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Case No: MA23C50390

Neutral Citation Number: [2024] EWFC 324 (B)

IN THE FAMILY COURT AT MANCHESTER

Manchester Civil & Family Justice Centre
1 Bridge Street West
Manchester
M60 9DJ

Date of hearing: 13th September 2024

Before:

HER HONOUR JUDGE CASE

Between:

MCC

Applicant

- and -

(1) A MOTHER

Respondents

(2) A FATHER

(3 - 7) THE CHILDREN (via their Children's Guardian)

MS S KILVINGTON for the **Applicant**
MS JONES for the **First Respondent**
MR WILSON for the **Second Respondent**
MR MCCALL for the **Children's Guardian**

APPROVED JUDGMENT

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HER HONOUR JUDGE CASE:

Introduction

1. The applicant Local Authority in this case is MCC represented by Ms Kilvington of counsel.
2. The mother is M, represented by Ms Jones of counsel. She attends remotely as she is in custody.
3. The father of the younger four children is F, represented by Ms Wilson of counsel. He is also in custody and attends remotely. As the father of S has played no part in these proceedings I will refer to him in this judgment simply as the father.
4. The parents have never been married but F holds parental responsibility for his four children.
5. The children themselves with whom I am concerned are:
 - S, who is a girl was born on 1 August 2011, and is 13 years old. She is the only child with whom I am concerned whose father is not F.
 - L, a girl born on 13 February 2015, she is 9 years and 6 months old.
 - LX, a boy born on 30 December 2015, he is 8 years and 7 months old.
 - N, a girl born on 12 December 2016, 7 years and 8 months old.
 - AX, a girl born on 29 January 2020, 4 years and 6 months old.
6. They all appear by their Children's Guardian FR and are represented by Mr McCall of counsel.
7. The main application before the court is the Local Authority's application for a care order, which was issued on 31 May 2023. The statutory timetable has been extended on a number of occasions.
8. The precipitating incident which led to issue was when S made grave allegations of sexual and physical abuse against F, but there have been a number of years of children's services' involvement prior to care proceedings being issued, including two periods of pre-proceedings; broadly, the issues in the earlier period were ones of neglect.
9. Also to be considered today is the Local Authority's application to discharge the parental responsibility of the father. That was very recently issued, but it is agreed that it can be dealt with today.
10. Originally, this matter was listed as a composite final hearing with a time estimate of nine days, and it was timetabled to follow on from the criminal trial of both parents. The criminal trial overran but concluded a few weeks ago in advance of the last directions hearing.
11. In summary, on 21 August 2024, F was found guilty of ten counts, including specific and multiple counts of vaginal, anal and oral rape of S. F was found guilty of actual bodily harm to S. The mother pleaded guilty, following her oral evidence, to failing to protect S from the sexual and physical abuse perpetrated by F. Finally, both mother, father and the paternal grandmother were found guilty of perverting the course of justice.

12. As a result of those convictions the issues substantially narrowed.
13. As far as the main application is concerned, threshold is now agreed by mother, and not contested by father, so threshold is no longer a live issue; furthermore, there is no opposition to the application for final care orders, and there is no opposition to the placement plans for the children which I shall set out below.
14. As a result of the narrowing of the issues, I reduced the final hearing to two days, Tuesday of this week and today. The matter was kept in the list for a second day primarily to deal with the issue of parental responsibility, which, as I have indicated, was a late application by the Local Authority. I directed skeleton arguments to deal with the application in relation to parental responsibility.
15. However, as there was likely to be some interaction between the issues, I indicated that I would give a judgment on all matters today.
16. I have now had written submissions from all parties in relation to parental responsibility. There are also some issues in relation to parental contact and there is the issue of a possible order under section 91 (14) in relation to father.

Local Authority proposals and the responses of the other parties

17. The Local Authority seeks a care order for all the children with a care plan of long-term foster care.
18. It is proposed that S remains placed on her own and LX remains placed on his own.
19. N has moved to a separate placement since 7 August 2024. Sadly, some of the information that she was given in relation to her parents, namely the fact that they were in prison, appeared to have a destabilising effect on N, and, although support was offered, that was not sufficient to stop the placement breaking down, and that has led to the separation of the three girls.
20. L and AX remain in the same placement. Unfortunately, there are no prospects of that becoming a long-term placement; they will need to be moved together.
21. As I understand it, S's placement and N's placement have some prospects of being long-term placements.
22. The proposal is that the children will have monthly sibling contact. The social worker rightly emphasised in her very helpful and nuanced statement the importance which the Local Authority attaches to sibling contact in this case. I entirely endorse that. It seems to me that, although there have been issues with the children living in one placement which have led to separation, the evidence is that the sibling bond can be successfully nurtured, and that that can be done through sibling contact.
23. Accordingly, there will be monthly direct sibling contact on the Local Authority's proposal, as well as additional indirect contact between direct sessions.
24. No party disputes the proposals for placement, or the sibling contact proposals.
25. For the mother, the Local Authority proposes indirect contact on birthdays and Christmas, to be sent by the mother to the children, along with information to go in the other direction as to health, education, move of placement and so on.

26. The mother had hoped that she might be provided with photographs of the children. Unfortunately, the nature of her offence makes that not possible from the point of view of prison rules, and she realistically accepts that.
27. It is agreed that following mother's release, she will be risk assessed, with a view to looking at future contact.
28. As far as father is concerned, the Local Authority's proposal is that father should have no contact, either direct or indirect, although they do agree that the issue of contact needs to be kept under review at statutory reviews.
29. In the light of their position on contact, the Local Authority seeks a section 34(4) order for both parents.
30. That is not opposed by mother.
31. It is opposed by father; he seeks direct contact or alternatively an indirect contact order under section 34.
32. The Local Authority seek an order discharging father's parental responsibility for the younger four children or, in the alternative, a prohibited steps order restricting it.
33. They also seek a section 91(14) order.
34. As I have said, there is now no opposition by the mother to the Local Authority's plans for contact, and she supports the Local Authority's position vis-à-vis father.
35. The father opposes the plans for contact, he opposes the section 34(4) order, he opposes the discharge of his parental responsibility, and/or any prohibited steps order restricting it; he opposes any order under section 91(14),
36. The Children's Guardian supports the Local Authority's positions on all those matters; she was the original proponent of the section 91(14) order.

