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**IN THE FAMILY COURT**  
**SITTING AT MANCHESTER**

**Case No: TI13P00004**

1 Bridge Street West  
Manchester  
M60 9DJ

**IN THE MATTER OF THE CHILDREN ACT 1989**  
**AND IN THE MATTER OF W: (A CHILD)**

Date: Wednesday, 8<sup>th</sup> June 2016

**Before:**

**HIS HONOUR JUDGE BUTLER**

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**Re: W (A Child)**

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The Mother did not appear and was not represented  
The Father appeared In Person  
Solicitor for the Child through her Guardian: Miss Flanagan

Hearing date: 8<sup>th</sup> June 2016

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**APPROVED JUDGMENT**

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DRAFT JUDGMENT

HIS HONOUR JUDGE BUTLER:

**Introduction**

1. The overall application before the court has been made by Mr Darren D, who is the father of Kara Louise W. Kara Louise W was born on \*\*\*\*\* and is therefore now just over 7 years old. She has a guardian appointed pursuant to Rule 16.4. The guardian is Miss Leigh Kendling who is present in court today and she in turn has instructed Miss Flanagan to represent the interests of the child in this court. The mother of the child is Miss Sarah W. Miss Sarah W lives at *[address given]*. The issues overall in this case are what arrangements should be made in respect of this child and her father.

**Chronology**

2. The mother and father of this child separated as long ago as May 2012 and there has been no direct contact between the father and the daughter since that date. That caused him to make a formal application to the court on 15<sup>th</sup> January 2013. Mr D has been acting in person almost throughout. The mother has been acting in person throughout.

A 3. The first hearing was on 27<sup>th</sup> February 2013, at which the mother did not  
attend. There was a further hearing on 26<sup>th</sup> April 2013 when an order was  
B made for what was then called contact by consent. A subsequent order  
was also made for contact by consent on 23<sup>rd</sup> January 2014. It would  
appear therefore that the mother in 2013 and 2014 was content for this  
C little girl to see her father. However, matters did not proceed smoothly.  
There was a further hearing on 26<sup>th</sup> June 2014 at which the mother did not  
attend. On 6<sup>th</sup> August 2014, there was another hearing at which the  
D mother did not attend and at that stage, the lay bench, the magistrates who  
were hearing it, decided to transfer the matter to the district bench.

E 4. There was a hearing on 27<sup>th</sup> August 2014 before the district bench, and the  
mother did not attend that hearing. On 29<sup>th</sup> October 2014, there was  
another hearing at which the mother did not attend. At that stage, the  
F learned district judge attached the first penal notice to an order. The  
matter was heard again on 7<sup>th</sup> January 2015 and the mother did not attend  
that hearing. A penal notice was attached to that order and the learned  
G judge determined that the mother was displaying symptoms of what is  
known as implacable hostility.

H 5. There was a further hearing on 18<sup>th</sup> March 2015. The mother did not  
attend that hearing. That order had a penal notice attached to it. On  
6<sup>th</sup> May 2015, there was another hearing at which the mother did not

A attend. A penal notice was attached to that order. On 1<sup>st</sup> July 2015, an  
order for indirect contact was made. The mother did not attend that  
B hearing. It would appear however that there has been some form of  
indirect contact between this little girl and her father and that has gone  
well.

C 6. The order that was made on 1<sup>st</sup> July 2015 also had a penal notice attached  
to it. There was a further hearing on 26<sup>th</sup> October 2015. The mother  
D failed to attend that hearing and the matter was transferred from the  
district bench to the circuit bench. On 14<sup>th</sup> September 2015, an order was  
made for her attendance at this court and a penal notice was attached to  
E that order. The matter came before His Honour Judge Appleby on  
29<sup>th</sup> October 2015. The mother did not attend that hearing and His  
Honour Judge Appleby had adjourned the application in order for there to  
F be observed direct contact. A penal notice was attached to that order, to  
require the attendance of the mother and her cooperation with the order of  
the court made.

