



Neutral Citation Number: [2026] EWCA Civ 266

Case No: CA 2025 001276

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE FAMILY COURT
SITTING AT THE ROYAL COURTS OF JUSTICE
Mr Nicholas Allen KC
ZC 22 P 01428

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/03/2026

Before:

LADY JUSTICE KING
LORD JUSTICE MALES
and
LORD JUSTICE STUART-SMITH

BETWEEN:

MATTHEW JAMES PRINGLE

**Claimant/
Appellant**

- and -

OLIVIA MARGARET NERVO

**Defendant/
Respondent**

Joy Brereton KC, Amber Sheridan (Pro Bono) & Gervase de Wilde (instructed by AFP Bloom) for the Appellant
Craig Vickers and Louise Verroken-Jones (Pro Bono) (instructed by Nelsons Law) for the Respondent

Hearing date: 29 January 2026

Approved Judgment

This judgment was handed down remotely at 11.30am on 13 March 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lady Justice King:

1. This is an appeal by the appellant father, Matthew Pringle ('the father'), against the making of a Costs Order dated 8 May 2025, in which Deputy High Court Judge Nicholas Allen KC ('the judge') ordered the father to pay £385,587 being 75% of the costs of £514,115.97 which had been incurred by the respondent mother, Olivia Nervo ('the mother') in private law Children Act 1989 ('CA') proceedings. Those proceedings, now concluded, concerned the child of the parties, a little girl ('C') now rising seven.
2. The issue in the appeal is whether the judge was wrong to have made an order for costs given the high bar which requires a party's behaviour in respect of proceedings involving a child to have been 'reprehensible or unreasonable' before an order for costs is made (*Re T (children) (care proceedings: costs)* [2012] UKSC 36, [2012] 4 All ER 1137, (*Re T*), in *Re S (A Child) (Father's Costs of Appeal)* [2015] UKSC 10, [2015] 2 All ER 778 (*Re S*)).

Background

3. The mother and father were in a relationship from late 2016 to early 2019. Whilst pregnant with C, the mother, who lived variously in London and Monaco, discovered that the father was in a long term relationship with another woman in his home country of New Zealand, a woman with whom he had one daughter and who was expecting a second child. The relationship between the mother and father came to an end and C was born three months later in 2019.
4. The father continues to live in New Zealand and comes from an extremely wealthy family. The mother is herself wealthy being a successful DJ, part of the duo 'Nervo' with her twin sister Miriam. The Nervo music Instagram has over a million followers. The mother posts extensively on social media. A key underlying tension in the proceedings has related to the mother's desire to tell her fans what has happened to her, as against the father's desire to maintain privacy for himself, C and his New Zealand family. This conflict has sat uneasily with the agreement between the parties that the father should have a relationship with his daughter and with the mother's insistence, from the earliest days and throughout the proceedings, that the father should facilitate C having a relationship with her half-sisters and her paternal family including the father's partner and C's grandmother. It has been a source of considerable discord that the paternal family, notwithstanding direct approaches from the mother, has been unwilling to facilitate any contact with them or any of them, until the proceedings were concluded and they could be reassured that the family would be wholly protected from further exposure on the mother's social media platform.
5. For a period of approaching three years, the parties were in correspondence through lawyers as attempts were made to reach agreement about financial issues and as to how best the father could be introduced to C. Interwoven were the significant concerns of the father in relation to issues of privacy, regarded by the mother as attempts to silence her and to prevent her from 'telling her story'.
6. In March 2021 those representing the father proposed that a therapist should work with the parents in order to assist them as to how best to develop their relationship as co-parents to C. The mother agreed and work started, but in July 2021 the sessions were

paused, the therapist having written that *'financial issues have a habit of hijacking the positive intent of each parent'*. The therapist continued, saying that: *'the mother should not be using the opportunity to try and raise them. It undermines the purposes of the therapy, it erodes the trust and polarises the parties.'* The mother's then solicitors responded saying that when the money matters were resolved, the mother would be content to re-engage with the therapy, although the father, they said, would need to go some way to demonstrate his commitment to integrating C within his family as an equal, in particular with her half-sisters.

7. The father proposed providing a property to a value of £3 million and the establishment of a £20 million trust fund for C's benefit. Financial negotiations however stalled as had the therapeutic work and the parties remained in dispute as to the mother's use of social media and in relation to the publication of an interview she had given. These lengthy attempts at Non-court Dispute Resolution ('NCDR') having failed, the father on 22 September 2022 applied for a Child Arrangements Order and a Parental Responsibility Order. The timing and motivation of the father's application was considered by the court and findings discussed at [49]-[51] below were made.
8. On 17 October 2022 the mother had filed a C1A form: Allegations of Harm and Domestic Violence. The behaviour described focused on the father's deception of the mother in relation to his family in New Zealand and what she perceived to be his desire to keep C from her half-sisters and wider paternal family. On 18 January 2023 the First Hearing Dispute Resolution Appointment ('FHDRA') was vacated by agreement on the basis that an independent social worker, chosen by the mother, would be appointed for the purposes of advising the parties about how best to introduce C to the applicant and thereafter to assist with the introduction and progression of the contact between the applicant and the child and, if agreed by them, her wider paternal family.
9. On 17 April 2023, in his formal response to the mother's C1A allegations of harm, the father again accepted that he had not been honest with the mother as to his relationship with his long-term partner and expressed his remorse. He again expressed his desire to have a full and meaningful relationship with C and for her to be a part of his family.
10. On 18 April 2023 a Dispute Resolution Appointment ('DRA') took place where all were agreed about the way forward and within days, in accordance with the agreed plan, and facilitated by the independent social worker, C met her father for the first time. At this stage therefore, the proceedings, although out of the ordinary given the wealth and international lifestyle of the parties, continued on a conventional trajectory. There was no question of a fact-finding hearing being regarded as necessary in order to inform the outcome of the proceedings. Both parties were working towards developing a relationship between father and child and contact took place assisted by the independent social worker.

