

IN THE FAMILY COURT SITTING AT PONTYPRIDD

IN THE MATTER OF THE CHILDREN ACT 1989
AND IN THE MATTER OF R-E (A CHILD)

The Courthouse,
Courthouse Street,
Pontypridd, CF37 1JR

Date: 21 October 2021

Before:

RECORDER NEIL OWEN-CASEY

Re R-E (Contact: Support from local authorities in Wales)

	A	<u>Applicant</u>
	- and -	
	C	<u>1st Respondent</u>
	- and -	
	R-E (through her Children's Guardian Wendy Dale)	<u>2nd Respondent</u>

Michael Hammett (instructed by Spicketts Battrick Law Practice for the Applicant)
Kayleigh Simmons (instructed Martyn Prowel Solicitors for the 1st Respondent)
Laura Gardner (instructed by GGP Law for the 2nd Respondent)

Judgment

MR. RECORDER NEIL OWEN-CASEY:

1. This is a judgment in respect of R-E. I am giving this judgment orally for the benefit of the court record but will provide a copy of this script of the judgment following the formal handing down. This is a short judgment so that it is placed on record the current circumstances of this matter and to set down what should happen next, as agreed by the parties.
2. This matter was listed for a two-day final hearing which was to be conducted on a hybrid basis. In court have been the father and his Counsel, together with the mother's Counsel. The mother herself, the Guardian and the Guardian's Counsel have each participated via the video platform. Also, the instructed solicitors have observed the hearing via the video platform.
3. The way court hearings are conducted has changed: this being brought about by necessities of the COVID-19 pandemic but also because of what special measures may be put in place for any participant. Those measures vary from case to case but in respect of this matter I gave permission to the mother to participate remotely at this hearing. An application had been made in advance of the hearing for her to attend remotely to which I acceded, and upon re-visiting the issues yesterday morning, no exception was taken to that measure remaining in place.
4. Accordingly, the manner in which each participant engages with the hearing has been done with the consent of the parties, and it has been possible to have a hearing that has enabled each party to properly participate and to ensure that their Article 6 rights have been sustained throughout.

A. INTRODUCTION

5. I am concerned with one child, R-E, a girl, who is nearly 4 years of age. It is not controversial to remind the parties that R-E is a child with complex emotional and developmental needs.

Parties

6. The Applicant father has parental responsibility for R-E by virtue of being named on her birth certificate. He has been represented at this hearing by Mr. Michael Hammett of Counsel.
7. The Respondent mother has been represented by Ms. Kayleigh Simmons of Counsel at this hearing.
8. R-E is a party to these proceedings by order of HHJ Parry dated 2nd July 2020 pursuant to r.16.4 of FPR 2010. She is represented at this hearing through her r.16.4 Guardian Wendy Dale of CAF/CASS Cymru who in turn is represented by Ms. Laura Gardner of Counsel.
9. There is one extant application before the court by way of the father's application for a child arrangements order. From the outset the father seeks an order that he has regular contact with R-E and to be fully involved in her health, education, and welfare. That

application was issued on 19th December 2019. By any measure, that is a significant period for any set of proceedings to be before the court, but this is not at all a straightforward matter.

10. I note that both Counsel for the mother and father have been involved in this matter since at least the time of the finding of fact hearing twelve months ago.

B. THE ESSENTIAL BACKGROUND

Details of the family and background

11. The parents had met online in 2015 and conducted an online relationship before physically meeting in February 2016. There was a break in the relationship before resuming once more in August 2016. The parents have not married, nor have they co-habited. The parties separated in October 2019. Thereafter, I understand that there was some limited contact between R-E and her father that was supervised by the mother. However, that arrangement appears to have broken down in November 2019.
12. The mother has two older children from a previous relationship - age 11 and age 8 - and they reside with the mother and R-E. They of course are important people in the life of R-E.
13. The father has three older children from two previous relationships – one by one mother, and two by another mother. They do not live with the father, but I understand that he has regular contact with the younger two children. Those children do not have a relationship with R-E.
14. R-E suffers with developmental delay which impacts upon her hearing, speech, language, and her social skills. I will return to this feature of the case later as it is a particularly dominant issue in my view.

Chronology of the proceedings

15. The father issued his application for contact on 18th December 2019 and the matter was first heard before the lay bench on 6th February 2020. The matter was transferred to a District Judge.
16. The matter was then transferred to the Circuit Bench at a Dispute Resolution Hearing on 2nd July 2020. It was at that hearing that R-E was made a party to the matter and a r.16.4 Guardian appointed.
17. There was a finding of fact hearing before HHJ Parry that concluded on 5th October 2020. The judgment from that hearing can be found in the court bundle at [A2(1-15)] and should be read into this judgment. Findings were made against both parents. The court was satisfied that there had been angry and aggressive behaviour on the part of the father. The court was also satisfied that the mother had not proved the totality of her allegations nor the detail of many of the serious allegations. The court concluded that the mother had resorted to exaggeration, reinvention, and fabrication with a view to securing the exclusion of the father from R-E's life.

