Neutral Citation Number: [2024] EWHC 199 (Fam)

Case No: DE19P00318

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 02/02/2024

Before :

MRS JUSTICE LIEVEN

- -

Between :

ANDREW JAMES GRIFFITHS

Applicant

and

(1) KATE ELIZABETH KNIVETON
(2) XX
(a child, through the Children's Guardian)

Respondents

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- -

The Applicant represented himself
Dr Charlotte Proudman (instructed by **Nelsons Law**) for the **First Respondent**
Mr Tom Harrill (instructed by **Moseleys Solicitors**) for the **Second Respondent**

Hearing dates: **17 January 2024**

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Approved Judgment

This judgment was handed down remotely at 10.30am on 2 February 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives

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MRS JUSTICE LIEVEN

This judgment was delivered in private and a Transparency Order is in force. 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 child must be strictly preserved. All persons, including representatives of the media and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

Mrs Justice Lieven DBE :

1. The court is concerned with the welfare of XX, aged 5 and a half. XX lives with the mother, M. The father, F, applies for a Child Arrangements Order ("CAO") for weekly supervised contact, leading to weekly unsupervised contact. He currently has weekly contact for 30 minutes via video link.

2. The F represented himself, the M was represented by Dr Charlotte Proudman and the Child's Guardian was represented by Mr Tom Harrill.

3. The unusual element of this case is that earlier judgments in the case have been published with the parents named but XX's name and some identifying features kept anonymous. The reason for this unusual approach is that the F was a Member of Parliament and the M is now an MP. HHJ Williscroft undertook a fact finding hearing and made very serious findings of fact against the F. The view taken by the Courts was that there was sufficient public interest, given F's public position, as to justify naming the parents. The balance struck by the Court is fully explained in *Tickle v Griffiths* [2021] EWHC 3365 (Fam) and *Griffiths v Tickle* [2021] EWCA Civ 1882.

4. The issues in this hearing were:

    a. Whether F should have direct contact;

    b. If not, the form of any indirect contact;

    c. The making of a s.91(14) order;

    d. An issue around the change of XX's name;

    e. A restriction on the F's exercise of parental responsibility;

    f. A prohibited steps order prohibiting F from contacting XX;

    g. A costs application by the M.

5. The M had made an application for a Declaration of Incompatibility ("DoI") under s.6 of the Human Rights Act 1998 in respect of s.1(2A) of the Children Act 1989 ("CA"). Because of that application, the matter was listed before me as the Family Presider for the Midlands. However, the Government Legal Department made clear that it would seek a costs order in its favour if successful in its defence of the DoI. I determined that I would not make a Protective Costs Order without a fully argued application at the conclusion of the hearing. The M then withdrew her DoI application, but I determined, given the fact the case was already listed before me, and the very lengthy nature of these proceedings, that it was appropriate that I continue to hear the case.

6. The background to these proceedings is that the parents separated in 2019 and the F made his application for a CAO in June 2019. The proceedings have therefore been going on for four and a half years.

7. On 26 November 2020 HHJ Williscroft produced a judgment after a four day fact finding hearing. She made very serious findings of domestic abuse ("DA") against the F. These findings can be summarised as follows:

(1) On 1 March 2011, in the Grosvenor hotel, F pushed M into a wall and shouted at her. M, frightened, locked herself in the bathroom;

(2) In May/June 2011, F assaulted M on the sofa by putting his hands round her neck and hurt her earlobe. M left the home due to fear;

(3) On 25 December 2014, F physically and verbally abused M's parents on Christmas Day which caused M to feel frightened and intimidated by his behaviour;

(4) In August 2015, whilst on holiday in Corsica, F pushed M onto the bed, threw her passport at her with some Euros and told her to 'fuck off out of my sight and get the next plane home';

(5) On 21 January 2017, F physically abused M following a night out by hitting her and caused damage to a picture. M left the property that night;

(6) On 24/25 December 2017, F was physically abusive toward his sister. M was present when F grabbed his sister around the throat or the shoulders, pinned her to the wall. When she attempted to leave, he threw her bag out and made the threat to 'drive off and kill yourself you silly cow'. This was a frightening incident;

(7) On 2 April 2018, whilst M was heavily pregnant, F put pressure on her to move to London as soon as the baby was born. When M said she did not wish to go, F became angry and went to hit her, then changed [his mind] and pushed her onto the bed;

(8) On the morning of 30 April 2018 XX was crying. F turned to XX and shouted: 'shut the fuck up XX'. M grabbed XX and told F not to speak to her like that again. F then left for work;

(9) On a date unknown, F assaulted his sister by slapping her, using restraint and throwing her onto the bed when staying with F and M. F was angry in a frightening incident;

(10) On many occasions when F and his sister were together at the property, there would be arguments between them, including physical violence on two occasions, instigated by F.