Application for a fact finding hearing:

11. In September 2023 the mother changed her legal team and with it her whole approach to the litigation. The position statement filed on her behalf in preparation for the next DRA, due to take place on 14 November 2023, was of a wholly different complexion and now sought *'admissions from F or direction for a find of fact hearing to prove her allegations of reproductive coercion and controlling behaviour including gas-lighting, love bombing, blame shifting, future faking and financial abuse through excessive*

litigation'. The position statement went on to express the view that the mother had been entrapped and raped by the father *'as she did not knowingly give consent to the intercourse on a trueful foundation'*. Notwithstanding seeking such serious findings, it was also sought on the mother's behalf, for the father to (i) be required to introduce C to her half-siblings and her paternal grandmother with (ii) a plan, designed to achieve that outcome, to be filed imminently and (iii) for the independent social worker to convene an in-person family group conference between the mother and the extended paternal family with the mother and her sister travelling to New Zealand for the meeting.

12. In these circumstances at the DRA on 14 November 2023, HHJ Talbott had no alternative but to give case management directions for consideration to be given at a further hearing as to whether there should now be a finding of fact hearing. The order however also made provision for further contact between C and the father in Monaco.
13. On 31 January 2024 the father apologised in his witness statement for his deception of the mother. He did not seek to excuse or justify his behaviour, but expressed a desire to focus on the future for C.

The application for a fact finding hearing:

14. The mother's application for a fact finding hearing came before HHJ Roberts on 8 February 2024. The application was refused. For the purposes of this appeal it should be noted that she found that:
 - i) There was no dispute that contact when it occurred had gone well and C had enjoyed it;
 - ii) The mother had set out her allegations in the C1A, but the case had proceeded on the basis that it was not necessary or desired by the parties for the court to go into them as it was agreed that the father should be part of C's life and that contact should start;
 - iii) The mother wished to be able to tell her fan base what has happened to her whilst the father wished to maintain the privacy of his other family and himself and of C. HHJ Roberts referred to this as *'an issue that is bubbling below the surface continually'*;
 - iv) For reasons about which HHJ Roberts was unclear, the approach of not needing to go further into the past and its impact on the present and that contact should simply progress as agreed, changed in November 2023 when the mother said she wanted her allegations considered. The judge was critical of the fact that those representing the mother had wholly ignored the limits as to witness statements and position statements.
 - v) HHJ Roberts said that the father's behaviour towards the mother had been reprehensible and she did not doubt that it came under heading of domestic abuse. She noted that the father had made admissions and much of the behaviour could be dealt with by way of admission. What he was unlikely to agree, HHJ Roberts said, was the characterisation of the behaviour as illustrated in Dr Proudman's position statement filed on behalf of the mother in referring to *'reproductive coercion, pathological lying, gas-lighting, manipulative deception and rape'*.

15. The judge did not think it necessary for the father to concede such terms as part of his admission. The judge went on to say that; *'if it thinks it's important to do so and I am far from convinced, the court can consider at the welfare stage whether it is helpful to make findings about the father's behaviour under those sorts of headings'*. Critically she went on *'I also do not see that the behaviour would cause C harm, it is difficult at this stage to see the risks that the mother says the father poses to C from the behaviour described'*.
16. The judge concluded that she could not see that it was necessary for the court to have a separate fact finding hearing before making welfare decisions for C. The principle of contact was agreed and was progressing. The sort of fact finding hearing the mother had in mind would, she said, be *'devastating to both parties to go through and to any future cooperation which I note was happening well until November.'*
17. The judge required the father's team to prepare a document setting out the admissions he would make and dismissed the application for a separate fact finding hearing. There was no appeal from that judgment.
18. In accordance with the judge's order, the father filed a schedule of admissions dated 29 February 2024 in which he accepted that he had led the mother to believe they were in a committed, monogamous relationship, that C's pregnancy had been planned and that the mother had discovered the truth when she had travelled to New Zealand on an unannounced trip. The father, it also recorded, suffered depression and had sought professional assistance for it. The admissions concluded that *'the father accepts the mother will have been deeply impacted by his above behaviour and that this has caused her emotional harm'*.
19. On 3 June 2024, the matter came before HHJ Roberts for a further DRA at which she set the matter down for a welfare hearing with a time estimate of four days. There was no agreement between the parties as to the number of hours the proposed contact between July and September should last. Notwithstanding the mother's objection, the judge ordered there should be an extension for contact to take place for up to six hours in line with the recommendation of the independent social worker. The attached schedule of recitals recorded that the father accepted that the behaviour, set out in the schedule of admissions of 29 February 2024, constituted domestic abuse of an emotional nature.
20. Unfortunately the striking change in approach taken by the mother appears to have had a significant impact on the parties and therefore on C. The father did not take up any contact with C from April 2024, making what he accepts were weak excuses for not travelling to see her on the arranged dates. On 14 August 2024 the father wrote to the mother's solicitors saying that he had reached a decision to withdraw his applications. On that basis, HHJ Roberts reduced the time estimate for the welfare hearing to one day and listed the matter before the judge for hearing.
21. In preparation for the shortened welfare hearing due to take place on 16 September 2024, each of the parties filed a witness statement. The mother's witness statement and exhibits ran to over 70 pages. On the one hand she asked the court to refuse the father's application to withdraw his application for a Child Arrangements Order and asked the court rather to make an order for him to have contact on a once monthly basis. On the other hand in relation to her opposition to the father having parental responsibility, she

