FINAL JUDGMENT

Neutral Citation: [2023] EWFC 89 (B)

IN THE FAMILY COURT **Leeds Family Court**

SITTING AT LEEDS, remotely

Date: 14 April 2023

IN THE MATTER OF THE CHILDREN ACT 1989

AND IN THE MATTER OF H (A MINOR)

Before :

Mr. Recorder W. J. Tyler KC

- -

Between :

A FATHER	**Applicant**
- and -	
A MOTHER	
H (A MINOR)	**Respondents**

RE H (A MINOR) (CHILD ARRANGEMENTS: SECTION 91(14) ORDER)

Hearing date: 5 January 2023

Judgment circulated in draft on 18 January 2023

Final judgment handed down on 14 April 2023

FINAL JUDGMENT

(REDACTED)

F, the applicant father, in person

Natasha Miller of counsel (instructed by Charles Strachan Solicitors) for the first respondent mother

Nathaniel Garner of counsel (instructed by Chivers Solicitors) for the second respondent child

Parties, applications, issues, positions

1. I am concerned with the interests and future of **H**, a boy, born in 2013, so 9 years old.

2. H lives in England with his mother, the first respondent, **M**. H is habitually resident in England.

3. H's father, the applicant, is **F**. F originates from Pakistan but has lived for most of his life in the UAE. He currently lives in Ajman. F has parental responsibility for H, by virtue of his being married to M at the point of H's birth.

4. F has represented himself at this hearing, as he has at previous hearings.

5. M has been represented at this hearing by Natasha Miller, Counsel.

6. H has been represented, through his Children's Guardian, Katy Sanderson (**"the CG"**), by Nathaniel Garner, Counsel.

7. F applied, as long ago as 3 September 2020, for a child arrangements order in relation to H. At that point, although he alleged H's having been wrongly retained in England after a trip to England from Dubai, where he had been habitually resident, F did not seek H's return to the UAE, but rather contact, twice weekly by video, and once or twice a year for holidays in the UAE, for periods of at least 10 days.

8. M opposed the application. She made allegations of significant domestic abuse against the father referable to their cohabitation in the UAE and the period of time she remained there following their separation.

9. The case came before me, then sitting as a Deputy Judge of the High Court (given the international issues then pertaining), in the week of 16 August 2021 for a fact-finding

hearing. I delivered an extensive oral judgment (which has subsequently been transcribed) on 27 August 2021, making far-reaching findings of domestic abuse against F.

10. The hearing before me today, 5 January 2023, has been the final welfare hearing bringing to an end unusually protracted proceedings.

11. The issues which I have had to determine are:

a. **Child Arrangements.** F effectively, if not explicitly, accepts that H will continue to live with M. Although he would like it, he does not formally seek direct, face-to-face contact. He seeks ongoing video contact with H. This is opposed by M, who contends that there should be only indirect contact by the exchange of cards, gifts and electronic messages between F and H, and the provision by her of relevant information to F about H, his life, interests and progress. The CG supports M's position.

b. **Section 91(14) order.** M seeks an order pursuant to s.91(14) of the Children Act 1989 (**"the CA 1989"**) prohibiting further applications by F in relation to H without the court's prior permission, such prohibition to endure until his sixteenth birthday or, if the court considers that too long, until he is thirteen (i.e. very nearly four years from now). F opposes any such order, for any period. The CG agrees with F, considering such an order not to be necessary.

c. **Recitals.** With an eye on my order being disclosed to the Dubai Personal Status Court, M seeks various recitals in the order, setting out particular features and aspects of the proceedings to date, and perhaps ranging rather more widely than would be the case if the order were not intended for distribution beyond the current parties and their legal teams. The CG broadly agrees, suggesting certain refinement. F has not

expressed a concluded view, no doubt due to his position in relation to whether the order should be disclosed.

d. **Disclosure of documents to UAE.** The mother seeks permission to disclose my judgments (fact-finding and this judgment) and various orders, including that emanating from this hearing, to the Dubai Personal Status Court. F agrees in relation to the judgments but opposes the suggestion that any further orders are disclosed. F further seeks permission to disclose the CG's most recent report. M opposes this and the CG, while she questions the purpose served, is essentially neutral on the question.

This hearing

12. At my direction, the CG has given brief oral evidence at this hearing, limited to certain matters which I considered had not been fully dealt with in her recent report. Both other parties had the opportunity to cross examine her, although F had no questions for her.

13. Other than that, the case proceeded on the basis of the parties' submissions (F's being on oath, given his status as litigant in person and given the contents of his submissions ranged – as expected – somewhat beyond what had previously been committed to writing in statements supported by statements of truth).

14. F clearly thought that M should have been asked questions, principally about her role in H's reluctance to have anything to do with F. He did not make a formal application for M to give evidence or to have her cross-examined (I would not have permitted him to have done so himself, given my earlier findings of abuse). I told F, who had not submitted questions in advance, for me, rather than him to put to M, that I would review the need for M to give oral evidence after having heard the parties' submissions.

15. I was much assisted by the submissions made, and, once again, am grateful to F for his polite and respectful participation in and engagement with these difficult and protracted proceedings, notwithstanding his obvious frustration with what he perceives to be a lack of any real progress.

16. Having heard those submissions, I formed that view that it was neither necessary nor proportionate to require M to give oral evidence.

Background; previous judgment; findings of fact already made

17. I set out the extensive background to this case, including the detail of the parties' allegations against each other, from paragraphs 18 to 117 of my fact-finding judgment of 27 August 2021. That judgment, necessarily and appropriately far more detailed than this, is to be read alongside this judgment.

18. The briefest of summaries provides context to the reader unable to read the full fact-finding judgment:

    a. The parents met in early 2012, becoming engaged in June 2012, and married in December 2012 in both civil and Islamic ceremonies. At that point, M lived and worked in England, F in Ajman.

    b. H was conceived and born fairly early in the marriage.

    c. On M's account, even before H's birth, the marriage was marred by F's temper and abusive behaviour, including two instances of actual physical violence (in February or March 2013 and February 2016).

d. The marriage effectively came to an end in 2016.

e. There was prolific litigation in the UAE between M and F, including cases relating to custody, alimony, contact, travel bans and the non-return of dowry gold. F's applications included attempts to remove H entirely from M's care.

f. M and H lived for a significant period in the equivalent of a Women's Refuge in the UAE.

g. In August 2019, M effected the temporary lifting of a travel ban which had prevented H's removal from the jurisdiction. M travelled to England with H that same month. She was to return by 8 October 2019, but has never done so. H and she have remained in England from then to date.

h. F has continued to issue and to seek to progress litigation in the UAE against M since then, and has procured arrest warrants for her. M is currently subject to an ever-accumulating daily fine of AED 1,000. M has been convicted in her absence of abduction. In April 2020, F obtained an order in the UAE transferring 'custodianship' of H to him and discharging all of his maintenance liabilities.

i. In September 2020, F issued these proceedings in England.

j. That notwithstanding, there have continued to be many applications made in the courts of Dubai. These, it seems, have comprised principally (i) M's attempts to secure (the equivalent of) child maintenance for H (or to obtain payment of liabilities accruing in relation to this before the discharge of the order), (ii) F's attempts to have the cumulative fine against M assessed, and even, latterly (and after my fact-finding judgment), to have the daily rate of fine increased from AED 1,000 to AED 3,000, and (iii) proceedings to enforce the custodianship order in F's favour.

19. The proceedings in England began in September 2020. By May, the case was listed before me, sitting as a Deputy High Court Judge.

20. After two case management hearings, in May and June 2021, the case came before me for a fact-finding hearing in August 2021. At the hearing on 10 May 2021, F represented himself (as he has, in large part, throughout proceedings). After a careful and protracted exploration (in lay, not legal, terms) with him in relation to jurisdiction, forum and where H should primarily live, I recorded in my order of that day these five recitals:

> *UPON the Father irrevocably agreeing and accepting that the child, [H], is habitually resident in the United Kingdom.*
>
> *AND UPON the Father irrevocably agreeing and accepting that it is in the child's welfare interests to continue living in the jurisdiction of England and Wales and in the care of his Mother.*
>
> *AND UPON the Court considering and the parties agreeing the points of dispute for determination at further hearings in this matter are:*
>
> *1) The factual situation in respect of allegations raised by the Mother against the Father as set out in the filed schedule of allegations;*
>
> *2) whether the Father should spend time with the child;*
>
> *3) if the Father is to spend time with the child, where that contact should take place and under what circumstances; and*
>
> *4) if any protective measures are necessary in relation to the Father's contact with the child and what those would be.*
>
> *AND UPON the Father informing the Court that he has been granted custody of the child in the UAE and that he cannot withdraw or discharge that order.*
>
> *AND UPON the Court declaring that the child is habitually resident in the United Kingdom.*

21. While the fact-finding judgment sets out in detail the evidence, my impression of the witnesses, my analysis and, in narrative format, my findings, for the purposes of this

judgment, I need do no more than set out the summary of my findings, as recited in my order of 27 August 2021. I made the following findings:

Domestic Abuse during the Marriage

1a. *The Applicant Father hit the Respondent Mother repeatedly during an incident in February/March 2013.*

