Neutral Citation Number: [2026] EWCA Civ 1216

Case No: CA-2026-001140

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE FAMILY COURT SITTING AT WREXHAM
Mr Justice McKendrick
WX25P00371

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29/09/2026

Before :

SIR STEPHEN COBB
PRESIDENT OF THE FAMILY DIVISION
LORD JUSTICE MOYLAN
and
LORD JUSTICE ZACAROLI

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Re C (Child Arrangements Orders; Domestic Abuse; Child Focused Court)

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Jennifer Perrins KC and **Imogen Lloyd-Thomas** (neither of whom appeared below) (instructed by **Simons Muirhead Burton LLP**) for the **Appellant (mother)**
The Respondent (father) appeared in Person
Barbara Mills KC and **Charlotte Baker** (instructed by **Beck Fitzgerald**) for Rights of Women as First Intervener (submissions in writing only) (all acting *pro bono*)
Louise MacLynn KC and **Edward Flood** (instructed by **Cafcass Legal**) for Cafcass England and Cafcass Cymru as Second Intervener (submissions in writing only)

Hearing date : 30 July 2026

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Approved Judgment

This judgment was handed down remotely at 10.30am on 29 September 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Sir Stephen Cobb P :

Introduction

1. Every day, judges and magistrates in the Family Court are called upon to make important decisions about the future care and upbringing of children whose lives and family relationships have been shaped, and sometimes deeply scarred, by domestic abuse. These are never easy cases.

2. This appeal has raised questions about how the responsibility vested in judges and magistrates should be discharged in cases which come before the court for determination under the new procedure for determining child arrangements for separated families known as the 'Child Focused Court' ('CFC') model.

3. This appeal concerns four siblings, A (boy, now aged just 14), B (girl, aged 11), C (girl, aged 9) and D (boy, aged 6). They are the children of the Appellant ('the mother') and the Respondent ('the father').

4. Final child arrangement orders under Part II of the Children Act 1989 ('CA 1989') were made in this case by McKendrick J ('the Judge') sitting in the Family Court in Wrexham on 22 April 2026. The mother and father were both represented at that hearing. The core ingredients of the order under appeal are as follows:

   i) The children shall live with their mother;

   ii) During term time, the children will see their father once per fortnight for five hours (on a Saturday); during school holidays (not half-terms), this will be once per week (five hours);

   iii) Additionally, the children will see their father for some additional time (three hours) at Christmas and Easter;

   iv) The father's time with the children must be supervised by one of a number of named family friends of the father; the supervisor is to be briefed by Cafcass Cymru as to the issues of risk;

   v) There will be no telephone contact between the father and the children; in this regard, an earlier child arrangements order (9 October 2024) was discharged, the Judge concluding that this is "not in their [i.e., the children's] best interests". In the event that any of the children initiate contact with their father by telephone, the father must communicate with them in an age-appropriate manner and not denigrate the mother;

   vi) The father must not undertake any water activities with the children during the time when they are with him (including wild water swimming/canoeing), except where a professional lifeguard is present;

vii) The mother's application for a non-molestation order to prevent the father from contacting her and the children is refused on the basis of the father entering into detailed undertakings;

viii) The mother's application for the removal (or significant curtailment) of the father's parental responsibility and the mother's application for a prohibited steps order (to restrain the father from removing the children from her care) are refused;

ix) Pursuant to section 91(14) CA 1989, no application for an order which relates to the children or any of them shall be made by either party without the court's permission until 22 April 2027.

5. With the permission of Baker LJ, the mother appeals against the orders set out at §4(ii) to (viii) above; she also appeals the order referred to at (ix) insofar as it applies to her.

6. For the purposes of this appeal, we have had the benefit of detailed written and oral submissions from Ms Perrins KC and Ms Lloyd-Thomas on behalf of the mother. We have received brief written and oral submissions from the father who represented himself on the appeal. Shortly before the hearing of the appeal hearing, we acceded to applications from Rights of Women ('RoW') and Cafcass / Cafcass Cymru to join into the appeal as interveners; each organisation has provided submissions in writing. We are most grateful to all of the participants in this appeal for their assistance.

7. For the reasons set out below, I would

i) Allow the appeal in relation to the Judge's order under section 91(14) CA 1989 insofar as it was made against the mother;

ii) Dismiss the appeal in all other respects.

8. Because this is the first appeal to have reached this court from a decision made in the Family Court operating the CFC model under Part II CA 1989, I have taken the opportunity in the first half of this judgment to consider the issues arising on a wider plane. I then turn to the specific facts of this case. This judgment will therefore be structured under the following headings:

General Comments

Child Focused Courts – Investigative Approach

9. In early 2022, a revised court process for determining family disputes relating to children under Part II of the CA 1989 (hereafter 'private law proceedings') was launched in the Family Court. This new process was initially piloted in two court centres, one in England (thereby involving Cafcass), and one in North Wales (thereby involving Cafcass Cymru). The model, designed collaboratively by the judiciary together with the Ministry of Justice, Cafcass / Cafcass Cymru and other interested parties, sought to incorporate the key recommendations of two significant reports which had been published in the first half of 2020, namely 'Assessing Risk of Harm to Children and Parents in Private Law Children Cases' (the 'Harm Panel Report') commissioned by the Ministry of Justice, and 'The Time for Change, the Need for Change, the Case for Change', prepared by the President of the Family Division's Private Law Working Group. Both reports, written by multi-disciplinary panels, had highlighted the significant incidence of domestic abuse in private law proceedings, and the failings of private law processes in that, and other, respects.

10. Prominent among the recommendations from the Harm Panel Report were:

    i) The importance of focusing early in the legal process on the needs, views, experiences and interests of the subject child; capturing the voice of the child should be central to any revised model;

    ii) The need to address what was described as the 'pro-contact' culture of the Family Court;

    iii) To replace the adversarial character of private law family proceedings (which was experienced as re-traumatising to victim-survivors of domestic abuse) with a more investigative and problem-solving approach;

    iv) To offer better support for victim-survivors of domestic abuse.

11. Initially known as 'Pathfinder', this new investigative model was renamed the 'Child Focused Court' ('CFC') model in early 2026. The model is presently being introduced on a phased basis to all Family Courts across England and Wales. It currently operates in ten court centres (including, currently the whole of Wales). By early-2029 it is envisaged that this model will be applied in all private law cases across the whole jurisdiction.

12. The ethos of the CFC model is helpfully summarised in the opening paragraphs of Practice Direction 12B(Pilot) ('PD12B(Pilot)') (entitled 'Private Law Reform: Investigative Approach') of the Family Procedure Rules 2010 ('FPR 2010') which is

set out in the Annex to PD36Z FPR 2010. Parties are encouraged, first and foremost, to engage in non-court dispute resolution:

> "1.2 The procedure is designed to assist families to reach safe and child-focused agreements for their child, where possible out of the court setting. If parents / families are unable to reach agreement, and a court application is made, this procedure encourages swift resolution through the court.
>
> 1.3 It is well-recognised that negotiated agreements between adults generally enhance long-term co-operation, and are better for the child concerned. Therefore, separated parents and families are strongly encouraged to attempt to try and reach agreement concerning the child outside of the court system. This may also be quicker and cheaper and any future issues that may arise could be easier to resolve".

13. The CFC model generally engages "a more investigative approach" (ibid.), with:

> "… particular focus on improving the experience of the family court and outcomes for survivors of domestic abuse, including children and litigants in person" (paragraph 2.1 of PD36Z FPR 2010).

Independent information gathering is commissioned early in the process with the preparation of a detailed report which profiles the child and their lived experience; this is known as the Child Impact Report ('CIR'). The CFC model contemplates early direct engagement by judges and magistrates with the parties at a Decision Hearing; paragraph 2.1 of PD36Z continues:

> "The court will also seek to hear the voice of the child more clearly through each case …, with the aim that appropriate engagement and communication are considered throughout proceedings. A more holistic, multi-agency approach is planned, with the court engaging and developing positive working relationships with key local partners such as mediators and local authorities".

14. This is not the place for a lengthy description of the entire CFC model. However, in order to set a context for this appeal, it is helpful to note the following key stages of the process:

i) When an application has been issued, a judge or legal adviser will swiftly review the case at 'Initial Gatekeeping' (PD12B(Pilot) paragraph 9) to decide on the appropriate steps to take. There then follow two stages: Stage 1: Information Gathering and Assessment; Stage 2: Interventions and/or Decision Hearing;

ii) At stage 1, a CIR will be ordered in the majority of cases; this will be prepared by a Family Court Adviser ('FCA') from Cafcass if the case has been issued in

England, or Cafcass Cymru in Wales; in certain circumstances (where the family has had recent contact with a local authority), the CIR will be prepared by a local authority social worker. The CIR will contain information garnered from a number of sources (i.e., safeguarding information, professional assessments, risk information, the views of parents and others involved, including the child where appropriate: see PFD12B(Pilot) paragraph 13.4). Where domestic abuse is an issue in the case, a referral to an Independent Domestic Violence Adviser (IDVA) or Domestic Abuse Support Worker can be made;

iii) The CIR should ordinarily be filed within eight weeks of the application; the CIR is designed to provide the judge at the first 'Decision Hearing' with a rounded picture of the child's lived experience in the home of their parents and (as the title of the report suggests) a description of the 'impact' which the parental dispute is having on the child;

iv) The filing of the CIR will trigger the second stage which commences with a second gatekeeping review of the case. If a final decision is not made at this stage, further listing decisions will be made; this could be to list the applications for a fact-finding hearing (if indicated) or for a Decision Hearing;

v) At a Decision Hearing, it is envisaged that the judge or magistrates will adopt investigative problem-solving strategies in order to attempt resolution (in whole or in part) of the family dispute. Judges and magistrates are expected to adopt a trauma-informed approach to issues of domestic abuse (i.e., recognising the potential effects of abuse upon both the child and the victim parent), focusing on how the arrangements sought will impact upon the child and the victim parent;

vi) A party who alleges that they are a victim-survivor of domestic abuse may have the assistance of an IDVA at the hearing; the IDVA may well have provided a specialist assessment of risk to the adult and child victim/s to inform the court and aid the court's decision making in relation to the order being sought.

15. The PD12B(Pilot) makes clear that all of the well-known child welfare principles apply in CFC cases, as does the overriding objective (rule 1.1 FPR 2010) and all other associated provisions of the FPR 2010 (see PD21B(Pilot) (paragraph 20)). This is relevant in this appeal given the Appellant's focus on the Judge's management of the hearing, and specifically his control of the oral evidence.