said, *'I wouldn't put it past Matthew to orchestrate a fatal accident to eliminate her from the world he knows this would deeply hurt me and allow him to evade any genuine commitment to her'*.

22. In his witness statement in response, the father unsurprisingly said that he felt unable to know how to respond to what was on any view, a wild and unsubstantiated allegation, but, he said, it confirmed his belief that the proceedings were no longer in C's best interest. The father referred to his ongoing depression and anxiety and the provision of his doctor's letter and expressed the view that he was no longer able to cope or engage in the proceedings in any meaningful way.
23. The father instead proposed that no order should be made, but that he would travel to Europe for face to face contact four times a year and have additional video contact in between. He said that the mother's proposal of monthly contact was not feasible given the distances and his other commitments.
24. When the matter came before the judge on 6 September 2024, the father had been given permission to attend remotely, but in the event he produced a short medical note saying that his mental health made him unable to join the hearing. It having been agreed that whatever the outcome of the hearing and whatever order was made, the father would have ongoing face to face contact with C, the following issues were left to be determined by the judge, some of which were dealt with on 6 September and some of which were held over to a further hearing on 25 February 2025:
 - i) The mother sought a declaration of parentage. In her application the focus was to enable a New Zealand passport to be obtained for C. This was expanded in argument by Mr Vickers who now represented the mother in place of Dr Proudman. The application was, at that stage, refused by the judge in an extempore judgment, and the judge gave the father a number of weeks to sign all the documentation necessary to make an application for a New Zealand passport on C's behalf. The father, at an adjourned hearing on 25 February 2025, agreed to the making of a declaration of parentage and to pay the costs in respect of the preparation of that application.
 - ii) Transparency Order: The father wished there to be a Transparency Order to continue to C's 18th Birthday. The mother and the media wished all Transparency Orders to be discharged forthwith. The mother wished to have maximum publicity in order to tell her story. The judge adjourned the application for lack of time and on 26 February 2025 granted the father's application and made a Transparency Order to continue to C's 18th Birthday. The judge handed down a separate judgment in relation to the transparency order on 8 May 2025.
 - iii) The mother sought an order pursuant to s91(14) CA requiring, for a specified period of time, leave to be given prior to any future application being made by the father. The father did not agree to the making of such an order at the hearing on 16 September 2024, but agreed at the hearing on 25 February 2025 leaving the only issue as to the duration of such an order which was determined by the judge to be four years;
 - iv) Parental Responsibility Order: the father's application for parental responsibility was withdrawn by consent.
 - v) Child Arrangements Order: the mother opposed the father's application to withdraw his application for a Child Arrangements Order. The judge allowed

the father to withdraw the application in an ex tempore judgement given on 16 September 2025. It was argued on behalf of the mother that the matter should be listed for three days in order for the court to hear evidence and to *provide ‘a narrative history of the parties relationship, how C came into the world, how C has fitted into the parties’ relationship with a full roadmap of all that has happened in the parties’ relationship’*. Mr Vickers submitted that without findings and a judgment, C’s private and family life could not be promoted. The judge in refusing to order this renewed application for a finding of fact hearing, saw *‘no solid advantage but only potential solid disadvantage to C when the issue of contact was not a live issue between the parties’*.

vi) Costs.

Costs in Private Law Children’s proceedings

25. The law in relation to costs in children’s cases is well established and uncontroversial. The parties submitted, and the judge worked from, an agreed document headed ‘Legal Framework Regarding Costs’. It is necessary therefore to set out the established law by reference to the rules and authorities only to the extent necessary in order to provide the backdrop against which it can be determined whether or not the judge erred in making an order for costs against the appellant.
26. Under the Civil Procedure Rules 1998 (‘CPR’), the ‘general rule’ in civil proceedings is, under CPR 44.2(2)(a), that the ‘unsuccessful party will be ordered to pay the costs of the successful party’. Under the Family Proceedings Rules 2010 (FPR) 28.2, the general rule that costs follow the event is disapplied although the court may by FPR 28.1, make at any time such order as to costs as it sees fit.
27. The exercise of the court’s discretion as to costs is found in CPR 44.2(4) and (5) and applies equally to both children’s proceedings and to general civil proceedings. It provides:

“(4) In deciding what order (if any) to make about costs, the court will have regard to all the circumstances, including-

- (a) the conduct of all parties;
 - (b) whether a party has succeeded on part of its case, even if that party has not been wholly successful; and
 - (c) Any admissible offer to settle made by a party which is drawn to the court’s attention and which is not an offer to which costs consequences under part 36 apply.
- (5) The conduct of all the parties include-
- (a) conduct before, as well as during, the proceedings and in particular the extent to which the parties follow... any relevant pre action protocol;
 - (b) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;
 - (c) the manner in which the party has pursued or defended its case or a particular allegation or abuse; and
 - (d) whether a claimant who has succeeded in the claim, in whole or in part, exaggerated its claim.”

