Case No: ZW18P00962

IN THE FAMILY COURT AT WEST LONDON
(sitting remotely)
IN THE MATTER OF THE CHILDREN ACT 1989
IN THE MATTER OF THE FAMILY LAW ACT 1996

The Family Court at Barnet
St Mary's Court, Regent's Park Road,
London, N3 1BQ

Date: 26 May 2020

Before:

HIS HONOUR JUDGE WILLANS

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Between:

M (a father) **Applicant**

- and -

(1) P (a mother) **Respondents**
(2) X (a child)(by her Children's Guardian)

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The applicant as a litigant in person
Mr De Burgos (instructed by **Direct Access Counsel**) for the **First Respondent**
Ms Mai-Ling Savage (instructed by **Hopkin Murray Beskine Solicitors**) for the **Second Respondent**

Hearing dates: 21 May 2020

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JUDGMENT NO.2

His Honour Judge Willans:

Introduction

1) I return to a case in respect of which I conducted a fact-finding hearing in July 2019[1]. I am now asked to make final orders and to consider whether it is appropriate to make a section 91(14) Order and a non-molestation order.

2) Following the fact finding process the child, X, was joined to the proceedings and is represented through her children's guardian, Kirsty Race. I will continue to refer to the mother and father by the initials P and M respectively.

3) I am assisted by the documents contained within the final hearing bundle together with the position documents and oral submissions on behalf of each party. At a prior case management hearing both parties confirmed their remaining challenge was to the CAFCASS analysis and this has been dealt with by written questions. No party sought to call or give live evidence at the final hearing.

4) The final hearing was conducted by remote means using the skype video platform. I consider this was a successful process and particularly so when geared against the delay for the child and parties had the case needed to be put back for an attended hearing. The facility allowed the continued usage of effective special measures and there was no suggestion of diminution in the quality of the submissions. Indeed, it may be the physical distance permitted the M as a litigant in person to better put his case. I accept there were limited technical issues in joining the hearing, but they were overcome with relative ease and the hearing proceeded without any real problems. I should record all parties agreed to such a process.

5) Within this judgment any references will be to the final hearing bundle page number unless otherwise stated.

Background

6) To avoid unnecessary repetition, I would simply refer to my previous judgment which sets out in clear terms the history of the parties' relationship; the difficulties that arose and my findings in such regard.

7) At paragraph 55 of that judgment I offered the following overview of my assessment:

   a) *This case should be viewed in the light of the lengthy relationship between the parents which commenced when they were early teenagers and ended more than two decades later. My assessment of the evidence suggested this led the parents to be emotionally entangled to a high degree and this has contributed significantly to the problems that have arisen as the relationship began to fall apart.*

[1] Re X (Fact finding Hearing: Special Measure) [2019] EWFC B88: Bailii

b) *I have made no findings as to respective responsibility for the breakdown of the relationship. I recognise each blames the other for the breakdown. I am not satisfied the cause was physical DV on the part of M but I accept there were likely to have been a number of verbally aggressive confrontations, some of which would have been undoubtedly experienced by X.*

c) *In the fall-out of the relationship M struggled to cope and was overusing alcohol. The consequences were negative. Evidence of this is found in the two convictions but I am in little doubt it was have contributed to the disagreement and problems reported by the parties.*

d) *However I am also of the view that P struggled with separation and found it difficult to accept M had found a new relationship. Her position was not assisted by her use of cocaine.*

e) *Although the detail is unclear I am in little doubt the relationship had at times an on/off quality with reconcilliations and fallouts. On balance I accept there may have been times when M falsely stated he was no longer with K (when he was) to ease the situation from his perspective. With hindsight this was not a sensible approach to take. I find P sought to gain control by using the leverage of contact with X against M.*

f) *Ultimately and unsuprisingly the relationship could not be fully repaired and despite an attempt at reconciliation in 2013 it finally ended. Given the history it is likely this was surrounded by a high level of emotional upset. This was complicated by the resumption of relationship between M and K leading to the incident at school in December 2013. Flowing from this P wrongly alleged rape against M.*

g) *Subsequently the fact of the allegations and the proceedings in 2014 have led to an estrangement between M and X. On the facts this should not have happened but there has now been a significant period without contact. During this period P has inappropriately sought to restrict and obstruct contact between M and X in part due to her ongoing hostility to K and her perception of the role she will play in contact should it resume.*

h) *During this period the lack of contact has led to a most unhelpful level of antagonism to develop as evidenced by the inappropriate social messaging. This has had the effect of fortifying what are sadly the battlelines between the parties. One result has been to lead to unauthorised attempts at contact with X. In the context of the case this is perhaps unsurprising.*

8) It is important to note that whilst I made some findings within the judgment (in respect of both parties), in my assessment none of these were such as to be of material relevance to the right of X and M to have a full relationship as father and daughter. They did not amount to findings which required direct work to reduce risk for instance. In (g) above I note that the estrangement should not have happened, but, it did and has now continued in a significant manner for a period of years. Whether fair or not this cannot be simply ignored.

