IN THE HIGH COURT OF JUSTICE No. SE09P00088

FAMILY DIVISION

**[2014] EWHC 4836 (Fam)**

Royal Courts of Justice

Friday, 13th June 2014

Before:

MR. JUSTICE MOYLAN

(**In Private**)

Re A (A Child)

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THE APPLICANT appeared In Person.

MS. STANISTREET, of Counsel, appeared on behalf of the First Respondent.

MS. PEMBERTON appeared on behalf of the Children's Guardian.

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**J U D G M E N T**

(As approved by the Judge)

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

MR. JUSTICE MOYLAN:

Introduction

1. In this judgment, I am determining a father's application for direct contact with his daughter, M. That simple statement of the reason for this hearing cannot begin to reflect the complex nature of this case: it has a longer history of court proceedings than any I have encountered during my career as a barrister and a judge. This family has been engaged in litigation for almost as long as is possible under the Children Act 1989, given that the child at the centre of the proceedings is now aged 14½ and given that there have been almost continuous proceedings since 2001, when she was aged 1½.
2. It is well recognised that litigation is stressful and has the potential to be extremely disruptive of family life. To meet a family and a child who have been involved in proceedings for so many years is an extremely dispiriting experience. In saying this, I am saying no more than was said by Goldsack HHJ QC when giving judgment in these proceedings on 9th October 2012 and by McFarlane LJ in the Court of Appeal on 6th September 2013. Both expressed their dismay at the history.
3. It will be apparent from the above that this is a re-hearing. The Court of Appeal set aside Goldsack HHJ's order that contact should be limited to indirect contact. In so doing, McFarlane LJ said, in the course of his judgment at para.77 said:

"Drawing matters together, whilst I do not conclude that the outcome ordered by the judge is of itself wrong and, therefore, to be set aside, I am sufficiently concerned about the process of these proceedings as a whole, which I have held has violated the Article 8 rights of both M and her father and also, by the deficits in the judge's analysis which I have now identified, to conclude in the words of CPR r.52.11(3), that the outcome is 'unjust because of a serious procedural or other irregularity'. For the previous systemic failure to end in a hearing which itself was highly unsatisfactory and where the judge has failed to conduct a sufficiently thorough analysis makes it almost inevitable that this court will consider that it has a duty to intervene with the aim of establishing an effective and full hearing.

(78) This decision is made with a heavy heart, as I fully understand that the idea of reopening these matters before the court will be a profoundly unwelcome one for M. That it is necessary, for the reasons that I have given, I am clear, just as I am clear that, on this rare occasion, part of the responsibility for this turn of events rests with those of us who work in the family justice system. But sight must not be lost of the place where the ultimate responsibility for this situation plainly rests, which is with the parents and, in this case, with M's mother in particular. It is she who has, on the judge's clear and unchallenged findings, doggedly refused to allow M to develop and maintain a relationship with her father without any good reason whatsoever for so doing. It is she, should she wish to do so, who could now unlock this intractable situation and permit her daughter to have some form of normality and balance in her relationship with her parents as she goes through her teenage years and beyond."

1. The father appears in person, as he did at the hearings before Goldsack HHJ and the Court of Appeal. He seeks direct contact at a level which would enable him to build a relationship with M again. It is his view that, if contact is ordered, it will take place, provided it is made clear that sanctions will follow any lack of compliance.
2. The mother has the benefit of legal aid and is represented by Ms. Stanistreet. She opposes the making of an order for direct contact and contends that any order should be limited to indirect contact.
3. During the course of the hearing before Goldsack HHJ, NYAS was appointed to act as M's guardian. At the first directions hearing before me, an application was made for M to be represented directly by NYAS, without either a NYAS caseworker or a CAFCASS guardian. NYAS's director of Legal Services stated that, in her opinion, M was competent to be separately represented and to conduct proceedings without a guardian or litigation friend. On the basis that the conditions referred to in Family Proceedings Rules 2010, r.16.6 were satisfied, I directed that Ms. Singleton, of NYAS, should continue to act as M's solicitor. At this hearing, as previously, M has been represented by the same counsel, Ms. Pemberton.
4. Given the complex and unusual circumstances of this case, I also ordered CAFCASS to appoint a guardian for M. This was not an appointment which fits easily within the Family Procedure Rules, as it was not for the purposes of CAFCASS representing M; it was to provide me with independent advice during the course of the proceedings and, in particular, as to what orders would be consistent with, and would promote, M's welfare. I am extremely grateful to CAFCASS for agreeing to this appointment.
5. Following the Court of Appeal hearing, the case was first listed before me for directions on 17th October 2013. At that hearing, the parties' respective positions were not properly formulated. I ordered a further directions hearing, on 28th November 2013, and also ordered CAFCASS to appoint a guardian. I directed that the guardian was to attend the hearing listed on 28th November and to propose directions as to the future conduct of the case, having regard in particular to para.80 of the Court of Appeal's judgment in which McFarlane LJ refers to the instruction of a multi-disciplinary team such as that provided by the Marlborough Family Service in London.
6. The guardian prepared a report for the next hearing. In this it was made clear that there is no service, similar to that provided by the Marlborough Family Service available, in the area in which this family lives and indeed that CAFCASS could identify no other services which were likely to be available.
7. At the hearing on 28th November, both the mother and NYAS submitted that only a short hearing was required, at which very limited evidence would be necessary. None of the parties addressed what additional expert evidence (if any) might be required, given that the previously instructed expert, Dr. Weir, had retired. This, regrettably, made it necessary for me to have a further directions hearing, which could not be listed before me until 6th February 2014.
8. At that hearing, the father applied for the instruction of Dr. Berelowitz, a Consultant Child and Adolescent Psychiatrist. This was opposed by Ms. Stanistreet and Ms. Pemberton. I did not see how there could be an effective rehearing, as ordered by the Court of Appeal, in the absence of further expert evidence. In my view, such evidence was essential and, accordingly, I directed that Dr. Berelowitz should be instructed to prepare a report, for which purposes he should see the mother, the father and, if possible, M. In fact M refused to meet with Dr. Berelowitz, so he had to complete his report and give oral evidence without having seen her.
9. I also ordered, given the history of the proceedings and given the Court of Appeal’s findings as to the failings which had occurred in this case, that the father should not have to pay any part of Dr. Berelowitz's costs but that they should be paid, effectively, by the Legal Aid Agency. At first, the LAA refused to accept my order. This necessitated a further hearing, on 17th February 2014, at which, because a decision had to be made immediately, the father agreed to contribute towards these costs, if necessary, and if the LAA did not review its decision. I listed the final hearing for six days commencing 6th May 2014. Shortly before this hearing commenced, the LAA indicated that it had reviewed its decision and accepted that the father should not have to pay any part of Dr. Berelowitz's costs.
10. At the final hearing, I heard evidence from the father, the mother, Dr. Berelowitz and the CAFCASS guardian, Ms. Whittle. At the end of the hearing, I reserved judgment to today, both because of other commitments but also, more importantly, so I could reflect on the evidence before reaching my decision.

Background

1. The background to this case is set out in the judgment of Goldsack HHJ. Nothing I have heard causes me to question his summary, nor has any party raised any significant issue about it. I propose, in due course, to incorporate into this judgment substantial parts of the history as set out in his judgment.
2. The mother is now age 50. The father is age 62. They began a relationship in 1991. In 1996, the mother had a breakdown, for which she received treatment. The parties separated, but resumed their relationship in 1997. Their only child, M, was born in 1999.
3. The parents separated again, and finally, in 2001 but, even before then, difficulties had begun to occur in the father's relationship with M. In a chronology prepared by the father in 2011, there is reference to M being "withheld" from him when she was three months old and the father being "prevented" from playing any active part in M's life. I have not, of course, undertaken any investigation into why these problems were occurring so early in M's life, but they show how longstanding and deep-seated these problems are and also how longstanding and deep-seated the parental conflict in this case has been.
4. Since the parties separated, M has, very largely, lived with her mother. She lived with the father between February and November 2007, when the mother was unable to care for her because of mental health problems. There have also been periods when M has lived with her maternal grandparents, again because of the mother's health.
5. Apart from the period when M was living with him, the father's contact has been intermittent. At times he has had staying contact, supervised and unsupervised visiting contact and, for significant periods, he has had very limited, or no, contact.
6. The father last had direct contact with M on 4th February 2012. Since then, there has been very little, even indirect, contact.