28. A court having decided to exercise its discretion to make an order for costs, then moves on to CPR 44.4 to decide the amount of costs to be paid. By CPR 44.4(3):

“The court will also have regard to –

(a) the conduct of all the parties, including in particular –

(i) conduct before, as well as during, the proceedings; and

(ii) the efforts made, if any, before and during the proceedings in order to try to resolve the dispute;

(b) the amount or value of any money or property involved;

(c) the importance of the matter to all the parties;

(d) the particular complexity of the matter or the difficulty or novelty of the questions raised;

(e) the skill, effort, specialised knowledge and responsibility involved;

(f) the time spent on the case;

(g) the place where and the circumstances in which work or any part of it was done; and

(h) the receiving party’s last approved or agreed budget.”

29. In children cases, the rules set out above are applied taking into account the principle that it is unusual for there to be an order for costs to be made in proceedings relating to children, a principle which goes back as far as *Gojkovic v Gojkovic (No 2)* [1992] 1 All ER 267 at [271]. The issue has come before the Supreme Court twice, each time in relation to public law care proceedings. On each occasion the Supreme Court emphasised that the law and approach is identical regardless of whether the court is concerned with public law proceedings or private law proceedings. In this context in *Re T (children) (care proceedings: costs)* [2012] UKSC 36, [2012] 4 All ER 1137, (*Re T*) Lord Phillips said at [44]:

“For these reasons we have concluded that the general practice of not awarding costs against a party, including a local authority, in the absence of reprehensible behaviour or an unreasonable stance, is one that accords with the ends of justice and which should not be subject to an exception in the case of split hearings.”

30. Lady Hale picked up the reference to the necessity for ‘reprehensible or unreasonable behaviour’ in *Re S (A Child) (Father’s Costs of Appeal)* [2015] UKSC 10, [2015] 2 All ER 778 (*Re S*) saying at [26]:

“All the reasons which make it inappropriate as a general rule to make costs orders in children’s cases apply with equal force in care proceedings between parents and local authorities as they do in private law proceedings between parents or other family members. They lead to the conclusion that costs orders should only be made in unusual circumstances. Two of them were identified by Wilson J in *Sutton London Borough Council v Davis (No 2)* [1995] 1 All ER 65 at [67], [1994] 1 WLR 1317 at [1319]: “where, for example, the conduct of a party has been reprehensible or the party’s stance has been beyond the band of what is reasonable: *Havering London Borough Council v S*

[1986] 1 FLR 489 and *Gojkovic v Gojkovic (No 2)* [1992] 1 All ER67 273, [1992] Fam 40 at [59]. Those were also the two circumstances identified in *re T*, at [44].”

31. When considering the facts in *Re T*, Lady Hale at [27] identified two questions. First, is there any reason to depart from the general approach in *Re T* (namely whether there has been reprehensible conduct or the parties’ stance has been beyond the band of what is reasonable) and second, are there other circumstances beyond the two identified in *Re T* in which a costs order might be justified.
32. More recently in *Re E (children: costs)* [2025] EWCA Civ 183 (*‘Re E’*) Peter Jackson LJ considered an appeal in private law proceedings, where a mother had made untrue allegations that the father had not only sexually abused the children of the family, but had made them the victims of a sex ring. The allegations were unfounded but the judge made no order for costs. Peter Jackson LJ summarised the position at [23]:

“There is a general practice of not awarding costs against a party in family proceedings concerning children, but the court retains a discretion to do so in exceptional circumstances. These include cases in which a party has been guilty of reprehensible or unreasonable behaviour in relation to the proceedings. This practice applies equally in public law and private law proceedings, and irrespective of whether a party is legally aided. Nor is there any difference in principle between fact-finding hearings and other hearings. The court can make costs orders at any time: FPR 28.1.”
33. Having considered various submissions as to whether different tests should apply to the costs incurred in fact finding hearings in private law proceedings from the approach identified by the Supreme Court in care proceedings, Peter Jackson LJ rejected such a submission saying at [29]:

“The correct approach is set out at paragraph 23 above. It is simple, flexible and well-established, and there is no reason to depart from it.”
34. During the course of his analysis, Peter Jackson LJ noted at [32] that allegations of domestic abuse are *‘sadly common place’* and were *‘never likely to lead to a cost award’*.
35. Mr Vickers on behalf of the mother, sought to distinguish between Lady Hale’s characterisation of the making of an order for costs as *‘unusual’* with that of Peter Jackson in *Re E* as it being *‘exceptional’* on the basis that Lady Hale’s characterisation represented a lower threshold for the making of a costs order than that of Peter Jackson LJ in *Re E*. The court Mr Vickers submitted, should formally disagree with Peter Jackson LJ’s characterisation of the making of an order as *‘exceptional’*. In my judgment such a semantic distinction is of no relevance either to the issue before this court or to the court of first instance. The approach is that identified at [44] by Lord Phillips in *Re T* and adopted by Lady Hale in *Re S* at [26] namely that the general principle is that there should be no order for costs in children cases absent reprehensible behaviour or an unreasonable stance being taken by a party in relation to the

proceedings. That is the approach adopted by Peter Jackson LJ in *Re E* and, adopting his words at [29], provides a test which is ‘*simple, flexible and well-established, and there is no reason to depart from it*’.

