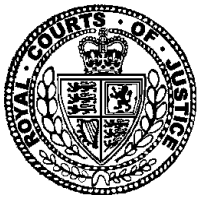

Neutral Citation Number: [2022] EWHC 1005 (Fam)

Case No: FD18P00451

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
IN THE MATTER OF THE CHILDREN ACT 1989
IN THE MATTER OF THE SENIOR COURTS ACT 1981
AND IN THE MATTER OF THE FEMALE GENITAL MUTILATION ACT 2003
AND IN THE MATTER OF Z (A Child) (born on 3rd March 2011 aged 11)

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 3rd May 2022

Before:

MS JUSTICE RUSSELL DBE

- -

Between:

M	**Applicant**
and	
F	**1st Respondent**
and	
Z (A Child)	**2nd Respondent**
(By her guardian)	

- -
- -

Applicant [F] in person
1st Respondent [M] in person

Ms Sally Bradley (instructed by **Cafcass Legal**) for the 2nd Respondent child
(By her rule 16.4 guardian)
Hearing dates: 7th & 8th April 2022

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Remote Hearings: Warning

All parties and participants in any remote hearing shall take notice that Section 55 and Schedule 25 of the Coronavirus Act 2020 have provided by Section 85C of the Courts Act 2003 that it is an offence for a person to make or attempt to make an unauthorised recording or an unauthorised transmission of an image or sound which is being transmitted through a live video link or a live audio link, or an image of, or sound made by, any person while that person is participating in court proceedings through a live video link or a live audio link

Final Judgment Approved by the court

The Honourable Ms Justice Russell DBE:

Introduction

1. This is my second judgment in proceedings concerning the child Z now 11 years old. There have been other judgments in Family Law Act (FLA) 1996 and Children Act (CA) 1989 proceedings; indeed, as observed in the judgment of this Court in 2017 there have been proceedings in respect of the arrangements for this child since December 2013 and for most of her life, beginning when she was only two and three quarters, she has been the subject of applications brought by her parents. The background and history of Z and her family have been set out in full in the previous judgment and can be seen in *Z (A Child) (FGMPO: Prevalence of FGM)* [2017] EWHC 3566 (Fam) (06 November 2017)URL:http://www.bailii.org/ew/cases/EWHC/Fam/2017/3566. Z, who was born in England, is of dual heritage. Her maternal background and heritage are white English and Roman Catholic (her mother is not a practising Catholic) and her paternal background and heritage is black African and Islamic, her father, who is a devout Muslim, is from the Fulah community in Guinea, West Africa.

2. The proceedings in respect of Z and her parents originated eight years ago when an application for protective relief was issued by M (Z's mother) under the FLA 1996 in the Family Court at Bromley in May 2014. It was heard by District Judge Brooks who made findings of domestic abuse against F (Z's father); as a result of which an occupation order was made in favour of M who remained living in the former family home with Z. Z has always lived with M and at all times has continued to live in her mother's care in England. The CA 1989 proceedings in respect of the arrangements for Z were originally issued and to place in the Family Court at Bromley. Central to the 2017 applications in The Royal Courts of Justice was the issue of Female Genital Mutilation (FGM) first raised in the

proceedings in 2014. Z was represented in those proceedings which were transferred to be heard in this Court to deal with that issue and the applications for FGM Protection Orders (FGMPO). The Court heard expert evidence, video evidence from F's family in Guinea. Findings were made of the very high prevalence of FGM in that country (around 96% according to the UN's analysis and the expert evidence before the Court) and the consequent likelihood that F's family will want to have Z "cut" or mutilated as a female child of the family. Z's guardian supported there being restrictions on overseas travel with her father in place until Z reaches the age of sixteen and an FGMPO was made in those terms along with an order permitting Z to make an application on her own behalf at the age of 13 should she so wish. The case was transferred back to the Family Court at Bromley where further proceedings took place.

3. F now applies to have the FGMPO set aside to allow him to take Z to Guinea, in much the same terms as he did previously; namely, he says, to allow Z to have contact with the paternal family and her Guinean heritage. He seeks to have his contact with Z increased although this is against Z's expressed wishes. His applications are opposed by M and by those representing Z through her Cafcass guardian, Ms Heather Davies.

History and background since 2017

4. This judgment will not repeat the history and chronology set out in the previous judgment. Nonetheless, while it has been recurring issue in the proceedings, including those before me in 2017, that F seeks to increase contact these repeated attempts have now become of concern because they are being made contrary to what Z herself has said and include complaints that F is continually seeking to involve her in the proceedings. When considered against a background of F's repeated refusal to accept the previous findings of the Family Courts, his continued discussion of those decisions with Z (despite his expressly telling the court he would not do so in 2018) and with his continuous denigration of M, his application to increase contact against Z's wishes of M can be seen as part of his emotional manipulation of Z as will be seen below. It is a matter of fact and part of the evidence before this Court that F has repeatedly attempted to go behind previous decision and sought to have the Court reopen or retry the findings in respect of his abusive behaviour towards M. This is despite his attendance at domestic abuse and parenting programmes. The latter have apparently failed to convince F to address the risks of emotional harm to Z by his failure to listen to Z or acknowledge the import of what she is saying; I shall return to this too in greater detail below. Even following the proceedings in 2017 when the time to be spent by Z with F (contact) was set out in an order, including staying and/or holiday contact (which was to increase as she got older) but their were difficulties with contact and the case returned to this Court in 2018.

5. It is part of F's case and a longstanding and repeated complaint that he has been side-lined and badly treated, but his complaints have to be considered in in the context of his equally longstanding refusal to accept responsibility for his behaviour towards M. I was reminded by Ms Bradley, Z's counsel, of the interim DVIP report filed seven years ago on 17th April 2015 which reported (at paragraph 8) that F, "*is invested in presenting himself as a victim of the situation…He has been observed to project his sense of injustice on to [Z], stating that [Z] is suffering, when in fact, it is he who feels wronged, disrespected or disregarded*

by his ex-partner's actions." On 20th May 2015 the final DVIP report filed; while F had admitted pushing M against a wall or the floor on 6 to 10 occasions and having *"hurt her sexually"* on 3 to 5 occasions F had not considered this to be violence and it was reported that F had *"continued to take this attitude – despite the material covered in the programme – that this did not constitute violence. All of the facilitators who worked with the father noted how he brought even unrelated matters back to the issue of finances, effectively portraying himself as a victim."* This pattern of behaviour has continued and it has remained his position that he has been victimised. F has remained unable or unwilling to accept accountability for his abuse of M and the violence he used against her as being a result of his own behaviour and the report concluded that in respect of any decisions regarding future contact arrangements between F and Z should take, *"serious account of the difficulty [F] has in separating out his interests from those of [Z], and the potential for ongoing emotional abuse and financially controlling behaviour, given that these will carry negative consequences for [Z's] emotional and physical wellbeing."* Having considered the subsequent events and evidence this conclusions contained in this report remain unchanged and relevant in 2022.

6. Cafcass guardians' reports and analysis. When the proceedings were returned to the Family Court at Bromley there were further CA 1989 applications made in 2018, 2019 and 2021. Principally these consisted of cross-applications in respect of contact , by F to increase it and by M seeking to reduce it or oppose his applications. There was an additional application in respect of Z's schooling which is no longer in issue before this Court. In fact Z has done very well in her primary school despite the conflict between F and M: F had objected to Z being moved to a Catholic faith school and had wanted Z to attend a non-faith school. In any event she is now due to go to secondary school in September 2022.

7. The evidence and information contained in the two further Cafcass reports dated 31st October 2018 and 21st March 2019 prepared by Ms Jacqueline Roddy (who had reported in the FGM proceedings in 2017 – and was then FPR 2010 r16.4 guardian for Z) and a third case analysis dated 4th October 2021 prepared by Ms Machekera, make informative reading and provide independent evidence of Z's reported wishes and feelings; they also set out a demonstration of the deteriorating relationship with her father and what was, and is, happening from Z's perspective.

8. The first report of Ms Roddy was written when the case at a time when Z was less obviously affected by F behaviour than she is now and she was clearly enjoying spending time with him. Nonetheless his manipulation of her was self-evident; at paragraph 4 of her report the guardian writes of Z's awareness of the court proceedings and orders *"having discussed it with her father, and she knew he was unhappy with it".* It was reported that Z had a sense of her father being unjustly treated, a viewpoint that can only have been encouraged, if not engendered by him, for as the guardian observed, F *"has communicated [his] grievance to [Z] despite his protestations [to the contrary]."* This too is a pattern of behaviour on the part of F that has continued to date.

9. While it is a fact that M had unilaterally stopped contact this has to be considered against the background of an incident which took place on 9th June 2018 when Z had been upset and frightened by her father's conduct towards her caused by Z having her mother's phone

so she could keep in contact with M when staying with F. It is telling that later, as reported by the guardian, Z did not take her mother's phone with her when having contact with F as she *"disbelieved his assurance that he truly agreed to that".* Z had been reported to be content with the level of contact approved by the Court (one weekend in three and Tuesday after school – also the current level) and had said so but despite this F sought more contact, choosing, as the guardian said, further conflict in challenging the order rather than focussing on enjoying contact which, *"disregards his daughter's wishes and is upsetting for her…I consider that [F] missed this opportunity to properly demonstrate he was able to prioritise [Z's] need to have contact with her mum beyond his annoyance that [M] might in some way intrude…"*

10. F's preoccupation about Z's paternal Guinean and Islamic heritage being subsumed by her maternal Christian and white English heritage was, and is, understandable, but he is choosing to ignore that it is a reflection of the reality of Z's life experience, her place of habitual residence and her integration into her local community. There is a degree of hypocrisy in F's complaints, he himself has chosen to make England his home and it is where his daughter lives and is being brought up. While it is understandable that he is anxious that Z should be aware of and proud of her Guinean heritage F is now using a legitimate concern as part of the pattern of his controlling behaviour. As her guardian observed F's actions and notably his objection *"to [Z] taking part in prayers and religious events in her new Catholic school, have served to override and disregard the child's wishes, and he refuses to accept [Z's] views as her own genuinely held views, devoid of her mother's influence. As such, [Z] feels unable to discuss these matters with her father, anxious about provoking an angry response, as she knows that it is a sensitive issue* (for him) (my parenthesis)" As long as three years ago there was evidence was of Z, then aged eight, propitiating her father's feelings and of subjugating her feelings to his and that she felt that she needed to take responsibility for placating him; this manipulation is redolent of controlling behaviour and the clearest example of emotional coercion.

11. Later in her report Ms Roddy said she had told F candidly that if he persisted in his approach and continued not to listen to Z, or to believe her views are genuinely her own, Z would be likely to choose not to see him when she was older. Despite this warning F had demonstrated little, if anything, in his approach to Z and her wishes and feelings to show he heeded Ms Roddy's helpful advice. In fact Z is now, in 2022, being so undermined by F that, according to her guardian's evidence, Z has become inhibited and compromised in her ability openly to express any view contrary to F's. To return to 2018 at the time, on the guardian's recommendation the case was adjourned for three months during which Z was to have some supportive work and F was to attend a 6-session parenting programme.

12. At the time of her next report dated 21st March 2019 Ms Roddy's observations were that the course attended by F had had some benefits and that he had been able to consider the effects of his past behaviour on Z. Ms Roddy said that Z was *"a bright child, able to make her views known…"* Those views included that the time she was spending with her father reflected her needs and wishes. It was her guardian's view that Z's wishes, clearly expressed to the guardian, reflected *"neither those of her father or mother – it is my view that they are genuinely held and are authentically her own."* It must be a matter of

considerable concern to the Court that, as we shall see below, Z is no longer able to express her wishes as openly and freely.

13. Nonetheless, at that time in 2019 Ms Roddy reported seeing positive changes in F and that she had observed a meeting between Z and F during which he acknowledged his responsibility for the conflict with M and apologised to Z. It is notable that on leaving the meeting F was unable or unwilling to make any attempt to greet M who was waiting outside. Whether F's expressions of regret and apology made to Z in Ms Roddy's presence were genuine or an act of expediency is impossible to say but it is a matter of fact that F has once again tried to re-open past decisions of the court, clearly does not accept the findings that have been made in the past and blames M for what he perceives and claims to be unfavourable and unfair treatment of him in the proceedings. There can be little, if any, doubt that F has continued to make his views clear to Z. She has told this to her guardian, despite his attempts to silence her and to influence what Z says to others. This pernicious behaviour of F has been evident for many years and, from Z's perspective, was exemplified in the occasion that he retained Z during her school holidays in the summer of 2020.

14. It now seems that Ms Roddy was over-optimistic about the change in F's attitude and behaviour, which proved to be short lived at best, but even then the guardian, while acknowledging the benefits of contact with F around identity, culture, religion and heritage, said those benefits would be lessened if F were to retreat from a full admission or acknowledgement of the impact of his abuse on M. Z herself had spoken to her guardian of her memories of F shouting at her mother and the fear that engendered. As Z had matured her developing sense of right and wrong has affected her ability to trust her father, and it was her guardian's view that *"[F's] lack of acknowledgement of the impact of the family history on [Z], his denigrating [M] in respect of his grievance arising form previous court decisions have accelerated the risk of [Z] becoming distant from her father – and being deprived of a relationship with, and knowledge of, her wider paternal family and identity."* Ms Roddy described the *"deep-down fear and upset [Z] remembers having when she witnessed her dad 'being bad' to her mum – specifically of her oft-quoted memory of when her dad deprived her of her mum's comfort during a loud argument. [Z] linked her fearful response to her dad's shouting during the June 'bad weekend'…to triggering these negative memories, and that served her to wanting to avoid her dad, to protect herself from that fear".* These are memories and fears that have remained with Z.

15. The case was heard by Her Honour Judge Redgrave in the Family Court at Bromley on 1st April 2019. Contact was set out in an order which maintained the same regimen as before but allowed for extended staying contact during the summer holidays and over Eid.