G 7. That order was never actually served upon the mother, but the matter  
H came before me on 19<sup>th</sup> November 2015 and the order which I made can  
be found at A50 of a bundle prepared by Miss Flanagan. The relevant  
parts of that order are as follows. At A52, I made a child arrangements  
order in the following terms:

A “(a) Between the date of this order and the final disposal  
of the applications, the arrangements for the child  
B shall be that the child shall live with the mother and  
spend time with the father by way of supervised  
contact, six sessions in total to take place with a  
C partner agency to CAFCASS such as Pro Contact.  
Such contact will be dependent upon the mother  
cooperating with the process.

D (b) Indirect contact shall take place between the applicant  
father and the child on a monthly basis, the applicant  
E father is to send letters, cards, drawings, directly to  
the school for the attention of the deputy head  
teacher, Mrs P. The guardian will arrange to look at  
F the items sent prior to them being shared with Kara.”

8. At A53 of the bundle, I attached a penal notice to that part of the order,  
G that is paragraph 9(a), providing that there should be supervised contact  
between the child and the father and I ordered that this order be personally  
served on the mother by the court bailiff at *[address given]*. I also ordered  
H at paragraph 11(a), that the matter should be listed for further directions  
before myself on 7<sup>th</sup> January 2016 and a penal notice was attached to that  
requirement as well.

A 9. That order, I am satisfied was served on the mother personally in  
B December 2015. The matter in due course came before myself on  
C 7<sup>th</sup> January 2016. The mother did not attend that hearing either. I was  
D satisfied on that occasion that the mother was aware of the previous order,  
E that is the order requiring her to attend court and also to comply with the  
F child arrangements order and so I found her on that day to be in contempt  
G of court. The relevant part of the order is as follows at paragraph 7(c):

“Having considered matters at the last hearing, the court is  
satisfied that the respondent mother is in contempt of court,  
given her failure to attend court for the last hearing and her  
failure to comply with the previous order made; and

The matter is listed for committal hearing, directions and/or  
orders in respect of the application for a child arrangements  
order on 7<sup>th</sup> June 2016.”

10. Again in that order:

“(a) Between the date of this order and the final disposal  
of the application, the arrangements for the child shall  
be that the child shall live with the respondent mother  
and spend time with the applicant father by way of  
supervised contact. The respondent mother shall

A make the child available for contact with the father,  
which shall take place with a partner agency to  
B CAFCASS, namely Pro Contact. The respondent  
mother shall engage with the guardian in relation to  
this and complete such documentation and attend  
C such meeting as may be required in order to achieve  
this;

D (b) Both the applicant and respondent shall engage in a  
separated parents' information programme, the court  
shall make the relevant referral in the usual way;

E (c) The matter is listed for committal proceedings on the  
first available date after 19<sup>th</sup> April and a penal notice  
F was attached to the child arrangements orders that I  
have set out, to the requirement to attend a separated  
parents' information programme."

G 11. The order itself that was made on 7<sup>th</sup> January 2016 was not actually drawn  
until 25<sup>th</sup> February 2016 and was then amended on 7<sup>th</sup> April 2016 in order  
that the dates to which I have referred should be made clear. That is, that  
H there is a hearing today and also of course the contents of the order as set  
out in mandatory form. I am satisfied that that order was served  
personally upon Miss W and I have a certificate from a bailiff to that

A effect that it was personally served on 3<sup>rd</sup> May 2016. Today then is the  
hearing in relation to committal proceedings and it is today, 8<sup>th</sup> June 2016,  
B in which I am deciding this matter and again, for the avoidance of doubt, I  
should say that present in court is Mr D, the applicant, Miss Flanagan and  
the guardian.

