

Neutral Citation: Re MLD (Summary Dismissal of Child Arrangements Application) [2023] EWFC 129 (B)

Case No: ZW23P00049

IN THE FAMILY COURT  
SITTING AT WEST LONDON

Date: 4 July 2023

**Before :**

**DEPUTY DISTRICT JUDGE HARRISON**

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**Between :**

**A Father**

**Applicant**

**- and -**

**A Mother**

**Respondent**

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The father represented himself  
The mother represented herself

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Hearing dates: 4 July 2023

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**APPROVED JUDGMENT**

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic. Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties by email.

**The date and time for hand-down is deemed to be at 10.00am on 7 July 2023.**

**DDJ Harrison:**

**The names used in this judgment are not the real names of the children or family.**

**Introduction and Background**

1. This case is about three boys:
  - a. Michael, aged 11;
  - b. Lawrence, aged 8, and;
  - c. David, aged 5.
2. Diane (M) is the mother of all three boys; Craig (F) is the father of Lawrence and David. Michael's father is not involved in the proceedings. F does not have parental responsibility for any of the children.
3. This is the first hearing in F's application for a child arrangements order (spend time with) in respect of all three children. The application was made six months ago, by notice dated 23 January 2023. As F is not Michael's father, he needs permission to apply for an order in respect of Michael. I have deemed him to have made that application, even though an application notice has not been filed.
4. There have been two attempts at first hearings prior to today: on 21 June 2023, and 3 July 2023, both before me, and both ineffective because F was unable to take part. I vacated the hearing on 21 June administratively; on 3 July 2023 I held a short hearing to deal with participation directions for this hearing, and to find out from the prison when the matter could be listed. To reduce delay, I accommodated a hearing in this matter the day after.
5. The children have lived with M for their whole lives. For the past five years, they have had no direct or indirect contact with F. In 2018, F was convicted of a murder, and sentenced by a senior judge to life imprisonment, with a minimum tariff of over 20 years. Since then, F has been at a maximum-security prison, a Category A prison, and a Category B prison in England. Save for one visit with Michael at a Category A prison, whilst on remand, the children have had nothing to do with F for this whole

period. Indeed, Lawrence was a matter of weeks old when F was sentenced to life imprisonment.

6. It is said by M, although F does not accept, that the murder was gang related. She tells me that F has had several threats on his life whilst in prison for this reason. I do not have the evidence to determine this, however, such was the extent of concern about M and the children, the police issued an ‘Osman Warning’ in respect of the family. This is also known as a ‘Threat to Life Notice’ and is reserved for cases where there is some basis of a threat being made to the subject’s life, in this case M and her children. She told me at this hearing that, although her safety is no longer an acute worry, she continues to live in fear of reprisal.

### **Parties’ positions**

7. F has two other children, both of whom he tells me that he sees in prison. He feels the loss of Michael, Lawrence and David, and wants them to be brought for prison for contact. His application is not that special arrangements are made, but rather that they be brought to prison for ‘contact days’, which are child-friendly activity-based days hosted inside the prison itself. F does not want me to order any form of indirect contact; he told me that he had “tried that” and was keen to move matters on, although he would like a telephone call.
8. In respect of Michael, M does not consider that F and Michael have a sufficient connection to allow permission to apply to be given. M considers that Michael would be unduly disrupted.
9. In respect of David and Lawrence, M urges me not to order and direct or indirect contact. She considers that the prospect of either would undermine the safety and security that the family has found.
10. F asked me, as a final thought, to consider that although he is in prison, he is not a “bad person” and he has something to offer the children. F makes a good point; children all over the country spend meaningful time and have meaningful relationships with imprisoned parents. The fact that a parent is in prison is not in any way a bar to contact taking place, as long as it accords with the children’s best

interests, and is safe for the children concerned.