(11) On a date unknown, F assaulted M by throwing a tray of food at her whilst she was sitting on the sofa. This caused damage to the floor and M was left to clean up the mess;

(12) On a date unknown, F threw a box at M whilst they were trying for a baby and spat in M's face;

(13) On a number of occasions, on dates unknown, F raped M by inserting his penis into her whilst she was asleep;

> (14) Throughout the relationship, F used coercive and controlling behaviour to ensure M submitted to his sexual demands.

8. That judgment was eventually published after a number of contested hearings and a failed appeal to the Court of Appeal.

9. On 12 March 2021 a section 7 report from Cafcass was produced. After the fact finding hearing Judge Williscroft ordered that contact should continue. The M then appealed the order that she should contribute towards the costs of the contact centre, and that appeal was upheld by Arbuthnot J in *Griffiths v Griffiths (Guidance on Contact Centre costs*) [2022] EWHC 113 (Fam). The M also appealed the order that direct contact should continue and that part of the appeal was upheld, contact reverted to indirect telephone contact.

10. F had a psychological assessment by Dr Briggs, whose report is dated 29 April 2022. The M had a psychological assessment by Dr Waitman dated 2 June 2023.

Evidence

11. I heard oral evidence from the F, the M and the Guardian. I had the expert reports of Dr Briggs and Dr Waitman.

12. Dr Briggs made clear that he was assessing the F, and recommendations as to what was in XX's best interests was outside his expertise. He said that the F showed no signs of mental illness or any form of personality disorder. He did not think there was evidence that the F posed any physical risk to XX.

13. He said it was hard to be confident about the underlying emotional truth of the F's responses as he *"talks a good game".* He questioned the degree of the F's emotional intelligence or ability to *"resonate emotionally with the experience of feelings of others".* He said:

> *"I pause to note that Mr Griffiths is a skilled communicator. He has been exposed to various therapeutic interventions and as such has the capacity to appear psychologically minded. What was more difficult to discern from this interview was the depth of Mr Griffiths' emotional intelligence, and more specifically his capacity to resonate emotionally with the experiences and emotions of others, ie. as opposed to his intellectual empathy, his ability to describe in words how others might feel."*

14. Dr Briggs recommended that the F undertake Schema therapy so that he could consider the nature of the child's core emotional needs and understand the impact of his behaviour on the M.

15. Dr Waitman concluded that the M has been traumatised by her experiences, and these continue to *"plague her memory and to some extent her daily life"… "this level of stress, anxiety and what she feels is a real sense of fear, combine to cause extreme emotional distress":*

> *"7.7 Ms Kniveton is a woman of considerable resilience; although currently going through a difficult litigation process, and feeling the*

> *anxiety of this and the pressures of daily life, she is well able to deal with the demands of indirect contact, although both she and [XX] feel that this is burdensome, but the idea of direct contact is out of the question at the moment. [XX] has not made any suggestion of wanting this to happen and it would be wise to wait and see how [XX's] well-being and continuing successes are maintained before any such progression is considered."*

16. The M had had some psychotherapy, which she was keen to continue but had stopped, in part because of cost:

> *"9.2 The issue of contact is a major factor in Ms Kniveton's perception of the level of fear she experiences in this regard as she is afraid that if Mr Griffiths were allowed to have greater contact with [XX], even if supervised, the level and quality of such supervision would not suffice to deal with any potential danger than might accrue from such an extension. Contact must therefore be agreed by those involved at a level that assuages Ms Kniveton's fear for [XX] but also allows for the fact that for [XX], contact with [the] father may be an important factor in [XX's] life. However, it is also important that Mr Griffiths understands that any information given by him to [XX] without a discussion first with Ms Kniveton would be tantamount to child abuse and is to be avoided at all costs.*
>
> *9.3 Ms Kniveton's concern for safety is such that completion of the legal process (whatever that might be) would greatly enhance not only her own life but also that of [XX], who as an innocent party in this grave matter does need the safety and stability of a life without fear or threat of danger."*

17. The F represented himself and gave evidence from the witness box. He was unsurprisingly very articulate and had a full knowledge and understanding of the case. He felt strongly that his case had been dealt with differently from the norm because of his high public profile. He particularly aimed these comments at Cafcass, who he felt would have dealt with the case differently if he had not had this profile. He felt himself to be the victim of a campaign, brought by Dr Proudman, and this had impacted on his case.