Goldsack HHJ's summary of the history

1. Starting at para.2:

"This litigation began in 2001 and, with some interruptions, has continued ever since. There have been no fewer than 81 court orders since 2006, alone, and many more before then. At least seven judges have been involved at one stage or another. In excess of ten employees of CAFCASS have been involved as report writers and, more latterly, as children's guardian. Eventually, following the inability of CAFCASS to provide continuity of a guardian, a mixture of health problems and limited resources, I appointed NYAS as M's guardian. Several social workers have also been involved at various stages. Those few statistics are perhaps the best evidence that there has been systemic failure in this case.

(3) The parents were in a relationship for about ten years before M was born. Although never married, they lived together before the birth and for a few months after the birth. An important background feature has been the mother's health problems, both mental and physical, which are of long standing. She had at least one mental breakdown before the birth of M. She has been variously diagnosed as having an emotionally unstable personality disorder, displaying paranoid personality traits and, periodically, suffers from depression. These have not been helped by occasions when she has abused alcohol and/or illicit drugs. She also suffers from Crohn's disease and was unable to attend the final hearing because she had only recently been discharged from hospital after admission for complications from that condition.

(4) It is the father's case that, since very shortly after M was born, mother, aided and abetted by her parents, with whom she has had an on/off relationship over the years and who father believes had never liked him, has tried to prevent him from having a worthwhile relationship with M. Mother has always asserted that she wants M to have a normal relationship with her father; that ... have hardly ever been periods when that occurred, she has increasingly put down to M not wanting to go for contact, particularly staying, and, more latterly, refusing to go for contact.

(5) Father has only had any contact with M as a result of bringing applications before the court and referring the matter back to court, where mother either refuses to move contact on, or does not produce M for contact. Early CAFCASS reports reveal, as early as April 2002, mother was resistant to contact moving on to overnight stays, although there has never been any doubt about father's ability to cope with the care of M; CAFCASS recommended it. Almost immediately, mother tried to undermine it by saying M was not happy with the food father was providing and M did not want to go. She stopped M going. CAFCASS recommended suspending staying contact. It was reinstated later and, in March 2003, the CAFCASS writer observed: 'The court may feel enough resources have been devolved to this case and it is incumbent on mother and father to make any order work.'

(6) Later that year, father saw more of M because mother was in a new relationship and wished time with her boyfriend. M was also being left with her maternal grandparents, who were concerned that mother was drinking heavily, behaving badly and not providing proper care. The acrimonious situation between maternal grandparents and father and, to a lesser extent, mother was noted. A s.37 report was recommended and ordered. The recommendation was for M to stay with mother, and parents to sort contact out between themselves, subsequently defined by the court. Within months, CAFCASS were preparing another report because mother was not providing the contact ordered. Father was considering an application to change residence, but he decided against it. He wanted alternate weekends. That is what was recommended because there was no good reason why a child of nearly five, who has a demonstrably good relationship with the non-resident parent, should not spend a full weekend with that parent. A family assistance order was made. Yet further difficulties resulted in the case being back before the court in March 2006, where no staying contact was ordered, pending yet another report from CAFCASS.

(7) Within days of that order, M made allegations that father had sexually abused her. The investigation into those matters was not handled well and breached all guidelines. The judge did not feel the professionals involved had approached the matter with an open mind. There was a five-day hearing, which resulted in the judge concluding that the alleged abuse had not occurred. She described M as telling a story rather than reliving it. Several matters stated in her judgment are informative and have come up time and again in the subsequent history of this case. M is a very bright girl and mature beyond her chronological age. She can be manipulative. In dealings with CAFCASS and social services, mother cannot deny her negative feelings towards father, and M is very well aware of this. M had blown a different minor issue out of all proportion. I believe M played to her mother's sympathy and she got it in bucket-loads. Despite the allegations, M had shown no reluctance to go for contact on other occasions. Father does not come out of this all sweetness and light. Father had accused mother of priming M. The judge did not go so far as to find that proved, but did find that mother was all too ready to find bad in father, which fostered the negatives she already had. Care would need to be taken to avoid M becoming an emotional wreck.

(8) A guardian was appointed for M. She observed contact with father on two occasions; it went well. M showed no reluctance and said, afterwards, that she had enjoyed it. Unsupervised contact was recommended. Subsequently, in February 2007, overnight contact was ordered. By then the case was being dealt with the (by now) designated family judge, who has since dealt with virtually every hearing until September 2011.

(9) There was a dramatic turn of events a few days later. Mother's mental health was deteriorating. M was with her maternal grandparents. The day before M was due to have her first staying contact with father, mother visited him. When she left, father found a knife concealed down the settee, and his backdoor key was missing. Mother brought M the following day. There was an ugly scene and the police were called. They found the key, and another knife, in mother's handbag. She was charged with possessing a bladed article and harassment of the father. She was admitted to a mental hospital. She was subsequently made the subject of a community order, with a restraining order not to visit father's house. Father was granted a residence order in respect of M on 26th February 2007 and she lived with him, happily, until November 2007.

(10) Once mother was discharged from hospital and her health had improved, M started having contact with her. She told her guardian that, although she loved father and wanted to spend a lot of time with him, she would like to return to live with mother. Meanwhile, Dr. Hall, a chartered clinical psychologist, had been instructed to prepare a report on both the parents and M. In her first report (April 2007), she did not consider mother was capable of looking after M properly. By the time of her addendum (September 2007), she did, and her recommendation was that M return to live with mother. The guardian also recommended M return to live with her mother, largely based on M's strong wish to do so and the guardian's view that M was operating at a level above her chronological age and was able to assess her own best interests.

(11) In evidence, I asked father whether he had opposed the move back to mother. He told me that that had been his intention, but he was advised by his lawyers that, in the light of the recommendation from the guardian, he was bound to fail. Reluctantly, he had accepted that advice, so there was no contested hearing. He told me - and it is contained in her report - that he was assured by the guardian that mother was now promising to co-operate with contact, and it was on that basis that the guardian made her recommendation.

(12) Mother did not regularly make M available for contact, as directed, and further hearings were required in 2008 and early 2009. Contact was ordered and, on some occasions, a penal notice attached. There was a very detailed order with a penal noticed attached, on 12th March 2009. A week later, mother applied to suspend the order. M had returned from contact with a bruise to her leg. She alleged father had caused it by pinching her. Father was to accept that that was correct but only because M at the time was hurting him, and he did it to make her stop. Incredibly, not only was father charged with common assault, but the matter went all the way to a trial before a district judge, who decided that no criminal offence had been committed. [I add that, for the purposes of that trial, M was required to give evidence.] That was in November 2009. In the meantime, the DFJ had ordered that contact was to be supervised by a maternal uncle.

(13) M's position on contact was hardening. She was telling her guardian that she was frightened of father. She was refusing to attend contact unless it was supervised by a person of her choice. The guardian took the view that was appropriate. A full hearing was directed and Dr. Hall asked to prepare a further report. In February 2010, she advised that M should not be forced to go to contact in any way than the way she wanted it. That recommendation was adopted by the guardian and so ordered by the court. The mother agreed to go for mediation, at the father's expense. The DFJ made a s.91.14 order, to last until October 2012.

(14) In fact the case was back before the DFJ, before long. An order was made for the father to have supervised contact with Core Care. Arrangements were being made for a final hearing and it was agreed that Dr. Kirk Weir, consultant psychiatrist, be instructed because of his expertise in long-running, acrimonious cases. His report was prepared in late July 2011. On 18th August, yet another order was made for the father to have unsupervised contact. M did not attend and the father brought the case back to court on 1st September. On that occasion, M attended court. After speaking to M, the DFJ ordered that she go off for the day for contact with the father.

(15) On 2nd September, the mother brought the matter back to court, complaining about what had happened the day before and saying that M had spent the night crying and distressed about the trauma of what happened. In fact, based on other evidence, I later saw (and accept) M had had a thoroughly enjoyable day with the father on the 1st, but then burst into tears when she arrived home to her mother and maternal grandmother and said it had been awful. The DFJ set up a hearing for 30th September, which was later changed to 17th October, for the experts to attend.

(16) At the last minute, she was unavailable and the matter came to me. Given that both Dr. Hall and Dr. Weir were at court, I took the view I should hear them. Their evidence lasted until 6.00 p.m. and the hearing was adjourned part-heard until 1st November. I directed unsupervised staying contact in the meantime; it never happened. M rang the father on the Friday morning to say that she would not be going to contact. She maintained that stance despite being told a judge had ordered it. The following day, mother rang father and, in the course of the conversation, said M was old enough to make up her own mind.