1b. *During an argument in February 2016 the Applicant Father caused the Respondent Mother's hand to hit a table so hard that it resulted in her fracturing her fourth finger and having to attend A&E.*

1c. *The Applicant Father swore at the Respondent Mother in foul terms and [in] temper.*

1d. *The Applicant Father charged at the Respondent Mother causing her to fear for her safety.*

1e. *The Applicant Father spat at the Respondent Mother, including in her face on one occasion.*

Litigation Conduct

2a. *The Applicant Father sought to exercise control and punishment of the Respondent Mother by exposing her to the fear of sanction within court proceedings, including imprisonment and receiving fines. This was not justified and amounted to abusive behaviour and coercive control, intended to harm and/or frighten.*

2b. *The Applicant Father procured a reduction in the alimony he was due to pay the Respondent Mother for herself and [H] by actively misleading the court and maintained that deception for some period.*

2c. *The Applicant Father sought to actively mislead the UAE courts in relation to the marriage contract and dowry gold.*

2d. *Both parties insisted on court applications unnecessarily within the UAE proceedings.*

2e. *The Respondent Mother must have found it harder to litigate in the UAE and was occasionally left at a disadvantage by the court-provided interpretation.*

2f. *The Applicant Father made unfounded allegations against the Respondent Mother within the UAE proceedings in order to seek to remove her custodianship of [H], which would have left her in an extremely precarious position.*

Post Separation Behaviour

3a. *The Applicant Father refused to provide a 'no objection' letter for the Respondent Mother for no good reason and unnecessarily forced the matter into the Court arena before ultimately applying unreasonable conditions on her ability to work.*

3b. *The Applicant Father required the Respondent Mother to shop at a specific supermarket, which was controlling and exposed her to embarrassment and a fear of being unable to provide for [H].*

3c. *The Applicant Father misrepresented his financial position to reduce his liability towards the Respondent Mother and [H], as a result of which [H] was not appropriately provided for.*

3d. *The Applicant Father threatened to cancel/rip up the Respondent Mother's and [H]'s passports and to 'strand' the Respondent Mother in Ajman.*

3e. *Although the Applicant Father was justified in seeking the Respondent Mother's and [H]'s passports and whilst the Respondent Mother could or should have behaved differently, the Applicant Father was at least partially responsible for the Respondent Mother and [H] having to spend time in the police station in Ajman.*

22. I declined to make further findings sought by M against F, including that he had acted inappropriately with H (allegations with quasi-sexual connotations) and that he had made little attempt to have a relationship with H.

23. It was recorded in my order of 27 August 2021 that the CG *'supports the continuation of indirect contact (by letters/cards) between the Applicant Father and [H], noting that [H] has expressed a wish to see some photographs of his paternal family.'* I directed F to file a statement in response to my findings and outlining his amended aspirations in relation to contact with H, the

CG to follow this with a position statement detailing her recommendations as to the progression of the case.

Events since the fact-finding judgment

24. F's first statement purportedly in response to my direction did not substantively engage with the findings I had made.

25. That notwithstanding, the CG was able to formulate her position, which was that, in light of the findings, she could not recommend direct, face-to-face contact until successful completion of a DAPP, which, she discovered, was no longer available online. Even if a DAPP were completed, the CG was clear that contact could scarcely take place in the UAE, given the orders in place in that jurisdiction and the unacceptably high risk of retention. She could not recommend contact supervised by a family member, given the issues; and considered that a supervised contact organisation would be unlikely to accept the case until there had successful completion of a DAPP. The CG's positive recommendations were:

> *The Guardian is of the view that it is in the welfare of H to have a relationship with his father and spend time with him indirectly. For those reasons the Guardian would recommend the following:*
>
> *(i) Video contact should take place between H and his father once each month, unless H requests to video call his father more frequently and then this should be facilitated by the mother*
>
> *(ii) The father to provide indirect contact such as letters, photos, cards and gifts (at appropriate times of the year) on a monthly basis.*

(iii) The mother should encourage H to respond but there should be no obligation placed upon H to do so, if he does not wish. If H does not respond to the indirect contact, then the mother should prepare a short letter updating the father as to events which have taken place recently.

26. At a hearing before me on 3 December 2021, I directed further evidence, a final report from the CG and that a final hearing be listed before me on 28 and 29 March 2022.

27. F, in his statement of 31 December 2021, made it completely clear that he did not accept any of my findings against him. He continued to seek twice-weekly video contact and proposed his travel to the UK over the summer and Christmas holidays for periods of a few days, unsupervised. He indicated a willingness to undertake a Domestic Abuse Perpetrators Course ("DAPP"), but only if this could be undertaken online, as he lived overseas. He continued to contend for H to travel to Dubai to stay with him ('*if H wishes to*'), offering up undertakings from F's UK-based brother as guarantor.

28. It was decided at the December hearing that there would be monthly video calls between H and F. The CG helpfully agreed to facilitate the first two of these, scheduled for January and February 2022. However, as it transpired, H refused to engage on both occasions.

29. The CG, in her February 2022 report, described the then 8-year-old H's presentation as having been difficult for her to determine when she met with him. She thought him to present as happy enough to engage with her sessions with him, but never to be forthcoming with information, giving single word or very brief answers (*"I don't know"*; *"I can't be bothered [to write to F]"*). The CG used various techniques to engage H in relation to his having contact with F. He would not sit and write a list with her of topics to talk to F about, he would not dictate a letter for her to type up on her laptop, he would not agree to the CG speaking first to F in any telephone call, before handing over; H just politely declined, while continuing to smile. H said he did not think much of the videos

his father had sent him, declined to write to F or to record a voice note, still less to engage in a video call. He said it had been a long time since he had seen F, and that he could no longer remember what he was like or what it had been like when he did see him in the UAE. Even when told that both of his parents had agreed that he should have monthly video calls with F, he said he did not want this. It was clear that – for whatever reason – he was well aware of there being ongoing conflict between his parents. He told CG – when asked how often he would like to text his father – that he would like to do so monthly, using his mother's 'phone and supported by her. An hour after that visit ended, M rang the CG to tell her that H had subsequently said that, although he had told the CG that he wanted to text his father, he did not.

30. In her February 2022 report, CG maintained the view that successful completion of a DAPP would be a necessary prerequisite to addressing the risk posed by F, but that, given his non-acceptance of the findings of domestic abuse, F would not meet the criteria for acceptance on such a course. (And even if this changed, his overseas location would prevent his ability to engage with a Cafcass course.). The CG considered that there were *'no safeguarding reasons'* why H should not engage in the proposed video calls. Given H's clear knowledge of there being ongoing dispute between his parents, the CG concluded:

> *'In view of this and in the absence of any other explanation from H, I think it is fair to conclude that H is choosing not to engage with the contact because he has become entrenched in the animosity between his parents and wishes to try and please his mother.'*

31. Considering it unlikely that M was actively telling H not to engage in the calls, the CG formed this view:

> *'[M] is very upset and anxious about the Dubai proceedings, which is not a criticism and is understandable, as they could be considered a form of abuse and harassment by [F]. [F] is aware that they are causing [M] a great deal of distress and yet he continues to choose to pursue them. It*

may be that H has also picked up on his mother's anxiety about the proceedings and he too feels anxious and worried about what the Dubai proceedings may lead to for him.

It is a difficult situation, [M] cannot be criticised for feeling negatively about [F] given what she has experienced and continues to experience and I believe that [M] has tried to encourage H to engage with the contact.

However, it would seem that H is aware of the negative views that [M] has shared with others about his father, as he has overheard these conversations. I was also concerned during my recent phone call with [M] following my visit to H, that he was present and overhearing the conversation where [M] discussed the Dubai proceedings and how angry and frustrated she felt about [F] continuing to pursue them.

I think it is the case that further effort needs to come from both parents. Perhaps if [F] stopped pursuing the proceedings in the Dubai courts, then [M] may feel less upset and negative about him and more willing to make concessions on her part i.e. to facilitate video calls.

Equally, [M] needs to make sure that she is not exposing H to her negative views about his father, especially when she is speaking to others and H may be within ear shot.'

32. By the point of the final hearing listed at the end of March 2022, the CG remained of the view that H should continue to live with M, but that he should have monthly video contact with F. In light of the fact that latter was still not taking place, despite her efforts to facilitate it by supporting H's engagement, the CG recommended the adjournment of the final hearing pending a referral to the Improving Children and Family Arrangements ("ICFA") service.

33. ICFA is a service, funded by Cafcass, available on referral by Cafcass, providing each parent consents. ICFA's work is described as follows:

    a. *ICFA work is short term, court ordered in private law cases only and has four expected key outcomes for families:*

i. Reducing barriers and resistance to agreeing arrangements and managing any risks so that these are safe

ii. Promoting positive communication within families

iii. Ensuring children's wishes and feelings are heard and considered

iv. Helping families agree a Parenting Plan to avoid future issues arising

b. The work will be tailored to meet the needs and outcomes of each individual family and should include application of learning from the Separated Parents Information Programme. ICFA work takes place over a few weeks and may include, but is not limited to:

i. Meeting the parents together and/or individually to help resolve issues and prepare them for spending time with the child

ii. Direct work with the child to prepare them for spending time with the adult

iii. Observation of the adult spending time with the child in a contact centre, the home, the community, or any other suitable settings.