16. It was during the summer holidays in 2020 and Z's extended stay with F that the incident referred to above took place when F again ignored Z's wishes and which has caused Z lasting distress and, at the time, led to M applying for variation of the CAO. Unprompted Z has told her present guardian Ms Davies about going to spend an extended time on holiday with F in the summer of 2020 about which she had worried so much that she became physically unwell. M described in her oral evidence to me that Z had been retching and vomiting at the prospect of this first extended stay. Her mother told F that Z was too

unwell to come but F's response was to call the both the Police and London Ambulance Service. It was agreed between Police, F and M that he would return Z home the next day and take her out for a few hours, but when F took Z away and she was not returned home for six days. Z had wanted to contact her mother but had had to contact her secretly. Z explained to her guardian that she felt lucky that she had been able to remember her mother's phone number and she had had to send a secret text to M which she had then deleted, to *"hide the evidence."*

17. It is unsurprising that this event caused H to distrust and lose confidence in her father, and as Ms Davies said in her report, "*I hypothesise that [Z's]trust in [F] is damaged and that she worries that if her father took her abroad, he may take her to Guinea or he may take her for longer than planned…… I find [Z] is 'reasonably justified' for not wanting to go on a holiday with her father."* The events and their effects on Z were exacerbated when the child was forced secretly to find a way to contact her mother to reassure M that she was safe and felt that she had to hide that communication from F. He should have been actively helping her to speak to her mother. The whole event was a serious breach of trust and no-one can be surprised that Z does not want to go abroad *anywhere* [my emphasis] with her father. It was a cruel and insensitive way to behave at best but on that raises serious questions as to what would happen to Z if she were in Guinea with F, not only if she were simply unhappy and wanting to speak to her mother, but also about her ability to raise the alarm were she about to be "cut" (the euphemism for the practice of female genital mutilation). The evidence before this Court is that F actively discourages and obstructs Z's ability to speak to others. This extends to these proceedings and her conversations with her guardian when she was not even in his presence.

18. It was and remains F's view that in retaining Z in the summer of 2020 he had done nothing wrong as the time he had kept Z with him was set out in a court order. F has demonstrated no insight into the lasting effects and the impact on Z's relationship with, and trust in, him that it had, and, as Ms Bradley acting on Z's behalf said in her written submissions, this lack of insight was apparent from F's oral evidence. M said that it took nine months for Z to rebuild some trust in her father and that while the trust Z has in F has improved since 2020, Z still does not feel as safe as she should feel with her parent; her guardian rightly concluded that Z's reference to it in the context of these proceedings emphasised the deep pain caused to the child by F's behaviour and how it has eroded her trust in him; it remains unrestored.

19. Following this event on the 20th August 2020 M applied for variation of the CAO of the 1st April 2019. On the 26th August 2020 F made cross applications to retain passports at all times (he has two UK and Guinean both of which he claims to be out of date and thus invalid), for all travel markers on his travel to be discharged by revoking the FGMPO and to vary the CAO to increase the time Z spends which him. This latter application F has persisted in pursuing despite the two Cafcass reports (one of Joanna Machekera dated 4th October 2021 and that of Ms Davies in December 2021) setting out clearly that Z <u>did not</u> [my emphasis] want to extend the time spent with F. Ms Machekera said, *"This is unlikely to be helpful to him in terms of his relationship with his daughter who has told him directly (as she did in 2018) she does not want to extend the time she spends with him …disregarding her wishes and also upsetting her … [F's] unchanged behaviour makes me*

wonder how much he has really changed in the light of the SPIP training he has had in the past as well as the parenting courses."

20. Equally significantly in respect of F's complaints, and in line with Ms Davies's view, the then Cafcass officer Ms Machekera added in her report, *"There is no evidence from speaking to [Z] that she is being unduly influenced by her mother…"* Ms Machekera's view was that it would be *"unfair to increase the time she spends with her father when she so clearly states to [F] and to professionals that she does not want it to be changed…"* Tellingly, because of F's claims that M is intent on reducing contact, M had offered an extra hour on Tuesdays after school which Z herself had declined. There was to be an additional phone call, once a week on Wednesdays at six in the evening, which Z herself did not want or consider necessary.

21. The case was to return before this Court because of the issues in respect of the passports and the FGMPO, and, on 15th October 2021 Z was joined to the proceedings under Rule 16.4 of the FPR 2010 and represented by her legal representatives through her Guardian, Ms Heather Davies of Cafcass. On 12th November 2021, permission was granted for the Cafcass reports, dated 21st March 2019, 31st October 2018 and 25th November 2016 prepared in proceedings in the Family Court at Bromley and the Family Court sitting at the Royal Courts of Justice (together with the reported judgment 6th November 2017) to be disclosed and included in the papers for these proceedings**.** Ms Davies filed her report dated 14th December 2021 which considered the merits of F's applications, the making of a section 91(14) CA 1989 order, and whether Z was and is being placed under any pressure by F to herself apply to the court to travel with him to Guinea when she reached the age of 13 as provided for in the order of 6th November 2017. All other orders including the FGMPO remain in place until 23:59 on 2nd March 2028.

22. In order to prepare her 16.4 Report the guardian undertook enquiries which included seeing and interviewing Z at the Cafcass Office on 1st December 2021 and undertaking a joint virtual meeting with Z and her solicitor on 8th December 2021 and a brief virtual meeting with Z on 10th December 2021. The guardian had a telephone interview with F and a video/virtual interview with him on 1st December 2021. Later, after the report had been filed, F refused to meet the guardian nor would he respond to her attempts to contact him and arrange meetings.

23. F complained that Z was interviewed at the Cafcass offices having been taken there by her mother, allowing the latter undue influence over Z when seen by the guardian. Z was also seen "virtually" via video link when at home. In respect of the first, I do not accept that there was anything untoward in Z being taken to be interviewed by her mother. As a matter of practicality Z lives with her mother and it was the least disruptive and easiest arrangement to make for M to take Z to the Cafcass Office. These were perfectly reasonable child-centred arrangements made without ulterior motive. In fact, given F's continuing inability to listen to his daughter which evident at the time, the Court would have had to have had concerns if it had been he who accompanied Z to see her guardian.

24. In respect of the second complaint by F, that Z was seen by and spoke to her guardian and solicitor remotely when at home with her mother, I do not find that this gives rise to

particular concern, particularly given that it was during the continuing Covid pandemic. Cafcass Officers are trained and experienced in assessing whether children are able to speak freely or whether a parent is influencing them. The assessment of Ms Davies was that, unlike the increasingly guarded approach Z has talking about F, Z has been observed to be happy and relaxed to talk about her mother and felt able to criticize M; for example by saying that she was embarrassed by her mother kissing her when she dropped her off at school and that sometimes Z prefers to talk to her auntie about matters that trouble her. Moreover, Z's solicitor is a respected and very experienced children's solicitor who has had to speak to Z as her legal representative. In fact the objective evidence in respect of concerns of any malign influence on, or interference with, Z's ability to express her own wishes and feelings have emanated from F and not from M. When considered in the light of all the evidence (as set out in this judgment) I must dismiss his complaints as no more that part of his attempt to undermine what his daughter is saying and to cast doubt on her veracity.

25. After the guardian had filed and served her report in December 2021 and prior to the hearing in April 2022 those representing Z were obliged to make an application to the Court in respect of where Z should stay during the hearing itself, which was to take place during the school Spring holidays. Despite court order (on the face of the order in April 2019) recording F's agreement not to talk to Z about court proceedings F had continued to do so. From the evidence before the court in respect of what Z felt able to tell her guardian (see more below) there is little, if any, doubt that F tried to influence what Z said to professionals and others. In short he was did exactly what he accused M of trying to do.

26. On 25th January 2022 M told the guardian that F had been talking to Z about court, as result her guardian arranged for Z to visit her in her office on 31st January 2022. Z told the guardian that she was worried about going to see F on Tuesdays and was worried about their phone calls. Z said she was more nervous because F had been talking to her about court; on Tuesday he did not talk about court but said he would on Sunday and then on Sunday he said he would like to talk about court with her on Tuesday, Z would have preferred they just talked about it then it would be over. This is indubitably manipulative and coercive, leaving the child intimidated and on tenterhooks, dreading the next call. Z said that when F talked about court and it made her upset and that he had done it in the summer holidays as well. According to what Z told the guardian, F told Z that she (the guardian) had written in her (December 2021) report that Z did not like F's family. As there was no such comment in the report as her guardian told Z, this was not the case. When asked how this could be rectified Z said she would like the guardian's next report to say that Z loves F's family and she thinks they are really nice. This is an unequivocal example of F influencing what Z says to the guardian, of Z feeling obliged to say what she knows F would want her to say.

27. Z was also worried about what else would be in the report because of the effect it would have on him and how he would then react to her as Z was aware that F would be told whatever she (Z) has told the guardian and the Court. Z said that the last time she went to counselling, which was when she was in Year 3, her dad was very unhappy so she would rather he was not told what she had said. This is a clear example of F failing to support Z receiving the help she had needed. Z told the guardian that she was anxious that the court

hearing was due to be over the week she is staying with F in the Spring holidays and asked if this could be changed from Sunday to Sunday to Friday to Wednesday as she is worried he will talk about court. Z was worried to the extent that she had said to the guardian, *"anything could happen"*. Her guardian told Z she would discuss the situation with F but if he did not agree to what she had suggested the Court would need to decide. Z said that she hates talking about court and wants it to be over and move on. Z had also said she still felt the same about not going to Guinea and going on holiday abroad with F and did not want to add anything.

28. Z's reluctance to speak freely about issues that "upset" F included the method in which she had her flu vaccination, as F had previously sought to deny Z the freedom to chose the protection she preferred on religious grounds so that Z did not want to tell the guardian whether she got the vaccine or not because she has not told her dad and does not want him to know. Z did not want to tell the guardian because she knew that the guardian would have to tell the Court and that F would then know. When asked directly Z said that she felt the same way as before about the time spent with F (that there should be no additional contact with F) and did not want to add anything new. Z did say that when F does not talk about court and it is just them she likes it a lot and they had done fun stuff together, but that they had been talking about court for a long time now.

29. Based on the guardian's evidence, Z has felt that she must apologise to F for upsetting him, in other words his behaviour towards her is such that she is made to feel responsible for his emotions rather than the other way around; but as a parent her emotional well-being is F's responsibility. Z told the guardian she has had to say *"sorry"* to F for everything that she had shared with her guardian; when asked if she was, in fact, sorry and Z said she did not know.

30. Most serious were what Z said about being unable to communicate with others, including in particular her own mother, when with F. Z had told the guardian that she shouldn't have said to the guardian that she had sent text messages to her Mum when she was with F in the summer of 2020 and that she is sorry about that, but if Z is sorry there is absolutely no reason at all why she should be made to feel apologetic about the fact that she had contacted her mother to reassure her, in doing so she acted out of concern for M, and F should never had put Z in the position of having to hide it from him. Moreover F did this after he kept Z away from her mother against her wishes, and having told the Police he would return her home within hours. Taken in context of F behaviour towards Z overall there can only be substantial concern about the nature of his conduct as a parent and in respect of Z's safety. If, for example, she were to be abroad with F there would be nothing to stop him taking her on to Guinea and the evidence is that his word cannot be relied on when he considers himself to he in the right. If F took her on to Guinea it would be against her will and F has repeatedly demonstrated that he cannot be trusted to listen to, or act on Z's wishes, added to which Z does not trust him.

31. From Z's perspective and as far as she is aware F has not, cannot or will not, sympathise or empathise with Z's feelings or understand things from her point of view. It's Z's experience that he ignores her wishes and feeling or overrides them. In early 2022 Ms Davies had asked Z whether she thought F could put himself in her shoes and she had said

"no." Z said that once proceedings are over, if she needs to talk to someone, she has friends, her auntie, her Mum and sometimes F. The guardian reminded her that she could also speak to teachers in school. The Court is concerned that the fact that Z knows that some, if not all, of what she says about F would get back to him, as professionals have had to disclose what she has said in the past and it has now inhibited her from speaking freely. This inhibition on speaking out is precisely analogous to the emotional threats employed by perpetrators of child abuse.

32. The guardian and Z's solicitor tried to intercede on Z's behalf and spoke to F between 1st and 3rd February 2022 to ask if he would desist from discussing the court proceedings with Z and if he could change the Spring holiday dates to the days Z had preferred but F declined and an application had to be made to alter the arrangements. Far from taking the opportunity so close to a substantive hearing of F's own applications to demonstrate to the Court that he was able to listen to his daughter's wishes and consider her feelings F then sought to increase the conflict by drawing the guardian into it. When the guardian spoke to F on 1st February to ask him to stop talking about the proceedings to Z, F responded by accusing the guardian of telling him not to talk to Z about her paternal family; there is no evidence before this Court on which to base such an accusation. Although F accepted that he had been talking to Z about the court proceedings he denied talking about the contents of the guardian's report. Ms Davies told the Court that she had spoken to F for an hour but found, in keeping with his past behaviour, F was focussed on historical issues.

33. Z's representatives issued a C2 application on 9th February 2022 for an urgent interim hearing to consider varying Z's contact with F during the hearing in line with the child's wishes and as proposed by the Guardian. On 15th February 2022 there was a video call between Z, the guardian and Z's solicitor when the latter two explained to Z what would be happening at the court hearing the following day. Z had told them that F had talked to her about court on Friday 11th February and Saturday 12th February had had asked why she did not want to go on holiday and had told her that he wanted an extra week with her in the school holidays. Again Z repeated that she liked the arrangements as they were. Z said that when F had collected her for Christmas for a 6 day stay from the 28th December 2021 (after the guardian's report had been filed) he had spoken to her *"about court"* for three days (half her holiday with him) and had asked her *"why did you say this?"* in reference to what Z had told her guardian as recorded in the report. Z said he calmed down over the week and had said *"it wasn't too bad but he did go on."*

34. In respect of the Spring Holidays Z made the entirely sensible and reasonable suggestion that she would like to be picked up on Friday after school and then dropped back to her mother's by three o'clock on the Wednesday afternoon and then stay at her Auntie X's for the two days of the court hearing before coming back to her mother's as she does not want to talk about the court hearing and said after that she would rather come home. Then, tellingly, Z corrected herself saying that both the parent's houses are her homes, adding *"I don't want Dad to talk about the hearing"*. Z repeated that she wanted the arrangements for the April holidays to change and for F to stop talking *"about court".* Z had asked if she could ask (the guardian) a question without F knowing; what would happen to F if he spoke to her about court? It was explained to Z that the Court will take any breach of any Order or undertaking very seriously. When the Guardian asked Z if she had a message for the

Judge, she said *"I don't want my dad to talk about the case or the court reports to me now and not ever".* Both her guardian and her solicitor were satisfied that Z was distressed and that her distress is a direct consequence of F's behavior and not her mother's conduct, despite all that F has repeatedly asserted.