9) These circumstances justified the appointment of a guardian having regard to X's age as she nears 15. Her wishes and feelings and an objective investigation of the impact of the parental acrimony upon her was essential. I am grateful to the hard work of Ms. Race in permitting X's voice to be heard above the din of adult disagreement.

Real issues for determination

10) P asks me to make a non-molestation order against M for a period of 1-2 years.

11) P asks me to make an order under section 91(14) Children Act 1989 for between 1-3 years with the effect that M would require the permission of the Court before he could make any applications pertaining to X.

12) M seeks a contact order/structure which, whilst not ordering direct contact would permit contact to occur at X's request and at her speed. P disagrees with M's proposals and suggests contact should proceed by indirect means. I will detail their respective views along with the recommendations of the guardian below.

13) All agree there should be a final order.

Legal principles

14) In respect to the request for a non-molestation order I have regard to section 42 Family Law Act 1996. The criteria for the making of a non-molestation order are

- There must be some evidence of molestation
- The applicant (or relevant child) must need protection, and
- The Court must be satisfied on the balance of probabilities that judicial intervention is required to control the behaviour which is the subject of the complaint

15) An order under this provision should be set for a defined period reflective of the circumstances of the case. As with all fact finding within the family court establishing evidence of molestation should be based upon the balance of probabilities: more likely than not.

16) In respect to the request for a section 91(14) Order I have regard to the guidance given by Butler-Sloss LJ. in **Re P (Section 91(14) Guidelines) (Residence and Religious Heritage) [1999] 2 FLR 573,** the Judge whilst maintaining the requirement for there to be a balancing exercise between the welfare of the child and the right of a litigant to access to the Courts drew the following guiding principles:

(1) Section 91(14) should be read in conjunction with s 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 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 (see also Re P (Children Act 1989, ss 22 and 26: Local Authority Compliance) [2000] 2 FLR 910, FD).

(7) In cases under para 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 (see also Re S (Contact: Promoting Relationship with Absent Parent) [2004] 1 FLR 1279, CA). The Court of Appeal has reiterated the principle that a need for time to settle to the regime ordered is not sufficient to justify a s 91(14) order: the purpose of the order could and should have been achieved by giving the order time to work itself out: Re G (Residence: Restrictions on Further Applications) [2009] 1 FLR 894, CA.

(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. In particular it is wrong in principle, except in exceptional circumstances, to put a litigant in person in the position, at short notice, of having to contest a s 91(14) order (Re C (Prohibition on Further Applications) [2002] 1 FLR 1136, CA).

(9) A restriction may be imposed with or without limitation of time. In Re B (Section 91(14) Order: Duration) [2004] 1 FLR 871, CA, it was said that where the mother was determined to excise the father from a child's life the court should never abandon endeavours to right the wrongs within the family dynamics. A s 91(14) order which was to last during the child's minority and was without limitation to specific applications gave the wrong message in a case in which the father had not abused the family justice system nor undermined the mother's primary care. An order which is indeterminate or is to last until a child is 16 should be an exceptional step because it is, in effect, an acknowledgement that nothing more can be done. If such an order is made the court must spell out why and what needs to be done to make a successful application in the future (Re S (Permission to Seek Relief) [2007] 1 FLR 482, CA). In S v B & Newport City Council: Re K [2007] 1 FLR 1116, FD, a special guardianship order and a s 91(14) order were made preventing the natural parents making any application for contact without limitation of time because the child's needs required that order to be made and failure to do so, in the light of the parents volatile behaviour, would impose an unacceptable strain on the carers.

(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 order (see also Re G (Contempt: Committal) [2003] 2 FLR 58, CA).

(11) It would be undesirable in other than the most exceptional cases to make the order ex parte.

17) There are significant procedural safeguards to ensure such an order is not made without a fair hearing. These have been properly dealt with by P being required to file a formal application with a statement in support in advance of the hearing. Both M and the guardian have been able to respond.