Relevant law as regards the key issues:

37. In respect of the contact issues, I have at all times regard to the fact that the children's welfare is my paramount consideration (section 1(1) Children Act 1989) and I bear in mind all the matters in the welfare checklist (section 1 (3) Children Act 1989). I am going to consider the welfare checklist in detail in due course, so I will not set it out here.
38. I bear in mind the presumption in section 2A and 2B Children Act 1989 that, in these circumstances the court must presume, as regards each parent, that unless the contrary is shown, the involvement of that parent in the life of the child concerned will further the child's welfare (involvement meaning involvement of some kind either direct or indirect but not any particular division of a child's time).
39. Parental contact with a child in care is dealt with in section 34 Children Act 1989

"Parental contact etc. with children in care

(1) Where a child is in the care of a local authority, the authority shall (subject to the provisions of this section) allow the child reasonable contact with—

(a) his parents;

(b) any guardian of his;

(c) where there was a residence order in force with respect to the child immediately before the care order was made, the person in whose favour the order was made; and

(d) where, immediately before the care order was made, a person had care of the child by virtue of an order made in the exercise of the High Court's inherent jurisdiction with respect to children, that person.

(2) On an application made by the authority or the child, the court may make such order as it considers appropriate with respect to the contact which is to be allowed between the child and any named person.

(3) On an application made by—

(a) any person mentioned in paragraphs (a) to (d) of subsection (1); or

(b) any person who has obtained the leave of the court to make the application, the court may make such order as it considers appropriate with respect to the contact which is to be allowed between the child and that person.

(4) On an application made by the authority or the child, the court may make an order authorising the authority to refuse to allow contact between the child and any person who is mentioned in paragraphs (a) to (d) of subsection (1) and named in the order.

(5) When making a care order with respect to a child, or in any family proceedings in connection with a child who is in the care of a local authority, the court may make an order under this section, even though no application for such an order has been made with respect to the child, if it considers that the order should be made.

(6) An authority may refuse to allow the contact that would otherwise be required by virtue of subsection (1) or an order under this section if—

(a) they are satisfied that it is necessary to do so in order to safeguard or promote the child's welfare; and

(b) the refusal—

(i) is decided upon as a matter of urgency; and

(ii) does not last for more than seven days.

(7) An order under this section may impose such conditions as the court considers appropriate.

(8)The Secretary of State may by regulations make provision as to—

(a)the steps to be taken by a local authority who have exercised their powers under subsection (6);

(b)the circumstances in which, and conditions subject to which, the terms of any order under this section may be departed from by agreement between the local authority and the person in relation to whom the order is made;

(c)notification by a local authority of any variation or suspension of arrangements made (otherwise than under an order under this section) with a view to affording any person contact with a child to whom this section applies.

(9) The court may vary or discharge any order made under this section on the application of the authority, the child concerned or the person named in the order.

(10) An order under this section may be made either at the same time as the care order itself or later.

(11) Before making a care order with respect to any child the court shall—

(a)consider the arrangements which the authority have made, or propose to make, for affording any person contact with a child to whom this section applies; and

(b)invite the parties to the proceedings to comment on those arrangements."

40. I have had regard to the Article 8 rights and the Article 6 rights of the children and the parents.

Discharge of Parental Responsibility

41. The provision which permits of discharge of parental responsibility for an unmarried father who has acquired it under section 4(1) Children Act 1989 is section 4 (2A) Children Act 1989:

(2A) A person who has acquired parental responsibility under subsection (1) shall cease to have that responsibility only if the court so orders.

42. The issue of the discharge of parental responsibility has its own jurisprudence, and I have been helpfully referred to a significant amount of caselaw by the advocates.

43. In one of the cases quoted, *D v E (termination of parental responsibility)* [2021] EWFC 37 at paragraphs 31 to 35 MacDonald J helpfully distilled the law with respect to such applications, and I note that that summary was also recently relied upon by HHJ Baker in another of the cases cited, *DG v KB v EMP* [2024] EWFC 12 (B). Like HHJ Baker, I found it a helpful summary, and I set it out now:

"Termination of Parental Responsibility

[31] Where, as in this case, the father has acquired parental responsibility pursuant to s.4(1)(a) of the Children Act 1989 by being registered as the subject child's father, his parental responsibility may only be removed by an

order of the court pursuant to s.4(2A) of the 1989 Act. Having regard to the terms of s.1 of the Children Act 1989, when deciding whether to terminate a father's parental responsibility, the child's welfare is the court's paramount consideration (that question being a question with respect to the upbringing of a child pursuant to s.105(1) of the Act) but is not required to consider the factors set out in s.1(3) of the 1989 Act, as an order terminating the father's parental responsibility is not an order specified in s.1(4) of the 1989 Act. However, in *Re D (Withdrawal of Parental Responsibility)* [2015] 1 FLR 166 the Court of Appeal made clear at [12] that:

'[12] When a court is considering an application relating to the cessation of parental responsibility, the court is considering a question with respect to the upbringing of a child with the consequence that by s 1(1)(b) of the CA 1989 the child's welfare will be the court's paramount consideration. By s 1(4), there is no requirement upon the court to consider the factors set out in s 1(3) (the "welfare checklist") but the court is not prevented from doing so and may find it helpful to use an analytical framework not least because welfare has to be considered and reasoned. Given that the cessation of parental responsibility is an order of the court, the court must also consider whether making such an order is better for the child than making no order at all (the "no order" principle in s 1(5) of the CA 1989).'

[32] With respect to the factors to be taken into account, in *Re P (Terminating Parental Responsibility)* [1995] 1 FLR 1048, Singer J held as follows at p.1052:

'I start from the proposition that parental responsibility – both wanting to have it and its exercise – is a laudable desire which is to be encouraged rather than rebuffed. So that I think one can postulate as a first principle that parental responsibility once obtained should not be terminated in the case of a non-marital father on less than solid grounds, with a presumption for continuance rather than for termination.