16. PD12J FPR 2010 is expressly incorporated into the new CFC model by paragraph 20.3 of PD12B(Pilot); paragraph 5.2 of PD36Z provides detailed amendments to PD12J so as to bring it in line with CFC procedure. Of particular relevance on this appeal is paragraph 5.2(n)(ii) of PD36Z, which modifies paragraph 19 of PD12J by requiring the court, taking into account any information already contained within a CIR, <u>to identify the key factual issues in dispute</u> (my emphasis) and to determine how those issues should be set out so that any complaints or allegations advanced by one party, and the other party's response to them, are clearly articulated. It further provides that if the court directs that there shall be a fact-finding hearing on the issue of domestic abuse, the CIR should contain information needed for that hearing, and

should be updated after the hearing, to take account of the findings of fact made by the court.

Child Focused Courts – Domestic Abuse

17. The definition of domestic abuse contained in sections 1 to 3 of the Domestic Abuse Act 2021 ('DA 2021'), read alongside paragraphs 2A to 3A of PD12J FPR 2010, is well-known, and does not require repetition in this judgment. For present purposes, however, it is important to emphasise that section 3(2) of the DA 2021 expressly recognises as victims in their own right children who see or hear domestic abuse, or who experience its effects.

18. It is important to emphasise that the CFC model does not in any respect undercut or dilute the operation of PD12J FPR 2010; judges and magistrates determining private law children cases under that model must continue to apply PD12J with the same care and rigour as at present. Introduced in 2008, and subsequently amended to give effect to recommendations advanced by Women's Aid and others, PD12J remains a central safeguard within the family justice system in cases involving allegations or findings of domestic abuse.

19. PD12J must, of course, be read and applied as a whole; no part of it carries greater or lesser weight than another. Nonetheless, for the purposes of this appeal I consider it helpful to draw attention to a number of provisions which illuminate both the approach which the Family Court is required to take where domestic abuse is alleged or established, and the centrality of those issues to decisions concerning children.

20. PD12J proceeds from the clear recognition that domestic abuse is harmful to children, and that children may be adversely affected by such abuse in a variety of ways (paragraph 4). Against that background, the court is under a positive obligation to consider in every case whether domestic abuse is raised as an issue, to examine the welfare implications of any allegation, admission or evidence of abuse, and to assess the extent to which those matters are likely to be relevant to the determination of any child arrangements order and the terms upon which it should be made (paragraph 5). Where domestic abuse has been admitted or proved, the responsibility rests with the court to ensure that any order protects the safety and wellbeing of both the child and the parent with whom the child is living and does not expose either to the risk of further harm. Throughout, the court's decisions remain governed by the welfare principle in section 1(1) of the CA 1989 (paragraph 6).

21. When determining child arrangements, the court must ensure that any order for contact serves the child's best interests and does not expose the child to an unmanageable risk of harm (paragraph 35). Where domestic abuse has been established, the court must apply the welfare checklist through the lens of that abuse and make an order for contact only where, so far as possible, the physical and emotional safety of both the child and the parent with whom the child is living can be secured before, during and after any contact takes place (paragraph 36). Further, whenever domestic abuse has been found, admitted or otherwise established, the court must consider the conduct of each parent towards the other and towards the child, together with the impact of that conduct, before reaching its welfare evaluation (paragraph 37). It is of course incumbent on judges in their judgments (magistrates in their reasons) to make clear how findings on the issue of domestic abuse have

influenced their decision on the issue of arrangements for the child. In particular, where the court has found domestic abuse proved but nonetheless makes an order which results in the child having future contact with the perpetrator of domestic abuse, as in this case, the court must always explain, whether by way of reference to the welfare check-list, the factors in paragraphs 36 and 37 or otherwise, why it takes the view that the order which it has made will not expose the child to the risk of harm and is beneficial for the child (paragraph 40).

22. All that has been said by judges of the Court of Appeal about domestic abuse, and specifically the relevance and importance of PD12J under pre-CFC processes, in *Re H-N & Others* [2022] 1 WLR 2681 ('*Re H-N*') and *Re K* [2022] 1 WLR 3713 ('*Re K*') applies with similar force to determinations of private law cases involving domestic abuse under the CFC model. Many other appellate and High Court judgments, too many to reference here, lend assistance to the understanding of domestic abuse, including the increasing recognition of the need in many cases for the court to focus on a pattern of behaviour; in that regard, I simply single out (as the court did in *Re H-N*, describing it as "essential reading" [30]) the judgment of Hayden J in *F v M* [2021] EWFC 4 where he described the 'insidious' effect of coercive and controlling behaviour in these terms (at [4]):

> "The term [coercive and controlling behaviour] is unambiguous and needs no embellishment. Understanding the scope and ambit of the behaviour however, requires a recognition that 'coercion' will usually involve a pattern of acts encompassing, for example, assault, intimidation, humiliation and threats. 'Controlling behaviour' really involves a range of acts designed to render an individual subordinate and to corrode their sense of personal autonomy. Key to both behaviours is an appreciation of a 'pattern' or 'a series of acts', the impact of which must be assessed cumulatively and rarely in isolation".

Child Focused Courts – Fact-Finding Hearings

23. Reflecting the importance of the considerations which I have outlined above, the Family Court must, at the earliest opportunity, identify and record whether domestic abuse is raised as an issue which is likely to be relevant to any welfare decision concerning the child (see PD12J FPR 2010, paragraph 14). It must then consider, as soon as possible, whether a fact-finding hearing is required in relation to disputed allegations, including where such <u>findings</u> are "necessary" (a "key word": see *Re H-N*, at [36]) to provide a reliable basis for assessing risk (paragraph 16, PD12J). In deciding whether such a <u>hearing</u> is "necessary" (similarly – per *Re H-N* – a key word in this context), the court must evaluate, among other matters, whether any admissions already provide a sufficient factual foundation for the proceedings to move forward and whether the allegations, if proved, would bear materially upon the issues before the court (paragraph 17, PD12J).

24. Where allegations are investigated, PD12J emphasises that, while they must be properly put and answered, the process need not be purely adversarial. The fact-finding hearing, or other hearing, may properly adopt an inquisitorial or investigative character, provided that the interests of all those involved are protected throughout (paragraph 28, ibid.).

25. It is important to reiterate that a fact-finding hearing is not an end in itself. Pursuant to paragraph 5 of PD12J (see §20 above), such a hearing will be warranted only where its outcome is likely to be relevant to the court's decision whether to make a child arrangements order and, if so, in what terms. As the Court of Appeal emphasised in *Re H-N*, not every case will require a fact-finding hearing, even where allegations of domestic abuse are "very serious" (see *Re H-N* at [8] and [139]). That approach resonates loudly with the observation of Hayden J in *Re A* [2025] EWHC 1279 (Fam) at [42]:

> "Perhaps counterintuitively to Family practitioners, this process may result in a conclusion that a serious allegation by one of the parties does not need to be tried because it is simply not going to have a bearing on the ultimate welfare outcome. Further, the case law shows that litigating allegations which have become uncoupled from any link with the welfare of the child, can sometimes be both counterproductive and contrary to the child's best interests".

26. It is essential that judges and magistrates sitting in the Family Court should identify and focus upon the real issue(s) in the particular case. The question is not whether domestic abuse can be proved in the abstract, but whether findings of a particular incident, course of conduct, or pattern of behaviour are likely to bear upon the court's welfare evaluation. Thus, the court should ask whether the findings sought would materially affect its assessment of future risk and, in turn, its determination of the arrangements that should be made for the child and any continuing contact with the alleged perpetrator. Returning to a point made earlier in this judgment, even where a fact-finding hearing is considered "necessary", it does not follow that each and every allegation should be investigated. Consistently with the guidance in *Re H-N* at [58], only those allegations which are required to underpin welfare-based decisions or to permit a proper and reliable assessment of risk should be identified for determination. In this regard, it is useful to reference again three important passages from *Re K*:

> "[42] A decision to hold a fact-finding hearing is a major judicial determination within the course of family proceedings. The process will inevitably introduce delay and postpone anything other than an interim determination of issues relating to the child's welfare, which is contrary to the statutorily identified general principle that any delay in resolving issues is likely to be prejudicial to a child's welfare (section 1(2) of the CA 1989). Further, the litigation of factual issues between parents is likely to be adversarial and, whatever the outcome, to have a negative impact on their ongoing relationship and ability to co-operate with each other as parents. It is therefore important for the court, in every case where fact-finding is being considered, to take time to identify the welfare issues, to understand the nature of the allegations, and then to consider whether the facts alleged are relevant to those issues and whether it is, therefore, necessary for the factual dispute to be determined".

…

"[65] A fact-finding hearing is not free-standing litigation. It always takes place within proceedings to protect a child from abuse or regarding the child's future welfare. It is not to be allowed to become an opportunity for the parties to air their grievances. Nor is it a chance for parents to seek the court's validation of their perception of what went wrong in their relationship. If fact-finding is to be justified in the first place or continued thereafter, the court must be able to identify how any alleged abusive behaviour is, or may be, relevant to the determination of the issues between the parties as to the future arrangements for the children.

…

[67] It seems that a misunderstanding of the court's role has developed. There is a perception that the Court of Appeal has somehow made it a requirement that in every case, in which allegations of domestic abuse are made, it is incumbent upon the court to undertake fact-finding, involving a detailed analysis of each specific allegation made. That is not the case. As *In re H-N* explained and we reiterate here, the duty on the court is limited to determining only those factual matters which are likely to be relevant to deciding whether to make a child arrangements order and, if so, in what terms".

27. Finally in this regard, I draw attention to what I said in *A v K (Appeal: Fact-Finding)* [2024] EWHC 1981 (Fam) ('*A v K*'). In that judgment at [46] I reproduced the key passages from *Re H-N* and *Re K* to which I have already referred above, before continuing:

"[47] Those are, in my judgment, the most important passages on this topic in our current caselaw. The seminal procedural rule which underpins those comments is rule 1.2 of the FPR 2010, which requires judges to deal with cases in a way which is 'proportionate to the nature, importance and complexity of the issues'. The fundamental decision to hold (or not to hold) a fact-finding hearing is also located (albeit not explicitly) in rule 1.4(2)(c)(i) FPR 2010 which is itself a cornerstone of the FPR 2010, requiring judges to '[decide] promptly which issues need investigation and hearing and which do not'. Thus, in this field as in all others in the Family Court, litigants should expect the issues to be tried to be limited only to those which it is necessary to determine to dispose of the case, and for oral evidence or oral submissions to be cut down only to those which it is necessary for the court to hear (see again the 'Road Ahead': June 2020, quoted in *Re H-N* (see above) at [43] and see also [44] / [46] / [47]). As the caselaw has made clear:

> i) Not every case requires a fact-finding hearing even where domestic abuse is alleged (*Re H-N* at [8]);
>
> ii) It is important for judges to hold firm to the notion that "[e]very fact-finding hearing must produce something of importance for the welfare decision" (*Re H-D-H* [2021] EWCA Civ 1192 at [21]);
>
> iii) There is a 'need for advocates to focus on those issues which it is necessary to determine to dispose of the case, and for oral evidence and/or oral submissions to be cut down only to that which is necessary for the court to hear' (*Re B-B* [2022] 2 FLR 725 at [6](iv));
>
> iv) 'Decisions about the scope of fact-finding are core case management decisions with particular consequences for the length and cost of proceedings, the impact of the litigation on parties and others, and the allocation of court time' (*Re H-D-H* at [3]);
>
> v) The function of the family court judge in resolving issues of fact is different from that of the criminal court judge: see *Re R* [2018] EWCA Civ 198 at [62] and *Re H-N* at [66]-[74]…".

