings. Despite the court's powers of case management, litigants regrettably bombarded the court or the other party with emails, either because of anxiety in some cases, or in others, as part of a campaign of oppressive behaviour by one parent against the other (see paragraphs 34-35). This behaviour caused distress and anxiety both to the party on the receiving end and to the children at the centre of what the Court of Appeal described as a "raging dispute" (paragraph 36). Such behaviour underlined the need for the court to

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use s.91(14) orders to restrict access to the court in cases of repeated and unreasonable applications. Additionally, the Court of Appeal noted that the court's jurisdiction to make such orders may be invoked in cases where the child's welfare required it even though there was no past history of making unreasonable applications. There was considerable scope for making these protective orders in the changed litigation landscape described in Re A since to do so would not only protect an individual child from the effects of endless unproductive applications and/or a campaign of harassment by the absent parent, but tangentially would also benefit all those other children whose cases were delayed as court lists were clogged up by the sort of applications which should never have come before a judge (paragraph 40).

50. Noting the imminent changes to section 91(14) orders envisaged by the Domestic Abuse Act 2021, the Court of Appeal in Re A observed that section 91A dovetailed with the modern approach outlined in that decision. It noted that the provision at s.91A(2) gave statutory effect to guideline 6 of Re P by permitting a s.91(14) order to be made where the making of an application under the Children Act 1989 would put the parent or child at risk of physical or emotional harm (paragraph 45). Likewise, section 91A(4) requires the court when considering whether to grant leave to consider whether there had been a material change of circumstances. The Court of Appeal in Re A noted that this provision would put the current approach to the granting of leave on a statutory footing (paragraph 46).
51. Section 91(14) orders are, of course, not restricted to private law proceedings but are available to the court when determining a public law case.
52. Both the local authority and the children's Guardian invited me to make a section 91(14) order for each child until they reached the age of 18, restricting the father's ability to apply to discharge or vary the Children Act orders I made at the conclusion of these proceedings and, for the avoidance of doubt, to make any application for any other Children Act order which might have the effect of discharging or varying the Children Act orders made at the conclusion of these proceedings. The father did not actively oppose the making of section 91(14) orders.
53. There is little doubt that the welfare of these children requires freedom from future litigation initiated by their father. Their father has caused the gravest emotional harm to them by killing the mother. In so doing, he has deprived them of her care throughout what remains of their childhood and into adulthood. Whilst the younger children have been told that their father hurt their mother so that she died, the details of what occurred are not yet known to them. P knows more of what took place but his knowledge remains incomplete for the moment. In due course, all three children will learn what is known by the authorities as to the circumstances in which the mother died. Coming to terms with that information will place a significant emotional and psychological burden on these children. This is not just because of the circumstances of the mother's death but also because the man all three love - their father - was responsible. That factor complicates and intensifies the psychological and emotional burden these children face.
54. Even if the father were remorseful and anxious to atone for what he has done to his children, I consider that further applications by him would undoubtedly place these children at risk of harm and the impairment of their mental health. However, the father is neither contrite nor remorseful - and maintains the lies he told police at the

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very outset of the investigation into the mother's disappearance, namely that she is alive and has run away abroad to live with a boyfriend. Maintaining that fiction in the context of future applications in respect of the children would, in my view, be profoundly destructive of these children's emotional well-being. How would they reconcile what they have learned of the mother's death with their father's protestations of innocence in the face of overwhelming evidence of his guilt?

55. Any application made by the father - unless filtered by an order pursuant to s.91(14) - would likely require the children's views to be sought. The procedural reality of any application in circumstances such as these would create emotional uncertainty for these children and is likely to impair their mental well-being.
56. In coming to that view, I have factored into my analysis the children's vulnerabilities and experiences. It is plain from my reasoning that, without the imposition of a permission filter, the children would be subject to unacceptable strain and risk of harm if further applications were made. S.91A(2) provides that an order may be appropriate if the child is at risk of harm, harm being defined in accordance with section 31(9) of the Children Act 1989 to mean "*the ill-treatment or the impairment of health or development including, for example, impairment suffered from seeing or hearing the ill-treatment of another*". The risk that harm may arise to a child under the age of 18 unless the making of applications is restrained is not qualified by words such as "*serious*" or "*significant*" and neither is the degree of harm that a child may experience. I observe that, insofar as the risk that harm may arise to a child is concerned, section 91A(2) sits a little uneasily alongside guideline 7 of the Re P guidelines which states that there must be a "*serious risk* [my emphasis] *that, without the imposition of the restriction, the child or primary carers will be subject to unacceptable strain*". Correctly applied to a child's circumstances, section 91A(2) gives a court greater latitude to make section 91(14) orders than the Re P guidelines do. Thus, in coming to my decision in this case, I have applied the new statutory approach to harm set out in s.91A(2) rather than guideline 7 of the Re P guidelines and, in so doing, I have adopted the ordinary civil standard of proof. That course is consistent with the modern approach of the Court of Appeal in Re A as outlined above.
57. I observe that section 91A(3) introduces a narrower definition of harm which applies to a child or other individual who has reached the age of 18, namely that harm is to be read as a reference to ill-treatment or to the impairment of physical or mental health. The explanatory notes to the Domestic Abuse Act 2021 provide that this narrower definition has been used because, in contrast, the definition in s.31(9) of the Children Act 1989 encompasses elements specific to a child, such as the impairment of development.
58. I have thought very carefully about the degree of restriction I should impose and, in so doing, taken into account the Re P guideline 10. My assessment of the harm which may arise if the father were to make further applications is that it would be grave and profoundly destabilising for each of these children. I have also considered the duration of any s.91(14) order and have concluded that these orders should last until each child is 18 years old. Protecting the children for a few years might give stability to P for example but thereafter would expose the younger children – at the start of or on the cusp of adolescence with its attendant emotional and psychological changes –

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to the profoundly destabilising effect of further applications at a time when they would be particularly vulnerable.

59. I am thus satisfied that s.91(14) orders to last until each child reaches the age of 18 are necessary and proportionate. The father should not be permitted to apply to vary or discharge any of the orders made at the conclusion of these proceedings. For the avoidance of doubt, he should not be permitted to apply for any Children Act order which would have the effect of discharging the care orders or the orders pursuant to section 34(4). I will reserve any application for permission to myself if available or to the Family Division Liaison Judge for the Midlands if I am not.

Conclusion

60. I have undertaken to write to each child explaining my decision in age appropriate terms and will also meet once more with P who has expressed a wish to talk to me again.
61. That is my decision.