18) As to contact the guiding principle will be the application of the welfare checklist [**section 1(3) Children Act 1989**]

(a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);
(b) his physical, emotional and educational needs;
(c) the likely effect on him of any change in his circumstances;
(d) his age, sex, background and any characteristics of his which the court considers relevant;
(e) any harm which he has suffered or is at risk of suffering;
(f) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;
(g) the range of powers available to the court under this Act in the proceedings in question.

and bearing in mind that unless the contrary is shown it should be presumed that a child's welfare will be furthered by the involvement of their parent in their life [**section 2A**] although involvement means involvement of some kind and does not specify the form of such contact.

19) I have also had regard to the recent line of authorities which consider the situation where a Court feels it cannot promote an ongoing relationship and the need for the Court to use imagination and perseverance to find room for the relationship to be maintained, and even if only at an identity level: see **VB v JD [2019] EWHC 612; Re A (Termination of Contact) [2019] EWHC 132; Re M (Children) [2017] EWCA Civ 2164, and; Re J-M (A Child) (Contact Proceedings: Balance of Harm) [2014] EWCA Civ 434** in which the following points were made:

i) the welfare of the child is paramount;
ii) it is almost always in the interests of a child whose parents are separated that he or she should have contact with the parent with whom he or she is not living;
iii) there is a positive obligation on the State and therefore on the judge to take measures to promote contact, grappling with all available alternatives and taking all necessary steps that can reasonably be demanded, before abandoning hope of achieving contact;
iv) excessive weight should not be accorded to short term problems and the court should take a medium and long term view;
v) contact should be terminated only in exceptional circumstances where there are cogent reasons for doing so, as a last resort, when there is no alternative, and only if contact will be detrimental to the child's welfare.

I appreciate this case does not engage an argument as to no contact, but the issues do engage a significant restriction on the ongoing relationship between M and X and such determination does in my assessment require a clear and reasoned justification.

20) Counsel for the mother also draws my attention to the related cases in which the circumstances are such that it is impractical to seek to force further contact: **Re W (Children) (Contact Dispute) (No 2) [2014] EWCA Civ 401; Re Q (Implacable Contact Dispute) [2016] 2 FLR 287**. These establish there will be cases in which faced by unwilling children the Court may have to accept there is no more than can be done as any attempt to enforce would fail and likely cause further harm to the children.

21) What I draw from these principles is the overriding importance to a child of the parental relationship which is to be promoted if it can be safely managed. Apparent obstructions to contact which are not child related should be challenged and the Court should not throw its hands up in despair without firstly seeking solutions, including imaginative solutions, to the problem faced. However, in some cases the Court does ultimately have to accept there is no more that can be done albeit to do so is to recognise a failure insofar as the welfare of the child is concerned, and in all likelihood the storing up for a future date of emotional harm to the child and its relationship with both parents.

Analysis

Non-Molestation Order

22) I do not intend to make such an order as I can find no safe evidential basis upon which to find evidence of molestation justifying of an order and in any event no sound basis for concluding that the Court is required to make such order to safeguard the welfare of either P or X.

23) I have considered P's evidence with care and set out my findings as follows:

a. There is complaint that M has been seen in the vicinity of P's home. Whilst I accept such conduct could justify an order the evidence to establish such presence is wholly vague and falls far short of the evidential standard required. In her statement P notes:

M has also been trying to ascertain where we live by sending letters to my neighbours and someone fitting his description has been seen in our general vicinity. M has harassed a number of my close immediate family who do not want his attention.[2]

As I raised with counsel: Who are the neighbours? How would they know what M looks like? When and where did this happen? Counsel accepted the difficulties with the allegation. In my assessment I could not safely make a finding on such evidence. I note I was not shown any of the suggested letters sent or any supporting evidence from the harassed family members. The allegation is far too general and vague and fails.

b. A second complaint relates to M opening an Instagram account in the name of X. This is said to be an act of molestation against which protection is required. I have seen a letter from X in which she explains this has upset her as her friends might think it is her account and correspond with it. I accept this point and recognise X may well have been upset by M's actions in creating the account. It is said by P that M was impersonating X in setting up the account. The police have been called and the child spoken to. There is a crime reference but an attachment to P's statement makes clear the Police do not see the basis on which

[2] A27 §4

this could be viewed as in any way criminal. This allegation is linked to a previous suggestion that M had 'hacked' P's "iCloud" account prior to the fact-finding hearing.

As above I acknowledge the upset felt by X. I agree with the guardian that this decision was not fully thought through. However, more importantly I must at least consider the context of the actions if I am to assess intent and the likelihood of repetition with a consequent need for protection. Having considered the statements it is quite clear that this action was pursuant to the suggestions of the guardian for the father to think about a mechanism under which he might be able to indirectly establish contact with X[3] ~ although I am confident the guardian did not have this action in mind.