35. The case came before me on 16th February 2022 when I was told about the events as set out above. Not only were Z's requests entirely reasonable they favoured neither parent and were a legitimate reflection of her wishes and feelings. I was particularly struck by the vehemence and clarity of her statement as reported, *"I don't want my dad to talk about the case or the court reports to me now and not ever."* I ordered that Z stay with her Auntie X during the hearing and then return home to her mother. By the order of 16th February 2022 F was forbidden to discuss the case with Z; that order was extended to M to ensure parity pending determination of their applications: but it must be noted that Z had not complained at all about her mother's conduct.

36. The next day, 17th February 2022, F made a formal complaint against Cafcass. This complaint is not an issue to be determined before this Court, but F no longer co-operated with the guardian appointed by the Court and so disengaged from the welfare analysis which the guardian was to prepare. The guardian sent an email to F on 8th March 2022 offering him five alternative appointments with her over two separate days; he did not respond. Ms Davies sent a further email on 14th March 2022 offering him four appointments with her over two separate days; she left a voicemail. F did not respond.

37. On 30th March 2022, the guardian spoke to M who raised her own concerns about Z's emotional presentation and her ability freely to express her wishes and feelings regarding spending time with F. M told the guardian that F had been going through Z's bag during contact which, as her mother told me in her oral evidence during the hearing, Z did not like, and as a result, Z had taken to leaving personal items or other things she did not want F to see at home or at school prior to spending time with him.

38. On the same day, during a video call between Z and her guardian, Ms Davies explained that the final hearing was approaching and reminded her that sometimes the guardian's recommendations are not in line with a child's expressed wishes and feelings and asked her how Z would feel if she went against her expressed wishes, Z had smiled and said, *"that's OK."* The guardian had explained that she would only be doing so if she thought it would be in Z's best interests. The guardian said she would catch up with Z following the hearing next week. The guardian did not tell Z that she was considering substantially reducing Z's time spent with her father because the guardian was concerned not to heighten Z's anxiety before staying with F nor tell Z anything that might cause F to put her under more pressure. Z had said that she felt okay that day but she had had the day off school because she has been unwell and now she feels slightly better and expected to go back to school.

39. Z had asked what would happen if F talked about court after the proceedings end. Her guardian told Z that she would need to tell someone and asked if would she feel comfortable telling someone? Z said she could tell her Mum. The guardian said it could be followed up with Court or Children's Services, and Ms Davies would speak to Z's solicitor. It is most

likely that Z was concerned about F repeating his past behaviour and would have been worried who would be responsible for stopping him; and who would be responsible for reporting anything F did contrary to the orders of the court in any event. It was notable that Z had then asked her guardian if she remembered Z telling her something (very minor) during a previous call about school and that Z had asked the guardian not to tell F because she preferred him not to know. Ms Davies told Z that these things were worrying because as Z grows up she will make her own independent choices but she feels she cannot talk to F about them. This had led to a conversation about the importance of having a happy and healthy relationship with F and the possible continued the intervention of Cafcass. This conversation between Z and her guardian as reported by Ms Davies demonstrates more than Z not being able to talk to F; it is evidence that she feels unable to share things with professionals freely and openly because of the ramifications for her if her father is informed of their content.

40. So serious were the guardian's and the child's solicitor's concerns about F's behaviour towards Z prior to the hearing when she was staying with him that they sought and were granted permission to delay the filing of their final position statement and the guardian's final recommendations and conclusions in respect of Z until after she was to go to stay with her aunt.

41. The hearing took place remotely by MS Teams and was recorded by HMCTS. The parties had agreed to a remote final hearing at the directions hearing in 2021 and there was no subsequent application by any party for a different format. This Court had previously determined that in the exceptional circumstances of the continuing global pandemic and the contiguous threat to public health and the parties having agreed that the case could be conducted by video and that the hearing was suitable for hearing remotely by means of MS Team, so that this hearing has been conducted remotely by MS Teams and it was recorded that HMCTS was responsible for ensuring an audio recording. The Court considered the suitability of a remote hearing in this case and determined it was in the interests of justice for this case to proceed remotely and that the balance between the Article 6 and Article 8 rights of each of the parties can be preserved by doing so.

Application to adjourn the hearing by F

42. Shortly prior to the hearing in 2022 F sent the court an email seeking to have the hearing adjourned to adduce what he described as up-dating "expert evidence" in respect of the incidence and prevalence of FGM in Guinea. F did not comply with the provisions and procedure as set out in Part 25 of the Family Procedure Rules (FPR) 2010, not least he did not provide a CV (or costs) in respect of the individual from whom he sought to adduce expert evidence. The rules of procedure apply equally to unrepresented parties, for, as has been observed elsewhere, to do otherwise would place represented parties at a disadvantage. The "expert", said by F to be a diplomat from Guinea holding a post in the United Kingdom, may have been able to give some authoritative evidence to the Court in respect of the Guinean Government's position and procedure in respect of FGM nationally but unless suitably qualified could not give any independent nor expert in respect of any specialist area of social and cultural conventions and/or practice specifically about FGM or the law in Guinea. The request to adjourn was not granted.

43. Even if I am wrong another more pressing reason not to adjourn was based on growing concerns about F and his ability to parent Z adequately and safely, and the increasing pressure being placed on the child herself by F which would have been exacerbated and increased by, and during, any adjournment. The guardian and Z's representatives opposed any adjournment based on the evidence that the incremental effect of F's conduct during contact with Z was resulting her being inhibited, and intimidated, if not effectively silenced, on subjects relating to her father and her experiences while in his care and that to adjourn at this stage would inevitably lead to F putting yet more pressure on this already over-burdened child. The issue of FGM had been dealt with comprehensively on a previous occasion and that judgment stands, it was the view of those representing Z, a view with which I must agree, that the predominant issue was now F's conduct and his behaviour as a parent.

44. Moreover, and while it is a repetition of what is set out above, the Court would have serious concerns about the continued stress, anxiety and the potential for further emotional harm to be faced by Z while in her father's care pending an adjourned hearing based on the evidence of his conduct over recent months. As recently as 16th February F had been adamant that Z should remain with him during the up-coming hearing despite the fact that he would have to attend court (albeit remotely) leaving Z on her own in another room in his home. Even if Z did want to be there, and she most certainly did not, F had no child-focussed alternatives in place for her care. She was to be left in a room on her own for most of the day or placed in an (unidentified) day centre amongst strangers rather than her father agreeing to her being safely with her own much-loved aunt, away from the court and the proceedings entirely.

The Evidence

45. In keeping with the Court's decision to allow the parents to respond to the guardian's evidence and make their submissions after those made on behalf of the guardian I shall deal with the evidence of Ms Davies first.

46. The analysis and recommendations of the guardian & FPR 2010 Rule 16.4 report of December 2021. I now turn to further consideration of the evidence before the court. The evidence of Ms Davies consisted of a report dated 21st December 2021, in which she recommended the continuation of the contact regime then in place. There was then a position statement filed late, on 6th April 2022 and with the Court's permission because of the guardian's concerns about Z being with F when it was due to be filed, shortly before hearing in which she substantially changed her recommendations to supervised contact only. Ms Davies then gave oral evidence in which she set out her reasons for her recommendations, which although not challenged to any extent by F during the hearing, he clearly does not accept. As the Court was acutely aware that F and M appear unrepresented and had had little notice of the change to the guardian's recommendations (albeit for reasons in respect of Z's welfare) a full precis of her evidence and further details for the reasons for her recommendations were ordered to be filed and served along with final written submissions on behalf of Z by 10:00 on the morning of 12th April 2022. This was to allow F and M to respond in writing by 21st April 2022 before the judgment was to be given by the Court on 3rd May 2022

47. In the report of December 2021 Z was described as a bright, friendly girl of ten, confident to speak to adults and she was able to correct the guardian if she had misunderstood what Z had told her. Naturally Z was reported as being excited about her transition to secondary school and the new opportunities that brings including using science lab equipment. Z said she would like to work as a scientist and an inventor. Z sounds like a delightful, intelligent and thoughtful young person, she has done well at her excellent primary school, for which she is to be congratulated.

48. As the guardian observed Z has been consistent in her wishes and feelings about contact with F over a period of more than three years and since she was eight and a half (as recorded the Cafcass guardian's report in October 2018). She ahs repeatedly said that she is content with the Child Arrangements Order (CAO) that has been in place since 2017 and has since said, again, that she would like the current arrangements to remain in place. Z's reasoning was impeccable (and consistent with the s7 Report filed in October 2021) when she said that, although F believed she spends more weekends with M, she herself feels that her weekends are split three ways between M, F and her friends. Even when in her mother's care at the weekends much of the time is spent with friends who Z knows from school and live locally. It is clear to the Court that F's grievances and his pursuit of fortnightly weekend staying contact have nothing to do with Z's feelings and the practicality her life and that he is focussed not on her best interests but on the grievances that he has nursed for years in respect of his desire for shared care.

49. Z told the guardian that she liked the arrangement with F on Tuesdays where she spends time with him after school until six o'clock, that she likes having dinner with him but being home in time to do her homework. Z told the guardian that she knew that on moving to secondary school she will be expected to undertake more homework and said she did not want overnight stays mid-week with F who lives too far away and she would be too tired and her week would be disrupted. At the time Z was not particularly enthusiastic about telephone contact and said she felt that her Sunday calls with F are *"nice",* and while she did not mind if there are going to be additional calls she is able to call him any time that she wants to and did not necessarily see the value of adding an additional day to the order. Z said that it was a priority for her summer arrangements with F to fall in the first two weeks of the break, her reasons were that she would like the rest of the holidays to spend time with friends and to prepare for secondary school. As the guardian said this was not an unreasonable request, and is meaningful to Z, and one which she, the guardian, would endorse.

50. Z told her guardian that she loves to travel and had recently been to France with her mother where she enjoyed the food and seeing the Eiffel Tower. Z had done a school project on Niagara Falls and would love to see them in Canada. As she should be, Z is aware of the FGMPO and the restrictions on her travelling with and she knows and the orders are in place to protect her. Z told the guardian that she would not like to travel to Guinea with F because of FGM, which she said most women and girls have there. Z did not believe F would perform mutilation, but knows that it is cultural, and said she would feel vulnerable there. Z asked her guardian and her solicitor, separately, about whether she would have to apply to the Court when she is 13 years old to go on holiday with F. Z said that she felt *"a bit"* of pressure from F about making an application and told them that he has spoken to

her about it. I keep in mind that a thoughtful and loyal child she is likely to play down her concerns about her father's treatment of her, particularly as she is aware that he would be told what she said to the guardian; and that she would bear the brunt of his displeasure should she say something he did not like; this latter concern increased in the next few months leading up to the hearing in April and following the completion of the guardian's rule 16.4 report in December 2021.

51. Z has been reported has having said clearly and in terms that she would not like to travel with F to any country as she worries about efficacy of the FGMPO anyway. Z has had direct experience of the FGMPO from when she has been on many holidays with her mother and said that she has only been stopped once on leaving the country and has been checked much more on her return, which, as she rightly observed, would have been too late if FGM had taken place. Z said that when she travelled to and from abroad once on Eurostar, no one checked in with her at all. These are pertinent observations and are in keeping the regrettable practice of checking inbound rather than outbound travellers. It is a matter that needs attention at a higher level and is not the subject of this judgment. The level of inconsistency Z has experienced with the FGMPO means that it alone cannot not offer her sufficient reassurance to wish to travel abroad with F.

52. The guardian referred to F persisting that he has never had an intention for Z to be subjected to FGM and said he only discussed with M when Z was a baby to say that FGM was prevalent in Guinea. The guardian referred to the 2017 judgement when I had found "*no objective evidence that supports [F]'s assertions that his family do not practice and disapprove of FGM*" and "w*hen looked within the context of the expert evidence of the almost universal practice of FGM in Guinea the risk to [Z] of FGM when in Guinea remains high."* And referred to the fact that the judgment highlighted the persistent themes of F showing poor insight into domestic abuse, the impact of denigrating M on Z and a lack of understanding into Z's free will. I pause to observe that there is no evidence that any of this has changed in the following years.

53. When, unprompted Z told the guardian, about spending time on holiday with F, about the events in 2020 when she was due to have an extended stay with F she described how she worried about it so much she it had made her ill. I find, as a matter of common sense, that it is clear the symptoms she was suffering, which included vomiting and stomach ache, were physical manifestations of the anxiety she was feeling about staying with her father. Far from displaying any concern, let alone sensitivity, F chose to increase the conflict and distress for Z by calling the police and London Ambulance Service. It had agreed been between the police and Z's parents that F would return the next day and take Z out for a few hours. It was the guardian's view, and it is with one which I agree, that in raising this at that time and in context of these proceedings Z demonstrated that her trust in F has not been restored. On any view, but particularly that of his own child, F failed to keep his word and did not return her, and from Z's point of view she had no choice but to stay with him for six days. There can be little wonder that the guardian has since observed this event undermined Z's trust in F, the lack of trust is based on an incident which is undisputed on the facts, and the effects of which, I find, remain with Z to date.

54. I consider it to be unsurprising that it led M to return the matter to Court and that at the time M did not want the 2017 CAO to continue the 2017. F's view is that he did nothing wrong, he had kept with him for the days allowed him by the court order, is simplistic and fails to take into account the effects of his actions on Z. It is a matter of fact, as reported by the guardian, and in his evidence to this Court that F has shown no remorse and little or no insight into the impact that this has had on Z. F has failed to recognise that he has effectively undermined his relationship with Z and her trust in him as her father, by his own action. Or that his behaviour towards Z has become of even greater concern during the currency of these proceedings.