The Judgment

36. There having been insufficient time on 16 September 2024 for the judge to hear submissions in respect of the father’s application that the Transparency Order should continue until C’s 18th birthday and the mother’s application for costs, those matters were relisted before the judge for a hearing on 25 and 26 February 2025. The judge handed down two separate judgments on 8 May 2025. The transparency judgment set out significantly more factual background and greater analysis of the facts than that found in the costs judgment and, for that reason, the judge said that the costs judgment should be read alongside the transparency judgment.
37. The judge set out substantial passages from the agreed note on the law and at [58] reminded himself that in the context of private law proceedings, his discretion was to be exercised only if the conduct had been ‘reprehensible or unreasonable’. He referred also to the fact that the unreasonableness must relate to the conduct of the litigation rather than the welfare of the child.
38. The judge, by reference to four matters, concluded at [60] that the father’s conduct, both before and after the commencement of proceedings, had been unreasonable and therefore, in his discretion, an order for costs should be made against him.
39. The four reasons given by the judge for making an order related exclusively to the father’s conduct of the proceedings and made no reference to that of the mother. The four matters relied upon were:
 - i) That in addition to being motivated by a desire to establish a relationship with C when he issued proceedings, a part of the father’s motivation had been to protect his privacy and safeguard his reputation knowing that upon issue, restrictions on publicity would follow by virtue of the Administration of Justice Act 1960, s12 and Children Act 1989 , s97.
 - ii) The lateness of the father’s application to withdraw the proceedings and his lack of a good reason for doing so.
 - iii) The father’s failure to attend remotely or otherwise the hearings on 16 September 2024 and 25 February 2025.
 - iv) The fact that the father changed his position in respect of the mother’s application for an order under s91(14) CA 1989 between the hearing on 16 September 2024 and 25 February 2025, when he agreed to the making of the order and further that the father had sought to adduce additional evidence on 7 February 2025, four months after the mother had filed her witness statement on 8 October 2024.

The judge’s approach to ‘conduct’:

40. As noted above at [26], at this stage, where consideration was being given as to whether an order should be made at all, the matters the court has to take into account under CPR

44.2(4) and (5) include: the conduct of both parties, whether it was reasonable for a party to pursue an issue, the manner in which it was done and whether the claimant was successful. In my judgment the judge fell into error in considering only the conduct of the father and not that of the mother. Had he done so, he would in my judgment also have taken into account amongst other matters: (i) the mother's failed application for a fact finding hearing and her attempt to resurrect the same under the guise of opposing the father's application to withdraw his application for a child arrangements order (ii) his own finding at [99] of the transparency judgment that:

“There is therefore unchallenged evidence that M's desire for publicity has already damaged the prospect of C building a relationship with their paternal family.”

(iii) that all applications had either been agreed or, where contested, the father had succeeded.

41. The judge then moved on to consider the amount of costs which should be awarded. The judge said that he took into account all the matters he had considered in determining whether a costs order should be made at all and that in determining the amount in the light of CPR 44.4(3)(a)(i), the court would have regard to the 'conduct of all the parties'. The judge in determining the amount did so at [93], by reference to a number of mitigating/conduct factors:

- a) “Efforts were made to progress matters out of court before the issue of proceedings and offers to settle the financial arrangements were made on F's behalf;
- b) I understand it to be accepted on M's behalf that mediation/therapy in relation to child arrangements broke down because she introduced the need to determine financial arrangements and made it a precondition of returning thereto that financial arrangements were resolved;
- c) there was no order for costs made by Her Honour Judge Robertson on 18th January 2023 and the same order was made by His Honour Judge Talbot on 18th April 2023 (with all subsequent orders being costs in the application) and the costs of and occasioned by these two hearings have therefore been determined;
- d) contact began after F issued proceedings with the assistance of an ISW who he has solely funded (at a cost of c. £46,000) and progressed for a number of months during 2023;
- e) F has made a previous contribution towards M's legal costs (although if I understand the position correctly the figure is c. £73,000 rather than c. £175,000 with the balance paid towards living and not legal costs);
- f) F persuaded Her Honour Judge Roberts on 8th February 2024 not to direct a free-standing fact-finding hearing in part because she determined his admissions meant that one was not necessary as they were sufficient for the court to move forward to determine welfare issues. The judge did not consider F had to concede terms and labels sought because of

admissions he had made. M did not therefore succeed in obtaining the findings she sought – both as to reproductive coercion and otherwise;

- g) F persuaded me on 16th September 2024 to permit his applications to be withdrawn; and
- h) it can therefore be said that (in this sense) F has succeeded and his approach cannot be faulted being one that was endorsed both by Her Honour Judge Roberts and by me.”