Most importantly, I am sure M was not trying to impersonate X to mislead anyone. He used her name, I accept, as he believed it would be more memorable and therefore more likely to be successful. For my part I cannot conceive of the logic for calling the police in respect of this action. Such response was heavy handed and demonstrated an inability to reflect on the father's actions in anything other than a critical manner.

That leaves the "hacking" allegation. Reference to my fact-finding judgment[4] shows that this issue arose previously. Ironically at that time the allegation was not of hacking but of forgery with it being said that the entries were not actually from the mother's diary. During that hearing I sought clarification on the point, but sensed counsel was in difficulty as to the contradictory positions: forged and therefore not hacked or genuine and hacked. During that fact finding hearing I was not asked to make findings. Counsels' recollection (which I share) is that M indicated the details had been given to him by someone known to the mother with access to her information.

It is clear M has been able to access P's personal information, but it is unclear how this arose. It is not clear and there is no real evidence to show he has hacked her account. It is likely there has been a breach of her privacy on the part of an individual, but it is unclear by who. Perhaps more importantly there is no suggestion of extensive invasion or ongoing misconduct. In my assessment the time for evidential investigation was during the fact finding and that opportunity was not taken. I struggle during this hearing on the evidence available to make a positive finding and I can see no interaction between this historic point (dating I think to 2017) and the Instagram account.

c. Finally, P relies on M's admission to having met X on a limited number of occasions during 2017-18[5]. Reference is made to these being contrary to my

[3] D22 §21
[4] §39(d) and (e) at B54-5
[5] D9 & D17: with M recording 5 meetings and X remembering 2 or 3

judgment which in context means contrary to my understanding and finding as to events rather than any order made by me as to contact. Rather, the contact is in breach of the historic order of DJ Payne from 2014[6] which indicated direct contact should be by written agreement or order of the Court. In her most recent meeting with the Guardian X advised that these meetings had caused her '*complications*, it was not what she wanted and around special occasions she walked a different route to school due to being worried about her father seeking to meet her.

Once again, I accept the basic premise of X's feelings in this regard. All the evidence tells me she has found herself in a very difficult position and she is sensitive around this issue. She has made clear this is not what she wants and M (whether he likes it or not) has heard her views. Importantly, despite knowing where X lived, and I understand her school, there is no evidence or suggestion as to M continuing such behaviour during the proceedings over the last two years. Having read what X has said it seems clear such behaviour would be counter-productive and particularly were I to accede to a mechanism for X to freely seek out contact.

Plainly, M was not wholly honest with me in this regard at the fact finding. But, reference to my judgment suggests I was conscious there may well have been other contacts with X, a situation that I found unsurprising on the facts of the case[7]. However, on my appraisal these historic events do not justify the making of an order as sought. That being said such conduct were it to continue could be grounds for a future application and so I would caution M to ensure he acts within the constraints of any order made by me pursuant to this judgment.

24) So, I dismiss the application for a non-molestation order.

Section 91(14) Order

25) I do not intend to make such an order. At outset I would make clear that this is not a case which requires an order arising out of the litigation action of a party to the proceedings. M's litigation has not been vexatious in form. Indeed, the criticism made is that it has been over restrained (in leaving the litigation field between 2014 and 2018). However, I accept this is not a legal requirement (see 16(6) above) and that X's welfare may require such an order.

26) However, in my assessment her welfare does not require this. I agree with the Guardian in this regard in her expressed view that X would benefit with a period of calm away from the litigation. She has plainly felt a level of stress in having to engage with the

[6] B8
[7] B53 §35

proceedings. But there is a lesser form of proactive management that achieves this goal without the necessity to infringe on M's principled right of access to the Court.

27) Later I set out my conclusions on contact. I am confident the structure I set will itself significantly limit any likelihood of further litigation within the next year (and therefore prior to X's 16th birthday). I intend to reserve any application during that period to myself and the parties will be aware that in considering any application I might determine matters should be resolved in a more summary manner in the light of the history and my knowledge of the case. Beyond that period the Children Act creates a form of limitation in that exceptionality is required to make an order relating to a child over 16[8]. For the avoidance of doubt I have applied my welfare assessment (set out below) in reaching this conclusion.

28) So, I dismiss the application for a section 91(14) order.