(17) When the matter came back before me, I made an order for shorter periods of contact and attached a penal notice. I could not have warned mother more fully of the potential consequences if she disobeyed the order. The first contact, M's birthday, went well. It was held at her house, with the mother leaving her and the father alone. Contact was due to start the next day, at 3.00 p.m. By a dreadful mistake, father got the time wrong and turned up to collect M at 4.30 p.m. The mother had, by then, left the house, with M, without trying to reach the father by phone. When he realised his mistake and phoned the mother, she refused to change her arrangements. Essentially, she accused the father of being in breach of the order and letting M down. It was used as justification for M not attending the forthcoming weekend contact, either.

(18) I then made a further order for contact, building into the order some flexibility for M to make choices. Because of that and the reason the previous order had failed, I did not attach a penal notice.

(19) In the meantime, the latest guardian had developed health problems and was not going to be able to attend the adjourned hearing. All the parties took the view the matter could not proceed without a guardian. A fresh, but very experienced, guardian was appointed in her place."

The Judge then refers to the fact that he directed a further s.37 report, as recommended by the guardian. Continuing:

"(20) She [that is the guardian] had taken the view that there was clear evidence that M may have suffered significant psychological harm and believed that there was a realistic prospect that social services might advise removal of M from the mother's care, to be placed with the father, under a care order. I set a directions hearing for 9th December; an adjourned hearing in February. I directed contact at the discretion of the guardian and social worker. In fact the social worker did not recommend public law proceedings.

(21) Shortly before the adjourned hearing date, CAFCASS brought the matter back before me because the latest guardian had now had health problems and could not attend court."

Goldsack HHJ then deals with the instruction of NYAS as guardian for M.

1. Goldsack HHJ's conclusions, based of course on the evidence before him, were as follows:

"(26) This is a case where one could raise a number of 'what ifs'. What if the court had taken a stronger line with the mother in the early stages and transferred residence to the father when she blatantly ignored court orders? What if M had been allowed to stay with the father after he successfully looked after her for eight months when the mother had a further mental breakdown? What if the court had not endorsed the recommendations that contact should proceed at M's pace and on her terms? What if, at any stage, there had been a male professional assigned to the case, would there have been a different approach? And what if there had not had to be significant delays after the hearing in October 2011 because of the illness of successive guardians?

(27) But I agree with the NYAS caseworker that we are where we are and this case must be determined on the now available evidence; that is that there is no way at present to enable father to have meaningful contact with M. She simply will not attend. I have no doubt that, despite her assertions to the contrary, the mother has always been implacably opposed to contact and that includes the father's extended family, with some of whom M has at times enjoyed good contact. Whether that is because of her mental health problems, as father is still charitably inclined to accept, is probably no longer relevant. It is a fact which M has taken on board. The evidence is clear that, whenever M has contact with the father, it is positive and that M does love her father. I do not believe she is in fact frightened of her father, but she is torn by a loyalty to her mother, who does have serious medical problems.

(28) I have enormous sympathy for the father. Despite all that has, quite unjustifiably, been thrown at him, he has remained loyal to his daughter. With a mother and maternal grandparents determined to prevent him having a positive relationship with M, he is in an impossible situation.

(29) But, despite all that has happened, M is doing well. She is described as 'bright and doing well at school'. She has a good group of friends, her attendance is good and she is one of the most advanced in her year-group. Although there must remain concern that she has been psychologically damaged by all that has happened in her family life, that is not yet apparent by any disturbed behaviour. Although, for many years, her stated views have, in my judgment, been substantially influenced by her mother, I accept that what she is currently saying are her own views. Given her present age, it is now time to give those views considerable weight. She is entitled to a life which does not involve endless meetings with professionals and the uncertainty of what the next court order will say and which she has no present intention of complying with if not to her liking.

(30) Accordingly, my judgment is that a line needs to be drawn under these proceedings. Father is still putting forward other possible ways of achieving contact, but no one else believes they will work; nor do I. The court has tried all possible options, and I must now accept failure. M is increasingly blaming the father for the continuance of the proceedings, and to continue them further will reduce what chance there is that, free of pressure, M will in time realise the father does have a role to play in her life and she will seek him out.

(31) Over the last few months, much case law has been referred to in the position statements, skeleton arguments and submissions. I have considered them all, but, ultimately, each case is fact specific. In that small proportion of cases where nothing seems to work, a court must be prepared to say that proceedings have become a part of the problem and are likely to cause damage, or further damage, to the child concerned. This is such a case."

Court of Appeal

1. The Court of Appeal decided, as set out in para.51 of its judgment, that the proceedings, as a whole, had violated the procedural requirements which are part of the rights protected by Article 8 of the European Convention on Human Rights with:

"… the result that family life rights of M and her father to have an effective relationship with one another have been violated."

In particular, McFarlane LJ said, at para.52:

"No facts have been established to support a finding that, in terms of Article 8(2), it was necessary or proportionate to refuse contact to protect the health or the right or freedoms of others. Goldsack HHJ was right to express a profound feeling of failure on the part family justice system. Other than matters relating to the mother, her physical health, her mental health and/or personality, there has been no valid reason to limit or curtail the relationship between M and her father, yet the court process has concluded, after more than ten years, with an order denying the father any direct contact with his daughter."

Continuing with para.53:

"The conduct of human relationships, particularly following the breakdown in the relationship between the parents of a child, are not readily conducive to organisation and dictat by court order; nor are they the responsibility of the courts or the judges. But courts and judges do have a responsibility to utilise such substantive and procedural resources as are available to them to determine issues relating to children in a manner which affords paramount consideration to the welfare of those children and to do so in a manner within the limits of the courts' powers, which is likely to be effective as opposed to ineffective."

1. In addressing Goldsack HHJ's welfare decision, McFarlane LJ concluded that there were, what he called, "deficits" in his analysis. Paragraph 22 of McFarlane's judgment:

"In this regard, given that he was basing his decision very much on M's wishes and feelings, it was also incumbent on the judge to face up to Dr. Weir's clear evidence that M's views should not be used as a principal basis for decision-making and explaining why he was disagreeing with the expert on this key point.

Paragraph 73:

"On their face, the judge's core findings are not readily compatible with each other and required further explanation. The findings were that:

(a) he did not accept the validity of M's stated reasons for her expressed wishes and feeling;

(b) he found that the mother had always been implacably hostile to contact and that M had taken this on board; yet

(c) he regarded M as now expressing views which were her own.

The judge's failure to explain how these three apparently incompatible findings were to be reconciled is significant and plainly goes to the root of the judicial exercise of discretion based, as it was, on M's views.

(74) The judge's focus is very much upon the here and now. It is plainly right for judges to make their evaluation of a child's welfare based upon the current situation, but, in analysing that situation, they must bring to bear such evidence that may be relevant from what has transpired in the past. Here the situation was not straightforward and did not simply involve a young person who has consistently expressed her view contrary to contact. In recent times, despite her express view, M had been persuaded to attend contact by Carr HHJ QC and, on being told by then guardian that her mother was in favour of the contact visit, spending time with her father in February 2012. Both of these occasions were, as the judge found, positive and enjoyable. In the circumstances, there was a need for the judge to make express reference, in his analysis, to these matters of history and then to bring them into his analysis of the weight he could then attach to M's wishes and feelings. Without such analysis, his statement that 'she simply will not attend contact' is an insufficient conclusion."

McFarlane LJ conclusions are set out in paras.77 and 78 of his judgment, as quoted above.

Expert Evidence

1. Next, I propose to summarise some of the historic expert evidence which provides part of the framework for my decision. I have been invited by the parties, and in particular by the father, to consider this evidence when determining this application.
2. As referred to in Goldsack HHJ's judgment, a significant feature in this case is the mother's health. The mother has a long history of mental health problems, dating from at least 1982 when she was first admitted for inpatient treatment. She has had a further four or five inpatient admissions since then. She has also suffered from Crohn's disease since adolescence and has had to have a number of surgical interventions.
3. In 2007, the mother was diagnosed as having a paranoid personality disorder, an acute polymorphic psychotic disorder and psychosocial and environmental problems. The conclusion of her treating consultant psychiatrist, which I quote in full, was as follows:

"The mother has been manifesting maladaptive, deeply ingrained and enduring behavioural patterns, i.e. suspiciousness, mistrust, hostility and hypersensitivity to criticism, since her adolescence. She has also exhibited features, i.e. social anxiety, poor peer relationships, eccentricity, and, in situations of stress, she has responded with brief psychotic episodes culminating in five inpatient psychiatric admissions, so far. She also has a tendency to abuse alcohol and other illicit substances in excessive amounts at times of stress. Her ongoing stresses include her chronic physical condition and ongoing custody battle with her ex‑boyfriend. With regard to the prognosis, though the acute psychotic episode had remitted now, her vulnerability to develop further psychotic episodes in situations of stress still continue, in addition to her coldness, eccentricity and suspiciousness, which are traits of her paranoid personality disorder."