The ability of a mother to make such an application therefore should not be allowed to become a weapon in the hands of the dissatisfied mother of the non-marital child: it should be used by the court as an appropriate step in the regulation of the child's life where the circumstances really do warrant it and not otherwise.

I have been referred in outline to four authorities as to the circumstances in which a court will make an order for parental responsibility on application to it under s 4, notwithstanding maternal opposition and, more particularly, as to the criteria and considerations which are relevant. The authorities in question are: *Re H (Minors) (Local Authority: Parental Rights) (No 3)* [1991] Fam 151, sub nom *Re H (Illegitimate Children: Father: Parental Rights) (No 2)* [1991] 1 FLR 214; *Re C (Minors) (Parental Rights)* [1992] 1 FLR 1, in the Court of Appeal, and *Re G (A Minor)*

(Parental Responsibility Order) [1994] 1 FLR 504, also in the Court of Appeal; and, finally, a decision of Wilson J, *Re P (A Minor) (Parental Responsibility Order)* [1994] 1 FLR 578.

Such applications for parental responsibility orders are governed by the considerations set out in s 1(1) of the Children Act, namely that the child's welfare is the court's paramount consideration. I can see no reason why that principle should be departed from in considering the termination of a parental responsibility order or agreement.

Key concepts to the consideration of the making of an order are evidence of attachment and a degree of commitment, the presumption being that, other things being equal, a parental responsibility order should be made rather than withheld in an appropriate case'.

[33] Within this context, in *CW v SG (Parental Responsibility Consequential Orders)* [2013] EWHC 854 (Fam), [2013] 2 FLR 655 Baker J (as he then was) endorsed the approach taken by Singer J in *Re P (Terminating Parental Responsibility)*. In *CW v SG (Parental Responsibility Consequential Orders)* Baker J held as follows at [59]:

'As in *Re P*, I find that, if the father did not have parental responsibility, it is inconceivable it would now be granted to him, and that this is a factor I should take into account when considering this application to terminate his parental responsibility. Furthermore, like Singer J in *Re P*, I find that in this case there is no element of the bundle of responsibilities that make up parental responsibility which this father could, in present or foreseeable circumstances, exercise in a way which would be beneficial for D'.

[34] The decision of Baker J (as he then was) was upheld by the Court of Appeal in *Re D (Withdrawal of Parental Responsibility)* [2015] 1 FLR 166, in which Ryder LJ (as he then was) held as follows at [13] and [14] with respect to the factors to be taken into account on an application to terminate parental responsibility pursuant to s.4(2A) of the Children Act 1989:

'[13] The paramountcy test is overarching and no one factor that the court might consider in a welfare analysis has any hypothetical priority. Accordingly, factors that may be said to have significance by analogy or on the facts of a particular case, for example, the factors that the court considers within the overarching question of welfare upon an application for a parental responsibility order (the degree of commitment which the father has shown to the child, the degree of attachment which exists between the father and the child and the reasons of the father for applying for the order) may be relevant on the facts of a particular case but are not to be taken to be a substitute test to be applied (see *Re M (Parental Responsibility Order)* [2013] EWCA Civ 969, [2014] 1 FLR 339, at paras [15] and [16]).

[14] An unmarried father does not benefit from a 'presumption' as to the existence or continuance of parental responsibility. He obtains it in accordance with the statutory scheme and may lose it in the same way. In both circumstances it is the welfare of the child that creates the presumption, not the parenthood of the unmarried father. The concept of rival presumptions is not helpful, although I entirely accept that the fact of parenthood raises the welfare question, hence the right of a parent (with or without parental responsibility) to make an application under s 8 of the CA 1989 without permission (see s 10(4)(a) of the CA 1989). There is also ample case-law describing the imperative in favour of a continuing relationship between both parents and a child so that ordinarily a child's upbringing should be provided by both of his parents and where that is not in the child's interests by one of them with the child having the benefit of a meaningful relationship with both. A judge would not be criticised for identifying that, as a very weighty, relevant factor, the significance of the parenthood of an unmarried father should not be underestimated'.

[35] Within the foregoing context, it is also important when considering an application to terminate the parental responsibility of an unmarried father to have regard to the shared nature of parental responsibility when the same is conferred upon both parents. In this context, in *Re W (Direct Contact)* [2013] 1 FLR 494 at [80] McFarlane LJ (as he then was) observed as follows:

'Whether or not a parent has parental responsibility is not simply a matter that achieves the ticking of a box on a form. It is a significant matter of status as between parent and child and, just as important, as between each of the parents. By stressing the "responsibility" which is so clearly given prominence in the Children Act 1989, section 3 and the likely circumstance that that responsibility is shared with the other parent, it is hoped that some parents may be encouraged more readily to engage with the difficulties that undoubtedly arise when contemplating post separation contact than may hitherto been the case'.

44. That summary refers to several of the cases which were referred to in the skeleton arguments, as well as some others, including one which I have found helpful in terms of overall principles, namely the decision of Ryder LJ in *Re D (withdrawal of parental responsibility)* [2015] 1 FLR 166 in the Court of Appeal.

45. Also useful are the **dicta** of Lieven J in *X v Y* [2023] EWHC 3170 (Fam), where she said at paragraph 60:

"I have considered whether some lesser steps, such as removing any obligation to consult or inform the father about medical or educational decisions, would be more proportionate. However, in practice, once I have removed these rights, and he has no contact with the children, in reality parental responsibility is diminished to such a point it has little meaning."