Contact: Spending time with X

29) It would be of assistance to briefly summarise the competing positions in this regard:

a. X's guardian considers it is important for M to '*commit to something, to enable X to choose this relationship in future*'[9]. Her guardian suggests the structuring of two occasions each year on which date M would make himself available at a given place (e.g. a coffee shop) enabling X to join him if she so wishes. In addition, there should be indirect contact and, having regard to previous obstruction of such contact, this should be by way of a designated email address which would permit M to provide X with updating information[10] and would be hoped to be a basis upon which the relationship might develop. Further to this indirect contact should additionally be sent by way of cards, letters and small gifts at birthday and other special occasions to be facilitated by a third party. When asked to consider the making of an order for direct contact she responded:

> *"…given [X's] clear and consistently expressed wishes and feelings, it is my view that this would be counter-productive, because it involves over-riding her autonomy entirely. She would still have to return home each time to a mother who is 'unsettled' about [M] and given [X's] age and her sensitive and compassionate nature she may feel responsible for how it makes her mother feel but would be powerless to stop it. It is likely this would lead to feelings of anger and resentment towards [M]…and this is not conducive to rebuilding a positive relationship with her father."*[11]

As to contact by way of social media the guardian was of the view the Court had to be both realistic and conscious of the limitations on its power to restrict contact and did not object to there being contact by way of a social media account set up by her father so long as this did not fall into the problems shown

[8] Section 9(6)
[9] D21 §18
[10] On a monthly basis – see position document
[11] E10 §15

by the Instagram account. The guardian was also clear that she opposed an order for 'no contact' as much as she did for enforced direct contact. This was not what X expressed herself as wanting. The guardian's schedule of proposals are found at §8 of her position document.

b. P sets out her position in a helpful position document[12] in which she outlines that she agrees there should be no order for direct contact but accepts indirect contact through cards, letters and small gifts on the basis that this was on four occasions per year (birthday, Christmas, Easter and one occasion in autumn) via a third party, with her sister being suggested. She disagrees with the suggestion of additional email indirect contact arguing that this would likely be misused. Finally, she opposes the suggestion of the twice-yearly invitations to meet as suggested by the guardian as this would be emotionally damaging for X playing on her sense of guilt. The logic of the non-molestation order and the arguments in support of the same suggest P also objects to contact beyond that specifically regulated within the order (i.e. social media).

c. M appears to have adapted his position in the light of the guardian's response to his questions. Previously I had understood him to be arguing for the Court to take a more interventionist approach on the basis that one could not safely distinguish X's expressed views from her mother's views and so the Court had to act to ensure X's true needs were met. However, in his final statement and submissions he notes:

"I am mindful of the wishes and feelings that [X] has expressed throughout this process. I have misgivings about their honesty and the environment of hostility and distress in which they have been formed, but I have listened to what she has to say and respect them. My experience of my daughter…and that of those who have been in contact with her of late, is that she is an intelligent and articulate girl capable of expressing what she wishes. For this reason, my proposal is to empower [X] with the choice to resume contact or not. I am willing and able to shoulder the responsibility of providing an environment for contact to take place, should she wish to resume contact on her terms."[13]

From this perspective M supports the meeting invitation approach suggested by the guardian and the mixed use of indirect solid and virtual communications although he citicises the limits suggested for such contact (e.g. monthly for emails) as being overly and unnecessarily restrictive. That being said I understood him within submissions to be somewhat dismissive himself as to the prospects of indirect '*solid'* (letters etc.) contact getting to X. I understand his position to be that there should not be restrictions in the sense that X should be free to engage in a more significant level of communication with him should she wish (to include direct contact) and that this potential should permit him to respond and not to be contained by the parameters of an order.

[12] §3
[13] C37

Within his statement M sets out a series of features which he considers are required to assist in fostering the future relationship between X and him[14].

Welfare Assessment

30) ***Wishes & Feelings***: At nearly 15 the Court will pay significant respect to X's expressed views. Wishes and feelings are to be understood in the light of the child's maturity and understanding. I have been told X is an intelligent and articulate teenager. Her guardian describes her as sensitive and compassionate. Her school speak positively of her and her approach to schooling. Recently she has been rewarded with a Gold Star for her continued commitment to school life during the Covid19 lockdown. She is plainly a child who has the capability to provide a clear opinion as to what she wants and at her age the Court would be slow to disagree with her and compel her to a different course. I agree with the guardian that such a course would likely be counterproductive and unenforceable. It would run the real risk of alienating her from her father if she felt compelled to act against her own wishes. In real terms it would not be the Court that was not listening to her but her father who was not listening ~ and that would not be a sound foundation upon which to attempt to reconstruct a relationship.