1. A report was also obtained in proceedings from a jointly instructed consultant psychiatrist. He concluded that the mother:

"... suffers from significant personality difficulties, amounting to a diagnosis of emotionally unstable personality disorder with paranoid personality traits".

The consultant psychiatrist commented that personality disorders are notoriously difficult to treat. In his opinion, the mother's personality disorder was then present at a mild‑to‑moderate degree of severity. When not exposed to significant stress, the mother would be able to provide stable, safe and consistent care for M. However, the nature of her personality difficulties was such that, when exposed to significant stress, her emotional lability and volatility and impulsive behaviour would result in her having significant difficulties providing stable, safe and consistent care for M.

1. As also referred to in Goldsack HHJ's judgment, a report from a psychologist was first obtained in April 2007 when the mother was an inpatient in a psychiatric ward. The report reflects the complex family history, including the mother's relationship with her parents, which was described as "volatile and full of conflict". It also identifies that the relationship between the mother and the father was full of conflict, with communication between them often reflecting the mother's mental health difficulties and personality problems.
2. The mother was found to have limited awareness of the impact of her mental health problems both on herself and on others. The consequence for M was that she was likely to have developed an anxious and insecure attachment to her mother and an insecure attachment to her father. In the psychologist's opinion, M had learned "to dissociate from all that is going on around her". In conclusion, the psychologist states:

"The relationship between the parents has been overshadowed by the mother's mental and physical health problems. She is consistently negative about him. He was less so about her, but did rehearse the past events of their relationship with a level of continued surprise and bitterness. It was as if he could not quite believe what had happened and was interested to get my support in this."

1. In an addendum report dated September 2007, the psychologist recommended that M should return to live with her mother. The mother presented a very different attitude towards the father, in that she did not seek to criticise him, and to the issue of M's relationship with her father. She found that M had "a very positive attachment to her mother". M also told the psychologist that she wanted to return to live with her mother. As referred to earlier in this judgment, M did indeed return to live with her mother, by agreement.
2. The same psychologist was again instructed in 2009 to provide a report on the father, the mother and M. In the course of her detailed report dated 25th July 2009, the psychologist commented that M was likely to have:

"... divided loyalties to her parents, which their disputes maximise. This makes it more difficult for M to know which way to turn without causing distress or anger in one of her parents".

She advised that it would be helpful for M to see her parents at least making an effort to get on with each other but each, she (the psychologist) recognised, in fact undermined the other.

1. In this report, the psychologist also expresses concern at the father's “very uncompromising” views. Previously, he had seemed to her to have some sympathy and empathy with the mother, but his position had become more entrenched. It was the psychologist's view that it would be “extremely damaging” for M to change her residence back to the father.
2. In a further report, dated 23rd February 2010, the psychologist recommended that there should be no change in the supervised contact arrangements:

"We have to wait for M to change her mind, rather than pressurise her into having any other form of contact with her father."

The psychologist saw M, who told her that she had found giving evidence at court, in respect of the criminal trial, very difficult; that she was upset that the father had been found not guilty; and that her trust in her father had been affected. When speaking to the father, the psychologist noted that he seemed to have little understanding of the pressure which the whole court experience would have placed M under.

1. In the psychologist's assessment:

"Whatever the influences have been on M in the past, or currently, she has internalised these beliefs and made them her own."

The reference to "these beliefs" was a reference to M's expressed views of her father. It was also the psychologist's opinion that therapy would not help M to change her mind: this would be likely to put more pressure on her and make her dig her heels in and refuse to go to any contact.

1. In the summer of 2010, the mother's mental health deteriorated and M moved to live with her maternal grandparents. She stayed with them until December 2010. For part of this period, M's contact with her mother was limited and supervised. In a CAFCASS report from March 2011, M is reported as saying that she is "fed up” and wants it to stop. It is clear from the report that this is a reference to the court proceedings. The guardian notes that, in her meetings with M, she consistently expressed a wish that all her family got on. On one occasion, M added: "I don't think this is likely, as they don't like each other"; an astute observation reflecting what she had experienced over the course of many years.
2. It seems to me that M's expressed wish relates not only to her mother and father, but also to the relationships between her maternal grandparents and her mother, and her maternal grandparents and her father. As referred to earlier in this judgment, the relationship between the mother and her parents, at least at times, has been a very troubled one. For example, after M returned to live with her mother in December 2010, the grandparents expressed concern to the guardian at their lack of contact with M; indeed, they had considered, themselves, applying for contact but had not done so because they did not want M to be exposed to yet further court proceedings.
3. At the date of the guardian's report in 2011, M was again living with her grandparents and having supervised contact with her mother. M, however, refers to her mother as her "no.1 person" and was consistently saying that she wanted to return to live with her mother at the earliest opportunity. M also told the guardian that, unless contact was supervised, she would not go.

Dr. Weir's evidence

1. The father relies heavily on this evidence. Dr. Weir was robustly critical of the mother and expressed his concern for M's welfare. I have a rough note of the evidence he gave during the hearing before Goldsack HHJ, but I propose to refer only to his written reports.
2. His first report is dated 27th July 2011. At that time, M was seeing her father for four hours of supervised contact every two weeks. I also note that there were difficulties in M's contact with the maternal grandparents. She had not seen them unaccompanied by the mother for many months. The frequency of the visits was uncertain and there was only occasional, brief telephone contact.
3. For the purposes of preparing that report, Dr. Weir had seen the mother, the father and M. He saw M with the mother and also saw M with the father over the course of contact which lasted nearly seven hours.
4. Dr. Weir strongly recommended an immediate increase in M's contact with her father so that residence was genuinely shared. Failing that happening, he advised that there were grounds for M moving to live with her father. In Dr. Weir's opinion, M's expressed wishes and feelings were not true but were a screen to protect her from feeling disloyal to her mother.
5. The paradox of a child expressing resistance to contact, but being happy during contact:

"...is a situation which is commonly seen in high-conflict contact disputes and arises because of the child's conflict of loyalty. Being aware that affection for one parent is likely to be disapproved of by the other, children hide their feelings and may make false statements of their opinion in order to please one or other parent. Children in this situation may also make trivial criticisms of one parent, or false allegations regarding the behaviour of one parent. When the child is trapped in such a conflict of loyalty, it is a disservice to them for adults to absolve themselves of the responsibility for deciding what should be done in the best interests of the child's long-term welfare, regardless of their stated wishes or feelings. Children understand that such decisions have to be made by adults, even though they may protest at the time."

Later in his report, Dr. Weir says:

"This is a case in which the child's wishes and feelings are unreliable and to follow them could not possibly be seen as being in the best interests of her long-term welfare. Quite apart from the unreliability of her views, she is only 11 years old and her appreciation of the past and the future is limited not only by immaturity but also by her maternal family's distorted and powerfully expressed perceptions. In my opinion, M would be greatly aided if it was made clear to her that, given the disagreement between her parents, the court has to make decisions which are in her best interests and not simply a reflection of what she says she wants at a particular moment. I think M would understand this and be relieved if contact was ordered by the court."

Then:

"The anguish of children caught in high-conflict proceedings is obvious to all. Resident parents who are opposed to contact often propose that it might be helpful to the child if such proceedings were to cease. My experience is that, when proceedings are abandoned in these circumstances, matters get worse, not better. They get worse because contact gradually decreases and ceases. Time passes during which no contact is taking place. It is harder for contact to be reinstated the longer the period of no contact and the older the child. M is at a crucial age and if contact were to cease in the near future, there is a considerable likelihood that her relationship with her father would end."

1. Dr. Weir also refers to the adverse effect on a child's psychological development which false beliefs can have. In his opinion, the best solution for false beliefs, for example, of abuse by a non-resident parent, is the reinstatement of high levels of contact.
2. Dr. Weir was subsequently informed of the problems which had occurred over contact in October and November 2011. In an addendum report, dated 11th November 2011, Dr. Weir states that he is concerned at the:

"... unbearable emotional pressure on M to support her mother's views, and the consequent adverse effect on her ability to enjoy a relationship with her father."

He concluded that an early transfer of residence was the only way of relieving her from these pressures. Without this:

"... there is no [my emphasis] prospect of her being able to maintain a relationship with her father and his family, and every prospect of the consequent immediate foreseeable and longer term harm to her adjustment and welfare".