46. I have also been asked to consider the approach of HHJ Baker in *DG v KB & Another* [2024] EWCA 12(B) in which he considered the practical impact of PR in terms of the key roles assumed by a parent with PR and considered the extent to which the father was in a position to exercise PR. I was also referred to some particular dicta at para 117:

“Will something less do? It would be possible to formulate prohibited steps or specific issue orders that ‘ring fenced’ elements of the exercise of PR. In my view there are two reasons why that is not the welfare solution that best meets EMP’s needs at present. First, on consideration of the day-to-day elements of PR that remain to be exercised it is difficult to identify what should be left or what may raise itself as an issue in the future. Secondly, and more importantly, in this case the ‘representative’ value of having PR is in my view significant. PR is important not just for the practical ‘rights and responsibilities’ it manifests but also because of its intangible quality as a statement of those rights and responsibilities. From the mother’s (and I am sure in due course the child’s) perspective it is difficult to ignore the fact that however ‘ring fenced’ or restricted, the father retaining PR represents an individual who has raped her retaining a legally recognised statement of his ability to involve himself and be consulted regarding the child. I fail to see how in the circumstances of this case that is a proportionate outcome.”

47. I have been quoted other cases, but, although they have all given me food for thought, what they each emphasise is that each case has to be approached on its own facts, and that the only true test is the test of welfare.

48. Within her skeleton argument Ms Kilvington helpfully added paragraph 12 of Ryder LJ’s judgment in *Re D* (withdrawal of parental responsibility) 2014 EWCA 315 Child to the paragraphs 13 and 14 quoted by MacDonald J (supra). Lord Justice Ryder said:

"When a court is considering an application relating to the cessation of parental responsibility, the court is considering a question with respect to the upbringing of a child with the consequence that by section 1(1)(b) of the Children Act 1989 the child's welfare will be the court's paramount consideration. By section 1(4), there is no requirement upon the court to consider the factors set out in section 1(3) (the 'welfare checklist') but the court is not prevented from doing so and may find it helpful to use an analytical framework not least because welfare has to be considered and reasoned. Given that the cessation of parental responsibility is an order of the court, the court must also consider whether making such an order is better for the child than making no order at all (the 'no order' principle in s 1(5) of the Children Act 1989)."

49. Having regard to that guidance, I am going to consider the application to discharge parental responsibility against the framework of the welfare checklist.

50. Finally I consider Section 91(14) Children Act 1989 which reads as follows:

“On disposing of any application for an order under this Act, the court may (whether or not it makes any other order in response to the application) order that no application for an order under this Act of any specified kind may be made with

respect to the child concerned by any person named in the order without leave of the court.

51. Section 67 of the domestic abuse 2021 amended the Children Act by inserting section 91A, which reads as follows:

"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.

(5) A section 91(14) order may be made by the court—

(a) on an application made—

(i) by the relevant individual;

(ii) by or on behalf of the child concerned;

(iii) by any other person who is a party to the application being disposed of by the court;

(b) of its own motion.

(6) In this section, 'the child concerned' means the child referred to in section 91(14)."

52. The leading case for many years in respect of section 91(14) orders was *Re P (section 91(14) guidelines, residence and religious heritage)* [1999] 2 FLR 289, and I will set out those guidelines here. I do observe that of course these guidelines predate section 91A so, although they still fall to be considered, they now need to be considered in the light of the amendments made by section 91 A.

"[41] A number of guidelines may be drawn from the cases to which I have referred above, and I am also indebted to Wall J for the helpful summary of propositions set out in Part III of his judgment. It is however important to remember that these are only guidelines intended to assist and not to replace the wording of the section.

Guidelines

- 1). Section 91(14) should be read in conjunction with section 1(1) which makes the welfare of the child the paramount consideration.
- 2). The power to restrict applications to the court is discretionary and in the exercise of its' discretion the court must weigh in the balance all the relevant circumstances.
- 3). An important consideration is that to impose a restriction is a statutory intrusion into the right of a party to bring proceedings before the court and to be heard in matters affecting his/her child.
- 4). The power is therefore to be used with great care and sparingly, the exception and not the rule.
- 5). It is generally to be seen as an useful weapon of last resort in cases of repeated and unreasonable applications.
- 6). In suitable circumstances (and on clear evidence), a court may, impose the leave restriction in cases where the welfare of the child requires it, although there is no past history of making unreasonable applications.
- 7). In cases under paragraph 6 above, the court will need to be satisfied first that the facts go beyond the commonly encountered need for a time to settle to a regime ordered by the Court and the all too common situation where there is animosity between the adults in dispute or between the local authority and the family and secondly that there is a serious risk that, without the imposition of the restriction, the child or the primary carers will be subject to unacceptable strain.
- 8). A court may impose the restriction on making applications in the absence of a request from any of the parties, subject, of course, to the rules of natural justice such as an opportunity for the parties to be heard on the point.
- 9). A restriction may be imposed with or without limitation of time.
- 10). The degree of restriction should be proportionate to the harm it is intended to avoid. Therefore the court imposing the restriction should carefully consider the extent of the restriction to be imposed and specify, where appropriate, the type of application to be restrained and the duration of the order.
- 11). It would be undesirable in other than the most exceptional cases to make the order ex parte."

53. Knowles J considered section 91(14) applications in a case which post-dated the section 91A coming into force, namely *A Local Authority v F & Others* [2022] EWFC 127:

"[53] There is little doubt that the welfare of these children requires freedom from future litigation initiated by their father. Their father has caused the gravest emotional harm to them by killing the mother. In so doing, he has deprived them of her care throughout what remains of their childhood and into adulthood. Whilst the younger children have been told that their father hurt their mother so that she died, the details of what occurred are not yet known to them. P knows more of what took place but his knowledge remains incomplete for the moment. In due course, all three children will learn what is known by the authorities as to the circumstances in which the mother died. Coming to terms with that information will place a significant emotional and psychological burden on these children. This is not just because of the circumstances of the mother's death but also because the man all three love - their father - was responsible. That factor complicates and intensifies the psychological and emotional burden these children face.

[55] Any application made by the father - unless filtered by an order pursuant to s.91(14) - would likely require the children's views to be sought. The procedural reality of any application in circumstances such as these would create emotional uncertainty for these children and is likely to impair their mental well-being.