28. I would like to make one final point about the evidence at a fact-finding hearing. Where such a hearing is to take place, the process can, and indeed now should, be investigative in nature (PD12J, paragraph 28; see §24 above). It follows that the judge or magistrates must exercise control over the evidence pursuant to rule 22 FPR 2010, and should examine with the parties, before oral evidence is called, what real contribution, if any, such evidence is likely to make to the fact-finding exercise.

29. In the present appeal, the mother criticises the strict limits imposed in advance by the Judge on the duration of the parties' oral evidence. She submits, a point also advanced by RoW, that parties must be afforded a proper opportunity to present their cases. That proposition is uncontroversial. However, judges and magistrates are required at all times to give effect to the overriding objective in rule 1 FPR 2010. Thus, there is no expectation that parties will be afforded unlimited time to advance their cases. On the contrary, the court must actively manage proceedings to ensure that they are dealt with fairly, expeditiously and proportionately, having regard to the importance and complexity of the issues involved (see also *Mother v Father* [2022] EWHC 3107 (Fam) at [23] per Lieven J).

30. Moreover, the oral evidence of the principal parties will ordinarily be of considerably greater forensic value than that of supporting witnesses (see *Re B-B* [2022] 2 FLR 725 at para. 6(v)). In my judgment, in this case the Judge was entirely correct to exercise firm control over the scope and extent of the oral evidence. Indeed, he was also entitled, notwithstanding that conclusion, to be persuaded that the evidence of JM should be heard.

Submissions of Rights of Women

31. RoW observes that the CFC is founded upon the identification of domestic abuse as a pervasive feature of private law children proceedings and upon concerns that abuse had too often been minimised, children's voices insufficiently heard, risks inadequately assessed and unsafe arrangements ordered. RoW supports the objectives of the CFC model, namely the creation of a culture of safety, improved outcomes for adult and child survivors of domestic abuse, greater child participation and a more coordinated and problem-solving approach to decision-making.

32. RoW's primary submission is that, although the procedural model has changed, the underlying law has not. PD12J, together with the principles articulated in *Re H-N* and *Re K*, continue to apply with full force to cases proceeding within the CFC framework. The focus must remain upon the proper identification and understanding of domestic abuse, the assessment of harm and future risk, and the formulation of safe arrangements for children. Equally, the fundamental requirements of procedural fairness remain unchanged, including ensuring that parties have a proper opportunity to present their case and that decisions affecting family life are reached through a fair process.

33. RoW submits that particular care is required at the early stages of the CFC process when decisions may be taken on the basis of a CIR and domestic abuse assessments without an oral hearing. While recognising the advantages of early issue identification, RoW contends that courts should proceed cautiously when determining whether a fact-finding hearing is required. Where the disputed issues are unclear, the safer course may be to list a hearing so that the parties can explain their positions directly. RoW further submits that final orders should not be made at an early stage unless the court is satisfied, through direct engagement with the parties, that any agreement is genuine and informed.

34. In relation to fact-finding, RoW does not suggest that every allegation of domestic abuse requires a separate fact-finding hearing. However, it cautions against treating limited admissions by an alleged perpetrator as providing a sufficient factual foundation for welfare and risk assessments where those admissions minimise the alleged abuse or fail to acknowledge an alleged pattern of coercive or controlling behaviour. In such cases, findings may still be necessary, whether at a discrete fact-finding hearing or as part of a composite final hearing. RoW also expresses concern at the use of language such as "harmful conflict", "toxicity" or "high conflict relationships" where such terminology obscures the existence of domestic abuse, attributes responsibility to both parties and risks minimising the conduct of the perpetrator.

35. RoW emphasises that domestic abuse frequently continues after the parties' relationship has ended and that established findings or admissions should therefore remain central to any assessment of risk. It submits that courts should adopt a structured approach to risk assessment, focusing on the nature, likelihood and consequences of harm and the means by which risk may be managed. The same considerations apply to the exercise of parental responsibility, which can itself become a vehicle for coercive or controlling conduct. Courts should therefore be willing, where appropriate, to restrict or adjust the exercise of parental responsibility in order to protect adult and child survivors from ongoing harm.

36. Finally, in relation to "returner" cases, RoW submits that the court should be cautious about treating previous child arrangements orders as necessarily safe or effective. Where arrangements break down and proceedings return before the court, the history of domestic abuse should not be dismissed as merely "historic", nor should the court artificially restrict its consideration to events occurring after the previous order. They further contend that difficulties in implementing arrangements may indicate that risks were not fully appreciated initially, or have subsequently re-emerged. RoW also warns against allowing an emphasis on expedition to undermine fairness. While the CFC model may reduce unnecessary delay, speed is not an end in itself, and proper consideration must be given to the need for parties, particularly unrepresented and vulnerable parties, to participate effectively in the process.

Submissions of Cafcass and Cafcass Cymru

37. Cafcass and Cafcass Cymru make no representations on the facts of the present appeal but invite guidance on the treatment of domestic abuse allegations within the CFC model. They submit that guidance is required on four issues: when fact-finding hearings are necessary; how FCAs should undertake welfare and risk assessments where allegations remain undetermined; how allegations of ongoing domestic abuse during or after proceedings should be approached; and how courts should evaluate reports from domestic abuse perpetrator programmes.

38. In relation to fact-finding hearings, Cafcass / Cafcass Cymru rightly submit that the legal principles underpinning PD12J remain unchanged notwithstanding the introduction of the CFC model. It relies upon *Re K* and *Re H-N* as establishing that the court must identify the welfare issues, determine whether disputed allegations are relevant to those issues, and decide whether determination of the factual dispute is necessary. Particular emphasis is placed upon identifying patterns of coercive and controlling behaviour rather than focusing solely upon isolated incidents. Cafcass / Cafcass Cymru further submit that admissions must be analysed in their broader context and that limited admissions may still leave disputes requiring determination in order properly to assess risk and future harm.

39. A central submission is that FCAs must be able, in their welfare assessments, faithfully to record and analyse allegations, experiences and reports of domestic abuse, even where no findings have been made. Cafcass / Cafcass Cymru stress that social workers are not thereby making findings of fact but fulfilling their statutory responsibility to assess harm, future harm and risk. It contends that risk assessments cannot properly be undertaken if practitioners are confined to considering only matters formally established in court, particularly where children describe experiences that have not been the subject of judicial determination. Cafcass / Cafcass Cymru warn that preventing practitioners from taking account of such information risks minimising domestic abuse and exposing children to continued harm.

40. Cafcass / Cafcass Cymru further highlight difficulties arising where the court declines to direct a fact-finding hearing despite professional concerns that disputed allegations are relevant to welfare. It points to instances where section 7 reporters are directed to proceed on the basis that no findings have been made against a parent, notwithstanding emerging evidence of risk. It submits that courts should give clear reasons, consistent with PD12J, when deciding that no fact-finding is required. Where a FCA subsequently identifies allegations relevant to welfare, Cafcass / Cafcass

Cymru propose that a short report should be filed seeking further case-management consideration, addressing the welfare issues, the allegations in question, their relevance to risk assessment, and the scope and format of any necessary fact-finding exercise. It endorses the guidance of MacDonald J in *ER v NT* [2025] EWHC 2146 (Fam) ('*ER v NT*') that fact-finding provides the essential factual foundation for welfare decisions.

41. As to allegations of ongoing domestic abuse arising during proceedings or after the making of a child arrangements order, Cafcass / Cafcass Cymru submit that such allegations will frequently be material to the safety and appropriateness of future arrangements and are therefore likely to require determination if disputed. In particular, where allegations of breach of a child arrangements order are met by allegations of continuing domestic abuse, Cafcass / Cafcass Cymru argue that the abuse allegations should ordinarily be addressed first, as their determination may provide a critical context for the conduct relied upon by the other party. In this respect it draws an analogy with authorities concerning allegations of domestic abuse and parental alienation, where the abuse allegations must generally be resolved first.

42. Finally, Cafcass / Cafcass Cymru submit that courts should exercise caution when considering reports from providers of domestic abuse perpetrator programmes. Referring to the report relied upon by the father in the present case and to the decision in *ER v NT* (at [30] and [73]), Cafcass / Cafcass Cymru argue that programmes focused principally upon anger management or emotional regulation are not equivalent to effective domestic abuse interventions, because domestic abuse concerns power, control, beliefs and accountability rather than a loss of temper. It therefore invites the court to endorse existing Cafcass guidance that anger-management-type courses should not be regarded as reliable evidence that domestically abusive or coercively controlling behaviour has been addressed, particularly where recommendations are made regarding child arrangements.

General observations

43. From the material which I have set out above, it is possible to identify a number of principles which are uncontroversial.

44. First, the introduction of the CFC model has brought about a significant change in procedure and culture within private law children proceedings. The model is intentionally less adversarial, more investigative and more closely focused on the lived experience of children and victim-survivors of domestic abuse. It seeks to identify the issues at an early stage, obtain a fuller understanding of the child's circumstances through the CIR, and promote a problem-solving approach to the resolution of disputes.

45. Secondly, the introduction of the CFC model has not altered the substantive legal framework. The welfare of the child remains paramount (section 1(1) CA 1989); PD12J FPR 2010 remains fully applicable. The obligations imposed on the Family Court where domestic abuse is alleged or established are unchanged. The authorities, including *Re H-N* and *Re K*, remain as relevant to proceedings conducted under the CFC model as they are to any other private law children case.

46. Thirdly, where allegations of domestic abuse arise, the court must remain focused upon the welfare issues which require determination in the individual case. The question is not whether every allegation of domestic abuse should be investigated, however serious, nor whether a fact-finding hearing is desirable as an end in itself. The question is whether findings of fact are "necessary" (per *Re H-N*: see §23 above) in order to provide a proper foundation for the assessment of future risk and for the welfare decisions. That exercise requires the court to identify the real issues in the case, to consider whether admissions already provide a sufficient factual platform, and to determine which, if any, disputed allegations actually require adjudication. The touchstone throughout is (as I have mentioned above) necessity. Judges and magistrates should therefore ask themselves at the outset of a case: What is this case really about? What issues are agreed? What is actually in dispute? And then the crucial question – What are the disputed issues which require the court's determination in order for us to be in a position to make a welfare-based decision? By way of obvious example, if the dispute is about the amount of contact rather than the principle of contact then fact-finding about previous abuse is less likely to be necessary.