1. A CAFCASS report dated 9th February 2012 was prepared by the then newly appointed guardian. The guardian met M both alone and with each parent. She also spoke to M on 6th February 2012 after M had had contact with her father on 4th February. Father and M had met at a café for about two hours in the morning. M told the guardian that she would be interested in using the café again to meet up with her father, preferably at the weekend. However, when the guardian had previously seen M and the father at the CAFCASS office, the meeting was brought to an end because of M's evident discomfort. She physically recoiled as the father embraced her in welcome and she remained anxious throughout the meeting:

"The position remains that M does not refuse to have contact with her father. She is convinced that matters will be sorted out informally and that contact will continue on an unstructured basis if left to the family to sort out. She is adamant that the court's involvement is counterproductive. She wants the process to stop."

1. The guardian was "supportive" of every effort being made to allow M's relationship with her father to flourish, but she added:

"I am not convinced that such efforts should be continued under court scrutiny, as I believe that the process is having a significant impact on M, and this risks alienating her from contact completely. This will be a great loss to M, as she has shown she enjoys contact with her father."

1. In a further letter, dated 15th February 2012, Dr. Weir comments that he shares the dilemma hinted at in the guardian's report, and in a s.37 report which had been obtained, namely "how to maintain the necessary relationship between M and her father in the face of her apparent resistance". Dr. Weir repeated his view that ending the proceedings was not likely to increase the chances of M maintaining a relationship with her father:

"Another year or two of enforced contact might be sufficient. The court might tell M that she is still not old enough to decide on such important matters but that the court will review the situation when she is 14."

1. Dr. Weir's final report is dated 10th September 2012. He no longer recommends a "forced transfer of residence", as he called it. He said:

"A forced transfer of residence cannot be recommended for a reasonably mature 13‑year‑old unless an agency, such as social services/CAFCASS/NYAS, are prepared to be actively involved in supporting the transfer and the aftermath."

No such agency was prepared to be actively involved.

1. Dr. Weir also expresses the opinion that:

"... the passage of time, the concurrent increase in M's age and the lack of contact are relevant, as all make it less likely that a resumption of contact can be achieved without M's co‑operation."

He refers also to his previously expressed opinion as to what was likely to happen in the absence of a change of residence.

Evidence at this Hearing

Dr. Berelowitz

1. Dr. Berelowitz is an extremely well-known and experienced consultant child and adolescent psychiatrist. He has given evidence to the courts on many occasions and is well placed to give evidence in this high and longstanding conflict case.
2. As described earlier in this judgment, Dr. Berelowitz has not seen M because she refused to see him. This has inevitably made it difficult for him, as he put it, to gain an understanding of M's own experiences.
3. Dr. Berelowitz starts from the position that children do better psychologically, following their parents' separation, if they have a rich and full relationship with both parents. He acknowledges also that it is "baffling", to use his word, and, in some ways, tragic that M, who was apparently residing happily with her father in 2007, is now refusing to see him at all. Dr. Berelowitz is not sure that we can now know why this has happened but he is also clearly not surprised that it has happened.
4. I will deal with his evidence at some length, given its importance, in my view, to my decision. In summary, he says that there are a number of factors present in this case which make it impossible for M to enjoy a relationship with her father. If she cannot enjoy it, she will not go. Dr. Berelowitz referred to research which has shown that discord is like "toxic radiation" which can tip a child either way and in a way which defies adult explanation. With regret, Dr. Berelowitz has concluded that, in this case, he can identify no solution. In his opinion, it is "almost certainly impossible to rebuild something here". He cannot see direct contact happening.
5. Dr. Berelowitz's report is dated 17th April 2014. In his opinion, an important background feature are the mother's longstanding mental and physical health problems. He also commented that, with the, as he put it, considerable benefit of hindsight, too much attention was given to M's wishes and feelings when she was younger. It had been noted that she had an anxious attachment to her mother, but, he says:

"Not enough heed was taken of the extent to which M's wishes and feelings would be tempered by her anxious attachment and her concerns about her mother."

However, given the current situation, Dr. Berelowitz does not recommend a change of residence. He cannot see how this could be effective, especially given M's age. In essence, he said that the measures which would be likely to be required could not sensibly be suggested and, even if tried, would cause M great emotional harm. He also cannot see how to *make* M have direct contact.

1. In his oral evidence, Dr. Berelowitz identified a number of factors which make it impossible for M to enjoy a relationship with her father. And, as referred to above, he said: "If she cannot enjoy it, she will not go." He asked what child would not get tired and afraid of the process and of being exposed to conflict and would not become weary of people determining their own future? Dr. Berelowitz can understand why M has just had enough of this process. She feels that she has made her views plain and, he said, she feels it insulting to make her repeat them. This would explain why she would not see him. He also describes her position, as set out in the brief statement from NYAS, as "measured" and, in his view, clearly understandable.
2. The factors which in Dr. Berelowitz's opinion are sufficient to deliver, what he called a "knock-out blow" to contact taking place successfully, are as follows.
3. First, the level of discord to which M has been exposed, almost all her life, would of itself be sufficient fatally to undermine contact. Research shows that such discord is, as I have already quoted, like "toxic radiation". It can tip a child either way. The way a child responds can defy explanation but, the effect is, that it is very hard for a child to enjoy rich and full relationships with both parents at the same time:

"Discord, whatever its nature and wherever it emanates from, is a very potent underminer of the child's relationship with the non‑resident parent."

1. Secondly, Dr. Berelowitz refers to the findings made in respect of the mother's opposition to contact. In connection with this, he also refers to the mother's view, that the absence of the father and his family from M's life, is not much of a loss and the view of the mother's family that the father is not really a fit person to look after M.
2. Thirdly, there is the mother's view that the father must have done something sexually inappropriate to M in 2006. This view, Dr. Berelowitz says, appears to be shared by M.
3. Fourthly, although Dr. Berelowitz has not seen M, in his opinion her views are now likely to be her own. There would have been a time when M was confused about what she felt, but now her expressed wishes and feelings fit with her own view of herself and her situation. He used the term "ego-syntonic". M is likely to have developed, in her own mind, a good rationalisation of why she does not want to see her father, why she should not be asked about it and why she should not be required to do so. From the history, it can be postulated that her views were influenced by her mother, but, at some point, they became independent. It is likely that M now feels, with great commitment, that these are her own wishes and feelings. She is also likely to feel that it would be cruel for anyone to try and override them.
4. Dr. Berelowitz is very concerned about the consequences for M's welfare and psychological development of her continuing to believe that her father has nothing to offer her, and of her continuing to have the false belief that her father has sexually interfered with her. If, because of parental hostility, a child has a personally damaging false belief, that, in Dr. Berelowitz's opinion, is a very grave outcome and one which amounts to emotional abuse. However, it is clear from his evidence that he can see no effective way of addressing this whilst M is living with her mother.
5. Dr. Berelowitz is also very clear that he does not recommend a change of residence either by transferring residence to the father or by M being placed in foster care. Balancing the harm which would be caused, it is Dr. Berelowitz's opinion that this would cause greater harm to M than by her remaining in the care of her mother.
6. Although Dr. Berelowitz was very concerned about the consequences for M, he considers, as I have said, that it is almost certainly impossible for a relationship to be rebuilt between M and her father. He points to the fact that he could not even have a conversation with her about contact; if that cannot happen, he said, contact cannot happen.
7. He expressed, in powerful terms, that there is no point in causing "recurrent degrading experiences" to take place, namely when contact is ordered but does not actually occur. He added: "Unless something serendipitous happens, I cannot see contact happening." As referred to above, Dr. Berelowitz can identify no acceptable alternative. It is not that he advocates no direct contact; it is that the alternatives will be more harmful, more damaging to M's welfare.
8. At one point in his evidence, when being questioned by the father, Dr. Berelowitz said that there might not be a huge amount to be lost by trying one or two contacts. I can well understand why he said this, given his evident sympathy for the father. However, it does not fit easily with the rest of his evidence, and he tempered it significantly by saying that it would be very complicated for M because she would have to find a way psychologically to make things small in her mind, which are quite large. Further, it would require a great deal of preparatory work by, say, NYAS, which could not have any particular goal in mind, as this would be seen through by M.
9. When asked about the enforcement of any prospective contact order, Dr. Berelowitz said that any such step would be likely to reinforce M's views about her father and confirm to her that she was right to hold those views in the first place.