42. The judge concluded that all those points acted to depress the proportion of the mother’s costs the father should be ordered to pay. The judge concluded saying:

“Acknowledging that I am painting with a broad-brush rather than a fine sable, in my judgment it is appropriate for F to pay 75% of M’s costs. This figure includes M’s costs incurred in relation to her application for a declaration of parentage which F has accepted he should pay.”

43. In my judgment whilst there is overlap as between CPR 44.4(3) (should an order be made) and CPR 44.2(4) (amount of costs), particularly in relation to taking into account the conduct of both parties, the matters which the judge took into account as matters of mitigation under CPR 44.4(3) should properly have been considered as part of his consideration under CPR 44.2(4)&(5) as to whether an order should be made at all.

44. The judge made an order that the father pay 75% of the mother’s costs of £500,115.97 and ordered the father to pay £192,793.50 on account being 50% of 75% of the costs. He noted that the father’s costs were £404,446 plus the cost of the independent social worker of some £46,000.

Grounds of Appeal

45. The father’s grounds can be summarised as follows:

Ground 1: the judge was wrong to exercise his discretion so as to make what is an unusual order for costs in private children law proceedings. The judge failed to have regard to the litigation as a whole, in particular the success of the father’s position in respect of C at all stages.

Ground 2: the judge was wrong to give weight to selected correspondence over a three-year period, the majority of which had not been before the court and had not been tested in evidence, when reaching his decision regarding motivators.

Ground 3: the judge gave insufficient weight to the mother’s litigation conduct, such as her significant change in approach which led to further costs, whilst attaching too much weight to the father’s litigation conduct, such as non-attendance at just two hearings, when this did not justify a costs order.

Ground 4: the case does not fall into the category of exceptional and the father’s conduct was not unreasonable and reprehensible. Even if his conduct could be classed as so, the costs order was punitive and arbitrary. The decision that the father pay 75% of the costs was wrong, disproportionate, and unjustified.

Submissions

46. The father's submissions made by Ms Brereton KC on his behalf, can be summarised in this way; that the judge had a too narrow focus on the limited reasons he gave, meaning he failed to take account of the litigation as a whole. Contrary to CPR 44.4(2), he failed to take into account the mother's conduct. At every stage of the litigation, the father's position was either agreed by the mother (until September 2023 when her representation changed), or endorsed by the court as being in the best interests of C. Viewed holistically, it cannot be said that the father's conduct was in anyway unreasonable or reprehensible.
47. Ms Brereton submitted that although the judge referred to various mitigating factors said to depress the amount the father should be ordered to pay, the judge should have considered and taken into account each of those factors when assessing the reasonableness of the father's conduct.
48. On his part, Mr Vickers' global submission was that the court should reject the submission that the judge applied a narrow focus on limited reasons in making the costs order. The judge he said, was well placed to consider the broader canvas of the litigation having presided over three days of hearings and delivered four judgments. Further he submitted, the fact that the father's position was mostly accepted by the court throughout the proceedings does not mean his litigation conduct was not unreasonable or reprehensible. A party can behave in this way and yet still achieve the substantive outcome they seek.

The Four Reasons

49. Against the backdrop of the Grounds of Appeal, I therefore turn to deal in more detail with the four factors which led the judge to conclude that an order for costs should be made. In the light of Mr Vickers' submissions, I do so in order to consider whether they are of such weight that, notwithstanding the judge's failure to factor in the mother's conduct or to place all relevant matters into the equation under CPR 44.2(4) &(5), they are on their own, capable of amounting to reprehensible or unreasonable conduct of such gravity as to lead to the making of an order for costs or for any other reason would justify the making of an order.

Reason 1: The father's motivation.

50. The judge did not find that the father in issuing proceedings when he did had been 'primarily concerned' not with C, her welfare and to have a relationship with her, but to protect his privacy and safeguard his reputation. He was however satisfied that protecting his privacy and safeguarding his reputation formed part of the father's motivation [65] and went to the issue of costs. So far as the timing of the application to the court on 22 September 2022 was concerned, he referred to three letters sent on behalf of the father, as part of the father's 'pre-action conduct' which the judge said, shed light on the father's motivation. In relation to the first letter, dated 12 November 2020, the judge took into account that the order of topics dealt with in the letter were, first 'defamation', then 'privacy' and finally the 'welfare' of C. A second letter, of 10 March 2021, he noted, was expressly written pursuant to the Pre-Action Protocol for Media and Communications Claims. Third was a letter of the same date, 10 March 2021, written to both the media and the mother's solicitors in relation to the media's

intention to publish an article following an interview with the mother during which, it was said, she had shared detailed information of her relationship with the father. No assurance having been provided by the mother's legal team that the article would not be published, the father issued his application for child arrangements and parental responsibilities orders two days later on 22 September 2022. These three letters led the judge at [62] to conclude that the father's application on that date, although made by a desire to establish a relationship with C, was also motivated by knowledge of the restriction that would follow under the Administration of Justice Act 1960, Section 12 and the Children Act 1989, Section 97.