34. The support commissioned by a referral can last up to three months. The CG had established that ICFA would accept a referral in the circumstances of the current case. The plan was for approximately six sessions of support, to include sessions with the parents to address any barriers to contact, a preparation session with H, and then some sessions of facilitating contact. There might have been scope to extend the service if ICFA had thought progress was being made.

35. M was initially reluctant to consent, taking the view that it would result in more agencies and professionals being involved with H, which she thought would be destabilising. In the event, M reconsidered. Thus it was, that, with the parents' consent, and on ICFA's agreement to take the case, I agreed to adjourn the final hearing, I directed both parents

to attend a Separated Parents Information Programme ("SPIP") and I re-listed the final hearing for later in the year.

36. Unfortunately, the ICFA process was not successful. Indeed, the programmed ended early *'due to the emotional impact on H and it was no longer deemed to be in his best interests'*.

37. Despite the ICFA workers' best efforts, it was not possible to move H from his simple but obdurate position that he did not want to speak to his father.

38. ICFA's description of the failed process contained a number of excerpts suggesting that M had not been able to commit wholeheartedly to the process. For example, during the direct work in relation to her trying to promote F to H and to support a relationship between them:

> *'M stated that she had been through a horrendous time in the UAE and had to live in a refuge due to the domestic abuse allegations. M stated that H had witnessed the abuse and was quite fearful of F.*
>
> *M stated that she did not feel that promoting F with H was beneficial due to H not wanting to speak with him.'*

A further example can be found in the description of a session between the workers and H, at which M was present by virtue of having brought him:

> *'The workers were having a conversation with H and M was answering for H for most of the conversation. The workers felt that H was able to answer the questions independently but was being overcome by M.*
>
> *After approximately fifteen minutes the worker asked M to leave so the workers were able to talk with H alone. The workers asked M to sit at the other side of the restaurant but M moved only three tables away from H and was still in his sight.'*

Description of a subsequent session includes the following, as the worker tried to make contact with F, in H's presence, via a phone call:

> *'The worker attempted the video call again, H got up from the table and walked over to M. M came over with H and stated that H had tears in his eyes. The worker was unable to see this as H had on his sunglasses. M lifted up H's glasses and H appeared upset with a tear in his eye.'*

39. The reasons given by ICFA for discontinuing its work were described thus:

> *'The worker felt that the more sessions we do with H the more H seems to be pushing away and disengaging with us. The worker worried that pushing further will impact on H's emotional wellbeing and the possibility of future arrangements.*
>
> *H has constantly kept to his views about not talking or seeing F.'*

40. The CG's reluctant conclusion at that point was that it was not in H's welfare interest either to continue the ICFA process or, in light of that, to seek by any other means to progress to video calls.

41. Due to illness, the ICFA process had been delayed. The case came back before me for directions on 3 November 2022 for a two-hour hearing, to consider whether final orders can be made in respect of H, if not, directions to a final hearing and the application – issued earlier in the year – for an order pursuant to s.91(14) of the CA 1989.

42. The case could not be concluded at that hearing. I directed further and final statements (M's to exhibit translated copies of the various documents emanating from the ongoing Dubai proceedings), skeleton arguments and the hearing which took place before me today.

The law

Welfare

43. In relation to any decisions relating to H's upbringing, s.1(1) of the CA 1989 requires me to have as my paramount consideration his welfare. In determining how best to secure his welfare, I am to have particular regard to the non-exhaustive list of factors at s.1(3) of the CA 1989. When considering the appropriate detail of any child arrangements order, I am to presume, unless the contrary is shown, that involvement of both parents in H's life will further his welfare.

44. I am bound to have regard to the parties' ECHR rights, in particular, in the current context, the Art. 8 right to respect for family and private life. In the event of conflict between a subject child's Art. 8 rights and those of an adult parent, it is the child's rights which must prevail. Any interference with any person's Art. 8 rights must be necessary and proportionate to the perceived harm against which the proposed interference is designed to protect.

Domestic abuse

45. In circumstances, as here, in which I have found there to have been domestic abuse, I am to have regard to the provisions of PD12J of the Family Procedure Rules 2010 ("FPR 2010").

46. Paragraph 4 of PD12J reminds the court that domestic abuse is harmful to children and puts them at risk, and points out that harm may be suffered directly, by their being the

victim of domestic abuse or being exposed to it, or indirectly, where the domestic abuse impairs the parenting capacity of one or other parent.

47. The provisions of PD12J have been faithfully followed in this case, a fact-finding hearing having been listed, case-managed and heard.

48. Having made findings of domestic abuse, the court *'should consider the conduct of both parents towards each other and towards the child and impact of the same'*. In particular, the court should consider:

> *'(a) the effect of the domestic abuse on the child and on the arrangements for where the child is living;*
>
> *(b) the effect of the domestic abuse on the child and its effect on the child's relationship with the parents;*
>
> *(c) whether the parent is motivated by a desire to promote the best interests of the child or is using the process to continue a form of domestic abuse against the other parent;*
>
> *(d) the likely behaviour during contact of the parent against whom findings are made and its effect on the child; and*
>
> *(e) the capacity of the parents to appreciate the effect of past domestic abuse and the potential for future domestic abuse.'*

49. The court is also to consider such expert risk assessment as has been commissioned and, in the light of it, the welfare checklist in determining whether direct contact is safe and beneficial to the child and, if so, what, if any directions or conditions are required to enable the order to be carried into effect (para. 38, PD12J). If the court does not consider

direct contact appropriate, it must consider whether it is safe and beneficial for the child to make an order for indirect contact, (para 39, PD12J).

Section 91(14) orders

50. In general terms, the right of access to the Family Court by a parent with parental responsibility seeking to make an application pursuant to the CA 1989 is absolute and unconditional, subject only to the imposition of a prohibition on doing so without the leave of the court. S.91(14) provides:

> *'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.'*

51. The *locus classicus* in relation to the appropriate deployment of s.91(14) has long been the judgment of Butler-Sloss LJ 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, the eleven *'guidelines'* which provide:

> *(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 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 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.

(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.

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

52. A number of recent developments have perhaps led to the need to look at s.91(14) and the *Re P* guidelines in a slightly different way.

53. By virtue of s.67 of the Domestic Abuse Act 2021, a new section was inserted into the CA 1989, taking effect on 19 May 2022, s.91A:

91A Section 91(14) Orders: Further Provision

(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.

54. Even before the coming into force of the new s.91A, the Court of Appeal had cause to consider afresh the question of the appropriate guidelines in relation to the making of s.91(14) orders. In *Re A (A Child) (Supervised Contact)* [2022] 1 FLR 1019, King LJ (with whom Newey and Arnold LJJ agreed) said this:

[33] Before considering the way the mother puts her case in this appeal, it is worth placing the Re P guidelines into a modern context and also considering how the provision in s 67 of the Domestic Abuse Act 2021 may impact upon the guidelines when the time comes for that section to be brought into force.

[34] Although the guidelines have substantially withstood the test of time and have received the endorsement of this court on a number of occasions in the intervening period, the fact remains that they were set out in April 1999, some 22 years ago. In the intervening period the forensic landscape has changed out of all recognition. Amongst the many advances is the advent of the smart phone and of social media in all its forms. Of particular relevance in this context is the almost universal use of email as a means of instant communication. Another development of relevance is that as a result of the withdrawal of legal aid in the majority of private law cases, a large proportion of parents are unrepresented and therefore do not have, as the judge described it in the present case, the 'steadying influence' of legal advisors.

[35] One of the consequences of these changes which is seen not uncommonly in private law proceedings is that the other parties, and often the judge him or herself, can be (and often are) bombarded with emails from a parent, whether male or female, who is representing him or herself. Such behaviour may be the result of anxiety but in other cases, as in this case, it is part of a campaign of behaviour by one parent against the other which amounts to a deeply disturbing form of oppressive behaviour on their part.

[36] Regardless of the motivation, behaviour of this type, as exhibited by the mother in this case by way of an example, is deeply distressing to the parent who is the subject of such abuse and litigation at this level and is highly debilitating to each of the parties and to their children. All too often such communications are ill-considered and ill-judged with the consequence that every minor dispute or misunderstanding is met with an application to the judge. More importantly, the distress and anxiety caused to the other parent and to the children at the centre of such a raging dispute cannot be overestimated, nor can the damaging consequences where the focus of the litigation veers away from what, on any objective view, would and should be regarded as the real issues going to the welfare of the children concerned.

[…]

[38] Even though every family judge has the case management powers to which I referred in Agarwala, often even strict directions designed to limit the torrent of emails have no effect. The easy accessibility to the court and the other parties as a result of emails means that Guideline (5) in Re P which says that s 91(14) orders are: 'generally to be seen as a useful weapon of last resort in cases of repeated and unreasonable applications', has even more resonance now than it did in 1999. It seems, however, that the phrase 'weapon of last resort', when put together with Guideline (4) which says that: 'The power is therefore to be used with great care and sparingly, the exception and not the rule', has led to an understandable, but perhaps misplaced, reluctance for judges to make orders under s 91(14), save for the most egregious cases of which, on the facts as found by the judge, this is one.