The guardian, Ms. Whittle

1. The guardian’s report is dated 31st January 2014. She also gave oral evidence.
2. Although Ms. Whittle has not (and I did not require her to) seen M, she has read all the papers in the case, from the beginning. She has many years' experience as a child care social worker and as a guardian.
3. Ms. Whittle made clear at the commencement of her evidence that she has considered carefully how a relationship between M and her father could be promoted because, she said, where it is safe, it is in a child's best interests for her to have a relationship with both parents. In her opinion, M would benefit from direct contact with the father and his family if it were possible for this to take place.
4. Ms Whittle noted that, in the past, there has been a warm and enjoyable relationship, albeit with complications and difficulties. However, she recommends that no order for direct contact should be made and that court proceedings should be brought to an end. She points to the considerable support which the family has had over the years, including a family assistance order and professional supervisors, but comments that, despite this level of support, contact between the father and M has stalled at every point. It has not developed into a self-sustaining relationship, despite the fact that M lived with her father in 2007.
5. She describes M's experience of these proceedings as being long-term, inevitably, and invasive. M will have few memories of her parents working co‑operatively in her interests and of when parental acrimony was not a significant issue. She has been in the middle of this conflict, which has prioritised her parents' issues over her own needs.
6. M has been interviewed by a large number of professionals to try and establish the truth regarding her experiences of her parents and her wishes and feelings. She has told different people different things, including being afraid of her father, but has then been observed to demonstrate positive feelings towards him. To quote, at some length, from Ms. Whittle's report, starting at para.41:

"M's life has also been significantly influenced by her mother's mental health, physical health and substance abuse. She has been subject to neglect of her physical and emotional needs when her mother has been ill, and has had to move to live with her grandparents and father, at short notice.

(42) In addition to these issues, it became evident that M had been allowed by her mother to feel that she had control over whether or not she had contact with her father. M told her guardian, at eight years old, that she herself decided whether to go to contact or not. This was giving M an inappropriate level of responsibility, for her age and development.

(43) M missed many contacts with her father, with her mother often citing M's health as the reason. This meant that M was frequently experiencing confrontation and stress between her parents, from a very early age. Her birthdays had been a source of conflict and she has missed some significant social events involving her paternal family.

(44) M has, however, had contact with her father and his family, albeit irregular, inconsistent and fraught with disagreements. She has experienced overnight contact with her father and lived with him for a number of months when her mother was ill.

(45) She has witnessed domestic abuse between her parents, and her mother's alcohol abuse. There is little doubt that she has received many negative and unhelpful messages from her mother about valuing her father and about how to conduct relationships and deal with conflict.

(46) M has also been given conflicting messages from her mother, who has insisted, and continues to insist, that she is supportive of contact, whilst her actions suggest otherwise. This may go some way to explaining why M, on occasions, displayed rudeness and bad temper towards her father in contact.

(47) M has good relationships with her maternal grandparents, who have provided her with a lot of vital support throughout her life, including monitoring her mother's health. Unfortunately, they, too, have a negative view of the father and have been unable to provide a balanced view for M of her father.

(48) By all accounts, M has enjoyed many positive aspects of a normal childhood, and court reports have described her being a 'chatterbox' and very bright. Her general health has been good and she has worked hard at school and achieved academically.

Later in her report, Ms. Whittle says, at para.53:

"The court and professionals have recognised the negative impact of M's mother upon both the facilitation of contact and on M's stated wishes and feelings. The ongoing conflict between the parents and failure of court orders to fully support contact, the mother's failure to comply with court orders, and her negative attitude towards the father have to be viewed in the context of her long-term mental health issues, personality disorder and attendant alcohol and drug abuse and M's close attachment to her mother."

1. The guardian recognises that the mother's behaviour has caused M harm. However, despite the difficulties M has experienced as a result of her mother's mental illness and in her parents' relationship, M is a very resilient child. Her resilience has been noted by the psychologist, Dr. Hall, by CAMHS and by CAFCASS practitioners throughout their involvement over the years. In Ms. Whittle's opinion, M continues to try and protect herself by seeking an end to these proceedings and the conflict which have overshadowed her childhood. She is probably also, in Ms. Whittle's view, finding the court process abusive.
2. Ms. Whittle agrees with Dr. Berelowitz that the factors present in this case are particularly powerful and are very damaging to the prospect of contact between the father and M taking place. As with Dr. Berelowitz, she cannot see contact working successfully whilst M is living with her mother, whose hostility towards the father remains evident. She points to the fact that all these years of proceedings have not led to contact. The process has never met the needs of the family, due to the personalities of those involved.
3. The mother's mental health issues, and specifically her personality disorder, probably mean that she is unable to change her views and behaviour. She has not engaged with mental health services and has been in conflict with her own parents as well. The mother's circumstances are, in the guardian's view, complex. The situation is more complex than ascribing the problems merely to the mother intentionally preventing the father and M having a relationship.
4. In Ms. Whittle’s opinion the father is very focused and determined. He is very negative about the mother and has shown, in her view, a lack of flexibility. For example, she could not understand why the father had not taken more advantage of the order for indirect contact. During her oral evidence, Ms. Whittle mentioned steps which the father could have taken, such as sending a good luck card for M's exams or giving her a magazine subscription. In her view, the father needs to recognise that M is a complex person who deserves attention in her own right, and that he should not focus simply on the mother's hostility to him, which I add, in Ms. Whittle's view, is reciprocated by the father.
5. Ms. Whittle also considers that M's stated wishes and feelings are now very much her own. She sees the key issues for M as being allowed to get on with her life and not to have to engage further with parental acrimony. The simplest way for her to do this is to refuse to have direct contact with her father. At para.66:

"This does not have to mean that she does not love her father or even that she could not enjoy spending time with him. It does not mean that she may never want a relationship again with the father in the future. But it does mean that she is prioritising her own needs at the present time."

1. When the father asked the guardian what could have caused M to change her mind so dramatically since 2012 when she said was willing to see him again, Ms. Whittle replied that there are a number of factors which could explain this. First, M is growing and has grown up and wants to take control of her own life. Further, she has had enough of experiencing the acrimony between her parents and of experiencing court proceedings.
2. Ms. Whittle agrees with Dr. Berelowitz that contact has never become self‑sustaining. Its tenuous quality, by a thread, has meant that it did not require much for it to break.
3. Ms. Whittle recommends no order for direct contact because, in her view, such an order would be unworkable when faced with a 14 year old who would simply refuse to comply with it. An order would not ensure that contact occurs and would serve simply to perpetuate the conflict and uncertainty for M and her father. It would also place additional, undue, pressure on the mother. In Ms. Whittle's view, the next 18 months are crucial for M in terms of her education and development and this should not be disrupted by her having to worry about court proceedings or court orders.
4. During the course of her oral evidence, Ms. Whittle also referred to one article about this case, in particular, which had appeared in the national press. Ms. Whittle said that young people can be desperately sensitive to personal information about them being made public. She was not surprised to hear it being said that M had found this deeply distressing and hurtful.

The father

1. The father's case is contained in a very detailed chronology and in a comprehensive skeleton argument which he prepared for this hearing and which effectively formed his oral evidence.
2. The father expresses his anguish, dismay, incomprehension and frustration at the lack of contact. He cannot understand how M can be saying that she does not want contact with him, when she lived happily with him in 2007 and, as I have described, told a CAFCASS officer in February 2012 that she would see him again. What has happened, he asks, to make her change her mind? The father's answer is clear. He believes that the only bar to a proper relationship between himself and M is the influence of her mother, who is implacably hostile to him, and, as a subsidiary point, of hostile maternal grandparents.
3. In his view, too much weight has been given to M's stated wishes and feelings and insufficient weight to their context and background. The father, as I have said, relies heavily on the evidence of Dr. Weir and says there is compelling evidence that M's real views are not as expressed by her. They are unreliable because of the influence of her mother and her maternal family. He asserts that there has been a conspicuous failure to take properly into account what he calls the "environment of hostility" in which M has been living.
4. The father points to the fact that, on many occasions in the past, M has said she does not want to see him but that, when contact has taken place, it has gone well, with M being loving and affectionate towards him. He points in particular to the contact observed by Dr. Weir. Also, as suggested by Dr. Weir, in the absence of court orders, contact has not taken place. In the father’s view, M appears to have become more hostile to contact, despite nothing having happened which could or should cause such a change in her attitude to him.
5. Much of the father's evidence dealt with his criticisms of decisions made during the course of the proceedings and of evidence given during earlier hearings. I have carefully read and listened to this evidence, but I do not propose to include these points in this judgment because the Court of Appeal has already given its assessment of the history. My task is to consider the evidence I have read and heard in order to determine what order is in M's best interests.