55. Of even greater worry and concern to this Court, as it evidence that Z is being stifled and her freedom to express herself compromised, Z would not take part in any written direct work with her guardian, including writing a letter directly to me as the judge, asking, *"will my dad see it?"*. Z was aware that her conversations with her guardian was going to be shared with the Court and with F in the guardian's report. By way of explanation Z told her guardian that in the past when she had had participated in direct written work F had become cross or upset with what she had written. The guardian surmised that Z recognised that if something is handwritten or drawn by her she had no way of denying it if F then questioned her about it. Z said that F did not necessarily become angry but he does think he knows better than her and that he sometimes shouts. Z told the guardian that she does not like F saying her thoughts are influenced by M as she does not agree, and that while M does not talk about the court proceedings, F did so often.

56. F told the guardian and this Court that the purpose of his application to spend more time with Z, although it was against her wishes he did not accept they were her wishes as Z was being influenced by M and that he wanted to influence and participate in Z's cultural and religious upbringing. It is the Court's view a more apposite view in respect of F's desired participation in Z's upbringing would be that he wishes to have greater control over it and Z herself. Z has described herself to the guardian as half-Christian and half-Muslim. Although Z attends a Catholic primary school she said she would consider her Christian beliefs to be more Methodist, demonstrating her that she has thought carefully about her religion and religious observance. Z has some schoolmates who are also Muslim but the school has only provided a limited religious education and as such, Z said she has learnt more about the Qur'an from F, but that, as Z told the guardian, she finds it upsetting when F has told her that Christianity is the wrong faith.

57. This is latter something F denies, but Z has said, and it is not disputed, that F had attended her primary school only once and had since declined to come back again to attend any events because it is a Catholic school. I find it more likely than not that F had told Z that Christianity is the wrong faith, but even if he has not the message that he is giving her by his actions are that he is at the very least antipathetic, if not antagonistic, towards the Christian faith because Z has also told her guardian that she was worried that her own ties to Christianity are upsetting for F. The guardian's view that this demonstrated Z's anxiety around pleasing F, who, in return has not demonstrated that he recognised that Z has dual religious heritage and that his words and actions impact her. I agree and consider it is one aspect of his overriding conviction that he is in the right, while in fact he is again behaving in exactly the way he has accused M of behaving.

58. Z told the guardian she was learning some Fulah (her Guinean language) with F. Z said it was hard to learn as it is only spoken but she does enjoy it and thinks the language is pretty. Z also said that she did not like it when F had put her on the phone with paternal relatives who only speak Fulah as she does not know enough on her own but she is fine with the calls if F stays on the call with her. What Z told the guardian disputes and contradicts F's version of events in respect of learning Fulah, he had told Z she said, *"if I had you more when you were young you would speak Fulah and French",* but, as Z told the guardian F had not tried to teach her when she was younger because he was too focussed on the court proceedings.

59. The guardian considered that in her describing of her parents, Z had provided and demonstrated balance. Z had been critical of F in terms of how he spoke about religion, the proceedings and her mother, but she had been positive about the time she spent with F. Z said that she did not like it when M deliberately embarrasses her and had she gave some age-appropriate examples, such as M giving her a kiss outside school. She enjoys spending time with her mother and her maternal aunt (Auntie X) and she likes that M does not talk about Court. In this analysis I consider that the guardian has failed sufficiently to reflect an imbalance in that Z is able to talk about her mother much more freely, and crucially does not feel the need to propitiate her mother's feelings or tailor her words to avoid later conflict with M. In short it is evidence that Z's relationship with her mother is healthier and more child focussed.

60. F sought to dictate to Z what kind of flu vaccine she should have on what he claimed are religious grounds and so doing interfered with Z's choice to have the kind of flu vaccine (nasal or by injection) she herself would have preferred. In contrast, I observe, M, in dereference to, and in recognition of, Z's Islamic heritage has ensured that M and Z exclude pork from their diets and eat Halal foodstuffs. The view F chose to impose on Z was that the nasal flu vaccine was against Islam but as the guardian reported Muslim scholars and authorities themselves are divided on the issue.

61. The guardian referred the court to the statement of Muslim Council of Britain[1] on the use of vaccines containing pork gelatine: "*that vaccines containing porcine are not permitted in Islam unless lives are at risk and there are no alternatives. Our view is not that Muslims should automatically refuse such treatment. Health is paramount, anyone concerned about the use of gelatine in vaccines must consult a medical practitioner and make an informed decision*." Their recommendation is to avoid vaccines containing gelatine if there are alternatives but, as the guardian said, *"they also caution that health is paramount."* The guardian also referred to the fact that British Fatwa Council, quoted by NHS West London Clinical Commissioning Groups[2], which is clear that the nasal flu vaccine is permissible in Islam[3]. Public Health England have advised "*for healthy children, there is no equivalent*

[1]Muslim Council of Britain (2019) Position on Flu Vaccines https://mcb.org.uk/mcb-updates/position-on-flu-vaccines/

[2]West London Clinical Commissioning Groups (2020) Flu nasal vaccine is permissible for children says British Fatwa Council https://www.westlondonccg.nhs.uk/news-publications-events/news/flu-nasal-vaccine-permissible-children-says-british-fatwa-council

[3] Dr Musharraf Hussain Al-Azhari (2020) Fatwa on Flu vaccine containing Porcine gelatine https://www.britishfatwacouncil.org/2020/10/fatwa-on-flu-vaccine-containing-porcine-gelatine/

vaccine. There are injectable flu vaccines that do not contain pork gelatine, but these are expected to be less effective than Fluenz® Tetra in children. They may also do less to reduce the spread of flu in the community."[4]

62. Contrary to advice if the learned religious authorities and public health bodies F's view is that he thinks that the injectable vaccine is an equivalent of the nasal flu vaccine and as such, he believes that Z should have the vaccine. More than that F's stated view was that as Z will have to have pain and injections in life and she needs to get over it. I find this to be another example of his need to dictate what Z does taking priority over Z's welfare. In respect of Z's individuality as a person of dual heritage Z is entitled to feel differently on this (and many other) issues from her father. In taking issue over the question and in attempting to dictate what she does using and in using his religion as part of his rationale F has chosen deliberately to ignore Z's wishes and feelings and so to over-ride her ability to form her own view as a person of dual heritage.

63. I find that F's stance and conduct in respect of this issue is evidence of a repeated pattern of behaviour in respect of ignoring, denying and over-riding Z's wishes and imposing his own; it is controlling and not, in any sense of the word, nurturing. It is consistent with his previous behaviour in respect of Z's schooling. Z's previous guardian noted in October 2018 at paragraph 22, *"[F's] concern about [Z's] Muslim identity being eroded and [that] his objections to her attending a faith school were not taken account of, which have propelled his determination to exert whatever influence he can on limiting her becoming further immersed in her Christian identity. Regrettably, his actions - borne partly from his frustration - in terms of his objections to [Z's] taking part in prayers and religious events in her new Catholic school, have served to override and disregard the child's wishes, and he refuses to accept [Z's] views as her own genuinely held views, devoid of her mother's influence. As such, [Z] feels unable to discuss these matters with her father, anxious about provoking an angry response [my emphasis], as she knows it is a sensitive issue."*

64. Z had had the vaccination by injection last year but has been clear that she did not want to have another injection, the guardian recommended that M took Z to her GP who can discuss both vaccines with her permitting Z to have the opportunity to ask any questions. It was the guardian's view, one with which I concur that Z would be able to make her own informed decisions and that Z has the intelligence, competency and capacity for understanding to that decision regarding this matter. This Z has done but she has chosen not told the guardian what happened as she did not want her decision to be disclosed to F; and this is not the only instance of Z not wanting to tell her father, or have him find out, about her life because of his reaction and behaviour towards her when he disapproves. As F's disapproval has been a constant theme in Z's relationship with him she is more likely than not to choose to tell him less and less as she grows older, thus he will continued to alienate her. While of itself the most serious question or issue un respect of medical treatment it is of concern as illustrative of F's belligerent approach to decisions concerning Z more generally and, in particular of his interference with Z's rights in respect of what

[4] Public Health England (2020) Vaccines and porcine gelatine. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/933552/Vaccines_porcine_gelatine_2020_A4.pdf

happens to her body. In the context of FGM I find F's conduct is to be considered an added risk marker and that it is very likely to have caused Z alarm and anxiety.

65. In December 2021, after setting out her reasons in her report the guardian recommended the 2017 CAO remain in place; Z staying with her father every third weekend and seeing him after school on Tuesdays, along with Sunday phone calls, saying, *"there is no recommendation to reduce the time that they spend together, despite the concerns around control that he demonstrates…"* Along with Z's wishes the guardian recommended that Z spend first two weeks of summer holidays with F. Z would continue to provide his passport to a solicitor when Z is under his care. The guardian recommended the FGMPO be varied to remove the option for her to apply to travel with F when she is thirteen to reflect Z's wishes.

66. The guardian recommended a 91(14) Order in respect of both parents, which would limit their capacity to initiate further proceedings, she said, *"It is my view that a 91(14) Order would demonstrate to [Z]that she is being listened to. [Z] has been consistent since 2018 that she likes the arrangements that are in place with [F]. [Z] has endured being the centre of Court proceedings from her parents' separation in 2013. [Z] has been forthcoming to say that she does not like the Court proceedings and further, that they have been a focus of her childhood."* She recommended that proceedings end and that Z no longer have support of a Cafcass guardian. The guardian recorded that she had regard in particular to the welfare checklist as required by Rule 16.20/16.33 FPR 2010 and, I repeat, I have had in mind the welfare checklist throughout.

67. In her analysis the guardian made reference to Z's expressed wish not to travel with F; to Z's description of F having discussed the Court proceedings with her to the detriment their time spent together; to Z's description of F telling her that she is influenced by M so demonstrating that she feels undermined and feels that F does not feel listen to her; and, to the thread running through all the Cafcass reports of Z wanting to please other people (although it must be noted that the references to Z trying to please are overwhelmingly in respect of F) so that the guardian's was, *"mindful that [Z] may be somewhat cautious about what she says due to being aware her father will read this report. Regardless, however, she has been confident to express that she does not want to travel with her father to Guinea or any other country."*

68. As the guardian observed all independent sources in respect of FGM in Guinea are that the situation remains unchanged with a high prevalence of FGM since the time the FGMPO was granted in 2017 and considered that Z is no less at risk in Guinea now as she was then; a risk that is unlikely to have diminished when she turns thirteen. It was in December and remains the guardian's view that the provision that Z may apply to go on holiday with F from the age of thirteen is unhelpful to her, causes her stress and has meant that F has exerted pressure on her to apply to the court. I find that, albeit unintentionally, that provision in the order has become a tool used by F as a means of attempting to circumvent the FGMPO and has been of service to him alone.

69. Z had told the guardian that there are numerous of countries she would want to travel to before she would be interested in going to Guinea. The guardian considered that Z could

continue to maintain contact with her paternal family virtually, and that F could continue to teach her about Islam, Fulah and French and about Guinea. M has supported Z to celebrate Eid with F whenever possible and respects Z's Islamic heritage by keeping Halal. In addition Z has spent time with an (unrelated) Islamic Guinean friend of M. The guardian did not consider that Z's cultural identity and dual heritage was being ignored. I find that M has been at pains to support Z in respect of her dual heritage in contrast to F who has disparaged and shown little respect for Z's maternal heritage and for M herself.

70. Regretfully for Z, since her guardian reported in December 2021, not only has F has once again retreated from the acknowledgement and acceptance of responsibility for his actions reported by Ms Roddy in 2019 he has continued to denigrate M, and, in doing so, F has also failed to adhere to his agreement with the court (as set out in the order 9th April 2019) not to denigrate M or to discuss court proceedings with Z. In addition there is evidence before this Court that since March 2019 F has repeatedly demonstrated that he is either unable or unwilling, or both, to listen to Z's wishes and feelings.

71. Guardian's Further Evidence & Final Recommendations of 5th April 2022. On the 5th April 2022 a position statement was filed setting out the substantially revised recommendations, her reasons for them and the events which had taken place since the guardian's report had been filed in December 2021. This document had been filed late with the Court's permission because the guardian and those representing Z were concerned about the child's safety and well-being and what might occur when she was staying with F prior to the hearing on 7th April 2022 if Z or F were aware of the guardian's recommendations at that time. Those events were given in more detail in the oral evidence of the guardian who told the Court how Z had become more reticent and reluctant to speak openly to her guardian about F and her contact with him after the earlier report was filed in December. It was the guardian's view that this was a result of F challenging Z and which had made Z uncomfortable about what she had previously told Ms Davies. It was also the guardian's view and her evidence that Z had become much more mindful and vigilant in her choice of language and there was marked difference in how much more relaxed Z was when talking about M when compared with discussing anything to do with F.

72. The guardian recommended that all contact between Z and F should be supervised. Ms Davies considered that what had happened in the months between December and April, particularly F's *"stubborn opposition"* to Z's expressed wishes, including the proposed change in care arrangements for Z during the final hearing (leading to the hearing in February 2022) was detrimental to Z and would cause her significant harm if allowed to continue. In the guardian's view the refusal of F to agreed to changes in the Spring Holiday in accordance with Z's wishes was, *"significant in welfare terms and strongly indicative of the father's inability to see [Z] as an individual and accept her wishes and feelings as her own. He hadn't thought about the two-day hearing and what it may mean and signify for Z to have to be in his home for the duration of the final hearing."* F's response also raised concerns on the part of both the Court and the child's about his understanding of his role as the father of a growing child, but his disengagement with the guardian since the beginning of February 2022 meant that Ms Davies was unable to explore this any further with him. It was the guardian's observation that, *"[Z] has anxiety around pleasing [F],*

however, in return [F] has not demonstrated that he recognises that [Z] has dual heritage and how his words and actions impact her."

73. It was the guardian view, and one with which I agree, that she had triggered F's disengagement when she did not align herself with his views, and that this, in turn, caused the guardian increasing concern that F would in the future do the same with any professional charged with Z's welfare who does not adopt his view. I find that this is likely given that F had then gone further by making a complaint against the guardian which is strongly suggestive, if not indicative of his an inability to accept any challenge or opposition to his own views in respect of Z. Further evidence of his intransigence can be seen in his short-lived acceptance of the advice given on parenting courses and by previous guardians. I find that the preponderance of the evidence before the Court points to the fact that he has never accepted the findings of domestic abuse nor fully acknowledged or accepted the effects of his abuse of M on Z.