31) That being said in cases of high parental animosity the Court must be mindful of the potential for the wishes of the child to be shaped by the views of a dominant parent. A child may often shape their views to safeguard, protect or simply fit in with the opinions of their key parent. In such cases wishes and feelings may mask the underlying turmoil faced by the child and there will be cases where the Court accepts the real wishes are for the Court to intervene and create for the child a relationship which they cannot vocally support.

32) In this regard CAFCASS are an indispensable tool for cutting through the information and searching for the child's true opinions and where these are obscured the reasons for the same. In this case I have received invaluable assistance from Ms. Race. In particular it is clear to me that X is not alienated from her father. Ms. Race has applied the CAFCASS toolbox in this regard and points to a range of factors which point against alienation[15]. These increase the ability to reflect upon positive times with her father; a lack of antagonism towards her paternal family; a lack of blaming of her father for what has happened, and elsewhere in observing guilt may drive her to meet with her father, a sense of reflection on his feelings. Indeed, within his own case M points to the meetings he had with X in 2017/18 and the positives of the same. I consider the CAFCASS officer has the assessment right when she points to the antagonism between the parents, linked to M's withdrawal from proceedings leading to him being distanced from X's day to day life and now an inconvenience and complication for her which she would rather not have to directly engage with. I assess that this is not an entirely

[14] C39
[15] A16 Position note §11

negative starting position but is one with challenges and will require sensitive and gradual progress for the relationship to stand a chance of being repaired.

33) ***Needs:*** I would start by acknowledging that X has the range of needs for a child of her age. A significant educational need for stability and a chance to stay focused on school work during this important educational time in her life. The evidence suggests she is well placed to achieve from her schooling. However, it simply would not assist were X to be worried about meeting her father on the way to or from school. The last thing M wants is to be the cause of a deterioration in X's school progress.

34) As to her physical needs the evidence tells me they are being appropriately met at this time. Reference to my fact-finding judgment highlights periods of stress for P but I have made no finding as this state of affairs continuing into the present.

35) The key focus within my decision-making is on X's emotional needs. As noted she shares with all children a need for stability, security, and predictable care givers in her day to day life. It seems she has a good attachment to her mother and this appears a healthy relationship. This speaks of sustained good care during her upbringing. But I should not overlook the real emotional risks attendant on being caught up in the parental dispute and the impact of separation from her father for a significant period of her life. As the guardian observed (and I agree)

> *There is no doubt that such a relationship [between X and M] would have numerous benefits to offer [X], materially and <u>emotionally</u>….[X] is not, however suffering significant harm without this relationship,,,[T]hat is not to say that the lack of this relationship will not impact throughout [X's] life, including in respect of her own ability to form relationships."*[16]

Elsewhere the guardian observes that X is a child:

> *…contending with enormous and unseen pressures. Her consistent narrative about the complications, disruptions and hassle that would ensue were she to embark on repairing the relationship with her father leads me to consider that the 'status-quo' that she has come to experience has been hard fought'.*[17]

36) In such circumstances the Court has the task of seeking to foster a relationship which has real benefits for X whilst seeking to avoid causing her significant emotional upset in the process of doing so. At her age she is an active participant in the scheme's prospects of success and so her role (for good or bad) cannot be overlooked. Emotional stability for her may mean a life in which her father plays little role or if any role a tangential role. Sad as this may be this might be the best/only way to permit her to remain settled and in good emotional health.

37) This is not a case in which the Court is or could be asked to shift the parental caring roles by moving X to her father's care. Such a course would be wholly experimental as

[16] D20 §16
[17] D18 §13

to its prospects of success and would not be child focused ~ to his credit M is not suggesting this course of action.

38) I conclude the outcome to this case must ~ to meet X's need ~ permit her a relatively light touch option to regain a relationship with her father. She must know that door is not shut and that her father is waiting with the door open but will not come through it until the time is right for her. In analysing the nature of the light touch approach, I am asked to reflect on the impact on and benefits to X of a sense of guilt in attending meetings. The guardian considers that at her age and with her confidence and resilience a certain level of guilt is manageable and is certainly better than there being no recourse to keeping in contact with M.[18] On behalf of P it is said this would not be a healthy basis upon which to establish a relationship and would be emotionally damaging for X to continue to have to carry these feelings. This is something I will be required to resolve in reaching my conclusions.

39) ***Personal characteristics:*** I have spent some time in this judgment commenting on matters relevant to this factor. I have noted X's age and maturity. I have noted her stage of education and her resilience. I have noted that she is well thought of and is a polite and intelligent child. I have of course noted the history she has experienced of estrangement from her father and there is a likelihood that this would have either been inexplicable and therefore hurtful (if without a storyline) or if based on her mother's narrative of her father as dangerous and troubled.