47. Fourthly, the investigative character of the CFC model does not diminish the requirement of procedural fairness. On the contrary, a less adversarial process places a premium on judicial clarity in identifying the issues, explaining the purpose of any enquiry, and ensuring that the parties have a fair opportunity to participate effectively in the decision-making process. Equally, and just as importantly, the court must continue (as it does now) to exercise robust case management powers, controlling and limiting oral evidence and the scope of factual investigation to those matters which are genuinely material to the welfare determination, and not beyond.

48. In broad terms, the submissions advanced by RoW and by Cafcass and Cafcass Cymru reflect these same themes. All emphasise the continuing importance of recognising and properly analysing domestic abuse, particularly coercive and controlling behaviour. All recognise that not every allegation requires a separate fact-finding hearing. Equally, all stress that the court must remain alert to the possibility that limited admissions or an incomplete factual picture may be insufficient to support an accurate assessment of risk or a safe welfare outcome. I accept the submission of RoW that judges and magistrates should satisfy themselves that any agreement is genuine and informed.

49. I do not regard it as appropriate, or indeed necessary, to give specific guidance which has been suggested by Cafcass and Cafcass Cymru on the four issues raised (see §37 and §42); those issues have not been central to the appeal, and we have heard no argument upon them. As it happens, on the day on which this appeal was heard, this court handed down judgment in *Re D (Change of Circumstances: Domestic Abuse)* [2026] EWCA Civ 969; the judgment of the court was delivered by Baker LJ. Much of the analysis at [17]-[46] of *Re D* covers ground similar to that set out above. At [47]-[59], Baker LJ considered extracts from the Cafcass Practice Pathway ('Pathway') – a document which is intended to provide a structured framework for FCAs in their assessment of domestic abuse risk in proceedings before the Family Court – the very issue on which Cafcass and Cafcass Cymru seek guidance. In *Re D*, this court held that procedural unfairness will arise where a judge determines a child's welfare on the basis of a section 7 report whose recommendations depend materially

upon the assumption that allegations of domestic abuse are true, notwithstanding that no findings of fact have been made. Where a section 7 assessment identifies the allegations as material to the welfare analysis and the recommendations advanced, the court must reconsider whether a fact-finding hearing is required before determining the child's future arrangements. Given the clear analysis given in Baker LJ's judgment, it is unnecessary for me to offer further discrete guidance. I would encourage Cafcass to consider carefully revising its Pathway, and the associated Domestic Abuse Practice Policy, in light of Baker LJ's comments.

50. Against that legal and procedural backdrop, the present appeal is not concerned with the merits of the CFC model itself. Nor does it require this court to revisit the established principles governing domestic abuse, welfare decision-making or fact-finding hearings. The appeal concerns the application of those principles within the particular circumstances of this case. More specifically, it raises questions as to whether the Judge correctly identified the issues requiring determination, whether the procedure adopted was fair and consistent with the requirements of the CFC model and PD12J, and whether the Judge's findings and welfare conclusions were reached on a sufficient and proper evidential foundation.

51. It is to those issues that I now turn.

Re C

Background facts

52. The parents are both well-educated professionals in full-time employment, whom the judge described as "very engaged and articulate parents". The mother has a new partner, with whom she has a young child.

53. The parties were married for a number of years before separating in 2023, when D was three years old. The mother's case is that the marriage was characterised throughout by the father's coercive and controlling behaviour, punctuated with acts of physical and emotional abuse towards her and the children. Proceedings were issued in the Family Court soon after the parties' separation; in those proceedings, the children were represented by a guardian appointed under rule 16.4 FPR 2010. The mother raised as a relevant factor the father's domestic abuse; a Scott Schedule of her allegations was prepared. The father admitted a number of acts of abuse towards the mother and children including controlling behaviours towards the mother, socially isolating the mother, smacking the children, and ill-treating the youngest child on an occasion in 2023. The father further accepted that following the separation of the parties, he subverted the agreed arrangements by which he could see the children, and attended the family home uninvited which caused the mother to lodge a formal complaint of harassment against him.

54. During the first set of proceedings (2023-2024), the parties submitted to psychological assessment; the psychologist described the father as demonstrating traits of an antisocial personality disorder, irritability and aggressiveness, irresponsibility and a lack of remorse; there were also traits of a narcissistic personality disorder. The Judge indicated that he was aware of this evidence, and reproduced this part of the psychological opinion at [12] of the judgment under review. The father had separately completed successfully a parenting assessment; some of his contacts with

his children had been supervised by Barnardo's who reported positively as to the interaction between the father and the children.

55. A report was prepared in those earlier proceedings by the rule 16.4 guardian; she considered with care the allegations of domestic abuse, and took specific account of the psychological opinion discussed above. She reported that all the children loved their father, and "consistently" expressed the wish to see him more often; the children were comfortable seeing their father in the company of a friend of the father ('JM'). The guardian did not recommend a fact-finding hearing in respect of the domestic abuse in those proceedings given the father's admissions; she recommended the continuation (indeed expansion) of contact albeit supported by JM.

56. A final order in the earlier proceedings was made in October 2024; this provided for the children to live with their mother, and for there to be supervised contact between the children and their father on alternate Saturdays for seven hours, and alternate Wednesdays for two hours. Supervision was to be provided by JM or by one of a number of named friends or (on a Wednesday) by the paternal grandmother. The order also provided for the father to have regular unrestricted telephone contact with A, and twice weekly telephone contact with the younger three children, provided he did not denigrate the mother. It was recorded that "the parties share joint and equal parental responsibility for the children and therefore the parties shall share and consult with each other in advance of making decisions about the children's welfare including but not limited to foreign travel, religion, education, and health". The father was to self-refer to an appropriate Domestic Abuse Perpetrators Programme. The judge also made an order (of one year's duration) against the father under section 91(14) CA 1989.

57. The father thereafter enjoyed the alternate weekend contact with the children as contemplated by the order, supervised by JM; by the time of the hearing under review, the Judge estimated that JM had supervised approximately 200 hours of contact (judgment [66]). The father did not take up the opportunity of direct contact on alternate Wednesdays as provided for in the order; he later explained that this was impractical for him.

58. The mother's case is that there were "persistent and grave" breaches of the October 2024 order, that it was not appropriately supervised, and that there were times when the children had been left with the father without any supervision at all. The mother complained that the father spoke inappropriately to the children during his telephone contact with them (she had been able to hear this, as the device was on speakerphone). In September 2025, the mother removed A's own mobile phone, ostensibly to prevent him from accessing "inappropriate websites"; this frustrated the court-ordered provision for the father to have unrestricted telephone contact with A as ordered (see above).

59. A number of specific incidents were reported by the mother; these were the focus of the enquiry before the Judge in his determination of the parties' cross-applications (see further §70 below):

i) Following the removal of A's mobile phone by the mother, the father secretly purchased a new phone for A, and set up an online bank account to enable him to pay the bills;

ii) On one of the Saturday contacts in December 2024, the father took A to a barbers for a haircut; the evidence was that the father in fact left A there while he had his hair cut. JM remained throughout with the B, C and D;

iii) The father did not apply suncream to the children when they were on outside activities during summer contact;

iv) During contacts in the summer, the father took the children wild swimming and canoeing (D had not yet learned to swim); JM remained on the riverbank;

v) On one occasion, D travelled by car for a period without being strapped into his car seat;

vi) JM was once seen escorting the children across a road, without holding their hands;

vii) The father undermined the mother's parenting of the children and sought to influence the children against her by his comments during his telephone contact, in particular by telling the children that the mother was stopping them from seeing him.

60. The father accepted the incidents listed at (i) to (vi) above; he offered no convincing response to (vii). He attempted a self-referral for a place on the domestic abuse programme recommended by the rule 16.4 guardian in the earlier proceedings, only to discover that the programme was no longer available. It was accepted that the father's then solicitors had written to the mother to ask for her view on him attending the 'Temper' Domestic Violence Course. The mother was not then represented; she herself replied, indicating that she could not comment on the suitability of the proposed course. The father therefore attended that course, completing a number of online sessions and one session face-to-face. He separately engaged in a course of therapy. The Judge recorded that the father had also (in light of his admitted behaviours discussed in the earlier proceedings) attended the 'Checkpoint' Programme, which is a voluntary adult offender diversion scheme, aimed at low and moderate level offenders, helping them to identify and address underlying causes of their offending.

61. In the summer of 2025, the mother arranged for A to see a psychiatrist (someone known to the mother professionally) at a private clinic for a neuro-diversity assessment; she did so without informing the father. The psychiatrist diagnosed A to be suffering from a form of ADHD, and prescribed medication. After the event, the mother told the father of this consultation, the diagnosis and the prescription for medication. The father did not accept the diagnosis, and did not support the administration of medication; he complained of the mother's failure to inform him, or consult with him, prior to the assessment, as would be expected given that he has parental responsibility for A, and specifically in light of the terms of the October 2024 court order (see §56 above). Accordingly, the mother made an application for a specific issue order, seeking the court's permission to administer ADHD medication to A. The father opposed this application. As the Judge was later to comment, it was no surprise that the father was 'obstructive' (judgment [138]): "… the mother's unilateral action is not helpful. That may have led the father to take a more oppositional approach than he otherwise [might] have" (judgment [148]).

62. The father responded to the mother's application for a specific issue order with an application for permission to apply to vary the contact order (he was still subject to the section 91(14) order) so as to have unrestricted time with the children; he argued that it would be expedient for the court to look at expanding his contact alongside the application in relation to ADHD medication. The father's application was summarily dismissed.

63. In October 2025, the mother unilaterally stopped the father's contact with the children.

64. The mother's application for a specific issue order was listed before the Judge in February 2026. The Judge ordered a second medical opinion; the Judge later observed: "I wanted that to take place because I understood the father's concern about his marginalisation at the beginning and the fact that, given he shares parental responsibility, he had lost confidence in the process and the recommendations made". That second opinion confirmed the diagnosis of ADHD, and at a later hearing the Judge ordered that A be provided with medication.

65. It was the mother's case that the contact ordered by the court in October 2024 had been a "disaster", and that once the contact had been brought to an end the children's wellbeing had improved immeasurably; she told the Judge "over the last few months since the children have seen their father they have shown the most amazing improvements". This evidence did not, in the Judge's opinion, square entirely with other evidence presented to him; indeed, it transpired that over the same period (since the cessation of contact), she had been "struggling to manage" (per Wrexham social services report, see below) A's increasingly defiant and oppositional behaviour; the Judge described "very alarming behaviours… from January [2026] through to really the end of March [2026]" (judgment [71]), which had reached such a pitch that the mother herself had reported A to the police (more than once) and referred him to the relevant local authority children's services as she feared that "someone in the home may get hurt".