18. He accepted the findings of fact made by HHJ Williscroft, save for that relating to the finding of rape. He said that he had believed that he had consent for the sexual intercourse. He spoke about how chastening the experience of reading the fact finding judgment had been, and the huge impact that had had on him. He said that he was now a different person from the one who had behaved so badly in the past.

19. He expressed a great deal of remorse for what he had done to the M, and the distress she had experienced and the impact of his conduct. He said this on a number of occasions and in his written position statements. He also made clear that he had great respect for the M and thought that she was doing an excellent job looking after XX. I have to say this stated respect and admiration for the M rather contrasted with his vehemence on having contact with XX, whatever the consequences for the M's emotional health.

20. He emphasised how much he and the M had wanted a baby, and the efforts that they had gone to in order for the M to become pregnant.

21. He said he had a close relationship with XX and both XX and he very much enjoyed the contact, albeit it was via a telephone screen. He spoke movingly about how he planned for the contact and what he and XX did, including lots of imaginary games together.

22. He said he wanted to have contact with XX because he needed to make amends to XX and to ensure that XX did not believe he was a monster. He wanted to show XX that he was a changed person. He did not have confidence that the M would be able to explain to XX what had happened in a way that would not alienate XX from him.

23. His view on Dr Briggs' report was that Dr Briggs' thought he was suitable to resume supervised contact. However, he had not undertaken the therapy because he thought it needed court approval, and because of the cost.

24. He felt the Guardian had failed to take into account his commitment to XX, and the degree to which he had changed since the fact finding hearing.

25. Dr Proudman cross examined the F about his failure to accept the facts that were ultimately found, until they were in the judgment. The F said that he had previously found excuses for his behaviour, but that he had now changed and he was not in any way trying to diminish the impact of what he had done, or the effect on the M.

26. I have not the slightest doubt of the F's love for XX and believe him when he says that XX is the most important thing in his life. The F's life fell apart when the sexting became public and then the fact finding judgment was issued. He has spent time in a mental hospital, his marriage broke down, he lost his job and effectively his reputation. My perception is that XX is the one thing for him to hold on to and to give a sense of hope in his life.

27. The F stressed that he had changed from the person who had done the various things found by Judge Williscroft. He understood that what he had done was wrong. Although the F expressed a great deal of remorse for what he had done to the M, and said he understood how traumatised she must be, I agree with Dr Briggs that it is very difficult to tell whether this is learned responses from an intelligent and articulate man or reflects any deeper understanding of the impact of his behaviour on the M, and on XX. I was deeply troubled by the fact that he offered to contribute to the cost of the M's therapy, thereby in some sense making the issue in the case about her default and psychological challenges, rather than addressing his own responses by undertaking therapy.

28. He had not undertaken the Schema therapy because he said he believed he needed a court order to do it. In my view this was an excuse. He never asked for permission from the Court to undertake the therapy or disclose the fact finding judgment to a therapist. He had never previously said he could not do the therapy because he needed court approval. He also said it was expensive and he had no money, but he offered to contribute to the M's therapy.

29. He was also very slow to understand, or perhaps to acknowledge, the impact his conduct had on XX, whether indirectly through the emotional impact on the M, or directly

through the assault on the M when pregnant with XX, and his conduct when XX was a small baby.

30. Most worryingly, he seemed unconcerned about the emotional impact on the M of his determined pursuit of contact and effectively took the approach that this was the M's problem.

31. The M gave evidence behind a screen and was very upset during parts of her evidence. I had no doubt that her emotions were entirely honest, and she was not putting on any kind of performance for the court. She plainly found the whole process deeply upsetting, and indeed traumatising.

32. She spoke about XX in a moving way and was very concerned to protect XX in every way she could. She was frightened of the F, for perfectly understandable reasons, and she effectively transferred that fear onto XX. She spoke about the F's temper and her fear that he would exhibit that behaviour towards XX. She felt the F would not be able to deal with XX and would lose his temper if he had unsupervised contact.