[58] I have thought very carefully about the degree of restriction I should impose and, in so doing, taken into account the *Re P* guideline 10. My assessment of the harm which may arise if the father were to make further applications is that it would be grave and profoundly destabilising for each of these children. I have also considered the duration of any s.91(14) order and have concluded that these orders should last until each child is 18 years old. Protecting the children for a few years might give stability to P for example but thereafter would expose the younger children - at the start of or on the cusp of adolescence with its attendant emotional and psychological changes - to the profoundly destabilising effect of further applications at a time when they would be particularly vulnerable."

Welfare analysis using the welfare checklist

54. The ascertainable wishes and feelings of the children concerned, considered in the light of their age and understanding:
55. The gathering of the children's wishes and feelings have been complicated by the length of time since they have seen their parents and the events since their removal from the parents' care.
56. The children have not seen their father since his arrest and remand in custody in May 2023 following S making very grave allegations of sexual and physical abuse against him. At that time, they were placed in foster care but continued to see their mother regularly until October 2023 when she too was arrested and remanded in custody. The children have been given child appropriate information about this.

57. The psychologist who was instructed in the proceedings reported that S's primary attachment is to her mother; her attachment style is at best insecure ambivalent and possibly disorganised; she was described as angrily preoccupied with F. S has long recognised that she does not wish to return to the care of either M or F and has been concerned about the prospect of any of her siblings returning to their care. However, S was described as confused and possibly anxious about and feeling rejected by the lack of recent contact with M. More recently when she was told about the outcome of the criminal trial she was said to be delighted.
58. The younger children were all described by the psychologist as extremely loyal to and protective of their mother, however L, N and LX understand that, prior to being removed, there were difficulties at home in terms of school attendance, home conditions, their behaviour, domestic abuse, parental alcohol abuse by F, physical chastisement and inappropriate behaviour.
59. The psychologist opined that the children's primary attachment is to their mother and hypothesised that the four younger children's attachments are at best insecure, with them all displaying features of both avoidant and ambivalent attachments, however L, LX and AX appear more obviously ambivalent.
60. None of the children indicated a strong emotional connection to F. LX appeared to hold him in mind the most, but the three girls do not appear to have experienced their father as physically or emotionally available. N appeared anxious and avoidant when her father was mentioned.
61. None of the children have recently expressed a wish to see their father, although they have from time to time expressed a wish to see or know about their mother.
62. In due course the children's wishes and feelings will need to be explored further within the currency of the care order.
63. The children's physical, emotional and educational needs:
64. All of the children have additional needs as a result of the parenting they have experienced.
65. S's needs are complex. Her presentation is described by the psychologist as being consistent with the experience of developmental complex trauma and unmet attachment/emotional needs. She is described as needing stable consistent highly skilled reparative compensatory and trauma informed care to minimise the impact of past harm and help her feel safe and able to trust adults to meet her needs, to learn how to recognise and better protect herself from harm in order to achieve a more positive developmental trajectory and outcome.
66. The younger children are described by the psychologist as requiring stable, skilled, reparative, compensatory and attachment-informed care, to minimise the impact of past harm, and help them achieve more positive, less harmful, developmental trajectories and outcomes.
67. N requires speech and language therapy.
68. Within the statement of the social worker is detailed in considerable and helpful detail the direct work that is proposed to be done with the children regarding F's and M's imprisonment. There has been a start in the sense that the children are now aware of their parents' whereabouts, and of course S has been informed of the outcome of the trial, but the children

will continue to have direct work done with them in relation to being informed in an age-appropriate and child-centred way about the current position with regards to their parents.

69. That is also going to include work with the foster carers.
70. Given the nature of the parents' offences and the length of their imprisonment, it is apparent that this is work, which is going to be ongoing over a very considerable period of time and is going to need to be done with the utmost sensitivity.
71. There is clearly going to be a significant emotional impact on the children, and direct work will be ongoing to support them with the questions and emotional responses that they have.
72. In section 6 of the social worker's statement, the nature of the life story work is set out. I do not intend to replicate this in detail, but note that the work involves different tools, including the PANTS rule, the "Boss of my Body" work, and "Safety Rocks" direct workbooks. The work is set out in considerable detail.
73. The issue to recognise, in my judgment, is that this is likely to be skilled, lengthy and difficult work, and the children's responses may vary as between each other as over time, and will need to be responded to flexibly.
74. The likely effect on them of any change in circumstances:
75. A key change of circumstances which is going to be happening and, as I have said, has begun is the work which I have just referred to, the children being told in a child-sensitive way what has happened to S, and the reason why they are living away from their parents. It is going to be incredibly challenging for the professionals no doubt, but most of all for the children.
76. It is being done against a background of the fact that the father does not accept the findings of the criminal court. He has not contested threshold, but it is clear that he does not accept the threshold findings in the sense of actually accepting that they are true, that he is responsible for those elements that relate to him. He does not accept that he harmed S.
77. In my judgment it is inconceivable that direct contact with father, who is denying these extremely grave offences, could take place while that work is going on. This is not simply or even mainly about the location where direct contact would need to take place. Undoubtedly it would be an exacerbating factor in terms of the children's emotional safety if they were to go into the prison, which is likely to make them feel unsafe. The key issue, however, is the emotional impact on them of being expected to engage with the father, as a father, in a normal way, whilst processing the hugely challenging information that he has sexually abused their sister, and at a very grave level.
78. It follows in my judgment that video contact would have a similar emotional impact; the children might be shielded from the feelings of unsafety associated with a prison, but the emotional impact would be similar.
79. In my judgment, the children would be likely to be very confused as to why professionals were encouraging them to have contact with Father in these circumstances. It puts them in a very difficult position.
80. The ways in which this could play out are manifold, but one of the more obvious scenarios might include the children asking questions such as. "Why are we seeing Dad if he treated S

like that?" It would be an obvious question, and one which professionals would find it very difficult to answer. The children might have questions for F himself and, given his denial of the offences, it is simply impossible to see how that could be managed. It is equally impossible to see how one could stop the children asking difficult questions, and expect them to avoid the subject, and talk about normal day-to-day matters.