66. The Judge recorded (judgment [71]) that on "5 March 2026, the police had to be called to home because [A] was highly aggressive, shouting, slamming doors. He was dysregulated. He calmed down a bit after taking medication. The mother was reported to raise concerns about ongoing aggression and influence from the father". In relation to that last comment, I hardly need repeat that by this time the father had not seen A for approximately five months. The judgment contains this further vignette, again ostensibly inconsistent with the "amazing improvements" about which the mother had given evidence:

> "[72] There was another incident, again very concerning, on 24 March 2026, where the police were informed by members of the public that [A] was sat in a river in the cold in heavy rain. The police noted [A] was soaked and cold. The police noted the incident carried significant risks. There was some concern about self-harming. The mother in her oral evidence downplayed that…".

67. The report from Wrexham social services was included in the evidence before the Judge; in that assessment, A told the social worker that he missed his father.

Notably, the FCA in the current proceedings took no account of the worrying contents of the Wrexham social services report when providing her own analysis. A counterpoint to this evidence were letters prepared by the school attended by B and C; in these letters, the schools recorded improvements in overall performance of B and C which were attributable (at least as to timing, in respect of one of the children) to the cessation of contact. It is not clear whether, and if so when, the Judge saw these letters.

68. It also became apparent that, although the mother had told the Judge that all the children have a good relationship with her new partner, the relationship between A and his step-father was in fact difficult. I note the Wrexham social services report includes the following passage: "[A] had an argument with [the mother's new partner], which resulted in [A] being asked to leave the home for the day. [A] stated he spent the day walking the streets and was subsequently refused entry back into the home, instead staying overnight with his grandmother". Separately, the mother blamed the father for having "systematically destroyed the relationship between her partner and A" (judgment: [57]).

69. The mother's case was that the children did not wish to see their father and had expressed no concern when the FCA advised them that she was recommending an end to direct contact. As I discuss further below, that account was difficult to reconcile with parts of the FCA's own evidence.

The current proceedings

70. Cross-applications were issued in late-2025, and it was these applications which came before the court in April 2026;

i) The father's application (16 October 2025) seeking enforcement of the October 2024 order and/or a variation of the October 2024 order, seeking unsupervised contact with the children;

ii) The mother's application (December 2025) seeking an order that the father's contact be *professionally* supervised. Her application was framed in these terms:

> "I recognise the importance of the children maintaining consistent and positive contact with the respondent, provided that such contact is safe and child-centred. … I have proposed professionally supervised contact and have identified appropriate professionals who are available; however, this option has not yet been taken up by the respondent. … I respectfully seek the court's assistance in determining an appropriate and safe arrangement for the children's ongoing contact with the respondent".

The mother confirmed this as her proposal at a first case management hearing on 15 December 2025.

71. Thus it will be seen that the cross-applications before the court, when issued, had contemplated a dispute on the issue of supervision of contact (i.e., professional supervision as against unsupervised), not on the issue of contact in principle.

72. Both parents filed statements of evidence, and in the mother's case, a detailed chronology of events since the October 2024 order. The mother had indicated through her witness statement a desire that the court should "remove" the father's parental responsibility, but no application to that effect was made. Similarly, while the mother indicated that she wished the court to impose on the father an order under section 91(14) CA 1989, no such application was before the court.

73. A CIR was ordered at the first gatekeeping; this was filed on 19 February 2026. The FCA addressed the domestic abuse allegations in the case in this way:

> "[6.1]: Having read the Scott Schedule there is a pattern of physical emotional and controlling behaviour from [the father] to both [the mother] and the children over a period of several years. They span issues of unsafe supervision, harsh discipline, emotional pressure and lack of support during [the mother]'s illness [2021]. Across the schedule some allegations are accepted, including several involving risks to the children, leaving them unsupervised, inappropriate behaviour during [the mother]'s illness and repeated breaches of boundary breaches (sic.) after their separation. Other allegations are denied by [the father]".
>
> "[6.2]: Themes emerging from the accepted findings include physical risk and neglect of the children, distressing behaviour during separations, incidents showing lack of care towards [the mother] and controlling or hostile behaviour in the relationship… Overall, the schedule presents a longstanding pattern of concerning behaviour, with the court already accepting several significant incidents involving risks to the children".

74. In the pro forma 'Summary of Advice' tick-box section at the conclusion of the report, the FCA indicated that there are "disputed allegations of domestic abuse or harm that need to be determined before the case can be concluded", however she did not indicate the need for a separate fact-finding hearing. Separately, she indicated that the case ought to be listed for a 'Decision hearing'.

75. The FCA recorded the children's wishes and feelings in her report. To ascertain those wishes and feelings, she conducted with each of the children a structured exercise intended to facilitate the expression of their views. She recorded that A and C wished to see their father; B also expressed the view that she wished to see him, adding that she would wish for her father and mother to be on the same 'island' with all of her most treasured people and belongings, but "it must be a really big island so that they don't see each other". The FCA incorporated within her report a letter which B (then rising 11) had written for the Judge; it read:

> "Dear Judge, I have never written a proper letter before so this may be weird. I don't mind seeing dad, I like it. I don't mind how often I see him, I don't have to see him all the time as long as I get to see him sometimes. Yours sincerely [B]".

76. The FCA did not record any specific comment about D's wishes in her report; however, in her oral evidence she described D crying for up to five minutes when told of her recommendation that he would not see his father again. In her report, she concluded:

> "[6.24] The children have expressed a wish to see their father, and their wishes and feelings should always be taken into account. However, in order to protect them from further emotional and psychological harm, progressing contact at this time would not be appropriate.
>
> [7.1] I cannot recommend that [the father] has a face-to-face relationship with the children at this time. The impact of ongoing contact will provide [the father] with an opportunity to continue intimidation or manipulation of [the mother] through the children. Ongoing contact between the children and their father poses risks to the children's emotional wellbeing, but also significantly impacts [the mother]'s recovery, safety and ability to continue to provide a safe home and stable care for A, B, C and D. Any continued contact may perpetuate the abusive dynamics and undermine the protective measures currently in place".

77. In addition to the recommendation for the termination of direct contact, the FCA further recommended:

   i) There be monthly indirect contact only between the father and the children (cards/letters/gifts/photos) via a PO Box;

   ii) An "indefinite" order under section 91(14) CA 1989, "barring" (as she put it) the father from making applications;

   iii) A non-molestation order to prevent the father from contacting the children or attending their home or schools;

   iv) A prohibited steps order to prevent the father from removing the children from the care of the mother.

78. It is not clear to me whether any referral was made by Cafcass Cymru to an IDVA to support the mother in this process, as may well have been expected given that domestic abuse was a live issue; I have seen no reference to an IDVA report having been filed with the court. This was not, however, raised as a point of complaint by the mother on this appeal.

79. A second gatekeeping hearing took place on 24 February 2026; armed with that CIR, the gatekeeping judge directed that the matter be listed for a Decision Hearing, and that this hearing would proceed on the basis of submissions only.

80. By the time the matter came before the Judge, the parties' positions had materially shifted. The father indicated a willingness to accept professionally supervised contact; the mother had significantly altered her stance, aligning herself fully with the recommendations of the FCA. She contended that there should be no further direct contact between the father and any of the children. In addition, she sought an order which would have the effect of extinguishing, in practical terms, the father's exercise of parental responsibility.

81. Position statements were filed on behalf of both parties by their respective counsel. The hearing proceeded on the footing, adopted by both parties, that the applications were effectively listed for 'final hearing'. In his position statement, the father accepted that he had made mistakes, and acknowledged that aspects of his past behaviour had been unacceptable. He recognised the court's likely concern regarding the matters which he had admitted from the Scott Schedule prepared in the earlier proceedings. He accepted that he should not have purchased a mobile phone for A and acknowledged that he had pushed the boundaries in contact since the previous order. The father observed that when determining the earlier proceedings in October 2024, the judge had plainly had the provisions of PD12J FPR 2010 well in mind (as recorded on the face of the order), and had nevertheless concluded that contact could safely take place and that such arrangements were in the children's best interests. Significantly, the father made clear that he was willing to accept professionally supervised contact as a means of rebuilding and re-establishing his relationship with the children.

82. As earlier indicated, the mother had prepared a chronology setting out her concerns regarding the father's more recent conduct; the document recorded a number of incidents in which the father was alleged to have tested the limits of the supervisory arrangements, undermined the mother, failed adequately to attend to the children during contact, and threatened further litigation. The document was not formally agreed but its individual elements were not materially in dispute. In his judgment, the Judge indicated that he had "considered" the chronology ([46]) and had had regard to the agreed incidents which did constitute breaches of the earlier order.

83. We have read a transcript of the entire hearing. The Judge indicated that he intended to conduct it in a manner consistent with the ethos of the Pathfinder model, to which he made express reference several times. The Judge encouraged agreement where possible and sought to identify a consensual route forward; in that regard, he gave an early provisional indication of his views on the principal issues, although those views were ultimately not accepted by the parties. He also exercised his wider case management powers to limit the extent of the oral evidence, having regard to the risk of further damaging family relationships beyond the conclusion of the proceedings. Crucially, however, he did not restrict the issues on which the parties could cross-examine, and neither counsel pursued their cross-examination on the basis that the father had continued a pattern of controlling or coercive behaviour. Instead, the questioning was confined to the more limited specific issues to which I have already referred (see §59 above).

The judgment

84. Judgment was delivered *ex tempore* on the second day of the hearing. Early in the judgment, the Judge expressed his concerns about the "corrosive and damaging nature of the ongoing relationship between the mother and the father" (judgment [4]) which was, in the Judge's view, "harmful to these four children"; he added that "ongoing litigation is harmful to the children" (ibid.). he later described the proceedings as "unpleasant" and "protracted" ([144]). He rehearsed the background history confirming that he was aware of the Scott Schedule of allegations of abuse, recording that:

> "[11] … there were sufficient admissions by the father to properly consider what child arrangements order was appropriate for the four children. I have firmly in mind the serious matters which the father accepted and the impact of those admissions on the safety and welfare … of the four children, but also the mother".

The Judge accepted that aspects of the father's behaviour in 2023 had been "callous" ([14]).

85. The Judge referenced specifically the October 2024 order and commented:

> "[16] I am principally concerned with the October 2024 order because the case for the mother is that matters have moved on so much since that order was made that the rationale or basis for that order is fully undermined. It is submitted there has been a change of circumstances such that it should be set aside and remade. I say that fully appreciating that I am not conducting a review of the October 2024 order. I am carrying out a full merits assessment of the children's welfare in April of 2026. But, nonetheless, I have to consider the basis upon which District Judge Roberts made his [October 2024] order".