[39] Although an order made under s 91(14) limits a party's ability to make an application to the court, the court's jurisdiction to make such an order is not limited to those cases where a party has made excessive applications, although that will frequently be the case. It may be that there is one substantive live application but that a person's conduct overall is such that an order made under s 91(14) is merited. This situation is anticipated by Guideline (6) of Re P: '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'. In my judgment the sort of harassment of the father seen in this case, in the form of vindictive complaints to the police and social services, is an example of circumstances where it would be appropriate to make an order under s 91(14), even if the proceedings were not dogged by numerous applications being made to the judge.

[40] Further, the guidelines do not say that a s 91(14) order should only be made in exceptional circumstances, rather Guideline (4) says such an order should be the 'exception and not the rule'. That is of course right, there is no place in our child focused family justice system for any sort of 'two strikes and you are out' approach, but it seems to me that in the changed landscape described in para [30] above there is considerable scope for the greater use of this protective filter in the interests of children. Those interests are served by the making of an order under s 91(14) in an appropriate case not only to protect an individual child from the effects of endless unproductive applications and/or a campaign of harassment by the absent parent, but tangentially also to benefit all those other children whose cases are delayed as court lists are clogged up by the sort of applications made in this case, applications which should never have come before a judge.

[41] In my judgment in many cases, but particularly in those cases where the judge forms the view that the type of behaviour indulged in by one of the parents amounts to 'lawfare', that is to say the use of the court proceedings as a weapon of conflict, the court may feel significantly less reluctance than has been the case hitherto, before stepping in to provide by the making of an order under s 91(14), protection for a parent from what is in effect, a form of coercive control on their former partner's part.

[42] The guidelines in Re P should now be applied with the above matters in a mind and in my judgment the prolific use of social media and emails in the modern world may well mean that orders made under s 91(14) need to be used more often in those cases where the litigation in question is causing either directly or indirectly, real harm.

55. As to the then prospective insertion into the statute books of s.91A, King LJ wrote:

[45] It is not for this court to presume to interpret or to purport to provide a commentary upon a section in an Act which is not yet in force and in respect of which statutory guidance has yet to be published. It is worth however noting that the proposed new s 91A dovetails with the modern

> *approach which I suggest should be taken to the making of s 91(14) orders. In particular the provision at s 91A(2), if brought into effect, gives statutory effect to Guideline (6) of Re P (see para [39] above) 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.*
>
> *[46] Under s 91A(4) when considering whether to grant leave the court will consider whether there has been a material change of circumstances. Again, this would put the current approach to the granting of leave on a statutory footing.*

56. Even more recently, and after the coming into force of s.91A, the use of and procedure in relation to s.91(14) orders came to be considered by Knowles J in *A Local Authority v F and Others* [2022] EWFC 127. Knowles J, having recited the terms of s.91(14) and s.91A and the *Re P* guidelines, and having summarised the relevant parts of King LJ's judgment in *Re A*, noted a subtle, but significant, change rendered by one particular part of the wording of the new section:

> *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. Two corollary changes have been made to PD12J to accompany the coming into force of s.91A. The newly inserted para. 4A in PD12J sets out that, where allegations of domestic abuse are proved, the court should consider whether a section 91(14) order should be made, even if no application has been made. Further, the newly inserted paragraph 37A.1 reads:

> *'In every case where a finding or admission of domestic abuse is made, or where domestic abuse is otherwise established, the court should consider whether an order under section 91(14) of the Children Act 1989 would be appropriate, even if an application for such an order has not been made. Section 91(14) orders are available to protect a victim of domestic abuse where a further application would constitute or continue domestic abuse. A future application could be part of a pattern of coercive or controlling behaviour or other domestic abuse toward the victim, such that a section 91(14) order is merited due to the risk of harm to the child or other individual. The court should refer to Practice Direction 12Q for direction on section 91(14) applications and orders.'*

58. PD12Q is the new Practice Direction, inserted into FPR 2010 to accompany the advent of s.91A. At Section 2, it records a number of *'Key Principles'*. Among them are:

> *2.2 The court has a discretion to determine the circumstances in which an order would be appropriate. These circumstances may be many and varied. They include circumstances where an application would put the child concerned, or another individual, at risk of harm (as provided in section 91A), such as psychological or emotional harm. The welfare of the child is paramount.*
>
> *2.3 These circumstances can also include where one party has made repeated and unreasonable applications; where a period of respite is needed following litigation; where a period of time is needed for certain actions to be taken for the protection of the child or other person; or where a person's conduct overall is such that an order is merited to protect the welfare of the child directly, or indirectly due to damaging effects on a parent carer. Such conduct could include harassment, or other oppressive or distressing behaviour beyond or within the proceedings including via social media and e-mail, and via third parties. Such conduct might also constitute domestic abuse.*
>
> *2.4 A future application could also be part of a pattern of coercive or controlling behaviour or other domestic abuse toward the victim, such that a section 91(14) order is also merited due to the risk of harm to the child or other individual.*

2.5 There is no definition in section 91A of who the other individual could be that could be put at risk of harm. However, it is most likely to be, but is not limited to, another person who has parental responsibility for the child and/or is living with or has contact with the child, or any other individual who would be a prospective respondent to a future application.

2.6 In proceedings in which domestic abuse is alleged or proven, or in which there are allegations or evidence of other harm to a child or other individual, the court should give early and ongoing consideration to whether it would be appropriate to make a section 91(14) order on disposal of the application, even if an application for such an order has not been made (since the court may make an order of its own motion – see section 91A(5)).

2.7 Section 91(14) orders are a protective filter – not a bar on applications – and there is considerable scope for their use in appropriate cases. Proceedings under the 1989 Act should not be used as a means of harassment or coercive control, or further abuse against a victim of domestic abuse or other person, and the court should therefore give due consideration to whether a future application would have such an impact.

59. As to points of procedure contained in PD12Q, these include:

3.4 Under section 91(14), an order may only be made when disposing of another application under the Act, but section 91(14) is silent on when an application for such an order may be made. In proceedings in which risk of harm is alleged or proven, including but not limited to domestic abuse, the court should therefore give early and ongoing consideration to the question of whether a section 91(14) order might be appropriate on disposal of the application, and to whether any particular findings of fact will be needed to determine the section 91(14) application.

3.5 If an application is made, or the court is considering making an order of its own motion, the court should also consider what opportunity for representations should be provided to the parties. Courts should look to case law for further guidance and principles.

3.6 If the court decides to make a section 91(14) order, the court should give consideration as to the following matters:

a. the duration of the order (see section 4);

b. whether the order should cover all or only certain types of application under the 1989 Act;

c. whether service of any subsequent application for leave should be prohibited until the court has made an initial determination of the merits of such an application (see section 6). Such

an order delaying service would help to ensure that the very harm or other protective function that the order is intended to address, is not undermined; and

d. whether upon any subsequent application for leave, the court should make an initial determination of the merits of the application without an oral hearing (see section 6).

60. In relation to the appropriate duration of any order:

4. Duration

4.1 Sections 91(14) and 91A are silent on the duration of a section 91(14) order. The court therefore has a discretion as to the appropriate duration of the order. Any time limit imposed should be proportionate to the harm it is seeking to avoid. If the court decides to make a section 91(14) order, the court should explain its reasons for the duration ordered.

61. As to the requirement in s.91A(4) that, on the making of an application for leave, *'the court must, in determining whether to grant leave, consider whether there has been a material change of circumstances since the order was made'*, PD12Q contains this important clarification:

6.4 In determining any application for leave, the court has a discretion as to the circumstances in which leave should be granted. Section 91A(4) requires the court to consider whether there has been a material change of circumstances since the section 91(14) order was made. In other words, a material change of circumstances is not necessarily required in order for leave to be granted, but the question of whether there has been such a change, is something that the court must consider.

62. In relation to the possibility of prohibiting service of the application for permission until the court has made an initial determination, PD12Q sets out:

6.6 The court may make an initial determination, without an oral hearing, of the merits of the application for leave. If the court does so, the applicant may, within 7 days of receipt of notice of the court's decision, request an oral hearing. If the court receives such a request, it must make directions as to service of the application and any other documents on the respondent, including the possibility that the respondent would not be served, and as to any representations or other matters in relation to the oral hearing.

It is not immediately clear from this paragraph whether the court would be entitled by this procedure to determine that permission should be granted without hearing from the proposed respondent. I assume not, but that is not a matter I need consider for present purposes.