The mother

1. I can summarise the mother's evidence very shortly. The mother's position, as referred to above, is that the proceedings should end with an order for indirect contact only. She says that M has made her position clear and it should be respected. She does not think that she has undermined contact and, indeed, in her first statement for this hearing, the mother said that she continues to hope that M will have a positive relationship with her father in the future.
2. During her oral evidence, the mother referred again to incidents in the past, which she says have affected M's views of, and relationship with, her father:
3. The incident in March 2006 when, the mother still believes, the father did something inappropriate when he applied cream. The mother's attitude was made plain when she said that, when M asked her earlier this year why her father had done this, she replied that M would have to ask him. She said something similar to Dr. Berelowitz. These responses contrast with what the mother says in her second statement for this hearing. In this she says that, if the father just gave M an explanation and apology for this incident, M could “move on”. He should explain that he was just trying to treat her with the cream. If the position were this simple, I do not understand why the mother could not herself have told M that her father was just trying to help.
4. An occasion in December 2008, when it is said that the father promised to bring M back later that day because she was upset, but he did not in fact bring her back until several days later.
5. An occasion in 2009, when M got a bruise because her father had nipped her.
6. The fact that M was at the father's house in 2007 when he called the police.
7. The mother also mentioned the fact that there has been very little indirect contact. She said there was no indirect contact between June 2012 and June 2013.
8. In response to a question from me, the mother said that she could not identify *any* step she could take to promote contact. She had had to go to great lengths to get M to go to contact on 4th February 2012. M had not wanted to go and, since then, she has made clear that she will not go again.

M's position

1. Since the hearing before the Court of Appeal, M has been seen on a number of occasions by her solicitor and her barrister. M has been very clear that she does not want to have direct contact with her father and that she would not go to such contact if it were ordered.
2. Her position for this hearing is set out in a statement prepared by NYAS on her behalf. It first addresses M's refusal to see Dr. Berelowitz. She was informed that *I* wanted her to see Dr. Berelowitz because it would assist me in reaching my decision if she did. The only question M asked was whether she could be forced to go. She was told she probably could not. She replied that she would not go. Her solicitor asked her to reflect on it but it is apparent that M did not change her mind, as she did not go.
3. M does not want to have any direct contact with her father. She is not able to think that anything good would come from having such contact. If an order for contact were made, she would refuse to go. She wants the proceedings to end, and is said to be "singularly unimpressed" that her father is continuing with the proceedings when he knows she wants them to end.

Submissions

1. Give the length already of this judgment, I propose to summarise the parties' respective submissions briefly.
2. Ms. Stanistreet, on behalf of the mother, in succinct submissions, contends that no order, other than an order for indirect contact, would accord with the court's obligation to make M's welfare its paramount consideration. She relies in particular on the evidence of Dr. Berelowitz and Ms. Whittle. It is the opinion of both those witnesses, even though they have not seen M, that her expressed views are her own and reflect her experience, in particular, of the years of hostility between her parents and of the court process. Ms. Stanistreet submits that the father's assessment of the situation is simplistic, as demonstrated by his rejection of indirect contact as not worth trying.
3. Ms. Pemberton, on behalf of M, submits that these proceedings should be brought to an end, with an order for indirect contact only. She submits that no order for direct contact will work because the evidence establishes that M will refuse to go. No other order is supported by any of the evidence and, in particular, no one supports M being removed from her mother's care. M has had enough of seeing professionals and of being involved in court proceedings.
4. Ms. Pemberton submits that there is ample evidence to explain why M is expressing the views which she is and has been for some time. These are identified in the evidence of Dr. Berelowitz and Ms. Whittle. The acrimony with which M has grown up all her life, and the other matters referred to in their evidence, are capable both individually, but clearly more powerfully collectively, of preventing contact commencing or continuing successfully. Contact has never become self-sustaining and Ms. Pemberton repeated the phrase that it was "hanging by a thread".
5. She submits that M needs to be allowed to get on with her life during her teenage years, free from being at the centre of conflict, free from being involved in court proceedings and free from being the subject of further analysis and reports. She needs to be able to live with her mother without being put in a situation of ongoing conflict of loyalties. She is doing well at school and socially and this should not be jeopardised.
6. Under the heading of "Harm", Ms. Pemberton refers to the following as having caused M harm or as creating a risk of harm: the lack of a meaningful and sustained relationship with her father; the acrimony which has been part of her daily life; the conflict of loyalties over many years; anxiety about her mother's physical and mental health; the knowledge that her story was in the national press - M said she saw the story online, accompanied by readers' views and comments about her and her mother, which caused her great upset and distress; the harm caused by her not having a positive image of her father; the harm which would be caused if her wishes were overridden, because it would make her feel her views were unimportant; the harm which would be caused by the court process continuing, which M has found intrusive and embarrassing and, picking up on what Ms. Whittle said, abusive.
7. Ms. Pemberton further submits that any order for direct contact will inevitably lead to further court involvement, whether for the purposes of monitoring such an order, or enforcement, which would cause M continuing anxiety about what might happen and continuing distress.

The father

1. The father seeks an order for direct contact so that he and M can have a proper relationship. He argues that the only impediment to contact is the mother's malign influence and her hostility to him. She hides behind M's stated wishes and feelings, which cannot be relied upon and which should not be used as a basis for decision making in this case. They have been shown to be at odds with her actual behaviour in the past.
2. The father understands that, at the age of 14 (rising 15), M will be developing her own life and independence but, he submits, this case is exceptional. He submits that Ms. Whittle and, indeed, other CAFCASS officers have failed to appreciate the full extent of the mother's hostility to contact and the effect this must have had on M and her views of him.
3. The father also refers to Dr. Berelowitz's evidence as to the harm caused, and being caused, to M as a consequence of the mother's hostility in that M is being deprived of a relationship with him, and has a personally damaging false belief about him. This is emotionally abusive.
4. The father submits that there is no good reason why M should not have direct contact with him unless the mother chooses to disrupt it. He acknowledges that the mechanics of getting M to contact could be “fraught” but, he submits, it is in M's best interests for it to be tried, and no one can predict what might happen until this is done.
5. In his view, there has been no proper analysis of why M is saying what she is about him and contact. Accordingly, he does not accept that M will not attend contact if an order is made. Although he does accept that M is unlikely to attend contact unless the court is prepared to use its enforcement powers to make this happen.
6. The father also comments that the fact that contact has never developed and has only ever had a tenuous quality is because of orders, in the past, not being enforced.
7. As for indirect contact, the father submits that this does not work. He and other members of his family have tried but it has simply not worked. He sets out in para.28 of his written submissions what has happened in respect of his and other family members' attempts to have indirect contact with M.

Determination

1. It is well established, as referred to by Dr. Berelowitz during the course of his evidence, that it is in a child's best interests to have good relationships with both parents. The fact that a parent should be involved in a child's life is also addressed by the recent amendments to s.1 of the Children Act 1989 (as effected by s.11 of the Children and Families Act 2014). This does not, however, mean that contact will be ordered because s.1 of the Children Act requires the child's welfare to be the court's paramount consideration. However, an order for no direct contact is, as referred to by McFarlane LJ in this case, an extreme order which plainly engages the right to family life within Article 8 of the ECHR. Accordingly, any decision to make such an order must also comply with the obligations placed on the court by that Article.
2. This obligation clearly has to be fulfilled in the context of the powers available to the court. I say this because, whilst the father's application is for an order for direct contact, in essence, he seeks the assistance of the court in promoting his relationship with M, however that might be achieved. I can well understand why the father seeks to place the obligation on the court to devise a solution, but the court's powers are limited to the orders which can be made. These powers and orders can be used creatively as part of an overall strategy, again as referred to by McFarlane LJ, but the court does not have resources available to it, generally, to access other resources or other services.
3. In particular, as Lord Scott said, in *Re G (Interim Care Order: Residential Assessment)* [2006] 1 FLR 601 at para.24, when dealing with submissions directed to the positive obligations created by Article 8, albeit in a very different context: " There is no Article 8 right to be made a better parent at public expense." I refer to this because, inevitably, I have to make my decision by reference to the factual circumstances of this case and by reference to the orders which are realistically available to me in this case.

My assessment of the witnesses

The mother

1. A significant feature of this case is, clearly, that the mother has longstanding and significant health problems. She has been diagnosed as having an emotionally unstable personality disorder, with paranoid personality traits. This may well explain, at least in part, why she and the father have had such a difficult relationship. Such difficulties have also not been confined to this relationship, as she has also had a very troubled relationship with her parents.
2. It was clear to me, while the mother was giving evidence, that she is completely fixed in her views. She could not see that she might have any responsibility for what has happened. She refused to accept that she might have interfered with contact, and she could not identify any step she could take to promote contact. She repeated, mantra like, the few isolated incidents which, in her view, served to explain why M might not want to have contact with her father.
3. It might be too much to expect, after so many years of conflict and having regard to her mental health problems, but the mother showed no apparent insight into M's situation. Indeed, I agree with Ms. Whittle's appraisal that the mother is probably not able to change her assessment of the situation or the way she behaves. As Ms. Whittle said, if the mother believes, as she clearly does, despite what she said in her written statement, that the father inappropriately touched M, then she will act on that.
4. I reject the mother's evidence that she continues to hope that M will have a positive relationship with her father. It is clear from all the evidence, including Dr. Berelowitz's, that the mother sees no benefit to M having a proper relationship with her father and is in fact opposed to it.
5. There is no doubt that M is well aware of her mother's views and attitude to her father and contact.