74. In her evidence the guardian told the Court that when she had asked Z what it was she was worried about happening if she were to stay with F during the final hearing or the week after it, Z's response had been *"anything can happen".* Unsurprisingly, this comment by Z caused the guardian further concern about the child's safety and well-being. The guardian concluded that Z herself was being increasingly invalidated by her father, that the longer this happened the more damaging this would be for Z. Ms Davies, echoing the observations of previous Cafcass Officers, said that there is likely to come a point when Z will say, what is the point of going to contact? And that a time would come when Z can validly say she was not going to go. I pause here to refer to the oral evidence given by M, which I accept, that Z had already asked her mother several times at what age she would be able to say that she did not want to go to contact with F.

75. The guardian's evidence was that her recommendation for a reduction and the introduction of supervision of Z's time with F was to allow Z the necessary time and space to think about what she wants, who she is and to grow up without any pressures from F; and, that this needed to happen because F is unable to see that his behaviour has been abusive and coercive and that he lacks the focus (that he should have a parent) on Z's welfare and well-being. In the guardian's view F is unable to see Z as someone independent of himself. Ms Davies recommended supervision as the only way that the weight and pressure put on Z by F could be taken away. A professional contact supervisor would be able to intervene and so release Z from having to exercise that vigilance herself. This vigilance was illustrated by M in her evidence when she described Z as pretending to be someone else when she is with F, and of Z needing to be constantly mindful of the repercussions from F. M said, more in sorrow than in anger, that she does not believe that F gets to see the real Z who never stops talking when with her mother, and yet, because she is so guarded with the information she chooses to give F, she is not her normal self when she is with him. It is notable that the evidence of M is supported by the examples of Z choosing not to tell the guardian about things that might have repercussions for her later with her father such as about the flu vaccine and some other minor matters to do with school.

76. The guardian shares M's view that there is a significant amount of control and coercion from F which is having an impact on Z and both the guardian and M agree that only

supervision and a reduction in contact can provide a safe solution. In her evidence M aid that sometimes after phone calls with F, Z "*presents as exasperated, commenting on how her father tells her she should react to certain situations, directing her on what she should be doing, how she should be living her life, as if giving her a moral lesson. On one occasion, she noted [Z] herself had said nothing for a full 40 minutes during a call, which can sometimes be just a one-way conversation."*

77. At the time of her December report the guardian had considered Z's wishes and feelings to be consistent and clear and following on from the s7 (CA 1989) report dated 4th October 2021, but Ms Davies had become increasingly concerned by evidence and pressure placed on Z by F and in evidence gave as examples the pressure put on Z around holidays when F constantly wanted to increase time he spent with her, dismissing what she herself was saying. In addition pressure being put on Z by F to spend more time with him there was evidence that F has sought to influence and control what Z has said to the guardian about him and her feelings about him: as the guardian said Z had, *"demonstrated that she does not have the freedom to share her experiences/wishes, feeling she has had to apologise to [F] for any views she expresses that run counter to his own."*

78. F's later disengagement from Cafcass, and his complaint about the guardian (which was not upheld when investigated by Cafcass) contributed to the guardian's concerns that F was once again choosing to focus on historic issues and that his written statements indicated that he is particularly focussed on his complaints about M. This latter is a matter of documented fact, for in respect of the guardian's observation in respect of F's attempts to re-open past issues, on 5th May 2022, two days prior to this hearing, F had sought to file a letter dated from May 2007 written by M which had no relevance at all to the applications before this Court. His final statement made repeated references to M (as M accurately told the court that there were more than 80 references to her in his last statement) and nothing of any substance in respect of Z and her wishes and feelings.

79. The way F had conducted himself and presented his case between December 2021 and April 2022, and the obvious and increased reluctance of Z to talk about her father coupled with Z's reluctance to engage in any direct work had led the guardian to re-examined the history of the case and to the conclusion that F responses to more the recent events had been, *"entirely consistent with [F's] past behaviour, albeit escalating, as evidenced by him going through Z's bag, which he accepted he had done, as Z becomes more independent."* The guardian submitted that Z *"is at risk of significant emotional harm should she continue to be subjected and exposed to her father's unrelenting influence."*

80. In giving her reasons for departing from Z's expressed wishes and feelings that the contact regime should remain the same and as Z had not asked for a reduction in contact or for it to be supervised the guardian submitted that it was her conclusion that Z *"has not had the opportunity to fully and freely share her wishes and feelings."* The guardian's view was that Z had taken *"the path of least resistance"* when she said that contact should remain the same, as she knew that to express a wish for less contact would upset her father and that he would react adversely during her time with him. Z has said to the guardian and her solicitor that she has felt *'a bit'* of pressure around going on holiday with F, but as the

guardian observed, Z, *"has to answer to [F] for anything that she says to the guardian, and as such she is very guarded."*

81. It was the guardian's view that Z is loyal to, and protective of, F as she listens to his concerns and is a support for him, but M has said that it is only about her father that Z feels the need to demonstrate this level of empathy. It is the Court's conclusion that F abuses Z's care for him and loyalty to him as her father by behaving inappropriately and continuing to discuss the proceedings with her, even after he has been told and ordered not to do so. to try to gain her support in his continuous conflict with M. His conduct amounts to abusive emotional manipulation and it is clear from what Z has been able to say that she has misgivings about the contact and the arrangements; for example the Court was told that in contrast to her previous enthusiasm about travelling to Bournemouth with him she now raises concerns about having to share a room with F and how to deal with it. Z's getting older and F's recent behaviour demonstrates that as he is unable to recognise that as an older child Z not only should she voice her own opinion but also that this will only increase with her age, based on the evidence before me, F is most unlikely be able to recognise, let alone appropriately nurture, the growing need for independence in an adolescent. It was the evidence of the guardian that she has concluded from her, *"discussions with [M]…her statements, and her [the guardian's] own discussions, [Z] is anxious around the spending time arrangements, however, she is not willing or able to freely share her concerns with the guardian for fear of upsetting her father."* I find that Z has been obstructed, deliberately, by F in her ability to express freely to the guardian, and through the guardian to the Court, what it is she would really prefer in terms of future contact and that the obstruction amounts to emotional abuse and has caused Z harm.

82. It is the Court's considered view that the guardian cannot be faulted for having has substantial concerns should the current CAO remain in place; as she said, *"[F] does not accept that his past behaviour was abusive; he strives to overturn and challenge previous findings of domestic abuse, and thereby shows a lack of insight into his own behaviour and its impact on [Z]."* It was the guardian's view that F lacks, *"child focus [as] was apparent in his refusal to change the arrangements for the Easter holidays, despite not having a child focused alternative plan for the care arrangements for [Z] during the hearing".* Indeed even when pressed by me when giving evidence F was unable to describe what it would have felt like for Z had the Court acceded to his demand that she remain at home with him during a remote hearing. Further, and most worryingly, F has not acted appropriately or in a child-centred way when Z is ill, not only in 2020 when she was physically sick at the prospect of contact with him over a longer period, but more recently when he insisted that he collect her for contact when she was still testing positive for coronavirus and did not feel well. In both instances F chose to force contact to go ahead putting his determination that Z should spend time with him ahead of the child's comfort and well-being and so demonstrating, I find, his preoccupation with his own needs, including his need to dominate and control, over the welfare of his child.

83. The guardian is rightly concerned that the burden for policing the order forbidding F to discuss the proceedings or court with Z would fall on the child herself unless contact is professionally supervised. The Court was told by the guardian that as recently as 30th March 2022 Z had asked her, "*what happens if Dad talks about court after the proceedings?"* The

guardian's said that Z must be aware of, *"the fact is that unless she raises the alarm, nothing will happen. This wrongly places a heavy emotional burden on Z."* The evidence before the Court is that Z would be very unlikely to raise concerns about her father with professionals, at school or her mother because of the trouble it will cause with him for Z herself. In any case it is not her responsibility to do so.

84. It is the guardian's conclusion is that if the time spent with F is simply reduced but unsupervised, the same issues will remain and F will continue to pressurise Z about spending more time with him and what he may have been told Z said about him to others. There is, I find, no alterative conclusion to draw. F has continually repeated the same pattern, ignoring what Z has said, blaming M, denigrating and vilifying M and seeking to redress and re-open decisions made by the courts over a period of many years, nothing in the evidence before the Court suggests that F would ever give Z the freedom to come to her own conclusions or make her own decisions. It is the guardian's view that supervision is necessary to give Z the time and space to consider her own wishes and feelings.

85. The guardian considers that F's continuous, and continuing, failure to accept Z's views as her own, risks damaging their relationship through his invalidation of her, leading to a strong likelihood that, as she gets older, their relationship would break down and Z will choose not to see him, whatever the current court order. This concern, as can be seen above, was trailed by previous guardians. It is significant, in the guardian's view, that while Z has consistently said that she is happy with the time she spends with F to remain the same, she has never expressed any wish to spend more time with him, and the present guardian has concluded that, *"this is Z's way of taking the path of least resistance, averting any exploration of her wishes and feelings (which could lead to offending her father), and distancing herself from conflict and challenge in an attempt to avoid any confrontation with her father."* Given F's conduct and the unrelenting pressure he has applied on Z, along with his repeated invalidation of her views as those of Z herself, I find that the guardian could not have safely reached any other conclusion.

86. The guardian now recommends that 2017 CAO is discharged to be replaced with an order that Z has her time with F supervised at a contact centre. Such a contact centre has been identified.

87. As the guardian points out, Z will be moving to secondary school in September 2022 and as such her schedule as yet is not known, but the lack of past co-operation or a willingness to be flexible on the part of F is indicative of a need for a comprehensive and determinative court order; essential as there is to be a s91(14) CA 1989 order. It's the guardian's view that Z should avoid social engagements on Tuesdays, which is the current day for after school contact and that, in any event contact should take place on a weekday and after school. The guardian recommends that arrangements should continue throughout the year with no breaks during school holidays, unless when Z is away or abroad on holiday, is unwell, has a school trip or if contact falls on Christmas Day. To eliminate further conflict when this occurs arrangements will not be made up by an additional day. There can be no doubt that there is a need for a comprehensive court order which recognises the need for Z to have her own time as well as the need for her to maintain a relationship with F.

88. The guardian recommends that the FGMPO is varied only to the extent that it reflects Z's wish not to have an option to travel abroad with F when she is 13 years old or before the order expires in 2028. The guardian considers it to be the risks identified remain and that protection is needed in addition it will provide Z with the reassurance she needs.

89. The guardian recommends a section 91(14) Order be made in respect of the F until Z is 14. While she had initially considered whether a section 91(14) order should continue until Z is 16 the fact that is contact to be supervised should significantly protect Z from the pressure. I shall consider this further below.

The Parents' Evidence

90. F's evidence. Much of F's written evidence consisted of what can only be described as a diatribe against M or his demands to reopen issues already determined by this or other Family Courts, as a consequence it had was of limited assistance to the Court in determining the issues before me relating to Z and her welfare. While I accept and acknowledge that he feels aggrieved and have heard his complaints he has been side-lined, his inability or unwillingness to accept the previous fundings and decisions made by the Court led not only to his failure to address the live issues but also, and more pertinently, have served to undermine his relationship with his daughter and to have caused her hurt, pain, distress and emotional harm. In an effort to place the blame for what his daughter says about contact and about him on M F has repeatedly ignored or overridden Z's wishes and feelings, has undermined her growing autonomy and freedom to express herself, thus damaging Z's relationship with him and to her having lost her trust in him.

91. F's evidence must be considered in the context of the evidence as a whole including the fact that he has been given assistance and support over the many years in which the proceedings concerning Z have come before the Family Court. F has been offered counsel by three experienced Cafcass guardians, he has attended a domestic abuse programme, he has attended two courses on parenting, but they have had limited effect as there has been a continuous and repeated pattern of his briefly appearing to acknowledge deficiencies in his parenting and accepting the findings of the courts only to return to the position that he had taken up at the outset of the CA 1989 and FLA 1996 proceedings in 2013. As can be seen from the Cafcass reports F has also continuously discussed the proceedings with Z and disparaged, insulted and denigrated M in his evidence and to Z. There is no evidence from either F himself or elsewhere that his case and position has changed at all, indeed it seems to have become more entrenched.

92. F's oral evidence served only to underline the fact that he did not acknowledge or begin to accept that Z is struggling emotionally in her relationship with him and feels undermined and vulnerable in respect of F even when not with him. F demonstrated that he was unable to put himself in Z's place (something she recognised herself); he had not even considered the discomfort and distress she may have felt had the Court acceded to his wishes and left him at his home during the hearing against her own wishes. Instead of taking the opportunity demonstrate to the Court his understanding and care for his child he again insisted that what she was saying should be ignored despite the fact that what she had asked for was sensible and favoured neither parent. Z should have been praised for her approach

and not again been made the subject of his disapproval. In his oral evidence F finally acknowledged it would not have been pleasant for Z but he was unable to explain why he had resisted her request to stay elsewhere. I consider that the most likely explanation is that that the answer lies in his own pride, his need to be in control and his determination to vilify M.

93. In respect of Z, F's oral evidence confirmed the guardian's view that he was unable or unwilling to recognise that Z is not to be seen by him only as his child but as separate individual, who is growing into a young person nor that Z has a increasing need to be listened to, that her wishes and feelings were her own and not to be callously overridden and that her privacy as an adolescent girl was to be respected without unnecessary intrusion. In respect of the latter, when F was asked about going through her bag he was markedly stubborn in being unable to accept that going through her bag and belongings amounted to an unnecessary intrusion into her privacy. Z is now 11 and pubescent, it is easy to imagine that there are items in her bag that she may not wish F to be examining or even see, but he showed no recognition at all of that fact nor to accept that he would have to step back as she grew older. In fact there can be no need at all for F to go through her bag when she visits on a Tuesday after school but he was adamant and refused to accept this in evidence saying that it was his right and duty as a parent to do so.

94. In respect of his application to discharge the FGMPO it was clear from his evidence that F's principal concern and primary focus was on the difficulties and inconvenience he encounters when returning to the jurisdiction because of it's terms, he was dismissive of the reassurance it offers Z. F's complaints centred on what he call an infringement of his freedom of movement and which included, he said, when he had been *"detained"* at passport control, which he told me he found humiliating. F's concerns were wholly centred on himself and the slight to his *amour propre* and he had little or nothing to say about Z's welfare; he was unable to see beyond himself.