51. Mr Brereton submitted, as she did before the judge, that it would be wholly wrong to make any finding as to the father's motivation in bringing the proceedings based on three letters. She highlighted the danger of this approach by pointing out that the letter of 12 November 2020, which dealt with the subject matter, (defamation first and C last), was a letter written in response to one sent by the mother's solicitors which was not in the bundle. It was therefore impossible to tell whether or not the letter from the father's solicitors was merely responding to an early letter in the same topic order as in the letter to which they were replying. Further, she rightly observed that in his declaration of parentage judgment of 16 September 2024, the judge had cautioned himself against just such a use of partial correspondence, saying at paragraph [17]:

"I am told, but have not seen, that there was significant inter-solicitor correspondence between solicitors acting for the father and mother in the months and years after C was born and I, having not seen that correspondence, cannot decide and do not decide why, in the first couple of years of C's life she had not been introduced to her father."

52. Even if the judge was right in concluding that *'furthering F's privacy was a motivator behind his conduct'* (judge's emphasis), I cannot see how, given the overall circumstances and background to the case, and following three years of pre-action correspondence, a finding of such a partial motivation could even amount to a make-weight to any application for costs. It follows that in my judgment the judge was wrong to have placed reliance on this limited correspondence and accordingly Ground 2 must succeed.

Reason 2: The father's late withdrawal of his application for parental responsibility and a child arrangements order.

53. The judge at [68] considered it relevant that the father did not apply to withdraw his application for a child arrangements order until 29 August 2024 not having seen C since April 2024. The judge said:

"I do not need to determine the reasons for this- and whether the responsibility lies with F, M, or both- in order to conclude that it amounted to a very late application by which time both parties would have continued to incur costs and in particular those referable to 16 September 2024 hearing will have begun to be incurred."

54. It is undoubtedly the case that an application to withdraw made just over a fortnight before the hearing listed on 16 September 2024 (although notified to the mother on the 14 August) is late. It is clear from the judge's judgment that over the months between April and August 2024, the father was struggling with his own mental health issues, with the proceedings themselves and with the mother's undoubted persistence in wishing to have a family conference and in her personally contacting his family in New Zealand.
55. All too often in private law family cases, parties make decisions or reach agreement very late in the day. Inevitably the lateness of these decisions may mean that costs have been incurred. If however, each time that this happened an order for costs was made, other than on the basis of the stringent test in *Re T*, one would see orders for costs being made more or less routinely in Children Act proceedings which would undermine the principle that, for the reasons given by Baroness Hale in *Re S* at [20 – 26], it is inappropriate as a general rule to make costs orders in children's cases.
56. As a result of the notification that he intended to withdraw his application for parental responsibility and a child arrangements order, HHJ Roberts reduced the time estimate for a full welfare hearing from four days to a day. Almost always such an application would have resulted in a consent order having been put before the judge for approval. Far from that being the case here, (as the judge put it at [21] of the transparency judgment), the mother '*strongly opposed*' the withdrawal and sought a full finding of fact hearing of the type which had been refused in February 2024 by HHJ Roberts and which had not been subject to appeal. Similarly the mother '*strongly resisted*' the continuation of the Transparency Order and maintained her desire to '*tell her story*' in the knowledge that it would inevitably lead to a blaze of publicity which could have only had an impact on C who was by then attending school. It follows that considerable costs were incurred by both sides as a result of the mother's approach after the father had given notice that he wished to withdraw from the proceedings.

Reason 3: The father's failure to attend the hearings of 16 September 2024 and 25 February 2025.

57. The judge next held at [70] that it was appropriate for him to take into account that the father did not attend the hearings on either the 16 September 2024, or 25 and 26 February 2025. The judge noted that the father had throughout been given permission to attend remotely given the distances including having been given permission to attend the hearing on 25 February remotely. On the morning of the hearing Ms Brereton told the court that she had received instructions that the father would not be in a position to attend the hearing remotely or at all and that his stress-induced anxiety and symptoms had worsened over the course of the last 24 hours. An updated letter was provided from the father's General Practitioner saying that he would be unable to attend. The judge commented that a similar thing had happened in relation to the 16 September 2024 hearing, the father having suffered an anxiety attack immediately before the hearing.
58. The judge accepted that he must be careful not to go behind the medical letters which had been put before the court and accepted that the father had a history of depression and anxiety and had been prescribed medication because of the proceedings. This was somewhat undermined by the fact that he also accepted Mr Vickers' submission that a diagnosis of anxiety is always based on a material degree of self-reporting and that his absences were in effect presented as a *fait accompli*.

59. Ms Brereton reminded the judge there had been no question of oral evidence being heard on either of the two relevant dates. The judge concluded in relation to the father's non-attendance at these two hearings at [77]:

“I am not persuaded that there was a sufficient deterioration in F's condition between when he sought to attend the two hearings remotely and then not to attend at all. I am therefore not satisfied that F was unable to attend either or both of the hearings remotely with, if appropriate, his camera turned off and with the possibility of frequent breaks and/or any other special measures in place that would have enabled his full participation. I maintain this view even if (as I accept) there may have been an increase in his stress induced anxiety in the build-up to the hearings. In my view this was “unreasonable” conduct during the proceedings which I am able to take into account.”

60. In my judgment, it cannot be said that the father's failure to attend these two hearings either together or with the other matters considered by the judge, would begin to approach the sort of unreasonable conduct which the Supreme Court had in mind in *Re T and Re S*. I note in particular that the father had been given permission by the court to attend remotely and that he was represented by leading and junior counsel who had instructions in advance of the hearing, (although I understand that there may have been difficulties in getting further instructions during the hearing). Counsel were well able to present all the arguments before the court. No court time so far as I am aware, was lost and each of the hearings was by way of submissions only so the father would not have been required to give oral evidence.