### **This Hearing**

11. This hearing took place over the Cloud Video Platform as a remote hearing. Both parents represented themselves. Both F and M addressed me at length; I was also joined by an intervention worker from the organisation PACT, a prison-family liaison service, who was of significant assistance to the Court.
12. At both aborted hearings, I re-listed the matter and defined the issues as follows:
  - a. Whether F should have permission to apply in respect of the child Michael;
  - b. Whether any further evidence, in light of the F's conviction for murder and extended period of incarceration, is necessary to resolve the proceedings.
13. F attended from prison; he was able to see and hear me, and took part fully. I gave M permission to attend by telephone; she remains scared of F and did not wish to be seen by him. In doing so, I considered both PD3A and PD3AA, the provisions of the Domestic Abuse Act 2021, and the allegations of domestic abuse that in this case plainly make M vulnerable. M did not ask for any other measures to be put in place.
14. Having heard from both parents, I adjourned the matter and explained that I would hand down this judgment in writing, giving my decision.

### **Evidence**

15. Cafcass has provided a very detailed safeguarding letter in this case, dated 2 May 2023. The letter runs to five pages, including two pages of analysis and recommendations. The key points of analysis are as follows:

*“Michael, Lawrence and David have not seen [F] for a significant length of time. David and Lawrence would have been very young and are unlikely to have any memories of their father. Michael has a biological father who he has a relationship with and [M] reports that he has never seen [F] in a parent role. [M] also reports that her and [F] never lived together, and [F] involvement in the children's lives was only very limited.*

*[F] has been convicted of murder which is incredibly serious and will have a big impact on whether he should have any relationship with the children whilst they are still minors. [M] also talks about [F] links to gangs which would increase the potential risk of retaliation or revenge attacks and could put the children and [M] at risk of harm if [F] is still affiliated with gangs or is still at risk of retaliation from his victim's associates.*

*[M] has raised domestic abuse as an issue which will need consideration. She alleges that [F] was very controlling towards her throughout their relationship, and he made serious threats to harm her and her family. Given [F] conviction it is important to take [M] allegations seriously and to consider how any communication between the children and [F] could potentially increase the risk of further domestic abuse. Practice direction 12J is relevant as a result of these allegations. Given that [F] already has a conviction for murder and is currently in prison, a fact-finding hearing is not necessary."*

16. Of additional interest is the following:

*"The children don't know what [F] has done or that he is in prison. They understand that the reason they had to leave their home and school was because [F] had done something bad, but they have no understanding of what. [M] is worried about the potential impact on their emotional wellbeing if this is not shared in an appropriate way or at the right time.*

*"The murder [F] committed was gang related. She and the children were not able to return to their home or schools as there were serious threats made to their lives due to reprisals from the family and gang that the victim belonged to.*

*"There has been a massive and traumatic impact on all of their lives as a result of [F] crime. [M] is deeply worried about potentially putting their stability and safety at risk by them having any contact with [F]."*

17. Although I did not hear sworn evidence at this hearing, I heard from both parents at length in submissions. F addressed me and highlighted:

- a. That he hopes to appeal against his sentence and conviction. He hopes for a lesser sentence, and for his conviction to be overturned. He hopes therefore to play a full part in the children's childhoods.
  - b. In any event, F is hopeful that he will move to a lower category of prison in the coming months.
  - c. That he considers that any traumatic impact on M could be ameliorated by the paternal family taking the children to/from prison.
  - d. That he has undertaken courses in prison to help him understand risk.
  - e. That he did not ever live with the children, although Michael would refer to him as 'dad'.
18. M did not address me, beyond reminding me that the children have finally found some stability and that this should not be undermined. M described the effect of proceedings as very difficult, and asked me to refuse any contact between F and the children.
19. David and Lawrence raise different issues to Michael in this case. I will consider Michael's position first and my decision in respect of him, before moving on to consider how I should deal with David and Lawrence.