63. It seems to me from the above that the approach I should take is as follows:

a. Given my findings of significant domestic abuse, even if M had not applied for this relief, I would have been bound to consider whether or not to make a s.91(14) order.

b. While such an order is *'the exception and not the rule'*, it does not follow that the case or its circumstances must somehow be adjudged to be *'exceptional'* before such an order could be made.

c. I should bear in mind that such orders represent a protective filter – not a bar on applications – and that there is considerable scope for their use in appropriate cases.

d. Whether I make an order is a matter for my discretion. There are many and varied circumstances in which it may be appropriate to make such an order. These may include cases in which there have been multiple applications (*'repeated and unreasonable'*), but that is not a necessary prerequisite. They may also include cases in which the court considers that an application would put the child concerned, or another individual, at risk of harm (without the need to find the *'risk'* to be *'serious'* or the likely *'harm'* to be *'significant'* or *'serious'*).

e. Subject to any inconsistency with the above, the *Re P* guidelines continue to apply.

f. If I decide to make an order, I must consider:

i. its duration, as to which, any term imposed should be proportionate to the harm I am seeking to avoid, and in relation to which decision I must explain my reasons;

ii. whether the order should apply to all or only certain types of application under the CA 1989;

iii. whether service of any subsequent application for leave should be prohibited pending initial judicial determination of that application.

g. In all of this, the welfare of the child is paramount. That said, any interference with a parent's otherwise unfettered right of access to the court, including the duration of any such prohibition pending permission, must be proportionate to the harm I am seeking to avoid.

The parties' arguments

Child arrangements

64. F's desire is clearly for H to live with him (*'I want my son to live by my side; he was, here in the UAE.'*). When I asked F if he agreed to the making of a 'lives with' order in M's favour, he said that he had come to my court, and if I thought such an order had to be made, then it must be, but his position remained as it always had been: he wanted his son back in the UAE. Effectively, though, the thrust of his written evidence limited his aspirations at this trial to his seeking monthly live video contact with H, alongside meaningful and reciprocal indirect contact (via cards and other electronic equivalents, such as video or voice messages, e-cards, etc., WhatsApp messages, and gifts as and when appropriate).

65. F argues that he has come to the court with a simple request and that this has simply failed to materialise, largely, he would argue, because M has willed it so. He points to the close relationship he had with H in the UAE, both before separation and when he had contact with him after separation and stresses the importance to H of growing up knowing his father in a meaningful way.

66. Even if there were an order for video contact, coupled with an order that M encourage H to participate, F poses the question as to who would monitor the genuineness of M's efforts to ensure engagement. F thanked the various professionals who have tried in earnest to effect change; that change was not forthcoming he attributed to M's failure or inability meaningfully to encourage H.

67. M argues that she has done her best to encourage H, but that he has always shown and continues to demonstrate reluctance to engage with his father. It is not in H's interests, M argues, to be forced to interact; in fact, this would be both counterproductive to the underlying aim and would risk harming his relationship with his mother by putting her, as primary carer, in the position of forcing him to do something he has expressly said he does not want to do.

68. M's alternative proposal is that the order records her agreement to continue to promote video contact between H and F and to facilitate anything H wishes. She is prepared to facilitate WhatsApp messaging between H and F, but via her phone, H being too young, at just 9, to have his own smartphone.

69. M considers that once these proceedings have come to an end and the proverbial dust has settled, H may come to be more inclined to have such contact with his father. M has long expressed her view that H has been disturbed and upset by the involvement with

him of numerous professionals, all asking him about, and seeking to cajole him into, something about which he has repeatedly expressed a negative view.

70. The CG set out in her final report the factual position: that H has made it clear throughout that he does not wish to engage in any form of contact with F, and that he has, to date, refused to engage with all attempts; that M, Cafcass and ICFA have all attempted to facilitate video calls, but that all attempts to date have been unsuccessful; that this has culminated in ICFA concluding that it would not be in H's best interests to continue to pursue the possibility of video calls, *'as it is clearly causing H distress and he has consistently stated for over a year that he does not want to have an form of contact with his father'*.

71. The underlying reason for this reluctance she described as *'a conundrum'*. Further, if H does not have any meaningful contact with F, this will impact negatively on his identity needs. It is disappointing, the CG notes, that H has clearly already lost his relationship and attachment with his F.

72. Ultimately, though, the CG agrees with the ICFA assessment that the time has come to stop seeking to persuade H to engage in video contact, as the pursuit of that aim is becoming emotionally harmful to H. The CG is eager to keep open the future possibility of video contact, at least, and suggests that this be effected by the monthly, bilateral indirect contact proposed, M to respond to F if H does not wish to do so. This should be alongside the routine provision of school reports and other relevant updating information.

Section 91(14) order

73. The mother alone contends for this order. She points out that, while such an order is often referred to as a *'barring order'*, it is no such thing; rather, and as recognised by the new Practice Direction, it is a protective filter.

74. M concedes that F has not made repeated applications in the courts of England and Wales, but, she would argue, he need not have done so, the current proceedings having taken more than two years to reach their belated conclusion. M argues that F has, however, already been found by this court to have used court proceedings and repeated, sometimes clearly unmeritorious and dishonestly-brought, proceedings in the UAE in a controlling and coercive manner. M further points to the fact that the proceedings in the UAE continue to rage unabated, and that these various proceedings include both F's persistent pursuit of fines (even at an increased daily rate) to be levied against M, and of his repeated insistence that H is wrongfully in England and that he should – by whatever means – be returned to F's care in the UAE (as the UAE custody order requires).

75. Thus, F knows, Miss Miller argues on M's behalf, the power of court proceedings and the abusive impact they can have on the other party.

76. Miss Miller points to the fact that H has been so affected by the proceedings and the involvement with him of numerous professionals that the CG chose, unusually, not to visit him in the preparation of her last report. The CG wrote:

> *'I have not visited H for the purpose of completing this report, because I feel it would be emotionally harmful to do so. H has been very clear that he does not want to have a relationship with [F]. H does not wish to engage with any form of contact with him and he is fed up of having to explain himself to professionals who are not accepting his position.'*

Thus, argues Miss Miller, it is to protect not only M – already found to be a victim of F's domestic abuse, including his coercive use of court proceedings – but also H, that an

order should be made. Miss Miller argues that these are exactly the sort of circumstances envisaged by s.91A(2): both M and H would be at risk of harm (i.e. the *'impairment of mental health'*) in the event of a further application.

77. F opposes the making of a s.91(14) order. He told me that he has no intention of *'filing continuous applications'*; rather, he has made a single application for contact. He should have access to the UK court, F argued. He only came to this court because he could not effect H's return to the UAE. *'Tomorrow, if I need your court, I should be able to [access it],'* he said, later clarifying that he was referring to the possibility of requiring court enforcement of such contact order as is made.

78. When I asked F about his litigation in the UAE, in particular in relation to the accumulating fine against M and his request that this be increased in rate, F's answer was effectively that if M wants to end the various Dubai proceedings, then all she need do is to travel to Dubai and argue her case. She could come to Dubai, he said, saying that she was ready to settle, and a compromise could be reached and approved, allowing F to visit H in England and H to travel to visit F in the UAE.

79. The CG opposes the making of a s.91(14) order. In her report, she cited the fact that F has made only one substantive application in the English court, *'and so there is no evidence to suggest he has any intention of making a further application and therefore no evidence to support the making of a s.91(14) Barring Order'*. It was not, she thought, appropriate *'to use [F]'s applications to a different court, in a different country that address different aspects of his separation from [M] and application to spend time with H, as evidence to justify making such a draconian order in this country'*. Responding to M's principal contention, that such an order should remain in place until H reach the age of 16, the CG considered it wrong for F never *'to […] pursue a further application to spend time with [H], for the remainder of his childhood'*. Given (a) that it is

safe for H to have video calls with F, and (b) that H is unable to articulate a reason why he is opposed to such calls, the CG thinks *'it is something that needs to be revisited in the future when H is older'*. In fact, the CG would *'actually encourage [F] to make a further application to this court to spend time with H, in the future when he is older,'* contemplating that there may be a time, away from the pressure of the court proceedings, as H starts to grow up, when *'he may start to ask questions about his identity and his father which may lead him to feel more open to contact with [F] in the future.'*

80. Given that the CG in her report seemed to be considering only the 7-year s.91(14) order proposed by M or no order at all, I required her to give oral evidence to indicate her view about the possible benefit to H of a far shorter s.91(14) order and to focus on the impact on H (and M) of the proceedings to date and on the likely impact on H (and M) of any further application. In that oral evidence, the CG confirmed her view that the proceedings had had a negative impact on H, leaving him frustrated, sometimes distressed, because he perceives that nobody is listening to him. If a further application were made, the further emotional impact on him would be *'considerable'*. It would not be appropriate, the CG thought, for F to make another application in the next year. That said, she did not consider that F was likely to make such an application, and so considered that such an order was not *'necessary'*. The CG confirmed her view that the emotional impact on M of these proceedings has also been *'considerable'*. In cross-examination, the CG indicated that she considered that F had not behaved unreasonably during the proceedings in this country and did not consider his litigation conduct in the UAE to be a matter to concern this court, not least as the Dubai courts do not seem to have raised concern about his conduct there. She was not troubled by the fact that F was telling the Dubai court that H was wrongfully retained and so should be returned to the Emirates, as that was different to what he was asking this court for, *viz.* indirect contact. Pushed by

Miss Miller to agree that it would be positively detrimental for H for a further application to be made not just during the next year but for a longer period, for example, two years, the CG said it would be difficult to know where H would be then, and did not move from her view that one *'can definitely say that the situation won't have changed in the next year'*. She rejected the notion that there should be concern about F using these, or any future, proceedings as a means of exerting coercive control over M.