33. She felt that the F's desire for a child and then his behaviour when XX was born, was highly performative. He would show XX off at public functions but then hand XX straight back when they were in private.

34. She said that she often had to encourage XX to engage with contact because XX did not actually want to do it. This was a stress and traumatic given her past history with the F. She was worried about having to engage with the F over contact once the proceedings had finished and there was no court or Guardian in the process. She said she constantly worried about what would happen in relation to the F, and that was very draining for her.

35. She said she wanted the s.91(14) order to be for 5 years because the proceedings had been going on for nearly 5 years, and there had been 10 years of an abusive relationship before that.

36. I asked her about how she would ensure XX understood about their identity and why there was no direct contact with the F. The M said she had thought about this, and would probably take advice, but also wait until XX was somewhat older. She was clear that she would never tell XX lies.

37. She did not feel the F had changed at all, and that he remained highly manipulative.

38. The Guardian, Ms Shenton, had spoken to both parents and met XX. She says XX is a happy, well settled child who is doing well at school.

39. Her judgement, having taken into account the history of the case, the research on the impact of DA and conversations with both parents, is to recommend that the F only has letterbox contact and that a s.91(14) order is made for 5 years.

40. She accepted that there would be harm to XX from not having a direct relationship with the F, but felt the balance of harm lay in having no direct contact. The letterbox contact would retain a link to the F but would protect the M and XX. Ms Shenton felt the most

important thing for XX was to have the most stable relationship possible with the M and to have a respite from meeting professionals.

41. I was somewhat concerned that her views had been influenced by the high profile nature of the case, but she strongly refuted this suggestion and said her recommendation was not unusual in cases of this type. Ultimately, having heard all the evidence, I reached the same conclusions as she had.

The law and guidance

42. The starting point is the welfare checklist in s.1(3) CA and the presumption of parental involvement in s.1(2A):

> *"**1 Welfare of the child.***
>
> *(2A) A court, in the circumstances mentioned in subsection (4)(a) or (7), is as respects each parent within subsection (6)(a) to presume, unless the contrary is shown, that involvement of that parent in the life of the child concerned will further the child's welfare."*

43. This is only a presumption, and necessarily will involve considering the facts of the particular case justify departing from the presumption, or the degree of restriction on any parental involvement.

44. The court must also have regard to Practice Direction 12J which deals with the consideration of cases raising allegations, or findings of DA. Although I have had regard to the entirety of PD12J, the most relevant passage is probably paragraph 36:

> *"(1) In the light of-*
>
> *(a) any findings of fact,*
>
> *(b) admissions; or*
>
> *(c) domestic abuse having otherwise been established,*
>
> *the court should apply the individual matters in the welfare checklist with reference to the domestic abuse which has occurred and any expert risk assessment obtained.*
>
> *(2) In particular, the court should in every case consider any harm-*
>
> *(a) which the child as a victim of domestic abuse, and the parent with whom the child is living, has suffered as a consequence of that domestic abuse; and*
>
> *(b) which the child and the parent with whom the child is living is at risk of suffering, if a child arrangements order is made.*
>
> *(3) The court should make an order for contact only if it is satisfied-*

> *(a) that the physical and emotional safety of the child and the parent with whom the child is living can, as far as possible, be secured before, during and after contact; and*
>
> *(b) that the parent with whom the child is living will not be subjected to further domestic abuse by the other parent."*

Conclusion

45. The first issue is that of the contact. I take into account s.1(2A) CA which states that it is generally in a child's best interests to have a relationship with both parents. That is undoubtedly correct, but necessarily a fact specific judgement has to be reached, both as to what is in the particular child's best interests, and the nature of the relationship that exists between the child and the parent. Although Dr Proudman referred me to a number of decisions, cases like this turn almost entirely on their own facts, and the approach of other judges in other cases is of limited assistance.

46. The evidence suggests XX enjoys contact with the F, although unsurprisingly as a 5 year old, sometimes has to be encouraged to engage. However, given XX's young age and the fact the M is the primary carer, XX's wishes and feelings are in no sense fixed. This is not a case where XX's existing relationship with the F is such that XX is likely to feel angry or resentful if contact is limited.