### Michael

#### Law

20. **Sections 10(4)-(5) Children Act 1989** (CA1989) limits the types of person who may apply as of right for a child arrangements order.
21. The Court has a discretion to entertain an application by any person subject to the giving of permission: **s.10(1)(a)(ii) CA1989**.
22. When considering an application for permission to apply for an Order, **s.10(9) CA1989** lays down a non-exhaustive list of considerations. They are:

*“(a) the nature of the proposed application for the section 8 order;*

*(b)the applicant’s connection with the child;*

*(c)any risk there might be of that proposed application disrupting the child’s life to such an extent that he would be harmed by it; and*

*(d)where the child is being looked after by a local authority—*

*(i)the authority’s plans for the child’s future; and*

*(ii)the wishes and feelings of the child’s parents.”*

23. In **Re B (Paternal Grandmother: Joinder as Party) [2012] EWCA Civ 737**, Black LJ (as she then was) reviewed the authorities and clarified the approach, making the following key points:

- a. Section 10(9) is not a test, but simply identifies some factors which require particular regard;
- b. Having an arguable case may not be sufficient to justify the granting of permission; and,
- c. the court has a wide discretion as to the stage at which the application is determined and the amount of evidence required in order to do so; there is no absolute entitlement to an assessment prior to determining the application.

Analysis – Factors in section 10(9)

24. I will consider each factor in turn.

25. **Nature of proposed application:** F wishes to spend time with Michael.

26. **Applicant’s connection with the child:** F’s connection with Michael is negligible. It has been a number of years since F and Michael spoke or spent any time with each other. I am told by M in the safeguarding letter that Michael has a relationship with his own father and a clear idea of his identity. It cannot be said that F has assumed the role of parent or had any responsibility for J since he has been in prison. Although this is to be expected on a practical level, F has made little to no effort (save for an initial

letter) to maintain a relationship with J. In any event, Cafcass observes that F's involvement hitherto was 'very limited'.

27. **Any risk of disruption that may cause harm:** Michael is aware that F is in prison. M has purposely not shared the reason why with Michael, and does not consider that Michael is resilient or mature enough to understand this yet. M described in submissions how settled J was in his new life. This is in stark contrast to the trauma J suffered aged 7: he was acutely aware of the loss of F from the family set-up, he saw his primary care giver experience distress as a result of the circumstances around F's arrest and imprisonment, and he experienced upheaval as the family effectively started again with every aspect of their lives. I consider there to be a risk of jeopardising the precious but fragile safety and security which Michael has found over the past few years, and that such a risk arises through both giving permission to apply and appointing a reporting officer to discuss F with Michael, or indeed the risk of any eventual order for contact. Either seems to be disruptive for Michael.
28. **Welfare:** Although this is not a limb of the test under s.10(9), I must of course consider Michael's welfare as part of my assessment of all of the circumstances. I must consider the checklist factors, but in particular the effect of a change of circumstances, and any harm Michael might suffer. In considering this, I weigh both the risk to Michael's emotional safety which I have outlined, but also to M's emotional safety as a process of assessment etc is ongoing. I cannot separate M and Michael artificially, and I must consider the effect of disruption on M as Michael's primary caregiver. The risk seems to me to be acute, and potentially catastrophic for any sense of stability and safety that Michael has achieved.
29. For those reasons, I do not consider that F should be given permission to apply in respect of Michael. I consider it to be hugely disruptive to Michael, potentially undermining of his stability and best interests.

### **David and Lawrence**

#### Law

30. F is David's and Lawrence's father, and so he may apply for a child arrangements order as of right: **s.10(4) CA1989**.



31. As with any case about the upbringing of a child, David's and Lawrence's welfare is my paramount consideration: s.1(1) CA1989.
32. When I conceive of welfare, I must do so with reference to the checklist of factors at s.1(3) CA1989.
33. I must make decisions to avoid delay, and I must not make an order unless it is better to make one: s.1(5) CA1989; s.11(1)(a) CA1989. The law requires me to presume that it is better for a parent to be involved in a child's life than not, although involvement does not necessarily mean direct contact: s.1(2A) CA1989, although this does not apply if the involvement of that parent in the child's life would put the child at risk of suffering harm, s.1(6)(b) CA1989.
34. In Re J-M (A Child) [2015] 1 FLR 838, the Court of Appeal noted five key principles relevant to my analysis:
  - (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 options 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; and
  - (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.