95. In his oral evidence F was dismissive of all that Z was reported to have said, and when asked about is only response was that she had been put up to it by M.. Most of F's consisted of complaints about the way he was mistreated and how he had been *"side-lined".* By way of explanation F did tell me that he was embarrassed in front of his family in Guinea because other children in the extended family had been to visit from overseas. It is very likely that this embarrassment has contributed to F's determination to have the restrictions on Z's travelling to Guinea lifted, for, except in the a general way, he offered no evidence or explanation for why he was seeking to have Z go to Guinea against her wishes. F proffered no evidence that different from that which he had put forward in 2017; there was no evidence of additional safeguards or from his family. Moreover he gave no evidence to support his claims of being side-lined, all his previous applications had been heard and fully considered by the court, in reality his complaints are based on the fact that he does not accept the courts' decisions. In particular he cannot accept that Z continues to live with her mother most of the time. F sought to rely on his continued and oft repeated complaint that Z says what she reported as saying under her mother's malign influence. Overall, as in his written evidence, F's oral evidence had little to do with Z directly, indeed, he said to me *"of course I know better than her"*. F said "*I believe much she is so scared of her mother…"* and later, *"I believe [Z] is protecting [M]…"* There is no evidence to support

his case in respect of M, if Z can be said to be is protecting anyone it is F alone, and, as I have already observed, he is not her responsibility.

96. Over almost nine years of court proceedings F has evinced little, if any, change in his understanding of Z needs, unfortunately as Z has grown older F's deficiencies in his ability to parent her safely have become more apparent. When she was a younger child, judging from the earlier guardians' reports, Z was much more positive and less ambivalent about being with F and had tended to accept his version of events, but as Z has grown and developed her own views (not least about her mother) F has increasing put pressure on her to force her into taking his side. F has been dismissive and undermining both of M and the maternal half of Z's dual nationality. From what Z has told the guardian she has now baulked against his accusations that M is putting words in her mouth. When pressed in evidence F stopped short of saying that Z was lying, but that was the import and implicit in his evidence. There is no doubt F has always considers that he should play a much greater part and role in Z's life, but the evidence is that in fact he seeks to have the dominate role and is set upon achieving that domination as a parent by attempting to manipulate and control Z. F refused even to contemplate that his repeated assertions that Z is being manipulated by her mother and that she is not saying whet she herself believes while part of that manipulation is undermining of Z as a person. F insistence that Z should spend more time with him despite the fact she has said she does not want to, that he should take her overseas and to Guinea despite the fact she doesn't want to go and his rejection the assurance that the FGMPO provides Z are all evidence of his inability to put her welfare before his own needs and wishes. F's refused to accept that he is exerting any pressure on Z, he was not able even to accept the possibly that she may perceive his conduct in that way.

97. I accept that F finds the effects of the FGMPO embarrassing and inconvenient, but F has told the Court that it means he could not travel and restricted his ability to do so – his freedom of movement. This is plainly not the case. There are no restrictions on his travel, if he choses not to travel that is his choice alone. The conduct of officials at passport control on entry to the UK is not at issue here, nor is a matter on which this Court can adjudicate. The issue is whether or not the facts and evidence before the Court require the FGMPO to remain as ordered, be varied or be discharged. For reasons expanded on above and below the order will be varied only to discharge that part which allowed Z to apply to travel with F at the age of thirteen. This limited variation in the FGMPO is what Z herself wants and is in line with the guardian's recommendations.

98. F told the guardian he has no valid passports, which is in keeping with the evidence from M that F has been surrendering out-of-date passports to the solicitor during contact. The Court has no independent evidence as to whether or not F holds or has applied for valid UK or Guinean passports. If F has no valid passport and does not intend to apply for one, which is what he told to the Court, it is then by his own decision and inaction he will be unable to travel and there can be no inconvenience caused. F cannot have it both ways.

99. I find that, on the balance of probabilities, and despite F's protestations to the contrary he has continued to talk to Z about court, the proceedings and what she has told her guardian. The fact that in February 2022 Z's representatives had to make an application to the Court,

in the face of F's intransigence, as a direct result of Z's wish to avoid F's behaviour and the pressure he would have placed her under at the time of the court hearing is proof of his continuing to discuss the case with Z. At the time she said in striking terms, as quoted above, that she did not want her father to talk to her about court again, ever. When on 16th February 2022 the Court ordered F not to discuss the case with Z he continued to do so. Not only has he indicated to the guardian that he spoke to Z about the proceedings, Z herself was aware of the prohibition in the court order and on 30th March 2022 she asked her guardian what would happen after the proceedings if F continued to talk about court. From the anxiety expressed by Z it is proper to infer that F not only continued to talk about the proceedings to Z and but also that she thought he would be likely to do so in the future. It led Z to become aware that it was she who would have to, as her guardian put it, raise the alarm or nothing would happen to stop F. As the guardian rightly opined, "*This wrongly places a heavy emotional burden on Z,"* It is a burden that had been placed on Z by F. I have found on the evidence before me that Z would be unlikely to raise concerns about F with because ramifications for her and F's reactions should she complain.

100. F has, I find, repeatedly and continuously, over many years denigrated M to their daughter. This finding is congruent with his own evidence to the Court in respect of M. The denigration has extended to the religion and heritage that Z inherits from her mother. Z is very much aware of this and it has caused her upset and distress; she has had to adapt her behaviour when with her father to try to cope with him and contain his displeasure. It is not her responsibility to dealt with F in this way; it is the duty of the adults in her life and ultimately, if they cannot or will not do so, of the Court to protect her. The evidence of the guardians in particular is of a child who has become increasingly wary and over-attuned to F's moods. The denigration of M is without foundation. There is no objective evidence that M has responded in kind not that she has influenced what Z has said to others; that has been expressly considered and dismissed by professionals who have assessed this case over a period of years. Z does not feel the need to protect her mother, when she has expressed displeasure at F's claim that M influences what she is saying Z has not been seen as taking her mother side rather Z has been annoyed that her words are not being taken as her own. The denigration of one parent by another is well-recognised to be harmful to a child's emotional and psychological well-being. I find that the parent who has influenced and restricted what Z has said to other is F and not M.

101. From the outset of the proceedings it has been clear from the Cafcass guardians' reports that Z has been made fully aware of by F of his opinions of her mother. The earlier reports suggest that Z felt some resentment towards her mother which had been based on what F had told her, as can be seen in Ms Roddy's report in 2016. This report (Cf. paragraph 31) supports and corroborates what Z has later told her guardian about F not taking the opportunity early on to teach her any more than a few words in Fulah or about Guinea because of his preoccupation with the proceedings. As time has past and Z has grown older she has become more aware of what is happening so she has expressed resentment that F continues to insist that what she is saying is not reflecting her own views and wishes but has been inculcated by M.

102. In denying that he discusses the proceedings with Z F has lied to this Court. The Court can place no reliance on any assurances that he gives respect of his future conduct in that

regard. F has lied to Z herself when he said he would return her home and did not in 2020. F has systematically over a period of many years sought to undermine Z's relationship with her mother and in doing so has sought to interfere with, and influence, what Z felt able to say to others about him and the time spent with him. Z loves and feels loyal to both her parents, but I find that F has abused her loyalty and her trust by seeking, and succeeding, in inhibiting Z in saying whatever she may want to about him, his behaviour and her wishes and feelings about the time she has spent with F. This has resulted in Z being silenced to a significant degree, she declined to send a letter or message to the Court because she was so scared and worried by F's reaction had she done so. This increases the risk of harm to her as she has been inhibited at best, and actually stopped at worst, from contacting anyone for support, assistance or even just comfort while in his care. In controlling her ability to stay in contact with others when Z is with him and in his persistent and pernicious denigration of her mother F has caused emotional harm to Z. This has been exacerbated by him in the continuous denial and dismissal of Z's wishes and feelings and an indurate disregard for her health and well being which he has insisted must always take second place to what he sees as his "rights". This has been evidenced by F's insistence on compliance with the letter of court orders even when it was not likely to have been in Z's best interests. I find that F's behaviour has been contrary to Z's best interests and betrays a fundamental disregard for her welfare.

103. M's evidence. I found M's evidence to be both measured and reflective. M had considered and focused on how any reduction in contact with F may affect Z, such as causing Z to blame herself and feel sorry for F, but M said she felt there need for Z to be released from the pressure placed on her by F. She told me she had considered whether there should be any face-to-face contact at all and had discussed with a trusted friend but believed that it was in Z's best interests to see her father and have a continued relationship with him while she shares the guardian's view that only supervised contact can safely provide Z with this opportunity.

104. Without ever being overly emotional M spoke with deep feeling and compassion about how ill Z had become in 2020 at the prospect of spending more time with her father and how this event and F's rejection of her wishes had seriously eroded Z's trust in him. This evidence was corroborated by the guardian who reported Z's unsolicited reference to the incident. There was nothing in her evidence to suggest that she was seeking to shut F out of Z's life, nor in her recent conduct in respect of Z's contact with F, nonetheless M was concerned for Z's welfare should contact continue unsupervised. M told me that in fact Z had really wanted to write to the Court (part of the direct work suggested by her guardian) but had not done so because she knew her father would see what she had written. Both she and the guardian made reference to matters that Z has chosen to keep private from her father. This included her Catholic Confirmation. It was M's evidence, which I accept, that Z left personal things at home or took them out of her bag before she saw F because he always went through her bag.

105. I accept the evidence of M. She has been fully co-operative throughout the proceedings before this Court. Z clearly has a healthy, relaxed and loving relationship with her mother which has been observed by the guardian. M has had the maturity and self-possession to pay for and complete counselling to enable her to view F as Z's father now rather than

focusing on the abusive ex-husband of the past. During her oral evidence M was able to display and express empathy and some sympathy for F, saying that she felt he was unable to deal with his situation because, unlike herself, he had no one with whom to talk things through and saying that she thought similar therapy to hers would be of assistance. F reaction was to say was not possible, that he could not afford it and it was not available. When M said that there were charities and other sources F was dismissive saying that he knew the NHS, as he worked for them and that there would have to be a referral by a GP and there was none available. When asked by me if had considered it or made any enquiries or taken any steps to do so F was forced to say that he had not.

The Law.

106. My paramount consideration, as a matter of law, CA 1989 s1, is the welfare and best interests of Z. Z is a bright, intelligent and caring child of 11 who has been embroiled in proceedings concerning the time she spends with her parents since she was an infant. It is beyond the time when the burden of responsibility for her father's feelings and his side of the conflict is lifted from her shoulders. The decisions made by this court will be a reflection of that need as being in her best interests. While it is reasonable and to be encouraged that any child is mindful of the feelings and wellbeing of others including their parents the evidence before this Court is that F has consistently placed Z under pressure and seeking to manipulate, intimidate and control her; it is abusive and harmful parenting.

107. The Guardian has applied for a section 91(14) CA 1989 order against F until Z is 14 to protect her from the distress of any further proceedings on the basis that Z's time with F is supervised; were her time with F to remain unsupervised her guardian would recommend the order remain in place until Z is 16. The purpose of a s 91(14) is to limit F from issuing further applications which involves Z and M directly without first being permitted to do so by the Family Court based on clear evidence that he has addressed and acknowledged the impact his behaviour and conduct on Z and her mother.

108. To be clear, the guardian also recommends that all contact is supervised, that the FGMPO remains in place, and that the provision of the order of 6th November 2017 allowing Z to return the matter to court at 13 is discharged. As contact would be supervised there would be no longer be a requirement for F to surrender his passports during contact so that he would be able to retain them. F seeks the discharge of all orders, for Z to be able to travel to Guinea and for his contact with her to be extended. M supports the guardian's recommendations.

109. Contact or child arrangement orders. The legal framework governing applications for prohibited steps orders and child arrangements are set out in the (CA) 1989 as amended by the Children and Families Act 2014 and are familiar to all who work in the Family Court. There is no dispute as to the relevant law; the statutory framework is as provided for by the CA 1989. I am concerned with cross-applications in respect of child arrangements for Z in respect of the time she is to spend with F. By law my first and paramount concern is the welfare and best interest of Z and I have in mind, at all times, her welfare and the checklist in s1 CA 1989 which is to be applied in all cases concerning the arrangements for children under the Act.

110. One of the concerns in this case is F's refusal to listen to, or accept as a truthful reflection of her own view, the expressed wishes and feelings of Z. The events leading up to the trial are to a large extent accepted by F. In his oral evidence he accepted that Z had indeed wanted to stay with her aunt during the trial. He also accepted that she did not want any increase in contact.

111. The core of this case is Z and her welfare and it is necessary for the Court to consider whether she has been caused harm attributable to the behaviour or conduct of her father, in order to decided whether she would be safe in his care here in the UK and by extension overseas where he applies to take her. In reaching a decision about the evidence in respect of those two inter-related issues the Court must apply the civil standard of proof, which is the balance of probabilities and those principles as set out in the seminal case *Re B (Care Proceedings: Standard of Proof)* [2008] UKHL 35, [2008] 2 FLR 141, in the words of Baroness Hale, at [70] *"the standard of proof in finding the facts necessary to establish the threshold under s 31(2) or the welfare considerations in s 1 of the 1989 Act is the simple balance of probabilities, neither more nor less. Neither the seriousness of the allegation nor the seriousness of the consequences should make any difference to the standard of proof to be applied in determining the facts. The inherent probabilities are simply something to be taken into account, where relevant, in deciding where the truth lies."* The burden of proof lies with each party in respect of the respective findings sought. In deciding those matters in dispute I shall consider all the evidence put before the court and, to paraphrase Dame Elizabeth Butler- Sloss P (as she then was) in *Re T* [2004] EWCA (Civ) 558, a judge is to exercise an overview of the totality of the evidence and consider the wide canvas of evidence before it.