86. He described the Scott Schedule as "an important document in these proceedings" ([37]), accepting that it showed "… psychological and emotional harm to the children" ([40]). He recorded that the father had accepted a range of behaviours prior to October 2024 including attendance at the mother's home in breach of bail conditions. The Judge also recorded the father's limited acceptance of controlling and coercive treatment of the mother at that time ([43]), before stating:

> "I have very much in mind all of those distressing aspects of domestic abuse and emotional abuse; perpetrated both against the children and the mother."

87. The Judge acknowledged that the mother is "devoted and committed" to the children, and is "suffering the consequences of the domestic abuse which the father has admitted" ([59]); he was nonetheless concerned that the mother had misled the court about the state of wellbeing of the children since contact had come to an end (see §65

above), which had been borne of the mother's "antipathy" to the father. The Judge noted that the father had:

> "[61] … accepted that [it] was harmful and wrong to involve [A] in the dispute between the mother and the father. He showed some insight, but, as others have suggested, he did at times seem rather lacking in proper insight".

88. The Judge then added:

> "[62] I formed the view that [the father]'s evidence was essentially honest, but there are limitations in his understanding and insight and reflection on how his behaviours make the mother fearful. There are limitations on him understanding the ongoing professional concerns about unsupervised contact".

89. The Judge heard from JM and formed a favourable impression of her: "an honest, straightforward witness doing her best to assist the court" ([63] / [69]).

90. Of the FCA reporter, he said this:

> "[78] Under "Case analysis", entirely rightly [the FCA] focuses on the Scott Schedule and the pattern of emotional and controlling behaviour by the father to the mother and the children. Unsafe supervision, harsh discipline, emotional pressures, lack of support. These are very important issues and themes that [the FCA] alights upon. She references [the psychiatrist's] report and the father's lack of remorse. …
>
> [80] She is concerned that the domestic abuse programme has had a limited impact on the father. She is concerned that he provided a mobile phone and a Revolut card to [A] without the mother's knowledge and that this behaviour is inconsistent with safe parenting and involves boundary-crossing and manipulation".

91. The Judge directed himself as to the law, citing PD12J, adding that he had "firmly in mind" paragraphs 35-37 (ibid.), and specifically:

> "[88] … the factors to be taken into account when determining whether to make a child arrangements order in all cases where domestic abuse has occurred. I am particularly aware of the admissions that have been made and the domestic abuse that has been established. I consider the welfare checklist against all of those issue and I consider, importantly, the safety of the child arrangements order for the children, emotionally and physically, but also the safety of the mother in making these arrangements".

He spoke of the "pernicious nature of coercive controlling behaviour" ([90]), adding that in relation to allegations of more recent domestic abuse:

> "[95]… When I did enquire yesterday on the issue of domestic abuse against the mother, post October 2024, I was not given any clear steer as to what the evidential basis for that is…".

He added:

> "[98] … as I survey all the evidence, there is no clear evidence of the father perpetrating any domestic abuse since October 2024 against the mother".

92. The Judge accepted that he was dealing with a case of "very serious domestic abuse" (judgment [97]) prior to October 2024, and he accepted the father's admissions of the same. He expressed his "concern" about the father having more recently bought A a mobile phone, and in this way "embroiling [A] in the dispute … precisely the type of emotionally harmful intervention that is probably leading [A] to have such a terrible time" (judgment [99]). He continued:

> "[102] … the father has limitations on the understanding of the emotional harm that has been caused to the children. That is patently borne out by buying [A] a mobile phone. I am less clear that he has systematically sought to undermine the mother in the contact sessions. That is not his evidence. It is not [JM]'s evidence. There is no particularity regarding that to allow me to make findings, but nor was that the purpose of this welfare hearing.
>
> [103] I remain of the view that there needs to be supervision and support for contact. I have no hesitation in rejecting the father's submission that contact can proceed to be unsupervised at the end of the summer. The father only has himself to blame for that. If he did not buy [A] a mobile phone, the situation might be different.
>
> [104] But it seems to me the Cafcass officer's recommendation and all the evidence that led to [the judge] making his order in October 2024 is largely still in place. That the children want to see their father, that the evidence is that they enjoy the contact, and it seems to me that it would be emotionally harmful for the children not to see their father when they wish to do so … I am also clearly of the view that supervision/support of contact is required.
>
> [106] … I accept the emotional harm of the telephone [contact]. But I have got to balance that up with the mother's own evidence, which is to be very clear that she does not want the father to see her children and to have a role. She was not even capable of accepting that the children

> want to see their father. So there is a tension here. These children have much to lose by their father being removed from their lives.
>
> [107] I am also very concerned that the mother unilaterally ceased contact in October 2025 and I consider that has been emotionally harmful to the children. The order of [the judge] was there for a reason. It was made in the children's best interests. The mother has concerns, and she was right to have concerns about the telephone, but they have been prevented contrary to an order of this court from the emotional warmth and company of their father for at least six months, when it is clear they want that to take place. That is emotionally harmful".

93. The Judge concluded that the appropriate balance was struck on these facts by there being some limited supervised contact, where JM (the supervisor) "could and would benefit from some support from an experienced Cafcass officer to assist her" ([111]) (i.e., to understand the risks).

94. The Judge acknowledged (judgment [112]) that in this as in other respects he was departing from the recommendation of the FCA and, as he was required to do (see for example *W v W (A Minor: Custody Appeal)* [1988] 2 FLR 505), he gave his reasons for doing so. They included:

    i) There was insufficient analysis in the CIR of the emotional harm brought about to the children by the mother's unilateral decision to end contact in October 2025. That took place in an unplanned way and the children were not prepared for it;

    ii) Insufficient attention had been paid to the genuine wishes and feelings of the children to see their father;

    iii) The risk assessment by Cafcass Cymru of JM was incomplete; by contrast, "my assessment of [JM]'s evidence was more nuanced, and she was able to understand physical and emotional risks and was willing to consider some letter or terms of future contact to assist" ([115]);

    iv) The overall package of recommendations from the FCA was "draconian"; "they relegate the father to having no parental responsibility and only having letter contact with his four children";

    v) While there has been admitted domestic abuse, there has also been 200 hours of supervised contact which has brought "much benefit" to the children ([117]).

95. At [121] / [125] he concluded:

> "[121] I, on balance, consider there are more emotional risks to the children by being denied contact with their father than it taking place in accordance with their wishes

> [and] feelings and being supervised by [JM]. I highlight in particular my concern that the mother's witness statement said the children had all improved very significantly, but she made no mention whatsoever of the very serious matters which led to [A] being returned home after having sat in a freezing cold river. That cannot be put at the door of the father six months after the contact was ceased. There is no proper evidence showing a causative link. I prefer the analysis of the [local authority] social worker that ultimately [A] is suffering because of this dispute between his parents".
>
> "[125] I have very carefully considered the harm which the children have suffered and the risk that they are of suffering future harm. I take into account, as I have said and repeatedly emphasised in this judgement, the harm caused by the father's admitted domestic abuse, both directly to the children but the impact on the children of the father's domestic abuse to the mother. But I find that there was nothing fundamentally (sic.) with the October 2024 order. That, properly managed, the risks and the balance of harm of there being supervised contact against no contact".

96. Thus, in the final analysis the Judge varied the October 2024 order in the following key respects:

    i) He reduced the length of each of the fortnightly contacts (from seven hours to five hours);

    ii) He reduced the frequency of contact to once per fortnight (instead of twice per fortnight) (i.e., he removed from the schedule the Wednesday contact);

    iii) He imposed a requirement that there be no wild swimming in rivers or anything of a similar nature unless there is a lifeguard;

    iv) He discharged completely the earlier order which had permitted telephone contact between the father and the children.

    His concluding view was that: "this is not one of those category of cases where the father's actions are so serious that he can be shut out of the children's life. That was the previous view of Cafcass Cymru, that was the previous view of the district judge, and I adhere to that view, notwithstanding what has transpired" (judgment [134]).

97. The Judge found that there was no evidence to support the making of a non-molestation order where detailed undertakings had been offered; he expressed himself to be unconvinced that "judicial intervention is required to control the behaviour which is the subject of the complaint" ([135]); no non-molestation order had been made in October 2024 and "the matter has not sufficiently changed such that I consider it is necessary to make one today" ([135] again). Similarly in relation to the mother's application to limit (or, as she sought, "remove") the father's parental

responsibility, having reviewed the relevant case law including *Re A (Parental Responsibility)* [2023] EWCA Civ 689, he said:

> "[139]… Looking at all the factors in the round, and considering the welfare needs of the children, the exclusion of the father in decision-making is not proportionate or necessary and, in my judgment, would actually undermine the welfare of the children, because it would exclude the father's role in their life. As I have already explained, they derive emotional benefit from the father being involved, notwithstanding his very poor decision-making and his historic domestic abuse".

98. Finally, in relation to the application under section 91(14) CA 1989, the Judge stated that he had applied the well-known principles, acknowledging that it is an order which is "made more easily these days" albeit that it "remains a relatively draconian order" ([141]). He concluded that "… a period of respite is required and that both parents' conduct requires the children's welfare to be protected by ending the litigation" ([143]).

Grounds of Appeal

99. There are six Grounds of Appeal, which I summarise as follows:

i) The Judge was wrong to make any order for direct contact between the children and their father against the recommendation of the FCA, and where there is a background of admitted abuse of the mother and the children; the Judge's reasoning was "inadequate and flawed" and there had been inadequate attention given to PD12J;

ii) The Judge's assessment of the evidence and its relevance to the best interests' decision was wrong, in that he attached greater weight to the evidence of the FCA from the 2024 proceedings and the recent report from Wrexham social services; he had failed to consider carefully the father's behaviours towards the mother since 2024; he overstated the children's wishes and feelings and made a flawed risk assessment; he gave too little weight to the recent dispute concerning A's ADHD diagnosis;

iii) The Judge wrongly managed the hearing on 21 and 22 April 2026 by dealing with the issues "too summarily" in purported adherence to the 'Pathfinder' model in such a way as to lead to flawed decision making and an unsafe order for contact; he failed to conduct any fact-finding, limited the length of the oral evidence, and, by giving an early judicial indication, had effectively 'prejudged' the outcome; the Judge wrongly admitted the evidence of JM;

iv) Alternatively, the errors described at (iii) above represented procedural irregularity such that the decision was unjust and should be set aside;

v) The Judge was wrong to refuse the mother's other applications (supported by Cafcass Cymru) for: (i) restriction of the father's exercise of parental responsibility; (ii) a prohibited steps order preventing the father removing the children from their schools or from the mother's care; and (iii) a non-molestation order;

vi) The Judge was wrong to make a section 91(14) CA 1989 order against the mother.