40) ***Change in circumstance***: I have spent some time considering the likely impact on X of contact at this time. Importantly the submissions for M are measured as to expectations. The boundaries of dispute are relatively limited and as such the parameters of change are equally limited. Should there be a dedicated email address and an invite to meet are not of themselves significant changes in X's life when contrasted with the uncertainty of the proceedings.

41) ***Risk of harm***: I should take this opportunity to make clear that there is no safeguarding reason as to why X should not be seeing her father. In my fact finding I criticise both parents and note issues they have each been required to deal with. However, none of these findings would justify X not having an active relationship with her father. That she has not and does not is a failure of parenting and a prioritisation of parental needs over the child's needs.

42) I am now informed as to the additional contacts that took place. I am unsurprised by the same. Informed by the lack of safeguarding risk what am I really to make of the paternal family striving for a relationship with X. I made clear findings on plain evidence that M's attempts at indirect contact were stifled by P obstructing and on occasions destroying the same. This was the route offered by the Court to rebuild the relationship. Is P really in a position to accuse M of breaching the Order when she

[18] D21 §19

herself did not comply with the spirit of the order if not its letter. I am not willing to stand in criticism of the father in such context particularly as there is no suggestion of particular misconduct at such meetings ~ although I agree with the guardian that this again placed X in an invidious position. It is noteworthy that such contacts ended in early 2018 and have not continued during these proceedings which is itself evidence of restraint.

43) ***Capacity of parents:*** The sad reality is that X has in principle two capable intelligent parents. I am sure their positive qualities were what drew each of them to the other many years ago. Properly applied X could immensely benefit from a relationship with each of her parents. But this seems to be most unlikely. The failure in this case has been of the parents to put X first and to put their own feelings and hurt a distant second. They should each be concerned that this decision making may return in time with unpredictable outcomes. P may find X reaches a point where she first questions and is then highly critical of her mother's choices <u>for her</u> and that she has paid a price she should not have had to pay. An otherwise positive relationship may come to unravel and weaken. This would be a great shame. Time is not on the side of the parents to put things right but there is at least some time to take tentative first steps.

44) ***Range of powers:*** I have no doubt I have available to me all the powers required to conclude in favour of either M or P's cases.

<u>Conclusions</u>

45) The key disagreements would appear to be:

- Should indirect letters be limited to 4 times per year
- Who should facilitate the communications
- Should there be additional email facilitated indirect contact
- If so how often
- Should there be any restrictions on social media-based contact?
- Should there be a regular invite to direct contact?
- Should I adopt any / some / all of M's proposed suggestions around contact.

46) I intend to set direct letters etc. at 4 times a year around birthday, Christmas, Easter and October half-term (Halloween). My understanding is that M is somewhat sceptical as this route to contact given the history of indirect contact being obstructed. At four times a year this may seem limited but as is set out below there is a supporting structure of additional contact. I would prefer for the focus not to be on this form of indirect contact given the historic disputes. I see no particular reason to limit the attendant gift to a

'small gift'. M will have to take a proportionate approach, but he is the best guide of this. There is a limited time until X is 18 and I can see no justification for restricting M. As to facilitation of the correspondence I can no obvious solution other than using a family member. Both X's step-grandmother and aunt have been suggested. I will permit M to use the services of either at his option. I do not favour letters being sent direct as P does not wish for her address to be disclosed and is on the facts entitled to confidentiality and perhaps more relevantly such an approach is likely to end in arguments as to correspondence being obstructed.

47) As to email correspondence I will permit the same. The sensible approach would be for M to set up an account with a major provider and give the account a memorable title (as is available) such as MandX@xxxxxxx.com. He should then set a password which is again memorable (perhaps X's birth month and date). These can then be supplied to X by the guardian. Each of X and M would then be entitled to message into that account any appropriate emails they wish to send to the other. In such a way it will act as an effective postbox between the two. As to regularity of messaging I am not being asked to limit X's potential contribution but if X were to accept this facility and seek to regularly message her father would that communication not be stifled by limiting him to one email a month? I judge there needs to be a proportionate and flexible answer. I will direct for M to be able to send at least a monthly email into the account, but he will also in addition be able to respond and engage with any responses sent by X without limit as to number. I can see no reason why there should be an annual limit on attachment of photographs of X's half-sibling. This should be a matter in the discretion of M.