47. The F definitely has a tendency to portray himself as the victim of the proceedings. He said he was "forced to sit through the fact finding hearing" when it was entirely his decision to contest each and every factual allegation. He thinks the Guardian is biased against him because of his prominence and thought that led to previous Guardian's not attending court, when that is in fact the complete norm in cases such as this, save for the welfare hearing. He feels Dr Proudman is mounting a campaign against him when, to be fair to Dr Proudman, she is merely representing her client's interests. He said he felt he "was being made an example of", rather than accepting that the findings of fact are very serious and the proceedings traumatising for the M.

48. I do not think on the balance of probabilities that the F would cause XX any physical harm. Although the findings of fact show that the F has a very bad temper and used to regularly lose his temper both with the M and others, I do not think there is any evidence that he would do so to a child, particularly a pre-teenager who he loved so much.

49. However, I have little faith in the F's ability to restrain himself from telling XX his narrative of the relationship with the M and seeking to "lobby" XX to see his point of view. The fact that he does not accept the findings of rape, and the fact that he is so keen for a relationship with XX so that he can show her what he is truly like, does not bode well for how he will talk to XX when unconstrained by court proceedings.

50. Most importantly I do not consider the F has any real understanding or insight into what the M has and still is going through, and how distressing this whole process has been for her. He fought the fact finding hearing "tooth and nail" despite the extreme distress that must have caused the M. He says that he has now changed, but I am far from convinced. Firstly, he applied for an adjournment of this hearing a few days before the date on the grounds that he did not have a barrister. He appears to have given no consideration to the impact of the litigation, and a further adjournment, would have on

the M. There was no reason to believe that he would have a barrister at any later hearing. Secondly, he effectively placed the burden on the M by saying that she should have therapy in order to deal with him having contact. Thirdly, he had seemed to have given very little consideration to the impact on XX of the M having to go on supporting contact. I am afraid that my conclusion, and I appreciate this will sound harsh, is that the F's main concern remains himself and what is best for him, rather than what is best for XX. Despite his voiced concern and respect for the M, his actions do not support such concern.

51. I am not going to make a finding that the F is deliberately conducting the litigation as a form of coercion of the M, which is the M's view. However, he certainly has little appreciation of the impact of the litigation on her, and therefore on XX.

52. Although I accept XX overall enjoys contact, and that it is important that XX has a relationship with the father and knows him, in the reasonably short term I think it is in XX's best interests not to have a direct relationship with the F.

53. The M is unsurprisingly traumatised both by what happened during the relationship, but also by nearly 5 years of litigation. If the contact continues then that trauma and distress will continue, and will have an impact on XX. It may be that the M is over anxious, and I am sure that therapy to help her with past trauma would assist. However, that distress is her reality and her anxiety about XX and any contact with the F is perfectly understandable in the circumstances. The F has taken some steps to consider and learn from the findings that have been made by HHJ Williscroft, but in my view he still has a considerable way to go before I would be confident that direct contact was in XX's interests, and not merely his interests.

54. Applying the various factors in the welfare checklist, I conclude that the correct order at the present time is for no direct contact, and only letterbox contact.

55. The second issue is whether to make a s.91(14) order and if so for how long.

56. The Court of Appeal considered the making of such orders in *A (A Child) (supervised contact) (s91(14) Children Act 1989 orders)* [2021] EWCA Civ 1749 (23 November 2021), King LJ held:

> *"35. One of the consequences of these changes which is seen not uncommonly in private law proceedings is that the other parties, and often the judge him or herself, can be (and often are) bombarded with emails from a parent, whether male or female, who is representing him or herself. Such behaviour may be the result of anxiety but in other cases, as in this case, it is part of a campaign of behaviour by one parent against the other which amounts to a deeply disturbing form of oppressive behaviour on their part.*
>
> *36. Regardless of the motivation, behaviour of this type, as exhibited by the mother in this case by way of an example, is deeply distressing to the parent who is the subject of such abuse and litigation at this level and is highly debilitating to each of the parties and to their children. All too often such communications are ill-considered and ill-judged with the consequence that every minor dispute or misunderstanding is met with an*

application to the judge. More importantly, the distress and anxiety caused to the other parent and to the children at the centre of such a raging dispute cannot be overestimated, nor can the damaging consequences where the focus of the litigation veers away from what, on any objective view, would and should be regarded as the real issues going to the welfare of the children concerned.