35. Each person involved in this case has a right to family life under the European Convention on Human Rights, and the Human Rights Act 1998. Any order I make will interfere with this right, and so my order must be both necessary and proportionate in its character. If there is a conflict between the rights and interests of the parent(s), and that of the child, the child's rights will prevail.
36. Children Act 1989 proceedings are inquisitorial and as such the Court has a wide ambit of discretion as to how to manage a case. Managing a case may include disposing of the proceedings summarily, or at an early stage. This power originates in **Family Procedure Rules 2010 (FPR) r.1.4**, and the extensive case management powers outlined in **FPR r.1.1 and r.1.2**. The Court must make its case management decisions in accordance with the overriding objective:

***“The overriding objective***

***1.1***

*(1) These rules are a new procedural code with the overriding objective of enabling the court to deal with cases justly, having regard to any welfare issues involved.*

*(2) Dealing with a case justly includes, so far as is practicable –*

*(a) ensuring that it is dealt with expeditiously and fairly;*

*(b) dealing with the case in ways which are proportionate to the nature, importance and complexity of the issues;*

*(c) ensuring that the parties are on an equal footing;*

*(d) saving expense; and*

*(e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.*

***Application by the court of the overriding objective***

***1.2***

*(1) The court must seek to give effect to the overriding objective when it –*

*(a) exercises any power given to it by these rules; or*

*(b) interprets any rule.”*

37. The scope of these powers include summary disposal of the case; see Sir Mark Hedley in **Re AA [2019] EWFC 64** at appendix 2 whereupon consideration of the relevant law the learned judge said:

*"I am satisfied that the court does have jurisdiction to bring proceedings to an end at any time before the conclusion of the final hearing. I am satisfied that the combination of statute and rules give the widest powers of control of case and trial management to the individual judge."*

38. The learned judge referred to a decision of the former president Sir James Munby in **Re TG (Care Proceedings: Case Management Expert Evidence) [2013] 1 FLR 1250**, at para 24-28:

*"In this connection, that is to say dealing with evidence, I venture to repeat what I recently said in Re C (Children Residence Order. Application Being Dismissed at Fact Finding Stage) [2002] EWCA Civ 1489. These are not ordinary civil proceedings, they are family proceedings where it is fundamental that the judge has an essentially inquisitorial role, his duty being to further the welfare of the children, which is by statute his paramount consideration. It has long been recognised, and authority need not be quoted for this proposition, that for this reason a judge exercising the family jurisdiction has a much broader discretion than he would in the civil jurisdiction to determine the way in which an application should be pursued. **In an appropriate case he can summarily dismiss the application as being, if not groundless, lacking enough merit to justify pursuing the matter. He may determine that the matter is one to be dealt with on the basis of written evidence and oral submissions without any need for oral evidence. He may decide to hear the evidence of the applicant and then take stock of where the matter stands at the end of that evidence."***

*"The judge in such a situation will always be concerned to ask himself: Is there some solid reason in the interests of the children why I should embark*

*upon, or having embarked upon, why I should continue exploring the matters which one or other of the parents seeks to raise? If there is or may be a solid advantage for the children in doing so, then the enquiry will proceed, albeit it may be on the basis of submissions rather than oral evidence, but if the judge is satisfied that no advantage to the children is going to be obtained by continuing the investigation further, then it is perfectly within his case management powers and the proper exercise of his discretion so to decide and to determine that the proceedings should go no further."*

39. If I am to make final orders at this hearing, and effectively summarily dispose of F's application, I must answer the following questions:
- a. What is in the children's best interests?
  - b. Is there a solid advantage to allowing the case to progress with further evidence or assessment, or will no advantage come to the children by allowing the case to continue?