112. It is F's case that the reported wishes and feelings of Z and her version of events is as a result of the malign influence of her mother M. While this assertion is far from unusual in family cases this Court has to consider that there have been similar complaints made by F in the past but that there was then, and is now, no independent evidence to support his case. Moreover there is evidence to the contrary, in as much as it is now his conduct and his manipulation of Z that is an issue based not only on M's evidence but the accumulated evidence provided by three Cafcass Officers. While I keep in mind that F was not able not to challenge Z directly about what she has been reported as saying he did not dispute the fact that she had in fact said the words reported.

113. Restrictions on travel and FGMPO. In respect of the relevant law I repeat these passages from my first judgment. FGMPO came into force by virtue of s73 of the Serious Crime Act 2015 which introduced a new Schedule 2 to the FGMA 2003. "*The court was given power to make a FGMPO for the purpose of protecting a girl against the commission of a FGM offence (as defined by the FGMA 2003 s 1(1)) or protecting a girl against whom such an offence has been committed. The government has taken a proactive stance against FGM as can be seen from the 'Statement opposing female genital mutilation,' published by the Home Office, Department for Education, Department for International Development, Department of Health, Ministry of Justice, December 2016. It is a matter of public policy that girls are to be protected against FGM and those that that carry out such mutilation or fail to protect a girl will be guilty of an offence under s 72 of the Serious Crime Act 2015. In addition, under s5 B inserted by s74 of the Serious Crime Act 2015 it has been mandatory*

since July 2015 for persons working in regulated professions to notify the police if it appears FGM has been carried out on a girl under the age of 18."

114. A FGMPO was made by this Court in the exercise of its powers under the Act having had regard to all the circumstances as required by under Schedule 2 paragraph 1 (2) including the need to secure the health, safety and wellbeing of the girl to be protected. The reasons were set out in full in my judgment and have not changed. The protection provided by law includes s3A of the FGMA 2003 (as amended) which created the offence of failing to protect a girl from the risk of FGM. The offence occurs if a genital mutilation offence has taken place and the offender is a person responsible for the girl: F was and remains such a person as defined by s3A (3) (a) and (b) as he has parental responsibility for and contact with Z.

115. An FGMPO may be for a specified period or until varied or discharged (Schedule 2 paragraphs 1(6) and 6); it remains in place and as discussed below there is no evidence that supports its discharge.

116. In 2017, when the Court was fortunate in hearing from Dr Schroven, a Social Anthropologist who works at the internationally renowned Max Planck Institute for Social Anthropology in Halle-Saale, Germany and is an expert on Guinea in general and on ethnic relations in particular and who has lived and worked in Guinea and adjacent countries in West Africa. Her opinion on Z's case was based on her scientific research and field research in Guinea and sub-Saharan West Africa and of particular relevance now was the evidence she gave in respect of the situation in Guinea and West Africa in 2016 after the then recent Ebola outbreak; an epidemic which was used to mask the larger trend and increase in FGM. Girls were being subjected to FGM at an earlier age in more discrete settings, including in public health clinics. The increase in FGM in African countries where it is prevalent during the Covid-19 pandemic has received national and international publicity.[5] Part of the so-called medicalisation of FGM the mutilation by health professionals takes place under more sterile and less (medically) hazardous circumstances. The current research and the research current at the time of the previous judgement indicated that the vast majority of people of all age groups in Guinea agree that FGM should continue to be practiced.

117. In my previous judgement I said *"Dr Schroven pointed out Z's dual heritage may offer some protection, but it also adds to the complexity of her particular situation; added to which is the paucity or almost total lack of protective measures that could be put in place through the judicial system. FGM would be considered a family matter and not a matter for the police; a dispute (between F and the elders in his family for example) would be settled by mediation authorities of religion, village or local or family elders. As most people believe FGM should continue, this system would provide little or no protection for Z."* It is noteworthy and of relevance that F had refused to allow Dr Schroven to consider his family so that she was unable to give any opinion on his assertion that his own family

[5] https://www.theguardian.com/global-development/2021/jun/08/on-a-rampage-the-african-women-fighting-to-end-fgm

have taken an almost unique stance against FGM either within their particular community or Guinean society in general.

118. I found then, and there is now, no evidence that F's family as a whole were against the practice, except for his assertion which has to be considered as self-serving. I do not intend to rehearse or repeat the whole of my judgment in respect of the law regarding FGMPOs, and, as already observed the case, is no longer concerned with the practice of FGM alone but also with the increased risks posed to Z by his parenting.

119. In applying to have the FGMPO lifted and to take Z to Guinea (putting aside the salient fact that Z does not want to go there) F is effectively applying to take Z to what is a non-Hague Convention country against the background of previous findings made by the Court concerning the risk of female genital mutilation. For the sake of completeness I have reminded myself of the relevant case law in respect of temporary removal as set out in *AB v TB*, in the judgment Mr Justice Peter Jackson (as he then was) who cited *Re R (Prohibited Steps Order)* [2014] 1 FLR 643, CA to make the following observations in reference to the decision of the Court of Appeal in *Re R* where it where confirmed that: *"The overriding consideration for the Court in deciding whether to allow a parent to take a child to a non-Hague Convention country is whether the making of that order would be in the best interests of the child. Where (as in most cases) there is some risk of abduction and an obvious detriment to the child if that risk were to materialise, the Court has to be positively satisfied that the advantages to the child of visiting that country outweigh the risks to welfare of a failure to return."* In this case, as already stated, there is the additional risk of FGM about which this court has previously made findings.

120. The Court of Appeal set out that within a judgment for temporary removal to an non-Hague country a court must consider the issue of risk broken down into three inter-related elements, a) the magnitude of the risk of breach of the order if permission is given; b) the magnitude of the consequence of breach if it occurs; and c) the level of security that may be achieved by building in to the arrangements all of the available safeguards. In endeavouring to do so I have regard to the welfare checklist in s1(3) CA 1989 as the prism for the pertinent information in respect of the risks set out in a) and b) and of the safeguarding in c). In short, the overriding consideration in deciding about the temporary removal of a child to a non-Hague country is whether the order would be in the best interests of the child, in this case Z.

121. Along with the decisions in case law that I have been referred to; I have also reminded myself of decisions in this area and following the approach to be taken in Re R and to the references cautioning the court against a too ready dismissal of the risks involved in cases of this kind. Z's welfare is my paramount concern and as such I must consider with care the likelihood of any harm to Z, particularly as a consequence of a breach of the FGMPO in this case is so very serious, potentially life-threatening and irreversible.

122. It is not usual in cases such as these for there to be expert evidence regarding the laws of the foreign jurisdiction in question, setting out any prospective safeguards that may be available. I have in mind the words of the Court of Appeal in *Re R* in addition to those in the seminal judgement of Lord Justice Thorpe in *Re K (Removal from Jurisdiction:*

Practice) [1999] 2 FLR 1084),. "*The overriding consideration for the Court in deciding whether to allow a parent to take a child to a non-Hague Convention country is whether the making of that order would be in the best interests of the child. Where (as in most cases) there is some risk of abduction and an obvious detriment to the child if that risk were to materialise, the Court has to be positively satisfied that the advantages to the child of her visiting that country outweigh the risks to her welfare which the visit will entail. This will therefore routinely involve the Court in investigating what safeguards can be put in place to minimise the risk of retention and to secure the child's return if that transpires. Those safeguards should be capable of having a real and tangible effect in the jurisdiction in which they are to operate and be capable of being easily accessed by the UK-based parent. Although, in common with Black LJ in* ***Re M*****,** *we do not say that no application of this category can proceed in the absence of expert evidence, we consider that there is a need in most cases for the effectiveness of any suggested safeguard to be established by competent and complete expert evidence which deals specifically and in detail with that issue. If in doubt the Court should err on the side of caution and refuse to make the order. If the judge decides to proceed in the absence of expert evidence, then very clear reasons are required to justify such a course."*

123. The lack of any legal safeguards were considered in my first judgment and F has not sought to adduce any such evidence in support of his application to take Z to Guinea now. The witness he wanted to call was not an expert in Guinean law, and as already observed, this Court has made decisions and orders in respect of FGM and a decision that has not been appealed by F. There is no cogent and/or independent evidence that prevalence and risk of FGM in Guinea has been reduced at all since 2017.

124. Section 91(14) Children Act 1989 order. The guardian seeks a s91 (14) CA 1989 order; the section 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'.* There are a number of reported cases concerning the circumstances in which orders restricting future applications can be made, and I have been referred to the case *Re P (Section 91(14) Guidelines) (Residence and Religious Heritage) [1999] 2 FLR 573, CA,* in which the Court of Appeal gave guidelines from the reported cases. I have kept in mind and applied the guidelines in the context of the facts in this case.

125. The court should carry out a balancing exercise between the welfare of the child and the rights of access to the court: s91(14) is to be read in conjunction with s 1(1) CA 1989 which provides that the welfare of the child is the paramount consideration of the court. The power of the court power is discretionary and while it must weigh in the balance all relevant circumstances pertaining to the child, it is important consider that imposing a restriction is a statutory intrusion into the right of a party to bring proceedings before the court and to be heard particularly in matters affecting their child, as such the power is to be used with great care and sparingly. While it is the exception and not the rule and should only be used as a weapon of last resort its use is not limited to cases of repeated and unreasonable applications and in suitable circumstances and on clear evidence a court may impose the leave restriction in cases where the welfare of the child requires it where there is no past

history of making unreasonable applications Cf. *Re A (A Child) (supervised contact) (s91 (14) Children Act 1989 orders) [2021] EWCA Civ 174*. In this case both parties have made several applications to the courts in respect of Z, over a period of nine years, it is now her welfare that requires that these applications cease.

126. I am satisfied that this is not a case the commonly encountered need for a time to settle to a regime ordered by the court where there is continued animosity between parents, the evidence is that that time has long past and, in any event, the regime has been in place for some time. The facts of this case go beyond that need, and there is now a real risk that, without the imposition of the restriction, Z will be subject to unacceptable stress and distress and by being put under pressure by Fin respect of any further proceedings. He is also, based on his conduct over many years, more likely than not to continue to denigrate M and to blame her for any views that Z may feel able to express which run contrary to his own.

127. In law a court may impose the restriction on making applications in the absence of a request from any of the parties and must, in fairness, allow an opportunity for the parties to be heard on the point As I had in mind that it is wrong in principle, except in exceptional circumstances, to put a litigant in person in the position, at short notice, of having to contest a s 91(14) order I ordered that the guardian to deal with this matter in advance and gave directions for her and those representing Z to do so well in advance of this hearing in November 2021.

128. Although in law a restriction may be imposed with or without limitation of time, case law indicated an order is to last throughout the subject child's minority or until the child is16 should be an exceptional step because it is, in effect, an acknowledgement that nothing more can be done. In making such an order the court must spell out why and what needs to be done to make a successful application in the future, without imposing any conditions as such. (Cf. *Re G (Residence: Restriction on Further Applications) [2008] EWCA Civ 1468; [2009]* 1 FLR 894, or of making future leave conditional: *Re S (Permission to Seek Relief) [2006] EWCA Civ 1190; [2007]* 1 FLR 482.)The degree of restriction is to be proportionate to the harm it is intended to avoid and the court imposing the restriction should carefully consider the extent of the restriction to be imposed and specify, where appropriate, the type of application to be restrained and the duration of order. In this case where I have found that Z has already suffered harm as a result of lengthy proceedings it is the risk of further harm that requires a restriction on F making further applications to be imposed.

129. There has been repeated professional intervention provided for F, in the form of attendance at DVIP and parenting programmes, along with advice and assistance offered by three Cafcass Officers to F, and he would now have to demonstrate that he not only is he now able to behave in accordance with that advice, information and training given to him in the past but that he has also has taken further steps to modify he behaviour in respect of M and to listen to Z's wishes and feelings; unless he can show that that those issues has been addressed any future application for permission to apply to the court for further relief is unlikely to be successful. In respect of Article 6 ECHR (by virtue of the Human Rights Act 1998) the making of a s91(14) order is not an absolute bar on F's access to the court and that an appropriate application in respect of Z's contact with him would be granted leave.

Given the harm to Z that such an order is intended to prevent, there is no issue of incompatibility. In essence restriction put in place by a s91(14) would be acting only as a filter (see below).

130. The submission made on behalf of Z were that a s91(14) restriction be placed on F to shield her from the further emotional harm and the pressure that would be placed on her by F by his making further and repeated court applications and that such a restriction would be, in all the circumstances of this case, necessary and proportionate. F's repeated attempts to reopen issues long dealt with by the Family Court are in illustration of the fact that he has never accepted that Z is to live with her mother and that there is no "shared care" order making further applications by F more than likely. I agree with the submission made on Z's behalf. I was referred by her counsel to the case of *Re A (A Child) (supervised contact) (s91 (14) Children Act 1989 orders)* [2021] *supra;* a case in which the Court Of Appeal provided guidance both on supervised contact and updated the *Re P* guidance, addressing, in particular, the use of the court proceedings as a weapon of conflict by a parent and how in such cases a s 91(14) order will be justified. The Court of Appeal noted that in its effect a s 91(14) order is only as a filter and if there is credible evidence that comes to light within the currency of the section 91 (14) to change the contact order, permission would be given on application to the party who seeks it. The s9 order in *Re A* had provided protection to the child from further litigation and all that brings with it; the order would provide the self-same protection in this case for Z. In that case the Court of Appeal upheld the judge's decision as the order was overwhelmingly in the child's best interests, just as it was right to make the s8 order that contact be professionally supervised; had the orders not been made in reality contact would be limited to indirect only; this is such a case.

131. Z's guardian recommended that Z's contact with F is supervised in future and I have alluded to the reasons why she does so above. In *Re A (A Child) supra* the Court of Appeal considered a case where there was to be indefinite supervised contact. As was observed by the Court of Appeal in the ordinary course of events supervised contact should be regarded as a stepping-stone to unsupervised contact, but as *per* Lady Justice King's in *Re S (a Child)* [2015] EWCA Civ 689, at paragraph [23] where appropriate *"such a route should … be deployed as a means of allowing a child to continue to have a relationship with her absent parent".* This would include a case where the choice was not between supervised and unsupervised contact but between no direct contact or supervised contact and that a court could, where the facts of the case demand it, make an order for indefinite supervised contact; that is a final order which does not define a pathway from supervised to unsupervised contact.