37. I referred to similar problems in a civil context in Agarwala v Agarwala [2016] EWCA Civ 1252 (Agarwala) where I said at [72] that:

"Whilst every judge is sympathetic to the challenges faced by litigants in person, justice simply cannot be done through a torrent of informal, unfocussed emails, often sent directly to the judge and not to the other parties. Neither the judge nor the court staff can, or should, be expected to field communications of this type. In my view judges must be entitled, as part of their general case management powers, to put in place, where they feel it to be appropriate, strict directions regulating communications with the court and litigants should understand that failure to comply with such directions will mean that communications that they choose to send, notwithstanding those directions, will be neither responded to nor acted upon."

38. Even though every family judge has the case management powers to which I referred in Agarwala, often even strict directions designed to limit the torrent of emails have no effect. The easy accessibility to the court and the other parties as a result of emails means that Guideline 5 in Re P which says that s91(14) orders are: 'generally to be seen as a useful weapon of last resort in cases of repeated and unreasonable applications', has even more resonance now than it did in 1999. It seems, however, that the phrase 'weapon of last resort', when put together with Guideline (4) which says that: 'The power is therefore to be used with great care and sparingly, the exception and not the rule', has led to an understandable, but perhaps misplaced, reluctance for judges to make orders under s91(14), save for the most egregious cases of which, on the facts as found by the judge, this is one.

39. Although an order made under s91(14) limits a party's ability to make an application to the court, the court's jurisdiction to make such an order is not limited to those cases where a party has made excessive applications, although that will frequently be the case. It may be that there is one substantive live application but that a person's conduct overall is such that an order made under s91(14) is merited. This situation is anticipated by Guideline 6 of Re P: 'In suitable circumstances (and on clear evidence), a court may impose the leave restriction in cases where the welfare of the child requires it, although there is no past history of making unreasonable applications.' In my judgment the sort of harassment of the father seen in this case, in the form of vindictive complaints to the police and social services, is an example of circumstances where it would be appropriate to make an order under s91(14), even if the proceedings were not dogged by numerous applications being made to the judge.

40. Further, the guidelines do not say that a s91(14) order should only be made in exceptional circumstances, rather Guideline 4 says such an order should be the 'exception and not the rule'. That is of course right, there is no place in our child focused family justice system for any sort of 'two strikes and you are out' approach, but it seems to me that in the changed landscape described in paragraph 30 above there is considerable scope for the greater use of this protective filter in the interests of children. Those interests are served by the making of an order under s91(14) in an appropriate case not only to protect an individual child from the effects of endless unproductive applications and/or a campaign of harassment by the absent parent, but tangentially also to benefit all those other children whose cases are delayed as court lists are clogged up by the sort of applications made in this case, applications which should never have come before a judge.

41. In my judgment in many cases, but particularly in those cases where the judge forms the view that the type of behaviour indulged in by one of the parents amounts to 'lawfare', that is to say the use of the court proceedings as a weapon of conflict, the court may feel significantly less reluctance than has been the case hitherto, before stepping in to provide by the making of an order under s91(14), protection for a parent from what is in effect, a form of coercive control on their former partner's part.

42. The guidelines in Re P should now be applied with the above matters in mind and in my judgment the prolific use of social media and emails in the modern world may well mean that orders made under s91(14) need to be used more often in those cases where the litigation in question is causing either directly or indirectly, real harm.

43. On 29 April 2021 the Domestic Abuse Act 2021 received Royal Assent. Section 67 of the Domestic Abuse Act 2021 which relates to orders under s91(14) will come into force in accordance with provisions yet to be made by the Secretary of State. (Commencement Note 403).

44. Section 67 (3) provides so far as is relevant, as follows:

"91A Section 91(14) orders: further provision

(1) This section makes further provision about orders under section 91(14) (referred to in this section as 'section 91(14) orders').

(2) The circumstances in which the court may make a section 91(14) order include, among others, where the court is satisfied that the making of an application for an order under this Act of a specified kind by any person who is to be named in the section 91(14) order would put—

(a) the child concerned, or

(b) another individual ('the relevant individual'),

at risk of harm.