#### Analysis

40. I will first consider the welfare checklist.
41. **The children's wishes and feelings:** I do not have any independent evidence of the children's wishes and feelings before me. I can safely infer that the children would wish for stability, security and an enduring quality of placement, free of conflict or disruption.
42. **Physical, emotional and educational needs:** I have no concerns about the children's physical or educational needs. The cornerstone of concern in this case relates to the children's emotional needs.
43. I begin with assessing the effect of F's proposal on M. I do so because I must adopt the widest definition of welfare. As Munby LJ (as he then was) noted in **Re G (Children) [2012] EWCA Civ 1233:**

*“... Evaluating a child's best interests involves a welfare appraisal in the widest sense, taking into account, where appropriate, a wide range of ethical, social, moral, religious, cultural, emotional and welfare considerations. Everything that conduces to a child's welfare and happiness or relates to the child's development and present and future life as a human being, including the child's familial, educational and social environment, and the child's social, cultural, ethnic and religious community, is potentially relevant and has, where appropriate, to be taken into account. The judge must adopt a holistic approach.”*

44. It is incumbent on me to adopt a relational approach. This means looking not only at the children in a vacuum, but in their home environment and therefore their primary carer. Aged 7 and 5, those things are inseparable. The effect of proceedings alone is having a negative effect on M. M was in significant danger in 2017 as a direct result of F's criminality, and was subjected to the ordeal of moving her life away from her home. I am entirely satisfied that the continuation of proceedings, and the inevitable assessments and further hearings that will follow, would be destructive to M and her own wellbeing. Although F suggests that M can be insulated from this by involving the paternal family in journeys, contact in effect would be significantly more involved than just a journey. David and Lawrence at present do not know who their father is; they do not know that he is in prison, nor why he is in prison. David and Lawrence will require a sensitive explanation of their life story and surroundings, and emotional support in preparing for and meeting F for the first time in their living memory. This is a high level of emotional support that I consider would be destructive to M, and therefore to the children. In addition, I place some weight on the fact that M has made allegations of serious domestic abuse against F, and such an arrangement opens the possibility of contact being used in an abusive way. Whilst I make no findings on M's serious allegations, and in light of the risks in this case I do not consider it proportionate to embark on this road, I simply note that this is a potential risk that I cannot and should not ignore.
45. What of the children? In my view, confronting the children with their own life story, and introducing to them to F, will, at this stage, cause them distress. The likelihood is that, even with modest levels of contact as requested by F, F will have little to do with the children in any meaningful sense. F will be in prison for the entirety of the

children's minority. He will be unable to play a full part in their lives until they are well over 18 years of age. At present, in my view, I am therefore being asked to risk the children's own emotional safety for the sake of a low level of intermittent involvement with F. I do not think it is appropriate at David's and Lawrence's tender age to explain to them the reasons why M took the decisions she has responsibly done. At the very least, it will scare them. At worst, learning about their history will be traumatic.

46. I must also have regard to the conflict between M and F. Quite obviously both M and F have differing views about the extent to which the children should be involved with F, and in particular the parents disagree on the extent of the risk to M's and the children's safety. F wanted to use some of the court hearing to speak directly to M and discuss this approach. Although I did not allow it, it was clear that there was a level of conflict, and F's perspective is radically different to M's perspective. Exposure to this conflict would in my view be harmful to the children's welfare, particularly as some discussion between F and the children about him missing from their lives seems to be inevitable.
47. **Likely effect of any change in circumstances:** This dovetails with the considerations above. On the one hand, a change in circumstances with direct contact at a prison contact day may be enjoyable for them. On the other, for the reasons I have articulated, a change of circumstances may undermine the children's sense of safety and stability.
48. In particular, I cannot rule out the risk identified by the Cafcass officer that there is a risk of reprisal or further violence for M. Even if what F told me about there being no gang element is true, and that he hoped to both appeal his conviction and sentence to recognise that the incident was "self-defence", I cannot ignore the fact that both the police and children's services assisted M in moving her life away from F following the Threat to Life Notice. This is a risk with both a high magnitude and likelihood.
49. **Age, Sex, Background** – There is nothing of particular relevance here, save that the children are of a tender age and any experience they have must be managed to ensure their emotional safety, and that it is age appropriate.