81. In respect of indirect contact, although the emotional impact and unpredictability of indirect contact may be lesser than that of direct contact, given that it can be monitored in advance, fundamentally it seems to me the situation is the same. There is a conflict between the narrative that the children will be told and the father's narrative. The children will be told the true narrative whilst the father holds to his own self-serving narrative. It is difficult to see how indirect contact could take place against that background.
82. I do not see how indirect contact, let alone direct contact, could be managed in a way which would promote the welfare of the children, certainly at this point in time.
83. I do accept, and I explored this in submissions with the parties, that there could come a point where the situation changes for one or more children. There could come a point where those working with the children come to the conclusion that it is in the interests of one or more of them to have some carefully controlled contact, particularly if father accepts his responsibility for what has happened. However, we are a long way off from that situation today.
84. The Local Authority have made it clear that they accept that they have an ongoing duty to consider the issue of contact in Looked After reviews, irrespective of the court's decision in relation to parental responsibility.
85. Their ages, sex, background and any characteristics of theirs which the court considers relevant.
86. As set out above, S is a 13 year old girl; L is a 9 year old girl; LX is a 8 year old boy; N is a 7 year old girl; AX is a 4 year old girl.
87. They are all of Slovakian heritage.
88. Any harm which the children have suffered or are at risk of suffering:
89. Again, I refer to the psychologist's evidence. She said that if the children do not receive the quality and type of care that they require, they are likely to go on to develop significant behavioural, social and emotional difficulties, and will be at high risk of mental health issues, including self-harm, depression and anxiety, educational and social exclusion, relationship difficulties, criminality and exploitation.
90. All those risks relate to care, but in my judgment they could also come to pass in circumstances where the children were having contact which was emotionally unsafe for them.
91. The psychologist specifically said this in respect of the father:

"There is a risk that direct contact would trigger anxieties and memories which would have a negative impact upon the children's day-to-day functioning and emotional wellbeing."

92. Those remarks were made prior to the parents' convictions, and it seems to me they are all the more apposite now. She went on to say that:

"There are no benefits of direct contact that would outweigh the possible risks to the children's emotional wellbeing."

93. It was submitted on behalf of the children by Mr McCall that harm is the magnetic feature in this case; it was specifically submitted that there was a parallel with the case of *CW v SG*. Certainly I accept the general point that harm to one member of the family, when it is at this level of gravity, has huge ramifications for the whole family.

94. Essentially everything that has happened, the care proceedings, the children being separated from their parents and from each other, can be traced back in large measure to the father's actions. Of course, the mother has also been convicted of very grave offences, and she bears significant responsibility, but the lion's share of the responsibility lies with F.

95. In terms of future harm, there is a real risk to the children of ongoing emotional harm, and again those risks in large measure flow from the actions of F to a much greater extent than those of the mother, M. There is in my judgment a risk of harm arising out of contact in the foreseeable future.

96. There is also in my judgment a risk of harm arising out of the father continuing to have a say in the children's lives which would be the case if he were to continue to have parental responsibility. The children would no doubt become aware of the need for father to be consulted, certainly if his parental responsibility was not restricted in any way, and would start to ask questions, "Why are the authorities still letting Father make decisions for me?", or, "...have an input on decisions which are being made for me?"

97. There are certainly decisions where, in my judgment, the Local Authority would be obliged to consult the father. To give a few examples, if one of the children was seeking to go abroad for a substantial period of time, they would need to consult him. Similarly, the Local Authority would need to consult the father about elective medical treatment, long term placement moves or decisions touching upon religion. These are all the types of decisions where it seems to me the Local Authority would need to consult the father.

98. It has been said on his behalf that he has not been directly spoken to by the social worker during the proceedings, but it does seem to me that that is different. Given that the father has been in prison but has the benefit of legal representation, the local authority may have reasonably taken the view that it was more practical to consult him indirectly via his legal team. The situation is different after proceedings when he no longer has that representation.

99. In short, it seems to me that the children are likely to become aware of the father's role in decision-making if he is to retain his parental responsibility.

100. The alternative, as has been raised by the Local Authority, is for father's input to be restricted, rather than for his parental responsibility to be removed entirely. In this regard the Local Authority put forward the possibility of their obligation to consult him being constrained.

101. However, it seems to me that the **dicta** that I referred to are relevant in this regard. Lieven in *X v Y* said:

"I have considered whether some lesser steps, such as removing any obligation to consult or inform the father about medical or educational decisions, would be more proportionate. However in practice, once I have removed these rights, and he has no contact with the children, in reality parental responsibility is diminished to such a point it has little meaning."

102. At this point I am considering parental responsibility under the heading of harm. The point essentially in my judgment is that in order to minimise any harm caused by the father continuing to have parental responsibility, it would be necessary to restrict it so substantially as to make the parental responsibility almost meaningless.
103. Finally, the application under section 91(14) Children Act 1989 also falls to be considered under the heading of harm. In this regard I found the submissions of Mr McCall very helpful. He submitted that the present case, like the case before Knowles J, contains the most serious offences against a family member of the children, in that case the murder of the mother, in this case heinous sexual abuse of a sibling. He submitted that the court should consider the destabilising effect which any application – for example an application for contact - may have upon the children throughout their childhoods.
104. The court has evidence of the significant vulnerabilities of each child. They are each yet to come to terms with the extreme nature of the abuse which was perpetrated on their sibling, or indeed to come to terms with the fact that their father has ultimately been responsible for the dispersal of the family and the siblings no longer all living together.
105. As time goes on, the children will inevitably face periods of acute vulnerability as they undertake work to understand what has happened to them. The impact of any application by the father upon any of the children may cause harm, and may undermine any progress which has been made to overcome the harm which has already been inflicted upon them.
106. He submits therefore that the court can offer protection to the children from such harm by a section 91(14) direction.
107. How capable each of the parents, and any person in relation to whom the court considers the question to be relevant, is of meeting the children's needs:
108. Again, I found the approach of HHJ Baker in *DG v KB v EMP* helpful, namely to consider what needs the father is capable of meeting. Of course, in terms of the basic needs of the children, his capability is severely restricted by the fact that he is in prison. His capability of meeting the children's needs is severely restricted by my decisions in respect of contact.
109. I am therefore struggling to identify any need of the children which he may be able to meet. It seems to me that the only way in which it is likely he would be able to meet any of the children's needs is if he accepted responsibility, if he accepted the findings. That is something he is not currently willing to do.
110. It has been submitted by the father that the Local Authority have treated the parents in an unjustifiably unequal way. I accept the submissions made by Ms Kilvington, M's offences are very grave but they are different from the father's, they are lower down on the spectrum of gravity. Also, it does seem to me that there is some scope for the mother being able to meet some of the children's needs in the future.