The father

1. I have great sympathy for the father and the situation in which he finds himself. In my view, it is understandable that he should have developed a lack of flexibility and a lack of sympathy for the mother. When the mother was suggesting ways in which the father might make a connection with M through indirect contact, it appeared to me that the father stopped listening or, at least, stopped paying attention to what she was saying. In my view, this reflects the level of the father's despair that anything will work to enable him now to develop a proper relationship with M. Dr. Berelowitz described the father as being quite despairing and believing that nothing would assist - there is no solution - while M lives with her mother.

Dr. Berelowitz

1. I found Dr. Berelowitz’s evidence powerful and compelling. He gave his evidence in a careful and balanced manner, which reflects his deep experience. I have summarised his evidence at some length because, in my view, his evidence is of particular significance to my decision.

Ms. Whittle

1. I also found Ms. Whittle's evidence compelling. Her balanced assessment also reflects her great experience.
2. The consequences for M of there being no order for direct contact are clear. I do not anticipate M's relationship with her father developing, at least in the near future. The obstacles to this happening would seem too great. I might express the hope that it might develop and that I am wrong, but it is no more than a hope. If I am right, M would continue to suffer the consequences of being estranged from her father and of having the false belief that he had acted inappropriately towards her. Dr. Berelowitz described the consequences as very damaging indeed, from an emotional point of view.
3. What options or orders are realistically open to me?
4. The father does not seek a change of residence. I make clear that the evidence does not support M being removed from the care of her mother, either by transferring residence to the father, or by, for example, the making of a care order providing for M to live with foster carers, even as a bridging placement. Even when Dr. Weir was reporting, as long ago as 10th September 2012, he could not recommend a forced transfer of residence absent an agency being prepared to be actively involved in supporting the transfer and what, as I have described, Dr. Weir referred to as the "aftermath". No agency was willing to act then and no agency is available to assist now.
5. Dr. Berelowitz was clear, in his oral evidence, that he does not recommend a change of residence, having regard to the circumstances of this case, including, in particular, M's age. He has recommended a change of residence for children in other cases, but in respect of younger children. In his opinion, it is simply too late in respect of M.
6. I agree with Dr. Berelowitz that the steps which would be likely to be required to seek to effect M's removal from her mother's care are far too drastic to be justified. Further, I cannot see such an attempt achieving anything other than increasing M's opposition to seeing her father. This would clearly do more harm than good.
7. The only option, in my view, realistically available to me, other than an order for indirect contact, is for me to make an order for direct contact. Is such an order one which is consistent with M's best interests? Is such an order one which is likely to promote the relationship between M and her father? Is such an order one which is likely to address the harm caused by her not having a proper relationship with her father?
8. Dealing with the last point first. In order for this harm to be addressed through direct contact whilst M continues to live with her mother, it is clear, from the evidence of Dr. Berelowitz and Ms. Whittle and, indeed, Dr Weir, that contact would have to take place of a nature and at a level sufficient to counteract or overwhelm the factors which are acting against contact developing successfully. Neither Dr. Berelowitz nor Ms. Whittle see any real prospect of this happening. Their evidence is consistent with that of Dr. Weir who said 2½ years ago that, without a change of residence, there is "no prospect of" M being able to maintain a relationship with her father and his family.
9. The expert evidence is, therefore, clear and unanimous, namely that there is no real prospect of direct contact being established under a court order sufficient to counteract or overwhelm the factors which are causing M harm.
10. What are the factors which point against direct contact developing successfully?
11. Dr. Berelowitz identifies a number of factors which, in his opinion, mean that there is no real prospect of direct contact taking place. To quote his evidence again: "It is almost certainly impossible to rebuild something here." I found Dr. Berelowitz's evidence on this particularly compelling. It is not difficult to see why a significant level of conflict and discord is like toxic radiation, which can tip a child to take a position or point of view which defies adult explanation. It reflects the child's experiences at an emotional level.
12. It is also, in my view, not difficult to understand why, when it is impossible for a child to *enjoy* a relationship with the non-resident parent, she will decide not to have direct contact because she cannot enjoy it. As Dr. Berelowitz said, what child would not get tired of being exposed to discord and a conflict of loyalties and would not want court proceedings and orders to stop? This is not, in my view, simply acting on the basis of M's expressed views. It is recognising the effect of the other factors in this case which mean that, to quote Dr. Berelowitz again, "direct contact will not happen".
13. The expert evidence in this case, as given by Dr. Weir, Dr. Berelowitz and Ms. Whittle, is to the same effect. Whilst M is living with her mother, she will not now be able to develop, or sustain, a proper relationship with her father. For the reasons given by Dr. Berelowitz, as referred to above, it is emotionally too difficult for her to do so.
14. An insight into how difficult it has been for M to navigate contact, given the conflict between her parents, can be obtained from what happened on 1st September 2011, as recorded in Goldsack HHJ's judgment. Contact took place that day as a result of the father applying to the court to enforce an order for unsupervised contact, which had been made on 18th August.
15. Contact had not taken place as ordered. M was brought to court by her mother on 1st September. M spoke to Carr HHJ, who ordered contact to take place immediately. Goldsack HHJ found that M had a thoroughly enjoyable day with the father. However, when she got home, she burst into tears and said to her mother and her maternal grandmother that contact had been awful.
16. In my view, this relatively small incident provides a window into the emotional burdens which M has been carrying as a result of the conflict between her parents and the continuation of the court process.
17. However, should I, as the father proposes and as Dr. Berelowitz briefly proposed in his evidence, make an order for contact to see what happens? In my judgment, such an order would not be likely to promote the relationship between M and her father. Indeed, it would likely to have the opposite effect.
18. I accept Dr. Berelowitz's and Ms. Whittle's evidence that the views being expressed by M are now her own. Their initial formation reflects her mother's influence, but it is understandable that she should have developed, in her own mind, a good rationalisation of why she does not want to see her father. This is partly a self-protective strategy but, to refer again to Dr. Berelowitz’s evidence, it has become part of the truth of her life story. The fact that M has enjoyed contact in the past, despite her expressed opposition, does not reflect the current position. As Dr. Berelowitz and Ms. Whittle explained, contact has long hung by a thread which can easily be broken. That thread has now, in my view, been irremediably broken.
19. It is clear, as I have described, that contact has not been easy for M to navigate, given the nature of the enduring conflict between her parents. Given that M refused even to see Dr. Berelowitz, I consider it inevitable that, if I were to make an order for direct contact, she would refuse to go. What would I then do?
20. Even if, as proposed by the father, I were to find some way of procuring the commencement of enforcement proceedings, M would inevitably, undoubtedly see these as being the responsibility of her father. In my judgment this would only turn her even more against him and, as described in the evidence, cause her to dig her heels in. To quote from Dr. Berelowitz, M would see it as another “battering” from her father. As he also said, there is no point in causing recurrent degrading experiences when contact would not take place.
21. In one sense, M would not suffer harm if direct contact were, in fact, to take place. But, in my judgment, the obstacles to it taking place are insuperable. As a result of these obstacles, M would be harmed by the only process by which this court could seek to procure contact taking place; namely, by the making of an order for direct contact and the taking of enforcement measures. The whole court process would continue and M would continue to be at the centre of conflict.
22. Having reflected carefully on the evidence in this case, I consider the only order which is consistent with M's welfare is an order for indirect contact. It would not, in my view, be in M's best interests for me to make an order for direct contact. This would serve merely to continue the discord and conflict without any reasonable or sufficient prospect of direct contact actually taking place and would be detrimental to her welfare.
23. M is settled and doing well at school. As the guardian said, this is an important period in her life and it should not be disrupted or affected detrimentally, as it would be, by the continuation of proceedings.
24. I propose, therefore, to make an order confined to indirect contact. In my judgment, this is clearly established to be a necessary and proportionate interference with the right which M and her father have to enjoy a proper family relationship. It is necessary and proportionate because an order for direct contact would be detrimental to her welfare and more detrimental than the consequences of my making no such order.
25. I know, inevitably, that the father will be deeply disappointed by this decision, but I urge him at least to reconsider his approach to indirect contact. It could keep a door or lifeline open, which might develop into something in the future.

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