50. **Any harm suffered or at risk of suffering** – For the reasons I have articulated, I consider that direct contact at this stage would expose the children to a risk of significant physical and emotional harm.
51. In addition, both children have suffered harm. The father’s offending has caused the children emotional harm. By reason of his criminality, he has disappeared from living memory for both children, who are missing an important figure from their childhoods. They have had to move and lost important relationships in the process. M described living a private life away from F; I am entirely satisfied that as a result of F’s criminality, M and the children will live a lower key childhood than they otherwise would have done. I do not consider at present, without a significant amount of intervention and age appropriate work, that direct contact would begin to address this harm.
52. I am doubtful as to whether F’s proposal of the children attending a contact day is realistic. I suspect that the children, M and F would require intervention and preparatory work prior to any contact. I highly doubt that a ‘contact day’ is an appropriate forum for any contact between F and the children. I imagine that any contact would need to be on a one-to-one basis. This would require the children being brought to prison and, like other visitors, having to go through searches and subject to delay. This would be an unpleasant experience for the children, and may be a source of harm.
53. **How capable each of his parents is of meeting his needs** – M is a loving and capable parent. I have no information about F’s parenting capacity, although such information is not necessary given I am asked to countenance contact in a professionally supervised and supported, structured environment.
54. **The range of powers available to the court under this Act in the proceedings in question** – as the parents disagree as to the way forward, the Court is required to make an Order.
55. Drawing the threads of my analysis together, I am of the firm view that direct contact between F and the children is contrary to their best interests. There are few advantages, and many significant, serious disadvantages to contemplate. When I weigh those factors, I am led to the conclusion that direct contact is not appropriate in

this case now or in the short to medium term. I cannot see any form of safeguard in direct or indirect contact that would guard against risks of such magnitude. Even in respect of indirect contact, the risks associated with creating such contact remain identical: the children must know who they are writing to, and why they are having to engage in this way. Likewise, indirect contact sent from F to the children would require a level of vetting and support that is simply unavailable to M at this time.

56. In the alternative, F has requested a regular update or bulletin on how the children are getting on. He would like this to be accompanied by photographs. M did not oppose this in principle, but raised concerns in submissions that F had access to social media in prison (although this is not allowed) and therefore might share images of the children on Facebook or another platform. Ms Burke from PACT kindly offered to act as an intermediary to ensure that photographs were well looked after, and were used only for the father to see his children grow and develop alongside the updates. This has the advantage of respecting F's role as the children's biological father but insulating the children entirely from F and the risks that I have identified. M considered that she would be able to do this on a very occasional basis, and it would not undermine her own emotional wellbeing that is so important to the children.
57. I will therefore order that every January, M should send F (via PACT) a short update on the children's progress: their schooling, and health. I will not make an Order that this should be accompanied by photographs, but I will make a prohibited steps order that if any photographs are sent, they are not to be shared with any other person including on social media. This is a very serious order, and the F must understand that breaching this order is a contempt of court, for which he may be sentenced separately.
58. Having formed this view, what should I do? Is any further evidence necessary? Can I bring the proceedings to an end, or is there a solid advantage in continuing the proceedings to attempt to progress arrangements?
59. In this case, I do not consider that there is any solid advantage to the children in allowing the case to proceed. I have formed this view for the following reasons:
  - a. Any risk assessment and welfare report, which is a constituent part of moving this case forward if it remains in proceedings, will involve discussions with both M and the children about the case generally, and the children's wishes



and feelings. I have identified clear risks from confronting the children with this information. I do not consider that such an intrusive process should be set in train.

- b. There is no evidence that the risks that I have identified would soften or change in the short to medium term. Any assessment of the true risk of reprisals from associates of F depends on a level of honesty that I simply cannot rely upon from F, particularly in circumstances where F plainly still does not accept his conviction. This itself presents an issue: F effectively protested his innocence at this hearing. Five years on, however, he remains convicted. He has not been given permission to appeal either his sentence or his conviction.
- c. Although I could direct further evidence from the prison or from F's caseworker within the prison. I accept at face value what F says about the work he has done in prison, but I cannot see that any amount of work would go any way to ameliorate the significant concerns I have outlined in this case. In circumstances where F does not accept his conviction, I do not see how any remedial or therapeutic work about his offending could have been effective. I must therefore be cautious about F's ability to interact with the children in a way that safeguards against any risk he may be assessed as posing.
- d. I do not see that any further evidence therefore will assist the Court at this stage. I recognise per **Re R (A Child: Appeal: Termination of Contact) [2019] 2 FLR 162** that the Court can only make a 'no contact' order when the end of the road is reached, and I recognise that the effect of finalising the proceedings is analogous to this. There are two things to say about this. First that this is subject to there being some solid advantage to continuing; this is a case where I have examined the benefits and risks to the children of setting off down the proverbial road at a preliminary stage, and have found that those risks fundamentally outweigh the benefits. Second, for the reasons I have explained, I am able at this early stage to form a holistic welfare analysis and I do not consider there to be any benefit to additional evidence when it simply cannot overcome the hurdles I have identified in terms of harm to the children that may come from any other form of order.