111. I am again refer to the psychological report. Ms Hamilton said this:

"M's early experiences of emotional neglect and abuse and trauma at the hands of her mother appear to have had a significant negative impact on her sense of self, as well as altering her understanding of healthy relationships, and are likely to have normalised the experience of physical assault and emotional neglect and abuse in close relationships. Her early experiences have significantly compromised her ability to act in a self-protective way and to recognise and remove herself from people and relationships that were harmful. She loves her children dearly, however her ability to meet the children's physical needs has been adversely affected by the dynamics of the relationship with F. She does not have a good understanding of her own or her children's emotional needs. Her understanding of safeguarding regarding sexual abuse is very limited. Whilst she acknowledges that domestic abuse is not good for children, her ability to prioritise the children's needs is impaired because of her altered perception of what is acceptable within a relationship. She has also viewed the children at times as her protectors, indicating an unhealthy reversal of protective roles within the family."

112. It is quite a long section, I will not quote it entirely, but paragraphs 8, 9, 10 and 11 go on to deal with the mother's understanding and insight, and how that might be improved. But at paragraph 12 she says this:

"I think that M will be able to cooperate and engage with Children's Services and other professionals in relation to the future care of the children, and all family time, and particularly if she is able to successfully distance herself from the influence of F and his family."

113. So, it seems to me that there is evidence that there is some scope there for M having some involvement in the children's lives of a positive nature in the future, notwithstanding the significant barriers to M being able to improve her parenting ability.

114. In the last comment, it appears that the psychologist is suggesting that M's parenting ability could in fact be enhanced by being able to distance herself from the father, suggesting that being the only person other than the Local Authority with parental responsibility for the children could have an indirect benefit.

115. The range of powers available to the court under this Act and the proceedings in question:

116. All references are to the Children Act 1989.

117. Section 31 is the power to make the care order.

118. Section 34 is the power to order contact to a child in care.

119. Section 34(4) allows me to make an order permitting the Local Authority to refuse contact to a child in care.

120. Section 4 (2A) deals with the ability of the court to remove an unmarried father's parental responsibility.

121. Section 8 covers the power of the court to make prohibited steps orders.
122. Under section 91(14) the court can restrict future applications to the court.

Conclusions

123. Having set out my survey of the welfare factors, I draw my conclusions together:
124. As far as the care order is concerned, I find threshold crossed.
125. Applying the welfare test that the children's welfare is paramount, considering all the matters in the welfare checklist, and the need to make proportionate orders, I find that a care order is the proportionate order in this case which best meets the children's welfare.
126. Neither parent is in a position to care for the children, and there have been no positive assessments of family and friends. There is no other order that the court can make in my judgment, and no other plan than long-term foster care.
127. Thus far there is no opposition to that course but of course before making any care orders, I need to be satisfied as to the Local Authority's plans for contact.
128. As far as mother is concerned, those proposals are essentially agreed. There will be indirect contact between mother and the children on Christmas and birthdays, and the mother will receive information about the children whilst she is in custody. There will be a risk assessment as to whether contact can progress if and when mother is released from custody.
129. As far as the issue of photographs is concerned, the mother now accepts the position that provision of photographs is not possible.
130. As far as father is concerned, I have set out my reasons for considering that contact is entirely contrary to the children's welfare at the current time. In my earlier consideration, I used the word "impossible" on several occasions. I simply cannot envisage how any direct or indirect contact could be in the children's best interests at the current time.
131. As I have indicated, there may come a time when some very strictly controlled contact with the father is in the children's best interests. That of course will need to be considered on an individual basis, and in consultation with those working therapeutically with the children, including their carers.
132. I remind myself that the issue of whether such contact would take place will not be affected by whether or not I discharge the father's parental responsibility.
133. I have concluded that, as far as both parents are concerned, the Local Authority do need to be able to manage the situation in a flexible way. Section 34(4) is a permissive order, it is not an order barring contact; it is an order authorising the authority to refuse to allow contact between the child and any person mentioned in the section, which of course includes the parents. I have concluded that that order is necessary.
134. I do make the point that it is important that the Local Authority are honest with the children in respect of the father's wish to see them. That may be of importance to one or more of the children, that Father has not abandoned them, but that the decision has been made that in the circumstances it is not in their interests to see him. It seems to me that that is information that

the children are entitled to, and not only if they specifically ask, but more generally, although of course the timing of providing that information is entirely a matter for the Local Authority as part of the life story work. But I do consider it important that the children are informed that their father wanted to see them, and wanted to continue to play a role in their lives.