Recitals in order; disclosure of orders and judgment; disclosure of children's guardian's report

81. M seeks various recitals to the order emanating from this hearing.

82. The CG agrees in principle, proposing some small changes, and suggesting that some matters would better be dealt with in this judgment than by way of preamble to an order.

83. F did not express any particular view on the matter.

84. M seeks permission to disclose relevant orders and the two judgments (i.e. this one, and that from the fact-finding hearing), appropriately translated, to the Dubai court.

85. The CG agrees.

86. F agrees to the judgments being disclosed but not the orders. I confess to having struggled to understand F's rationale for that, save that he thought that such a course may be to cause *'confusion'* in Dubai.

87. F's informal application for permission to disclose the CG's reports to the court in Dubai was somewhat clarified in the course of his submissions to me. He seeks permission to disclose only the most recent report. He has no particular intention of disclosing it to the

UAE court, but does not want to find himself in trouble if he chooses to do so later. The Dubai judge, he said, would not be interested in seeing the report in any event, but he wanted permission just in case.

88. Miss Miller, for M, objects. Such reports are evidence, but are not definitive. If they are disclosed, so should the evidence on which they are based and in response, she argues. She fears the *'muddying of the waters'* in Dubai if such documents are released into any proceedings.

89. The CG did not formally object to the application, but queries why it is necessary.

Discussion and analysis

Findings of fact; non-acceptance; ongoing conduct

90. I have made a series of findings against F of significant domestic abuse. The period of time over which those findings span is significant. During the marriage, the abuse comprised not only occasional physical violence but, more frequently, behaviour which was threatening (physically charging at M, causing her to fear for her safety) and/or demeaning (spitting at her, including in her face). After the marriage, the abuse comprised a course of terrorising M through prolific court proceedings in the Emirates, in which F sought to control and punish M, not least by attempts to achieve outcomes which – if successful – would have acted significantly to H's detriment (reducing alimony, seeking M's imprisonment, making unfounded allegations in order to remove H from her custody). Also after the marriage, F's actions as found, were abusive not only to M, but must have impacted on H, both indirectly, through the impact on M's capacity to provide attentive care, and, in some instances, directly, for example, by reducing M's access to

provisions and finances and by playing a part in her and H's spending time in unpleasant conditions in a police station.

91. It is notable that, even now, F does not accept the truth of any of these findings or the validity of the description of any of his conduct as abusive.

92. It is also notable that F continues his pursuit of litigation in Dubai. I am struck by the CG's words in her report in February 2022:

> *[65] However, knowing and observing how negative, angry and frustrated [M] feels about [F] and particularly his continued pursuit of the proceedings to have H returned to his care through the Dubai courts, I think it is highly likely that [M] is making it clear to H how she feels about his father and H has said as much in his sessions to me.*
>
> *[66] [M] is very upset and anxious about the Dubai proceedings, which is not a criticism and is understandable, as they could be considered a form of abuse and harassment by [F]. [F] is aware that they are causing [M] a great deal of distress and yet he continues to choose to pursue them. It may be that H has also picked up on his mothers anxiety about the proceedings and he too feels anxious and worried about what the Dubai proceedings may lead to for him.*
>
> *[67] It is a difficult situation, [M] cannot be criticised for feeling negatively about [F] given what she has experienced and continues to experience and I believe that [M] has tried to encourage [H] to engage with the contact.*
>
> *[68] However, it would seem that [H] is aware of the negative views that [M] has shared with others about his father, as he has overheard these conversations. I was also concerned during my recent phone call with [M] following my visit to H, that he was present and overhearing the conversation where [M] discussed the Dubai proceedings and how angry and frustrated she felt about [F] continuing to pursue them.*
>
> *[69] I think it is the case that further effort needs to come from both parents. Perhaps if [F] stopped pursuing the proceedings in the Dubai courts, then [M] may feel less upset and negative about him and more willing to make concessions on her part i.e. to facilitate video calls.*

93. The continued pursuit of the proceedings, then, is relevant for two reasons.

94. First, F knows that the fact of his litigation leads directly to upset, anger and frustration on the part of M, and that this is likely both to be transmitted (whether intentionally or inadvertently) to H and to act on M's preparedness – or not – genuinely to encourage H to engage with his father.

95. Secondly, it was spelled out to F, if not before, certainly in February 2022, when this report was received, that M perceives the ongoing litigation and the manner in which it is pursued as having the potential to be an extension of the coercive and controlling litigation behaviour (as already found), and positively abusive of M. However, since that report was received, it is apparent from the translated UAE court documents, that F has made such assertions as:

> *'I attach the letter and the court decision; they clearly state the date of the respondent escape from the country and the refusal to give back the child.'* (26 September 2022)
>
> *'Request: A Decision was issued on 04/05/21 (the applicant will be fined 1000 dirhams for each time she fails to attend the contact, starting from the next contact, and the defendant must follow up and notify each time to approve the fine on the specific day for the contact). Therefore the claimant seeks from the esteemed court a fine from the applicant of 1000 dirhams for non-compliance with the implantation of the contact this week, with respect and appreciation.'* (20 May 2022)
>
> *'Based on the request of the judgment debtor* [M] *we* [the court] *asked the petitioner* [F] *if he wanted the child to return to the Emirates and if he wanted custody.*
>
> *My son H is overseas in Britain, against my personal desire, as the defendant fled with the child outside the country, she managed to lift the travel ban and brought a guarantor / sponsor to bring the child back to the country.*
>
> *Yes, I would like my son, H, to return to the country to grow up by my side […]*
>
> *Decision: Implementation proceedings to continue.'* (29 April 2022)

> *'Request: […] Therefore the claimant requests an increase in the daily fine to become 3000 dirhams instead of 1000 dirhams, and therefore to force the defendant to return to the country and return the child H to the claimant.'* (20 May 2022)

96. It seems to me that, far from taking heed of the clear professional advice to seek to lower the temperature by bringing to an end the litigation in Dubai (which, looking at the third of the above excerpts seems likely to be well within his power, certainly in relation to the ongoing fining of M), F has continued to seek to continue, even (in relation, for example, to the level of financial penalty) to escalate.

97. The consequence of the above, it seems to me, is that I must treat F as a man who does not accept at any level that he has behaved in any way inappropriately, still less abusively, to the mother of his child. He has demonstrated neither remorse in relation to nor insight into his behaviour towards her. No less troublingly for the purposes of these proceedings, he has no insight in relation to the multi-layered impact of this on his son. H will have been affected by what he witnessed of parental discord and his father's abusive treatment of his mother. He will have been affected by the difficulties of his life with his mother after separation. He will certainly have been affected, in the view he holds of his father, by the impact on him, H, of the effects of his father's ongoing behaviour on his primary caregiver. Given what I have seen of the ongoing litigation in the UAE, it seems abundantly clear to me that F's use of court proceedings in order to instil fear, upset and anxiety in M continues, largely unabated. It so happens that these proceedings have been underway in the UAE rather than England; but that does not prevent there from being an adverse impact on M, albeit that she is currently safe from the fear of enforcement or civil or criminal penalty.

98. In relation to the proceedings in England, however, I note that F denied any wrongdoing whatever, forcing M to endure giving evidence in the fact-finding hearing. On my making

findings against him in the clearest terms, he has shown no acceptance, still less the slightest hint of remorse. Nothing resembling an apology to M has been forthcoming in the sixteen months since my judgment. It could be said that each denial of responsibility, each specific refusal to accept the truth of his behaviour, represents a further act of aggression, as this is how it will inevitably be perceived by his victim.

Child arrangements

99. Mr Garner was quite right to remind me, at the beginning of his submissions, not to lose sight of the subject of these proceedings, H.

100. His welfare being paramount, I turn to the welfare checklist, albeit that I approach the various factors out of turn and need deal with some in rather more detail than others.

101. H is, by all accounts, a lovely, charming engaging little boy, of whom his parents can rightly be proud. He is just nine years old. He has a rich and complex heritage, given his parents' racial backgrounds, and where they, and he, have lived during their respective lives. He has no particular physical or educational needs. His other needs should be reviewed in light of his extraordinary life experiences to date. He was initially brought up in affluent conditions, albeit that he was almost certainly exposed to some elements of his parents' abusive relationship. He then lived in the UAE with his mother in separate accommodation to his father, before spending a significant period in significantly reduced circumstances in the equivalent of a women's refuge, moving then to a hotel, then to an apartment building. He spent overnight with his mother in a police station in highly traumatic circumstances. He was almost certainly aware of both his mother's financial difficulties and his parents' conflict. During that time, by all accounts, while he saw fairly

little of his father, he enjoyed a close and loving relationship with him. He then moved, suddenly, to England and has not seen his father now for nearly 3½ years.

102. It seems to me that H has almost certainly suffered emotional harm as a result of this concatenation of atypical childhood experiences.

103. His mother is well able to meet all of his needs, save that she is, it seems to me, very unlikely to be able to promote his father in any positive way. Given the wholly negative view she holds of F, largely justified by his treatment of her, even were she to try, she would, in my estimation, find it very difficult to conceal from a bright 9-year-old, no doubt well-attuned to his sole carer's every emotion, her true feelings.