- e. I understand that PACT offer support and guidance to families looking to help children of prisoners understand their life stories. Cafcass has recommended that M seeks the support and intervention of the local authority, in addition. I do not consider that this work should be rushed or take place within the proceedings to allow contact to be contemplated. The children's and M's own timescales require careful assessment, and I do not consider that the children's welfare demands that I put pressure on this process.
- f. There are inherent issues in any event in using Children Act 1989 proceedings to direct that contact takes place between a prisoner and their children. These were fully set out by Macdonald J in **Z v Z (Contact in Prison) [2021] EWFC 47**. In particular, even if I disagreed with M and considered that contact should take place, I could not compel the prison to supervise or facilitate this. Prison governors have their own responsibilities under Children Act 2004 and other statutory schemes. As noted by Macdonald J, National Offender Management Service Public Protection Manual 2016 stipulates at paragraph 3.2 of Chapter 5c, entitled Child Contact Procedures, that: *"The Governor (or senior manager with suitable delegated authority) is ultimately responsible for making an assessment of what, if any, level of contact should be permitted."* Although I have the power to make an Order, ultimately the implementation of that Order *"is subject to, and cannot displace, the statutory powers of the Secretary of State for Justice to operate the prison system, including communications between serving prisoners and outside persons and, in this case, the management and assessment of the risk posed by serious offenders."* There is therefore significant doubt about the utility of this process in any event.
60. Article 8 of the European Convention permits interference only where it is both necessary and proportionate to interfere. These proceedings are an interference in rights to family life of the mother, the father, and the children. Any order I make extending the proceedings is likewise an interference. For the reasons I have set out, I do not consider that such a step is proportionate where I have identified several threads that pull against taking that step. I would be doing so for the sake of the father's right to family life and interests. I understand of course that he loves his

children, and that he wants desperately to see them, but to continue this inquiry would in my view place his rights over and above the children's interests. That is contrary to the welfare principle and the approach which the ECtHR tells me I should adopt:

**Yousef v Netherlands [2003] 33711/96; s.1(1) CA1989.**

61. For those reasons, and in the absence of a solid advantage in continuing the proceedings, I exercise my discretion and case management powers to make the orders I have made as final orders. The proceedings will now come to an end. I have formed a welfare analysis to underpin these orders, which I have explained in this judgment.
62. I am not going to make any order to prevent a further application by the F at this stage; I do not think that this is proportionate, and I hope that the F will reflect on my reasons. It may be that circumstances change as the children get older. I hope that F will use the PACT service provided by the prison to review and explore the possibilities in the years to come. This will at least allow the mother to share the children's life story with them in an appropriate way.

### **Conclusion**

63. For the reasons I have outlined, I make a final order in the following terms:
  - a. The father's application for permission to apply for a spend time with order in respect of the child Michael is refused.
  - b. Pursuant to Family Procedure Rules 2010 r.1.4, the father's application for a spend time with order in respect of David and Lawrence is summarily dismissed.
  - c. Every January, the mother should send a short, written update to the father (via PACT) on the children's progress, education and health. This may (but does not have to be) accompanied by photographs.
  - d. If photographs are sent by the mother, the father is prohibited from sharing these photographs with any other person, or taking any steps to display or publish those photographs on social media or in any other place. Likewise, the father is prohibited from asking or encouraging any other person to do this.

64. That is my judgment.