48) As to social media I agree with the guardian as to the limitations on what the Court can be expected to either approve or restrict. The heart of this decision is the autonomy that should be given to X. It would be illogical to then seek to limit her ability to engage with her father on social media should she wish to. To the contrary I would want to encourage this were that her wish. The key is for safe use. I consider M's attempts in this regard were not sinister, but they were poorly conceived with a negative effect on X. The simple solution is for M to establish a memorable presence in his own name (my understanding of the submission is that he already has the same) and for this to be shared with X. Given this is intended to be a potential source of engagement for X I would advise M to consider with care the content of his postings. Postings which criticise P for example are not likely to encourage X. This information can be shared along with the email details.

49) As to the biannual invites I have considered the arguments with care but ultimately approve the same. This is a novel suggestion but does not deserve criticism as a result. It is exactly within the context of an imaginative approach to maintaining a relationship that is expected and I approve the guardian's approach. Most importantly I can find nothing fundamentally inappropriate for X to experience a level of guilt concerning this issue. Feelings of this nature along with other complicated emotions are simply part of

growing up and I accept the guardian's analysis as to her resilience to any anxiety as a result. Sometimes guilt is a fuel to action and this is not necessarily to be judged in a negative light. Who is to say that feelings of guilt will not arise whether or not the invitation approach is taken. The opportunity to engage acts as a potentially valuable pressure relief in my view.

50) I have drafted an order reflecting these conclusions. It will be seen I address certain matters raised by the father in recitals. To the extend I have not addressed every suggestion made by him this is because I deem the same to be either unnecessary or inappropriate. But these are modest issues.

51) I have drafted a short letter to X which I would ask the guardian to share with X in the manner of her (the guardian's) choosing. This letter is not intended to limit the guardian's role in reporting back to X the outcome of these proceedings but is drafted to assist with the process.

52) I intend to hand this judgment down at a mention hearing (t/e 5 minutes) on 29 May 2020 at 10am. I will accept any requests for clarification / corrections received by 12 noon on 28 May 2020. To the extent I offer clarification that will form part of this judgment. All parties and representatives are excused attendance at the hearing. If a party wishes to attend the hand down then they should notify me of this wish but should be aware that I will not hear detailed submissions. If a longer hearing is required then I should be notified by 12 noon as above. I will accept any applications in the first instance on paper so long as they are received prior to 12 noon date.

HHJ Willans

26 May 2020

Annex to Judgment: Letter to X

Dear Amelie

I am the Judge who has been considering your case and I have been asked to make the decision which is best for you. In coming to my decision I have heard from both your mum and dad, but as you know I have also heard from your own guardian. She has been quite clear about what you want in terms of contact and I have listened to your views and done my best to reflect them in my decision. I have also been told about the effort you are making at school and I was impressed to hear about your recent Gold Merit award which is a real achievement in keeping focused when there are so many distractions not being at school.

Having had responsibility for your case in the last couple of years I think there are three things you should know:

- It is important you know that there are no reasons why you should not spend time with your dad when you think the time is right. Part of my job is to sometimes decide whether parents are a risk to their children (this can be for lots of reasons). I have no doubt your dad is no risk to you and that you would be safe if you spent time with him

- It is important that you know he has previously sent you letters and cards which were not given to you. This was one of the things I had to decide about and I was received evidence which left me confident he had tried to keep in contact by letters which were not given to you

- It is also important that I am fair and tell you that I consider both of your parents have the ability to look after you when you are with them. But I have sadly found that they have let their own disagreements get in the way of making the right decisions about your time with each of them. Your dad regrets the gap in time between 2013 and 2017 when he did not see you but knows he can't change history but can only look to the future.

Having listened carefully I want you to have some control over what is best for you. You are nearly 15 and with this comes greater personal responsibility and the freedom to make more decisions for yourself. I am not going to treat you like a child and make orders for you to go for contact. Instead I am going to leave the door open for contact when you are ready. I have agreed you should get occasional letters from your dad but I have also asked your guardian to provide you with an email contact to which your dad and you can send emails for each other to read (when you want to either simply read what your dad has sent or reply if this is what you want) together with details of a social media site at which you can link up with your dad at your speed. I heard about the Instagram account and I agree your dad made a mistake but I understand why he made that mistake and I think he now knows he approached things the wrong way.

Finally, I am going to put in place a system under which your dad will be ready to meet with you on two occasions a year if you want to turn up to see him. I would like you to think about this hard. Both your parents are very important for you and you will never be able to get back lost time. So do what is best for you but I hope you make the right decisions and I hope you are happy with your choices.

Best wishes

Judge Willans