104. His father may well be able to provide well for his physical and educational needs, were he to be called on to do so. However, the findings of fact, or rather, the behaviour they describe, coupled with F's complete denial of them and his ongoing misuse of litigation as a weapon, speak to significant deficits in an ability to meet H's emotional needs. However, F still has much to offer. F is an intelligent, engaging man. He clearly loves his son – the pain he feels at being entirely apart from him is real and visceral.

105. F is H's father, and for reasons of identity and self-image, which will become more and more important in the coming years, it is very much in H's interests to grow up knowing his father as a person, and conscious that his father loves and is interested in him.

106. F's non-acceptance of his abusive behaviour, and so his inability to take any meaningful steps to reduce risk, render direct, face-to-face contact currently impossible. However, I agree with the CG that video contact would not be unsafe and – if it meant that H could know something of his father – would be in H's interests.

107. However, despite the very best efforts of the CG and other professionals, and despite the court allowing an unusual amount of time to these proceedings, it has not been possible to move H to a position where he is able to countenance such contact. The reasons for H's sustained refusal are probably several in number and interlinked in a complex manner. H is likely to have adverse memories of parts of his life in the UAE. As he has grown older, he is likely to have become aware that his father was responsible for many of these. It is likely that his mother has been unable to hide from him her own dislike of the father, or the fact that his father has also mistreated her. It is likely that – whether intentionally, subconsciously, or somewhere between the two, the mother has found it simply impossible to promote H's having a real relationship with his father, for the straightforward reason that, in herself and born of her own sustained abusive experiences of F – she does not believe that it is in H's interests to have such a relationship. It is not possible for me to determine in what proportion these various ingredients have combined to produce the current situation. The simple fact, however, is that H is not prepared to have the contact with his father, which his welfare would otherwise dictate, and the process of adults and professionals seeking to force him into this has begun to cause harm in itself.

108. With a somewhat heavy judicial heart, then, I am driven to agree that H's interests are currently best served by an order for reciprocal, monthly indirect contact, M to respond on H's behalf if H is reluctant to do so, with M also responsible for keeping F updated in relation to educational and other developments.

109. It is to be hoped that by the respite provided by such a course, by the cessation of these English proceedings, and in combination with H's natural development, from a 9-year-old likely to absorb most of his view of the world from his primary carer, into a more independent adolescent, driven by curiosity and his own authentic thoughts, that H may

come to want more of a relationship with his father. That remains to be seen. It seems to me, though, that, given that H has been at the centre of parental conflict for most of his remembered life, he needs a real, meaningful and sustained break from such conflict.

110. The chances of H moving from his current position, which is unhealthy for him from a longer-term emotional and psychological point of view, will be enhanced if both of his parents play their roles with patience and good faith. For M, this will require her – in her son's interest – to stick to her word in relation to promoting F to H. For F, this will require him first to create and to stick to a regime of monthly indirect contact with H, giving thought to how best to engage him, not losing heart and withdrawing when green shoots do not immediately emerge, and secondly to do everything in his power to bring to an end the various forensic battles between him and M.

Section 91(14) order

111. In determining this question, I will work through the checklist I set for myself at paragraph [63] above.

112. I note that this is a question which, in light of my findings of domestic abuse, I would be required to consider, even had M not applied for such an order. And I note that an order such as this is *'the exception and not the rule'*, albeit that I do not have to assess the case against some notional *'exceptionality'* criterion.

113. I also note that such order would not come close to being an absolute barrier to access to the court, but rather would represent a *'protective filter'*.

114. It is not necessary that there have been *'repeated and unreasonable'* applications. In this case there has been only one application in this court, albeit that it has taken an inordinately long time to dispose of it. However, looking more broadly, perhaps more purposively, at this potential criterion, it is important to note (a) that at the fact-finding I found F to have used court proceedings in another jurisdiction in a punitive and coercive way, to have engaged dishonestly in such proceedings at times, and to have sought in those proceedings results which would have positively detrimental to his son, (b) that I have found in this current judgment that F has continued to litigate unreasonably and with abusive intent in the UAE, and (c) that F does not accept at any level either any of my findings against him, or that he bears any responsibility for the position in which he finds himself. The CG considers that F has not behaved other than properly in these proceedings. I do not agree. As I have indicated, to deny the truth of one's wrongdoing and so to put one's victim through the ordeal of a fact-finding hearing is, in my estimation, to weaponize legal proceedings; and to continue wholly to deny the truth of findings of abuse is abusive in itself.

115. I consider that M has been significantly detrimentally affected by these proceedings. The stressful nature of any proceedings is compounded in the case of a litigant who is also a victim of domestic abuse. I also consider that H has also been significantly detrimentally affected both by the proceedings and by the well-intentioned efforts of the court and professionals to engage in the contact thought best for him.

116. From that, I form the clear view that, in the event of further application, both H and M (the latter being *'another individual'*) would be at risk of harm, as defined. Quantifying the risk, the likelihood of harm occurring would be virtually inevitable, if the application were very soon, and would probably diminish over time. Equally, the degree of likely harm

would be, for both M and H, significant, if the application were made soon, reducing over time.

117. Combining, then, my view in relation to F's litigation conduct, here and in the Emirates, previously and ongoing (which goes to establish a real likelihood, in my estimation, of some further application), with the likelihood of harm, in the event of such an application, a strong factor militating in favour of such an order arises.

118. There is an interrelated factor which it is also important to consider. My ruling in relation to child arrangements (above) is that while, other things being equal, it would be in H's best interests to have more significant indirect contact with his father, it is not possible to direct this at this time as H refuses to engage in it, and further efforts to change this will be positively harmful. However, I have set out my hope that, with time and space, that is, an appreciable period of calm, the chances of H's views (and M's underlying attitude) changing will improve. This, it seems to me, represents another strong argument in favour of putting some form of forensic safety net around H (and M). A section 91(14) order would provide just such protection.

119. What are the potential dangers of a s.91(14) order? First, H will be adversely affected if F is prevented from coming to court at a point when an application would be a timely route to rekindling the relationship between father and son. Secondly, F will be unfairly treated if he is wrongly denied access to the court of the country in which his son is habitually resident at a point when he, F, has a legitimate and arguable case to argue.

120. However, I note that such an order is a *'protective filter'*, not some sort of impenetrable procedural barrier to access to the court. If I make such an order, I can and must trust absolutely that the process by which any application for permission to apply during its

currency is fairly decided. In that circumstance, the two potential disadvantages reduce significantly in their potency.

121. Cross-checking at this point against *Re P* guideline factors 1-7, the only outstanding point to consider is the first half of factor 7 (the second half ('serious risk') having been varied by the wording of s.91A and my having considered this above). As will be evident from the facts of this case, I am certainly satisfied 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'*.

122. Taking into account the above, and applying my analysis in relation in relation to the welfare checklist (above), it seems to me that H's welfare interests will best be met by a s.91(14) order.

123. I am conscious that my view differs to that, conscientiously reached, of the CG. As will be evident from the foregoing, while I agree with the CG that H will be detrimentally affected by a further application, I do not accept her assessment either of the likelihood of such an application being made or of the relevance of that factor once likely harm has been assessed. Moreover, when I survey F's use of litigation in this jurisdiction and in the UAE in a manner either designed to cause, or with the effect of causing, harm and distress to M, I reach a markedly different conclusion than that expressed by the CG.

124. Having decided that such an order is required in H's welfare interests, I must consider (a) its duration, (b) its breadth, and (c) whether M should, by prohibitive order, be protected from any subsequent leave application pending initial judicial determination.

125. As to duration, M contends that a s.91(14) order should endure until H reaches the age of 16; failing that, until H reaches the age of 13. The CG contends that, if I am minded to make such an order, it should not remain in place for more than a year.

126. I ask myself, then, the question required by the *Re P* guidelines and now enshrined in the new PD12Q (para. 4.1): what duration is proportionate to the harm I am seeking to avoid?

127. The harm I am seeking to avoid, simply put, is H (and M) being caused harm by becoming embroiled again, to whatever degree, in further proceedings. Both the likelihood of harm occurring, and the likely degree of such harm, as I have set out above, I consider to be significant in the short term, diminishing over time.

128. The purpose I am seeking to achieve by the imposition of a s.91(14) restriction is to create a prolonged period of calm, in which M and H can exist without the spectre of social workers, and children's guardians, and ICFA workers, and lawyers, and judges impinging directly or indirectly on their lives, and in which their current view of F as some unwelcome spectre might soften, to H's advantage.

129. Thus, like the CG, I do not for a minute wish to discourage F from seeking to play a more prominent part in H's life at some point in the future. That point will depend on a number of factors, some in F's gift, some not. But it follows that a restriction on application to the court enduring for some seven years is wholly disproportionate to the court's legitimate aim.