132. Specifically and in recognition of the fact that we are no longer in 1999 Lady Justice King made the observations of how the *Re P* guidance should be applied to include providing protection to a parent of coercion and control and although the conduct King LJ refers to concerned adult carers the self-same conduct which directly affects the subject children and can amount to emotional abuse of the children themselves. The emotional pressure placed Z by F to support that his agenda and his preferred version of events which has in turn has inhibited her ability to speak freely is both emotionally abusive and harmful.

133. As there is no requirement for there to have been a number of applications before a section 91(14) order can be made, the court's jurisdiction and discretionary use of its power is not limited to those cases where a party has made excessive applications. Indeed there may only be one substantive application but it may be in a case where a person's conduct overall is such that an order made under s91 (14) is merited. In this case both parents have made applications in respect of the child arrangements for Z, but some at least of those made by M were made as result of F's behaviour causing distress to Z (as can be seen from the chronological narrative above) the issue is in respect of Z's welfare now and in the future and the need to protect her not only from further proceedings by from F attempting to draw her into them; for those reasons in addition to a s(1(14) order the previous order permitting Z to apply to the court herself at thirteen will be discharged. Furthermore, and in support of my decisions, as observed by the Court of Appeal in *Re S* the *Re P* guidelines do not say that a s91(14) order should only be made in exceptional circumstances, rather that such an order should be the *"exception and not the rule"* and that such an approach had been anticipated by the guidance in *Re P* wherein it was said, *"In suitable circumstances (and on clear evidence), a court may impose the leave restriction in cases where the welfare of the child requires it, even if the proceedings were not dogged by numerous applications."* The making of a s91(14) order is not only to protect a child from the effects of repeated applications but also from unmeritorious ones.

134. As a result of the Court of Appeal's more recent decisions where a judge has formed the view that the type of behaviour of one of the parents amounted to use of the court proceedings as a weapon of conflict, the court may feel significantly less reluctance than had previously been the case before stepping in to provide protection for a parent by making an order under s91(14) in instances where proceedings being used as a form of coercive control and/or emotional abuse. The Court is not using the s 91(14) order to provide the "breathing space" referred to above to allow contact arrangements to settle down for the reasons I have already given; it is a case there has been repeated opportunities for the contact regime to settle between applications, and where F has been offered and provided support but he has been unable to accept either the support or the court orders. In addition F has proved to be increasingly unable to accept Z's growing independence or to listen to her wishes and feeling and has placed her under unacceptable pressure, effectively coercing her into pursuing his case for him.

135. Statutory provision has extended the use of S(1 (14) by virtue of s67 (3) of the Domestic Abuse Act 2021 which provides that the court may make a section 91(14) order where the court is satisfied that further proceedings would risk causing a parent or child harm, particularly where proceedings could be a form of continuing domestic abuse. In addition to which the court must, in determining whether to grant permission during the currency of the order, consider whether there has been a material change of circumstances since the order was made. It is submitted on behalf of Z that further proceedings would cause Z harm.

136. In respect of the supervised contact order recommended by the guardian and sought on Z's behalf by her representatives, this order requires separate consideration on its merits. This is a case where F has continually spoken to Z about the court proceedings. Z has told her guardians about it over the years (see above) and is increasingly upset and distress by the

pressure he is putting her under. F's behaviour has compromised Z's ability freely to speak to her guardian and those representing her, his intervention and obstruction resulted in Z not writing to the Court and from telling the guardian anything that might "upset" her father and cause him to put her under further pressure. According to the guardian from what Z has said to her Z is already worried about being left to police his behaviour and being put in the position where she would have to report breaches of the court's orders for anything to be done to stop him resuming his oppressive behaviour. F has sought to blame M for what Z has been reported as saying and in doing so has both denigrated and vilified M to Z, and has demeaned Z by denying her own views, subjugating her wishes and feelings in favour of his own.

137. It is submitted on behalf of Z that F has used the proceedings to not only to try control M, but also Z. It was further submitted on behalf of Z that the court can safely find the following facts.

i) F has exerted emotional pressure on Z in an attempt to influence her wishes and feelings and bring them in line with his own.

ii) In so doing he has had no regard for her welfare and prioritised his own needs above her own.

iii) F is unable to accept responsibility for his conduct seeking to blame M and professionals instead.

iv) F has [demonstrated] no awareness that his behaviour carries emotional consequences for Z's emotional and physical wellbeing and his current and future relationship with her.

v) F's continuing lack of insight and understanding of Z's needs places her at risk of significant harm should there be no safeguards in place by way of supervision of their time together and the imposition of a section 91 (14) order.

138. Those representing Z conclude that, in all the circumstances, and on the recommendation of the guardian the orders sought *"are appropriate and necessary to ensure Z's protection from future harm and to provide her with the space to develop and express her own independent views without any further interference from her father."* There is considerable force in those submissions and based on the evidence before me as set out in this judgement I so find.

139. The last of the submissions sets out the guardian's concern that Z would be placed at risk of significant harm without the imposition of a s91(14) restriction on further proceedings; it also refers to the need for the supervision of contact in order to safeguard Z. F told the guardian in February 2022 that he was still discussing the proceedings with Z and although he denied discussing the guardian's report in talking to Z about the case he was, by his own admission, in breach of the agreement he had entered into with the court. Certainly Z was by then so inhibited that she felt unable to discuss anything to do with F that might *"upset"* him for fear of repercussion. The fact is that F has always discussed the proceedings with Z with the intention of influencing what she has said and has closely questioned her about

what she was reported as saying; everything about his conduct of his case and his behaviour throughout serves to underline that he will continue to do so unless there is someone there to stop him. Contact must be supervised to bring his abusive behaviour, for that is what it is, to an end and to protect Z from further harm.

Conclusions and Orders

140. It is the guardian's view supervision is necessary to give Z the time and space to consider her own wishes and feelings. It is the Court's view that supervision is necessary to protect Z form further significant harm and the only way of keeping her safe from further emotional abuse while recognising that she wants to see her father and that there are benefits in their relationship continuing in respect of her needs, her identity and to reassure her that he is all right.

141. In respect of the FGMPO the guardian considers that the risks identified remain and that protection is needed in addition to which it will provide Z with the reassurance she needs and assist in her wellbeing. The court considers that, objectively when taking the evidence as a whole, the risks have increased. F's need to dominate and control as a parent as has been demonstrated in his constant questioning of Z and his repeated dismissal of Z's own wishes and feelings and impose his own are but one side of the effective undermining of Z; this has extended to him ignoring her best interests when she has felt or been ill and insisting on her having a painful flu injection instead of the nasal spray recommended for her age group. The latter instance is of substantial concern as they relate to Z being allowed to make her own decision when it comes to her own body, added to which F's insistence that it was on religious grounds raises concerns about his ability to withstand similar conventional pressures in Guinea concerning FGM.

142. The evidence before the Court is that F has already caused Z emotional harm and has emotionally abused her by repeatedly drawing her into the court proceeding despite being told not to do so and in the face of court orders. F has deliberately and continuously sought to undermine and dismiss Z's expressed wishes and feelings. The reports of his conduct to professionals and in the face of the Court (in respect of where Z should be during the hearing) during the latter part of these proceedings part have provided further evidence of his determination to put himself first. Some of his conduct may well have a basis in his determination to vilify M as a parent but some is a deliberate and direct negation of the maternal side of Z's dual heritage, Z's right to her personal views and opinions and to her right freely to explore both sides of her cultural, religious and social heritage: to undermine Z's ability to do so is an assault on her mental and emotional wellbeing. F's conduct raises further, and serious, concern about the risk to Z of FGM were she to travel to Guinea with F as he now has demonstrated a thorough disregard for what Z herself wants to happen. In pursuing a dismissal of the FGMPO when Z herself wants it to remain in place is of concern in itself, as is the application to take her to Guinea when she is so clearly saying she does not want to go. The FGMPO will be varied only to the extent that the part giving permission to Z to apply to the Court herself at the age of thirteen is discharged. For the reason set out above the Court has no evidence before it which would justify the discharge of the FGMPO.

143. In respect of supervision of Z's contact with F, the fact that Z's opinions which are increasingly likely to diverge from F's mean that it is more likely than not to lead to further conflict with F, as he said, knowing better than Z. That would lead to an increase in the need Z feels to propitiate F and for her to be forced to further compromise her own welfare, safety and aspects of her identity (we have heard of how is already "not herself" when she is with F); none of this would be in the best interests of her welfare and well-being. The self-protective reaction to F by Z has been obvious to professionals for some time, as I was reminded by Z's counsel, in 2019, Catherine Garro, Coordinator of the My Space programme who undertook work with Z recorded Z as telling her that *"her dad gets cross if she is upset, or cries – so she moderates her responses when with him to avoid upsetting him."* In this way Z and for years has learned to deal with and appease F, but it is ultimately damaging to her emotional well-being. It is also evidence that F has consistently rejected most if not all the professional advice he has been given about Z's welfare as he has done nothing to moderate his behaviour when with Z, nor to respect her wishes and feelings.

144. As this anxiety about F's reactions has been a part of Z's relationship with F for so long that I find that it is most unlikely that she would have felt able to tell the Court directly as she was invited to do, or through her guardian, what she really feels about contact with F. Although she has given some indications albeit indirectly such as by asking M when she would be old enough to say she did not want to go to contact. Z has also experienced F lying to her and betraying her trust when he said that he would return her and instead kept her with him for 6 days. Most worrying Z has been silenced by F in these proceedings on any subject to do with him, or about which he might be, as Z describes it, *"upset"*; that would have include any expression of a wish to have to spend less time s with F. Z has voiced her anxiety about what would happen if he continued to talk about court after the proceedings conclude, she needs to be protected from that likelihood. The negative effects on Z of unsupervised contact with her father are considerable and go beyond what she has felt able to tell the Court through her guardian. No child should feel physically ill and display the signs of anxiety she did about spending time with a parent; it is an unequivocal sign of real anxiety, fear and distress.

145. F has attempted to use Z to achieve the dominant role as a parent he considers his due, Almost six years ago in 2016 (as reported by the guardian at the time) when Z was aware at five years and eight months old she knew that F felt aggrieved so she had said that she should spend more time with him, no doubt with his encouragement. F has a sense of grievance which remains so that once more he is pushing to have more contact than Z has said she is comfortable with in the coming school summer holidays. Once more he is ignoring and dismissing the considered plans of Z herself. By all accounts a sensible, intelligent child Z is starting secondary school in September, a pivotal and potentially stressful time for any child, representing a significant change in their lives which F has failed to consider, choosing instead to override Z's wishes and feelings and has again given priority to his own needs and wish to dominate. I do not accept F's claim that it is to ensure Z is educated in matters Islamic and Guinean as there is limited evidence that he has ever provided much in he way of such an education, but even if he had that cannot be the priority, which, by law, must be Z's overall welfare.

146. It falls to the Court to ensure that Z is to be able to move on to secondary school without carrying the burden of her father's emotions and needs; she is no longer to be left with the responsibility of policing what he says and does when she spends time with him. It is F's responsibility, but as the evidence is that he has continued to put his own needs before hers and not to act as a responsible parent his time with Z must be supervised. The pressure F puts on Z to spend more time with him is not the only issue for I have found that F has repeatedly denigrated M to Z despite having agreed not to do so, and having had it explained to him on several occasions by professionals (not just the guardians as F has attended more than one parenting course) the reasons why doing so is detrimental to Z's well-being. As F's frankly expressed view that he knows best has extended to his decisions that Z should suffer pain, distress and discomfort, I have in mind the flu vaccine, contact taking place while she still had Covid and his volte face in failing to return Z home, I find that his actions are part of his determination to prove his point that he is to be obeyed and his need to prioritise his views and feelings about his role in her life, the Court will make orders to prevent further litigation.

147. As discussed above this is case such as envisaged in *Re A (A Child) supra* by the Court of Appeal and there will to be indefinite supervised contact as per Lady Justice King's judgment in *Re S (a Child) [2015] EWCA Civ 689 et supra*, at paragraph [23] that where appropriate "*such a route should … be deployed as a means of allowing a child to continue to have a relationship with her absent parent".* The reality is that in order to safeguard Z and protect her from F's continuous attempts to involve her in court proceedings or litigation and his unceasing denigration of M the only route which allows direct, face to face contact to continue is if it is supervised so that this is a case where the choice is not between supervised and unsupervised contact but between no direct contact or supervised contact. The latter being the only course that protects Z from further emotional abuse while permitting her to continue a relationship with F, there can be no pathway from supervised to unsupervised contact as F has repeatedly failed to apply the lessons that he should have learned on parenting courses nor has he heeded the advice of the Cafcass Officers.

148. On applying the law as set out above in respect of s91(14) I consider that the evidence supports the making of an order to protect Z from distress and the anxiety of any further proceedings. It has been submitted on behalf of Z that in order to shield her from the emotional harm and pressure placed on her by F by his making further and repeated court applications such an order is, in all the circumstances of this case, necessary and proportionate. In respect of this submission I was referred to and have applied the guidelines set out in the case of *Re A (A Child) (supervised contact) (s91 (14) Children Act 1989 orders)* [2021] EWCA Civ 174 above.

149. This order will remain in force until Z is sixteen. This exceptional step is taken as an acknowledgement that nothing more can be done. On the evidence and over nine years of litigation F has been unable or unwilling to retain the advice and assistance that has been offered to him. For the reasons set out above, to safeguard Z and in the interests of her welfare direct contact is to be supervised. Any application for leave would require F to demonstrate that he has taken steps to successfully remedy his antipathy towards M and is able to respect her as Z's mother along with that cultural and religious part of Z's dual heritage. He will have demonstrated his inability to listen and act on Z's wishes and feelings

and to allow her the freedom to express herself in all aspects of her life without disparagement or any further attempts to manipulate her into taking his part or supporting his side of any conflict. This will require more than mere lip-service or assertions on his part. These are the minimum of the issues set out in this judgment which F would have to address.

150. I do not impose conditions on the s 91(14) order and have above identified the issues F would have to address. There will be a s91(14) order in respect of F to remain in force until Z is sixteen to allow her uninterrupted participation in her education and to best meet her potential.

151. For the reasons set out above the FGMPO remains in force and is varied only to the extent of discharging that part which has permitted Z to apply to the Court at the age of thirteen in accordance with her wishes.

152. This is my judgment.