Reason 4: The father's late concession to the making of a s91(14) CA 1989 order and late application to file a witness statement.

61. Finally the judge took into account the father's late agreement to the making of a s. 91.(14) CA order and his late application to adduce additional evidence which had been made on 7 February 2025 and which was refused by the judge. The judge categorised this as a further example of unreasonable conduct during the proceedings, notwithstanding that he accepted it was unlikely have led to a significant sum in the context of costs.
62. The judge therefore concluded that these reasons amounted to a case justifying the exercise of the court's discretion to depart from the general practice of not awarding costs in children cases.

Discussion

63. The judge at [86] rejected Ms Brereton's submission that the case did not fit within the legal structure for a costs order in children's cases, she having given by way of example, the types of cases where such orders had properly been made such as fabricated allegations of physical and/or sexual abuse. The judge said that her reading of the authorities was too narrow.
64. In my judgment the judge's approach swung too far in the other direction giving too broad an interpretation of what amounted to unreasonable behaviour such as to justify

the making of an order and rather relied heavily on what was low level procedural conduct in the form of late decision making and late notice, which whilst to be deprecated, is in reality all too often part and parcel of such emotive proceedings. Had he focused on the approach summarised by Peter Jackson LJ in *Re E*, he would have concluded that the father's conduct, before and during the proceedings, could not on any basis have been regarded as reprehensible or unreasonable and, that once the mother's own conduct was added to the equation, there should have been no derogation from the general rule that there should be no order for costs in children cases.

65. I am conscious and appreciate that the judge was faced with numerous applications spread over a substantial period of time against the backdrop of the father's deceitful behaviour towards the mother in the period of time leading up to the birth of C. It is clear that the judge was frustrated by the father's failure to attend remotely at the hearings in September 2024 and February 2025 and was dealing with costs as the last of four judgments. The judge was clearly conscious that those costs if paid by the father, who could well afford it, could be utilised for the benefit of C. The point of principle however applies regardless of means and had the judge worked his way through CPR 44.2(4) in respect of each of the parties' conduct and in particular factored in the mother's late application for a finding of fact hearing which derailed the consensual progress of the case, he would have appreciated that this was not one of those rare cases where the making of an order for costs was appropriate.
66. In saying this it should not be thought that I am in anyway underplaying the father's shameful and deceitful behaviour towards the mother, or that I am ignoring his admission that that behaviour amounted to the emotional abuse of the mother. It is clear that the father's behaviour, quite understandably, remains a source of considerable bitterness and continuing distress to the mother. An order for costs however relates only to the conduct of the parties in relation to the pre-proceedings and proceedings and not to the events, abusive or otherwise, which led to the conception of C. Such matters may well go to the welfare analysis in cases where, unlike here, there is an issue as to whether contact should take place at all, but not as to costs.

Conclusion

67. It follows that the appeal must be allowed, the judge having fallen into error in that he:
 - i) Failed to take into account the conduct of both parties.
 - ii) Wrongly concluded that the four features relied upon by him were capable of justifying a finding of unreasonable conduct on the part of the father such as to lead to the making of an order for costs contrary to the general principle that there should be no order for costs in children cases.
 - iii) Failed properly to apply CPR 44.4(3) in that he regarded matters which should properly have been taken into account in deciding whether an order should be made at all, as features going only to mitigation under CPR 44.2(4)&(5).
68. Accordingly the appeal will be allowed and an order that there be no order for costs shall be substituted for the judge's order save, as conceded by the father, there shall be an order for costs in respect of the mother's preparation of the declaration of parentage application on a standard basis to be assessed if not agreed.

Lord Justice Males:

69. I agree with the judgment of Lady Justice King.
70. I would add that it is a great pity that, when she instructed a new legal team in September 2023, the mother chose to introduce into the proceedings allegations of ‘reproductive coercion and controlling behaviour including gas-lighting, love bombing, blame shifting, future faking and financial abuse through excessive litigation’ and specifically of entrapment and rape, and to persist thereafter in seeking a fact finding hearing (or its equivalent after the application for such a hearing had been refused) for these allegations to be ventilated in court. Deplorable as the father’s conduct had been, and however understandable the mother’s bitterness about it, this change of approach was guaranteed to send the temperature of the litigation soaring and to increase the costs substantially. Even more importantly, it was bound to undo much of the progress which had been made up to that time in working out a way in which C might have a relationship with both of her parents and, as the judges in the court below rightly held, was quite unnecessary in view of the admissions made by the father.
71. In my view the fact that the mother chose to conduct the proceedings in this way was highly relevant to the question whether a costs order should be made against the father, but it was not a factor which the judge took into account.
72. Finally, and speaking as one who is not a specialist in family law, I confess that I am somewhat bemused by the concept of a Transparency Order whose sole purpose is to ensure privacy. I do not doubt that such orders are appropriately made in many cases, and there is no issue before us as to the order which was made in this case. But it seems to me rather odd that such orders do precisely the opposite of what it says on the tin.

Lord Justice Stuart-Smith:

73. I agree with both judgments.