> *(3) In the case of a child or other individual who has reached the age of eighteen, the reference in subsection (2) to 'harm' is to be read as a reference to ill-treatment or the impairment of physical or mental health.*
>
> *(4) Where a person who is named in a section 91(14) order applies for leave to make an application of a specified kind, the court must, in determining whether to grant leave, consider whether there has been a material change of circumstances since the order was made."*
>
> *45. It is not for this court to presume to interpret or to purport to provide a commentary upon a section in an Act which is not yet in force and in respect of which statutory guidance has yet to be published. It is worth however noting that the proposed new section 91A dovetails with the modern approach which I suggest should be taken to the making of s91(14) orders. In particular the provision at section 91A(2), if brought into effect, gives statutory effect to Guideline 6 of Re P (see para 39 above) by permitting a s91(14) order to be made where the making of an application under the Children Act 1989 would put the parent or child at risk of physical or emotional harm."*

57. Under section 91A(4) when considering whether to grant leave the court will consider whether there has been a material change of circumstances.

58. The F has not made multiple applications. However, his conduct of this application has been far from thoughtful towards the impact on the M. He strenuously resisted all parts of the fact finding hearing. He has sought adjournments of these proceedings on a number of occasions, despite the impact that will necessarily have had on the M. Dr Proudman also relies on his conduct in the financial remedy proceedings, but I do not consider I am in a good position to reach conclusions on that, so I do not take the conduct in those proceedings into account.

59. I do not accept that the F has knowingly conducted the litigation as a further form of coercive control over the M, a pattern of conduct which is by no means unusual in the Family Court. However, he has pursued contact with little thought for the impact on the M.

60. My principal reason for making a s.91(14) order and for making it for 3 years, is to give the M a break from litigation and the strain that places upon her as XX's primary carer. This litigation has been going on for four and a half years, the large majority of XX's life. One cannot underestimate the toll that litigation takes, particularly where one party has been the victim of very serious abuse by the other.

61. In my view, the M needs a period to feel confident that she will not have to see the F, whether on a screen or in person, and will not have to return to court unless a judge considers that is appropriate.

62. I have carefully considered the length of the period. Dr Proudman submits that it should be 5 years. Mr Harrill also argued for 5 years on the grounds that the litigation had lasted nearly 5 years. In my view the correct balance is struck by three years. That gives a long pause for the M and XX, but takes into account the efforts the F has made to change. I remind all parties that a s.91(14) order is a filter and not a bar. If the F can

show the Judge that there is a real change of circumstances, then he will be permitted to make a fresh application.

63. The third issue is the change of name. As I understand the parties' final positions, the M wishes XX's surname to change from Griffiths to Kniveton, with Griffiths as a middle name. She says this will give XX a choice as to what name to use. The F accepts both names as surnames, with a hyphen and the Guardian supports a non-hyphenated surname. I think this is a somewhat arid debate as doubtless the M and XX when XX is older will use the name they choose, save on formal documents. I think it is a mistake to try to airbrush the F out of XX's consciousness by removing Griffiths as a surname. XX has to understand the truth of who they are and in my view it will simply confuse XX for the surname to change. On balance I will order the surname changes to Griffiths Kniveton without a hyphen.

64. I will ask Mr Harrill to draw up an order that allows the F to be given termly updates from the school about XX's progress, and for the M to inform the F about any medical interventions and some form of regular news about XX. The F can send letters and cards four times per year and at Christmas and XX's birthday.

65. I will make a prohibited steps order to stop the F contacting the M and XX, save for the extent allowed. I will not make an order stopping him going to the school because I do not consider such an order is justified. The F has not breached court orders in this case, and although there are valid criticisms of his conduct, he has throughout shown respect for the court and its orders. There is no justification for making the type of draconian orders that are sometimes required in Family Court litigation.

66. Finally, Dr Proudman asks for the M's costs to be paid by the F. It was established during the hearing that HHJ Williscroft had made an order for "no order for costs" after the fact finding hearing, which was not appealed and I do not believe was even contested. Dr Proudman now seeks to reopen that order, but such an application is years out of time and has no sensible basis. The M was represented at that hearing, by Dr Proudman, and if she wished to seek and contest her costs that was the moment to do so. The costs of the fact finding hearing have therefore been determined.

67. In relation to the welfare hearing, it would be very unusual to order costs of such a hearing. The F was perfectly entitled to pursue his application for a CAO and although I have found against him, his conduct during the hearing and indeed in the lead up to the hearing was not vexatious. It is not in the best interests of children for their parents to be discouraged from seeking a CAO because they are worried that a costs order will be made against them, save where they do so in a frivolous or vexatious manner. For these reasons I do not consider a costs order to be justified.