100. Ms Perrins KC contended that one single factor underpinned these grounds, namely that the Judge had minimised, compartmentalised and wrongly excused the evidence of the father's harmful behaviour and had given insufficient attention to the fact that the mother had been the victim of coercive and controlling behaviour. The Judge's failures in these respects were compounded by the overly summary manner in which he had disposed of the case in the name of 'Pathfinder' private law reforms. She contended that the Judge failed to give proper consideration to whether a fact-finding hearing should be held either separately or at the same time as a decision hearing. The Judge had failed to note that the FCA had recommended that "disputed allegations of domestic abuse or harm … need to be determined before the case can be concluded" albeit not as a separate fact-finding exercise.

101. Specifically, it was argued that judge had misinterpreted what was required of him under the Pathfinder model (PD36Z / PD12B(Pilot)). She argued that the new model should not create unfairness and/or limit proper consideration of domestic abuse when it remains relevant to the court's determination of welfare issues.

102. Although the father had argued before the Judge for a more expansive arrangement of his contact with the children, on this appeal he contended that the Judge reached the right decision for the reasons which he had given.

Discussion – Procedure (Ground 3 and 4)

103. I deal first with Grounds 3 and 4, which may conveniently be considered together. Their resolution requires an examination of whether the Judge adopted an appropriate procedure in determining the applications before him. More particularly, it is necessary to consider whether the circumstances called for a more extensive investigation of the mother's allegations against the father, those which pre-dated the 2024 hearing and/or those more recent, including the holding of a fact-finding hearing. It is also necessary to determine whether, in endeavouring to apply the ethos underpinning the CFC model, the Judge impermissibly curtailed the scope of the hearing on 21 and 22 April.

104. The Judge was, it seems to me, under no illusion about the seriousness of the domestic abuse which pre-dated the resolution of the 2024 proceedings. He referred to it as "serious" and "distressing" (see also judgment [97] at §92 "very serious domestic abuse") and accepted that it had had an "impact" on the safety and welfare of the four children and their mother (see §84 above). He described how it had caused the children "psychological and emotional harm" (judgment [40], at §86 above).

105. The mother's case was not that the judge who had made the order in 2024 was wrong, but that subsequent events had demonstrated that the assumptions underpinning that order had proved unreliable. The Judge considered her complaints, which I have

listed at §59 above. Setting aside the father's behaviour during telephone contact identified at §59(vii) (to which I return below: see §112) the Judge accepted the validity of all of the mother's complaints, the father having not in fact disputed them. It was, therefore, not "necessary" (see §23 above) for the Judge to conduct any deeper enquiry into those facts, let alone conduct a full fact-finding hearing. I say so for the following reasons.

106. First, the father; in addition to what his counsel had set out in the Position Statement (see §81 above) the father told the Judge in his oral evidence that he had made a "bad decision" to take A to the barbers, and that it was "inappropriate" for him to ask A to lie to his mother about the mobile phone. Perhaps significantly, he accepted that the court was right to treat his behaviour as creating risks for the children. It was clear to the Judge, as it is clear to this court, that the father accepted that he had in several respects wrongly pushed the boundary of supervision.

107. Secondly, the father's conduct was, in my judgment, sufficiently well understood by the Judge to enable him to address the relevant risks within the framework of his order. His approach was entirely consistent with the 'Guidance for Judges and Magistrates: Fact-Finding Hearings and Domestic Abuse in Private Law Children Proceedings' (Macur LJ, 2022) ("the 2022 Guidance"), which states at [15]:

> "Always consider whether the allegations (at their highest) go to safeguarding in general or to particular circumstances that <u>could be mitigated by supervision of contact or some other measures</u>. If the latter and mitigations are available, why is it said that a fact-finding hearing is required?" (emphasis added).

108. The Judge was plainly alive to the possibility of such mitigations. He considered a range of measures designed to address the concerns which had arisen, including strengthening the supervision arrangements by making clearer to JM and any other supervisors the parameters and expectations of their role, reducing the duration of contact, and imposing conditions on the activities which the father could undertake with the children during contact sessions.

109. It is material to note in this regard that the mother's application had been launched on the basis that the children should continue to have a relationship with their father; she explicitly recognised "… the importance of the children maintaining consistent and positive contact with the respondent, provided that such contact is safe and child-centred". For this reason, she had proposed professionally supervised contact. At that stage, she did not seek an outcome which would, in substance, remove the father from the children's lives. By coincidence, although this was not reflected in the CIR and only emerged in the course of the oral evidence, the FCA had independently arrived at much the same conclusion, namely that the risks identified in the evidence could appropriately be managed through professionally supervised contact. Those convergent positions provide support for the Judge's view that the issues raised by the father's conduct were capable of being addressed through appropriately calibrated safeguards rather than requiring a further fact-finding exercise.

110. Thirdly, it is clear that the Judge had much in mind in his management of the case not only the provisions of PD12J, but also the overriding objective set out in rule 1.1 of

the FPR 2010. Rule 1.1 FPR 2010 and PD12J are designed to "work together rather than in conflict with each other" (*Re H-N* at [140]). Thus, the Judge cannot be criticised for limiting the scope of the forensic enquiry and the length of the oral evidence given his objective to deal with the case expeditiously, fairly, proportionately and – as I have earlier mentioned – within the ethos of the CFC model.

111. Fourthly, at no stage had the case been configured as a fact-finding exercise. The gatekeeping judge had given no direction for fact-finding, and counsel before the Judge did not identify any specific points of dispute on which a determination was required, let alone invite him to determine such. Those matters are material when considering the complaint now raised vigorously by Ms Perrins that the hearing contained no fact-finding element. That said, as the 2022 Guidance makes clear, the views of the parties or their lawyers on the question of whether a fact-finding hearing should (or should not) take place "may be persuasive, but they are not determinative", and the judge or magistrate will always need to examine the reasoning which underpins those views (2022 Guidance, paragraph 2). Thus, in this case, as in all others of its type, the Judge's responsibility did not depend upon the stance adopted by the parties and their lawyers. In accordance with the continuing duty on the judge or magistrates throughout the proceedings to consider whether domestic abuse is raised as an issue, and to consider whether to investigate, they must also ensure that the matter is addressed in accordance with paragraph 5 of PD12J, irrespective of whether either party has sought such consideration.

112. I have taken the telephone contact (§59(vii)) separately, as I accept the submission persuasively advanced by Ms Perrins that the father's denigration and undermining of the mother during telephone contact with the children could not properly be viewed in isolation. While the Judge found no broader evidential basis for allegations of post-2024 domestic abuse, the conduct during telephone contact could nonetheless properly be understood as a continuation of the father's previously established pattern of coercive and controlling behaviour. As I have already mentioned (see §92) the Judge accepted that the father's denigration of the mother in the telephone contact was causing the children "emotional harm" (judgment [106]). No discrete fact-finding exercise was required to establish this; the Judge was able to work, and did work, with those facts in reaching his welfare decision.

113. Having accepted the mother's submission that the father could not be relied upon to moderate or regulate his behaviour during telephone contact with the children, he concluded that telephone contact should cease. Although this represented a significant restriction on the father's involvement in the children's lives, it was a proportionate and justified response to the continuing pattern of conduct identified by the court. It directly addressed the difficulties which had arisen, while effectively removing both the ongoing impact of that behaviour on the children and the risk of its recurrence.

114. Of course, if I had concluded that the process was in any respect flawed, then I would in all probability have been minded to allow the appeal and remit the applications for re-hearing. As this is not my conclusion, I go on now to look at his consideration of the issues on the merits.

Discussion – Contact (Grounds 1 and 2)

115. This was a complex case on the issue of contact for a number of reasons.

116. First, there was a proven record of domestic abuse, by admission. The father accepted responsibility for a pattern of abusive behaviour over a period of time during and after the end of the marriage; he further accepted that this had directly and indirectly impacted upon the children. This evidence had been before the court at the October 2024 hearing and was reprised before the Judge. No fact-finding had been deemed necessary in 2024 – either by the parties, the rule 16.4 guardian, or the judge. Contact between the father and the children had, with those events more recent in time, been agreed and ordered.

117. I am satisfied that when the Judge reached the decision now under appeal he had firmly in mind the damaging effect of the father's behaviour which had been a central feature of the proceedings which concluded in 2024; the Judge had described the earlier admissions of domestic abuse as being at the "heart" of the case (judgment [97]).

118. Secondly, it is clear that the father had behaved in a number of ways since October 2024 which had, in the finding of the Judge, undermined the mother and pushed the boundaries of supervision. I reject Ms Perrins' contention that the Judge had failed to consider adequately or at all the impact of the father's behaviour on the mother; the judgment, for example, records "I have no doubt that she is suffering the consequences of the domestic abuse that the father has admitted. She gave her evidence in large measure honestly and with thought" (judgment [59]). The Judge had deprecated the father's conduct in these regards. But the Judge was, in my judgment, entitled to the view that this behaviour – bad though it plainly was – was not determinative of the issue of future contact, and specifically did not of itself disqualify the father from having some supervised time with his children going forward. The Judge's role (per paragraph 5 of PD12J) was to ensure that any child arrangements order in place protected the safety and wellbeing of the child and the parent with whom the child is living, and does not expose either of them to the risk of further harm. That is to say, there was in this case, as in all of these cases, a balance to be struck.

119. Thirdly, aligned with the last point, Ms Perrins had cited the father's opposition to the administration of ADHD medication for A (which had provoked separate specific issue order proceedings) as a further illustration of the father's controlling behaviour. In my judgment, the situation was, as the Judge rightly reflected, somewhat more nuanced. As I have earlier explained, the mother had arranged the medical consultation for A without informing the father, let alone obtaining his agreement, notwithstanding that: (a) the father has parental responsibility for A, and (b) the October 2024 order had specifically made provision for consultation on medical matters (see §56 above). In fact, it transpired at the hearing that the mother had more recently arranged for A to commence a programme of therapy, again without any consultation with the father. The Judge was entitled to the view that the mother's unilateral actions in these respects had not been "helpful" and that this in itself may "have led the father to take a more oppositional approach". In a sign that the father was capable of moderating his views, he had at the hearing before the Judge agreed ADHD assessments for B and C.