C 12. It is common ground between Mr D, Miss Flanagan and indeed the court,  
that it is with the greatest of reluctance that this court will consider  
D committing Miss W to prison for breach of the orders that have been made  
by this court. The objective that Mr D and the children's guardian and the  
court wish to achieve, is not for Miss W to go to prison, but for Kara to  
E see her father and the only way in which that will happen, is if Miss W  
cooperates with the court and with CAFCASS and obeys orders made by  
the court.

F 13. That then is the summary of the chronology and factual background to this  
application. I should say that the evidence I have, is set out in two very  
G helpful reports, one dated 15<sup>th</sup> August 2013 and one more recently,  
4<sup>th</sup> January 2016 from CAFCASS which catalogues the lamentable and  
appalling history of lack of compliance by the mother with any of the  
H statutory agencies.

A     **The Law**

B           14.   Turning then to the law. This is not an application by any party, that  
C           Miss W be committed to prison. It is of the court's own motion and it is  
D           of the court's own motion because Mr D does **not** want the mother of his  
            child to go to prison. It is of the court's own motion, because the  
            children's guardian does not want to be seen to be advancing a case where  
            the mother of this child is sent to prison. It is, therefore, for the court to  
            shoulder the responsibility of ensuring that there is compliance with its  
            orders so that this child can see her father.

E           15.   I am satisfied for all the reasons that I have outlined in terms of the  
F           chronology of this case, I am satisfied beyond reasonable doubt that the  
G           mother is in contempt of court and she is in contempt of court firstly for  
H           failure to attend court on 7<sup>th</sup> January 2016 and for failing to comply with  
            the child arrangements order that were made in November 2015. She is in  
            my judgment, and I am satisfied beyond reasonable doubt, in contempt of  
            court for failing to attend court today and for failing to comply with the  
            child arrangements order that I made on 7<sup>th</sup> January 2016 and for failing to  
            engage with the separated parents' information programme. Those then  
            are the breaches that I find are made out. The only matter that I therefore  
            now have to consider is what punishment the court should make for such a  
            breach.

A 16. I am satisfied that there has been a deliberate disregard for two orders of  
this court. I am satisfied that that amounts to a contempt of court. The  
B options available to me are relatively limited. There have been some  
attempts to find out whether in respect of the breach of the child  
C arrangements order, a provision for unpaid work might be available, but  
those options are not available to me to consider today. The flagrant and  
deliberate disregard of the orders of this court in my judgment, in any  
D event, is insufficient for some form of community service to be  
appropriate and in my judgment the only sentence that is appropriate,  
E unfortunately and with great reluctance and because the court is left  
without absolutely no choice whatsoever, is to pass a sentence of  
imprisonment upon Sarah W for a period of 28 days.

F 17. However, I am going to suspend that period of imprisonment and the  
terms of the suspension of the sentence of imprisonment will be that she  
G complies with the order which this court made on 7<sup>th</sup> January 2016. If she  
fails to comply with that order, that is the order for supervised contact and  
engaging in a SPIPs, that is a separated parents' information programme,  
then the sentence of imprisonment will be immediate if it established to  
H my satisfaction and beyond reasonable doubt that there has been non-  
compliance with the terms of the suspended sentence. For that to happen  
there will need to be a further hearing. I shall rely upon the Children's

A Guardian to restore the matter in short order if the mother continues to disregard orders of this Court.

B 18. What, however, I wish to add and to be conveyed to the mother, if a  
C transcript of this judgment is not available with sufficient speed, is that  
D what the court wants, what the father wants, what the children's guardian  
E wants, is for contact to take place, direct contact to take place between the  
F father and his daughter, but if the court is left with no alternative, then  
G Miss W will serve a term of imprisonment of 28 days.

D 19. What I would like to happen or what I know will happen is, that the  
E children's guardian will keep the court informed as to the progress of the  
F mother's cooperation. If she does cooperate, then the matter will be  
G brought back before the court on behalf of the child and I will consider  
H what to do at that that stage. *[Judgment ends]*