130. I am struck by the duration and consistency of H's obduracy, by the length of time for which he has been exposed to these proceedings, and by the extent, as I assess it, of M's current (and largely subjectively justified) antipathy towards F. I do not anticipate any particularly 'quick fix'. H has just turned nine years old. It seems to me that, given that

the vast majority of his consciously remembered childhood has been overshadowed by parental conflict, he should be afforded a fairly significant period of time in which, if change is to come, it comes from him. I do not consider that a year is likely to be a long enough period for that. Moreover, the danger of such a short period may be that, if emotions have not sufficiently calmed, the expiry of the term serves almost as an invitation to reapply. There is no magic to numbers such as these, even if they are carefully chosen, but the appropriate term, in my view, is two and a half years. On my reckoning, this would coincide with H being about to finish his last year at primary school. At 11½ years old, H will be at or somewhere close to the point of beginning his adolescence, with all of the attendant drift towards independence of mind and opinion involved.

131. Looking again at the question of proportionality, on the one hand, this seems to me to be a stretch of time which appropriately reflects the need for an appreciable period of calm; on the other hand, if, in the meantime, matters develop in a way not currently anticipated, then the s.91(14) prohibition will not act as an unfair bar to access to the court, simply as a purposeful *'safety filter'* to prevent premature or inappropriate access.

132. What should be the breadth of the prohibition? In my judgment, all applications under the CA 1989 should be prohibited, save for any application to enforce the CAO which I am to make. I can see no reason either to remove any particular types of application from scope or to prevent F from being able to enforce the contact – minimal though it is – afforded him.

133. Should there be a prohibition on the service on M of any leave application pending initial judicial determination? In my view, absolutely there should. The damage potentially caused by the sudden knowledge of what ultimately turns out to be an unmeritorious

leave application would likely be to undo whatever positive progress may have emerged by virtue of the period of calm intended by this order.

134. Finally, on the question of the s.91(14) order, I have asked myself whether I ought to set out some sort of view in relation to factors which I anticipate might militate in favour of a grant of leave during the pendency of the order. I do not consider that the recent changes in law change the underlying message drawn from the dicta of the Court of Appeal in *Re S (Permission to Seek Relief)* [2008] 1 FLR 369 and *Re A (Contact: Section 91(14))* [2010] 2 FLR 151, *viz.*, on the one hand, it is not for a judge making a s.91(14) order to seek to impose conditions on it, but it may be permissible to identify a particular issue and to suggest to a litigant that unless he could show that that particular issue had been addressed, any future application for permission was unlikely to succeed.

135. In this case, there is no particular stellar factor which has caused me to impose the order, and so there is no single issue, the resolution of which would properly or necessarily open the way to a further application within the currency of the s.91(14) order. However, certain factors have weighed heavily in favour of my decision. The resolution of some of these are beyond F's reach. Others, though, are within it. F's inability or refusal to acknowledge his abusive behaviour towards M, or the impact of this on M and, directly and indirectly, on H, represents a real and ongoing impediment to progress. Further, F's persistent litigation in the UAE is a factor which will stand in the way of positive change for as long as it endures. This litigation seems to include, for no obvious beneficial reason to himself, the quest for the fine outstanding against M to reach ever higher levels (precluding her ever returning to the UAE, which can only reduce to infinitesimal levels the chance of H ever being able to travel there during his minority). Moreover, given that F has accepted, at least as a matter of fact and law, that H is habitually resident in England, that the English court considers itself to have sole jurisdiction in relation to H, and that,

given my unappealed findings, there is no sensible question but that H will continue to live with his mother, to continue to state otherwise, or at least to litigate on an alternative footing in the UAE, can only be counter-productive in relation to what should be the more important quest, that is to create an environment in which H (and his mother) can contemplate the rebirth of H's relationship with his father. At a more basic level, if F is able to settle into a routine of sending H messages, in whatever medium is most likely to engage him, and reflecting what F has been told by M or H currently interests him, if he is able to maintain this, even if there is little reciprocation for a prolonged period, then he will be doing his best to create fertile ground for positive change.

Recitals; Disclosure

136. There is no dispute in relation to permission being given to either party to disclose my two judgments in this case (my fact-finding judgment, and this final welfare judgments) to the Personal Status Court of the UAE. There is no reason for this permission not to be granted. I make it clear that I do not grant permission to any party (or non-party) to disseminate the judgment any more widely than is allowed by this grant of permission (or other rule of court).

137. I suspect that the judgments, given their length and the amount of space devoted to considerations of English domestic law, may not particularly assist the UAE court. While F does not agree to the relevant orders being disclosed, it seems to me that these are likely to be far more readily comprehended by courts whose legal rules and the principles on which they act differ to those of the English courts. I can see no reason for the relevant orders not to be disclosed, and I give permission for their disclosure, on the same terms as above.

138. As to the Guardian's report, I am concerned about F's true intentions in seeking permission to disclose it to the UAE court. I am also concerned as to the danger of misinterpretation by foreign courts of the true nature of a body such as Cafcass (being on the one hand quasi-governmental, but on the other, whose recommendations are not automatically accepted or actioned by the courts. I have summarised above, at some length, much of the Cafcass report, and the extent to which I have accepted the conclusions. It seems to me that, there being no good reason set out for its disclosure, and some potential for its misuse or its being misunderstood, I should not permit its disclosure at this stage.

139. As to the suggestion that the order from this hearing should include certain recitals, I take the view that this is very sensible, given the real possibility that judges and lawyers in other jurisdictions may find themselves trying to understand exactly what this court has decided and ordered, and why. The guardian floated the idea that certain of the proposed recitals might better be dealt with by the underlying fact being explained in this judgment rather than inclusion in a recital. Given what I have said about the potential difficulty of some specific detail in a lengthy judgment being readily accessible to a foreign court, I take the view that anything which ought to be made clear for the purposes of explaining to another court what has taken place and why would better be dealt with in a recital to an order.

140. Accordingly, and noting M's and the CG's suggestions, the following are to be included as recitals to my order:

a) In F's originating application to the Family Court in England, dated 3 September 2020, he explicitly stated that he was not applying for an order for H's return to the UAE (even though he considered that he had a right to make that application), but

was only seeking contact with H. His stated reason for this was that *'the child has now settled in the UK and in school'*.

b) On 11 December 2020, with the agreement of the parties (including F), the Family Court in England declared that H was habitually resident in England and that the courts of England and Wales had jurisdiction to determine matters concerning the welfare and upbringing of the child.

c) On 10 May 2021, F told the English court that he *'irrevocably agreed and accepted that the child, H, is habitually resident in the United Kingdom,'* and that he *'irrevocably agreed and accepted that it is in the child's welfare interests to continue living in the jurisdiction of England and Wales and in the care of his mother'*.

d) On 27 August 2021, at the conclusion of a trial in which F fully participated, the English Family Court made findings of fact that the F had perpetrated domestic abuse against the M.

e) There have been a number of child protection / welfare agencies working with M, F and H in order to promote, encourage and facilitate F's indirect contact with H.

f) In March 2021, the court made an order allowing for indirect contact to take place by way of the exchange of letters, cards and photographs between F and H. F has not been consistent in sending such indirect contact to H, despite being permitted to do so monthly.

h) On 9 June 2021, F (who was present at the hearing and whose representations were heard by the court) did not object to the court making an order that H live with M in England.

i) The Court has been aware throughout that, while F has told the court in England that he accepts its jurisdiction and that he does not seek an order for the return of H to the UAE, there have also been proceedings ongoing in relation to H in the UAE.

Prohibited steps order; port alert

141. F does not object to an ongoing (slightly varied) order prohibiting him from removing H from M's care, although he states that he has no intention whatever of doing so.

142. It is not controversial that the All Ports Warning I made on 9 June 2021 can now be discharged, allowing H to travel with M, as appropriate, beyond the frontiers of England and Wales.

Decision

143. I shall make a Child Arrangements Order providing for the monthly exchange of indirect contact between H and his F; if H does not willingly respond, M is to update F in relation to H instead, including providing him with the sort of information about H's life, likes and interests which will enable F to communicate with him in a meaningful way. In any event, M is to keep F appraised of any and all significant developments in H's life. The order will include a recital recording M's commitment to promoting F to H in a positive manner and her willingness to facilitate indirect video contact (or similar) whenever H is amenable to this.

144. I shall make an order pursuant to s.91(14) of the CA 1989 prohibiting any further application by F in relation to H pursuant to the CA 1989 (except for an application for

an enforcement order), this to endure for two and a half years from the date of the hearing (i.e. until 5 July 2025).

145. I give permission to either party to disclose to their lawyers and/or the Personal Status Court in Dubai my judgments and my orders both from this hearing and from the hearing which concluded on 27 August 2021. I do not give permission for any further dissemination of any of those documents.

146. My order will include the recitals set out at paragraph [140] above.

147. I make a prohibited steps order that F must not:

a. remove H from the care of M or any person or institution (including any school) to whom M has entrusted H's care, nor instruct or encourage anybody else to do so, other than for the purpose of contact agreed in writing or ordered by the Family Court of England and Wales, in which case H must be returned promptly at the end of each such contact period; or

b. remove H from England and Wales

148. I hope that H and M will be afforded some respite by the terms of this order, that this time will also allow F the chance for self-reflection, and that the combination of the two will allow for a revival of a meaningful relationship between father and son.

149. As above, I am grateful to counsel, Miss Miller and Mr Garner, for their assistance, and to F for his respectful and patient participation.