120. Fourthly, the court was dealing with a sibling group spanning a range of ages and developmental stages. That was, it seems to me, a not unimportant feature of the case. Somewhat surprisingly, however, I can find no indication that it was reflected in the FCA's analysis, nor was it identified, whether as a significant issue or otherwise, by counsel at the hearing before the Judge. The Judge did, however, address this point – albeit in passing – in his judgment thus:

> "[87] The children's welfare is my paramount consideration. I fully acknowledge that I should consider the welfare of <u>each child independently</u>. I have thought about that carefully. But ultimately my assessment will come down to an individual consideration but the outcome for all of the children will be the same for reasons I will explain. But <u>I have not overlooked the individual needs, ages of each child</u>. But <u>I note in any event neither the parties nor the witnesses have set out any different outcome for each individual child</u>. Both the mother and the father and Cafcass have effectively said the arrangements should be the same for all children" (emphasis added).

121. Fifthly, although the father had attempted to comply with the court's expectations to engage with a perpetrator programme, the course recommended by the rule 16.4 guardian was not in fact available. It seems likely that the course he did attend ('Temper') did not correspond to the model which the rule 16.4 guardian and the judge had contemplated. Whatever the merits or otherwise of the particular course (and Ms Perrins was plainly entitled on the evidence to raise significant question marks about it), the Judge's fundamental conclusion was that the father's insight into his behaviours, even after the course, remained limited (see again judgment [61]/[62]):

> "… He showed some insight, but, as others have suggested, he did at times seem rather lacking in proper insight… [The father's] evidence was essentially honest, but there are limitations in his understanding and insight and reflection on how his behaviours make the mother fearful. There are limitations on him understanding the ongoing professional concerns about unsupervised contact".

122. Sixthly, all of the children were expressing clear and consistent wishes to see their father. I do not accept Ms Perrins' submission that the Judge overstated the children's wishes and feelings; in my judgment, he summarised them accurately. However, speaking for myself, I do not consider that those wishes could be considered in isolation from the family history. The father's abusive behaviour will inevitably have shaped the children's experiences, perceptions and emotional responses, and may therefore have influenced the wishes they expressed. It is notable, for example, that B's aspiration was not for her parents to live together, but for them to remain on the same island while living sufficiently far apart "that they don't see each other" (§75 above). That observation is a telling illustration of the extent to which domestic abuse had become normalised within the children's understanding of family life. Even while expressing a wish to maintain a relationship with their father, the children's views plainly reflected an appreciation of the need to protect their mother from his

behaviour. Their wishes were therefore not merely a factor to be weighed in the welfare balance, but were themselves liable to have been significantly shaped by the abusive dynamics to which they had been exposed.

123. The Judge rejected the mother's contrary evidence about their views (see judgment [106]/[107] (§92 above). Within this complicated mix, the Judge formed the clear impression that, in part because of the "consequences of the domestic abuse" ([59]), the mother would not be "able to promote the children's wishes and needs for emotional stimulation with their father, given her level of antipathy to the father" ([59]).

124. Recognising that the children's wishes may have been influenced by the family's history does not deprive them of significance; it merely requires that they be evaluated in that context. As I have already noted, the Judge concluded that the children had "much to lose by their father being removed from their lives" (judgment [106]). On that issue, however, the FCA provided little assistance. Given the recommendation she was advancing, one would have expected a careful evaluation of the likely emotional, psychological and developmental consequences for these children of the effective loss of an established parental relationship. While her analysis focused on the risks said to arise from continuing the relationship, it did not address the corresponding harm that might flow from bringing it largely to an end, nor how such an outcome might affect these particular children, either now or in the future. That omission is striking. Indeed, when pressed in oral evidence, the FCA accepted that the father's removal from the children's lives would have an "impact" (inferentially, adverse) upon them. Against that background, the Judge was plainly entitled to conclude that the children had much to lose from such an outcome.

125. A balance needed to be struck, and in striking that balance, the Judge's concluded view was that it would be more emotionally harmful for the children not to see their father (judgment [104] / [121]) than to see him.

126. Turning to the specific challenge advanced under Ground 1, namely that the Judge was wrong to reject the FCA's recommendation, I am entirely satisfied that he was entitled to do so for the reasons articulated in his judgment, summarised at §94 above. Moreover, it appears to me that there were additional considerations, identified below, which could properly have been relied upon and which further undermine the FCA's analysis and recommendations:

i) Surprisingly, the FCA did not review the evidence by reference to the welfare checklist (section 1(3) CA 1989). In this difficult case, it would I suggest have assisted her, not to mention the court, if she had done so. A number of the factors were directly in play: section 1(3)(a) (the wishes and feelings of the children); section 1(3)(b) (their emotional needs), section 1(3)(d) (the wide range of ages of the children); section 1(3)(e) (the harm which the children have suffered or at risk of suffering), and section 1(3)(f) (the capability of the parents). I note that each of the FCA's reports concludes with the same standard formula: "I have applied a welfare checklist analysis to the facts of the case throughout." Standing alone, that assertion is of little value. It does not support any discernible welfare checklist analysis and therefore does nothing to explain how the relevant welfare factors informed the conclusions reached. By contrast, the Judge – faithful to the obligation imposed on him under paragraph 36(1) of PD12J – undertook a conscientious welfare analysis closely following the section 1(3) CA 1989 checklist;

ii) The FCA told the court (oral evidence) that she had had "numerous conversations" with the mother during her enquiries; the mother told the court that she had had "lots of discussions with [the FCA] about how to handle these situations [i.e., A's relationship with the mother's partner]" (emphasis added). These corresponding remarks suggest that there was a significant level of unrecorded communication between the mother and the FCA – i.e., far more communication than had been revealed by the two reports. The fact of these discussions, and the failure to record them raises questions as to why they were not referred to openly;

iii) As I have mentioned at §109 above, in her oral evidence, the FCA indicated that she would have recommended *professionally* supervised contact between the father and the children in the future "if there were clear parameters in terms of dates and times". She explained that she had only not recommended professional supervision of contact because the father had expressed himself to be against it. There was no hint of this in her report. This was a qualitatively different recommendation from the one which she made to the court.

127. That the Judge rejected the proposal for *professional* supervision of the father's contact with the children was in large measure attributable to the favourable view he had formed of JM. The Judge was in a privileged position in this case to form such a view, having been able to forge a "face-to-face, bench-to-witness-box, acquaintanceship" (Lord Wilson in *Re B* [2013] UKSC 33 at [42]) with JM, to assess her credibility and reliability, and to undertake a similar exercise in relation to the parents themselves (see also *McGraddie v McGraddie & another* [2013] UKSC 58 at [1]-[6]). Moreover, as is well known, this court will rarely interfere with judicial discretion as to the best order for meeting a child's needs when arrived at after careful reference to the welfare checklist; as Wall LJ (as he then was) said in *Re S* [2007] 1 FLR 819 at [48]:

> "Provided the judge has carefully examined the facts, made appropriate findings in relation to them and applied the welfare check-lists contained in section 1(3) of the 1989 Act and section 1 of the 2002 Act, it is unlikely that this court will be able properly to interfere with the exercise of judicial discretion, particularly in a finely balanced case."

128. For these reasons in combination, I am of the view that the Judge did not, on the facts of this case, fall into error in ordering limited supervised contact between the children and their father.

Discussion: Section 91(14) CA 1989 (Ground 6)

129. The challenge to the section 91(14) CA 1989 order made against the mother is expressed succinctly in her Grounds of Appeal: the order was wrong. The basis of that challenge was not developed in any substantial way, either in writing or in oral argument. Nonetheless, I am satisfied that Ms Perrins is correct in her submission that this aspect of the order cannot stand.

130. In reaching that conclusion, I have had particular regard to PD12Q FPR 2010, paragraph 24A.2 of PD12B(Pilot) (to which I return below), section 91A CA 1989, and the observations of Butler-Sloss LJ in *Re P (Section 91(14) Guidelines) (Residence and Religious Heritage)* [1999] 2 FLR 573 at pp. 591-593, together with those of King LJ in *Re A (Supervised Contact) (s 91(14))* [2021] EWCA Civ 1749, [2022] 1 FLR 1019, particularly at [41]. Neither authority was cited to us, but both provide important guidance on the proper approach to the making of such orders.

131. Under section 91(14) CA 1989, orders are available to prevent a person from making an application without leave of the court. Section 91(14) leaves a discretion to the court to determine the circumstances in which an order should be made; those circumstances may be many and varied. In this regard, it is relevant to consider PD12Q FPR 2010, together with paragraph 4A and 37A of PD12J. Specifically, in relation to cases proceeding in the CFC model it is relevant to consider paragraph 24A.2 of the PD12B(Pilot) which sets out the circumstances in which a section 91(14) order may properly be made:

> "… can also include where one party has made repeated and unreasonable applications; where a period of respite is needed following litigation; where a period of time is needed for certain actions to be taken for the protection of the child or other person; or where a person's conduct overall is such that an order is merited to protect the welfare of the child directly, or indirectly due to damaging effects on a parent carer. Such conduct could include harassment, or other oppressive or distressing behaviour beyond or within the proceedings including via social media and e-mail, and via third parties. Such conduct might also constitute domestic abuse".

132. Paragraph 24A.4 PD12B(Pilot) supplements this provision, materially for present purposes, in the following way:

> "In proceedings in which domestic abuse is alleged or proven, or in which there are allegations or evidence of other harm to a child or other individual, the court should give early and ongoing consideration to whether it would be appropriate to make a section 91(14) order on disposal of the application, even if an application for such an order has not been made (since the court may make an order of its own motion – see section 91A(5))."

133. While the lists in paragraph 24A are not intended to be exhaustive, and while it may fairly be said that a period of respite from this admittedly "unpleasant" litigation was required, the Judge undertook no analysis of the extent to which, if at all, the mother's conduct fell within any of the categories identified above (see my summary of his brief treatment of the issue at §98 above). In my judgment, it did not. In those circumstances, it was wrong to equate the mother's litigation conduct, or any contribution she may have made to the continuation of the proceedings or the abuse within the family, with that of the father. This was not a case in which the mother fell

within the ambit of section 91A; by contrast, there was a strong arguable basis for concluding that the father did so.

Discussion – Parental Responsibility, Prohibited Steps and Non-Molestation order (Ground 5)

134. As with Ground 6, Ms Perrins did not develop the argument that the Judge had erred in his reasoning in refusing the mother's (informal) applications in these various respects significantly beyond the bald complaint contained within the composite Ground 5. For my part, the Judge adequately explained his reasoning over a number of paragraphs (which I have summarised at §97 above), and cannot be said to have been wrong in his conclusions.

Conclusion

135. For the reasons set out above, I would allow the appeal in relation to the section 91(14) CA 1989 insofar as it applied to the mother. I would dismiss the appeal in all other respects.

136. In the event that issues arise now as to the timing of implementing the Judge's order given the lapse of time while this appeal has been considered, these should be referred to the Judge on formal application, he having reserved the case to himself. This is not to encourage any such application as there is no reason why the parties should not be able to agree this.

Zacaroli LJ

137. I agree.

Moylan LJ

138. I also agree.