135. I now move on to the issue of father's parental responsibility. I am going to take the approach, which was taken by HHJ Baker in *DG v KB v EMP* of considering what role the father is able to play in the lives of the children in the light of his very serious offending.
136. I have dealt with the issue of the potential harm to be caused by contact both now and in the future, and with the father's inability to meet the children's needs. It seems to me that the father is not capable of meeting the children's needs in any of the commonly understood day-to-day ways in which parents do meet their children's needs. He is not capable of meeting their needs in the limited circumstances provided by direct or indirect contact.
137. I am not able to identify any needs of the children which he is going to be able to assist in meeting, save for them being provided with the information that he still loves them, and that he would like to see them.
138. In my judgment he does not require parental responsibility for those messages to be given to the children. In my judgment this is a situation where retaining parental responsibility would be entirely for the benefit of the father; it would be all about retaining the consultation role that the Local Authority have in respect of a parent. But even that, it seems to me, raises the risk of harm, a matter that was discussed by HHJ Baker in *DG v KB v EMP*. Judge Baker recognised that PR is important not just for the practical rights and responsibilities it manifests but also because of its intangible quality as a statement of those rights and responsibilities. In this case, as in the case which Judge Baker was considering, it seems to me that the children (as they grow old enough to understand) may well ask themselves, "Why is my father, who raped my sister, still being consulted about what happens to me?"
139. I further note that although, as alluded to earlier, there is the option of making a lesser order restricting the father's parental responsibility by for example removing the need for consultation, if that were to take place alongside a decision that the father will not be having contact with the children for a considerable period of time, there is really no purpose left to be served by parental responsibility.
140. Finally, I have also taken into account that it, is in my judgment, inconceivable that, if the father were to be making an application for parental responsibility, that he would be granted it; that is one of the matters which caselaw entitles me to take into account.
141. Accordingly, for all those reasons, and bearing in mind that the children's welfare is paramount, it does seem to me that the children's welfare would be enhanced rather than damaged by the removal of the father's parental responsibility. It is a welfare decision, and that is the decision I make.
142. I do agree with Ms Wilson's submissions that it would go too far for there to be a prohibited steps order preventing the father from making enquiries about his children. Requests for information from the father can be considered on their own merits, as they would be from any father who does not have parental responsibility.
143. In respect of the 91(14) application, I do note that I am of course required to consider a section 91(14) order in any circumstances where I consider that there would be a risk of harm caused

by an application. This is no longer an order that can only be made following a formal application by one of the parties; it is an obligation on the court to consider whether such an order is required. Of course, in any event the parties are fully aware that it is on the agenda.

144. I found Mr McCall's analysis helpful. He drew the analogy with the case cited above which was heard by Knowles J, *A Local Authority v F and Others*, pointing out that they both had at their heart the most serious offences against a family member, in that case it was the murder of the mother, in this case it is heinous sexual abuse of a sibling.
145. Mr McCall invited me to consider the destabilising effect of any application for contact on the children throughout their childhoods. I have already referred to this passage of his skeleton. The children are yet to come to terms, and may take a very long time to come to terms, with the extreme nature of the abuse which has been perpetrated on their sibling, for which the father is responsible.
146. Again, I have also referred to the fact that in my judgment he bears the lion's share of responsibility for all the events which have befallen the family. Although mother is not exempt, and bears significant responsibility, the father in my judgment does bear the greater share.
147. The children are facing a long journey of coming to terms with what has happened to them against the background of their already vulnerable position as a result of the harm which had already been caused to them by their parenting. There is, in my judgment, considerable scope for applications to destabilise the children if made without the filter of section 91(14).
148. I do consider that it is likely, and I note that in the case of *A Local Authority v F & Others* [2022] EWFC 127, Knowles J considered it inevitable, that the children would need to be told of applications if made without the section 91 (14) filter. As I mentioned, the eldest of F's children is nearly 10. Unless F was to make an application in very early course, any application that he might be considering making might be when she is 11, 12, 13. At those ages, it seems to me it would be inevitable that the child would need to be told. With a mixed-age sibling group, even when they are not living together, given that they will be having extensive contact, there is clearly considerable scope for one child knowing of the application to lead to another child knowing. Of course, LX and N are only a year and two years younger than L, so the considerations apply equally to them.
149. In short, the children's ages, it seems to me, are such that it is likely that they will need to be told about any substantive application, and there is the risk therefore that they will be disturbed by it and any progress put back by an application.
150. I have already raised in discussion with Mr McCall that the leave filter is a flexible one, and it may be that the court in receiving an application from F considers it is hopeless and deals with it on paper; however it could also be that the court, even at the leave stage, calls for statements from the Local Authority, appoints a Guardian, and permits position statements from all parties. Those are all possible responses to a leave application. There is a flexibility as to how that would be approached.
151. But once leave is granted, it seems to me that the children are going to become aware of it. So, that is the difference, and it does seem to me therefore that there is a distinct and very clear welfare benefit to making the 91(14) order.

152. Dealing finally with the period of the section 91(14) direction, the key point seems to me that it is simply too unpredictable to try to predict at what stages the children's vulnerabilities may be most apparent. I do not think that I can simply say, for example, after three years the risk of harm which I have identified is going to disappear, or after five years it is going to disappear. I cannot come to that conclusion, and therefore I do consider, in the same way that Knowles J did, in *A Local Authority v F and Others* that the order should be made for the length of the children's childhood.
153. I do not however consider that this is a case where I need to make a direction such as that made by HHJ Baker in *DG v KB v EMP* that the application should not be served until it has been considered by the court. The fact that the Local Authority are in the driving seat as regards to parental responsibility, and not the mother, makes it in my judgment unnecessary to put that extra level of protection in place. Of course, if an application was to be made, the court would almost certainly want to know from the Local Authority its views of the application. So, I do not consider that to be a necessary direction.
154. I do accept the point made by Mr McCall that it will be helpful for father to be aware of what is likely to lead to a successful application, and I endorse the points made by Mr McCall that at the minimum it seems to me there would need to be some remorse, some recognition of the harm he has caused S, in particular, and some insight into the harm which has been caused to the whole of the family.
155. As regard each factor, the court would not be expecting total admissions, total insight, total recognition, but at least some progress in each area before the court could even consider taking the matter forward to a substantive application.
156. In conclusion:
- a) I find threshold crossed, I approve each of the care plans including the plans for placement and contact, I make the final care orders for each of the five children.
 - b) I make section 34(4) orders in respect of both parents and all five children,
 - c) I discharge the father's parental responsibility for each of the younger four children.
 - d) I make the 91(14) orders for the periods of the children's childhoods respectively.
157. This judgment concludes the proceedings.

(This Judgment has been approved by the Judge.)

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