18. I note that HHJ Parry found that there was ample evidence that the mother wanted to control the father's relationship with R-E, and that there was no evidence adduced to show that the father was otherwise incapable of caring for his children outside the volatility of his relationships. The court expressed the view that how the case moved forward would depend on the extent to which the father was going to be able to address aspects of his anger, frustration, and tendency to heightened emotion. Further, the extent to which there could be a degree of separation in the minds of each parent about their relationship from the relationship that R-E's welfare may suggest she needs to have with her father. That judgment was not challenged and provides a factual matrix to the sad circumstances of this case.
19. In January 2021, the court approved of the instruction of a psychologist to undertake a psychological assessment of the parents and their ability to meet the needs of R-E, and thereafter the mother's ability to promote and sustain contact if so ordered by the court. The report was timetabled to be filed at the end of May 2021 and the matter was listed for further directions thereafter.
20. The matter first came before me on 16th June 2021 and the matter was timetabled for a final hearing. I directed that there should be monthly indirect contact albeit the mother would be taking the lead, with the father responding thereafter. This was to be facilitated by the Children's Guardian. I also gave the mother permission to obtain an assessment from the treating Consultant Community Paediatrician as to R-E's current condition and needs, as I considered this to be entirely necessary. That report was due by 13th August, with the filing of final evidence thereafter, concluding with the final analysis and recommendation from the Guardian on 8th October 2021.

Issues to be determined

21. The issues to be determined at the outset of the hearing appeared to be thus:
 - a. Could the father meet the child's needs in supervised direct contact;
 - b. Should there be a gradual progression to such supervised direct contact and how could this be achieved;
 - c. If not, is it too early to make such an order at this stage;
 - d. To what extent should indirect contact continue and how; and
 - e. What steps would need to be taken to progress to direct contact if it could not be ordered at this stage.
22. The issues have narrowed in terms of the respective positions of the parties in that rather than contest the above points there is now a consensus, but the issues do nevertheless remain and the animosity between the parties has not dissipated. That is in no-way a criticism of the parties and is simply a reflection of the complexities of this case, especially when a holistic view is taken with R-E at the heart of all that.
23. Having considered the findings made by HHJ Parry in October 2020 I expressed the view to the parties that, even at their highest, the findings would not be a barrier to contact. That view was not opposed by the parties and is endorsed by the Guardian. If that is right, the appropriate approach in my view is to ask the same questions from the perspective of the child rather than assessing the parents individually first. I appreciate the mother's view at the outset that the father would not have the ability to meet the needs of R-E. Similarly, I acknowledge the father's view and anxiety about re-establishing contact at the earliest opportunity, otherwise there could be long-term damage. However, whilst

these are entirely appropriate and understandable viewpoints for the parents to assert, I come to the view that each perspective misses the key point: what does R-E need, and how can that be achieved?

24. The court and the parties agree that there is no certainty at this stage about R-E's complex 'needs' and how they can be appropriately met. That is a factor that will take time to crystallise and there appears to be agreement about that. Again, if that is right, I cannot see how either of the assertions of the parents can be properly answered at the present time.
25. Therefore, the issues have boiled down to this:
 - a. What are the next steps to be taken as part of promoting and developing even a minimum relationship between R-E and her father; and
 - b. Should the court keep the proceedings alive to assist with that, given there is considerable uncertainty as to timescale.

Positions of the parties

26. The respective positions of each parent have been put forward so that the court is in no doubt as to where they stand. Having listened to the submissions put forward by Counsel, it soon became apparent at this hearing that the parties were able to agree on many of the issues that abound. I think that may have pleasantly surprised them somewhat. Nevertheless, it shows that the parents – however much they dislike each other and even distrust one another – when they take a step back, they can do what is best for their child, rather than continue what has been the fallout from a toxic relationship. I give the parents enormous credit for this. The positions at the outset of the hearing were as follows.
27. The father informed the court that he remains anxious to re-establish contact with R-E without further delay, and that he has been engaging with indirect contact since the last hearing. He sees the next step as being a progression to direct contact and wished to assert that short-term discomfort maybe the case but would be less harmful than the long-term damage of there being a continued restriction of his relationship with his daughter. He tells the court that he has engaged in parenting and anger management courses and has put his name forward to engage with a course that is focused on parenting children with autism. The father proposed that the next step could be video contact and thereafter direct contact. He does not accept that he could not meet R-E's needs in a supervised setting. The father recognises that the mother's involvement would not be appropriate given the poor relationship they have. Naturally, he is disappointed about the outcome of the Guardian's final analysis, but it seems to me that he has taken that onboard as part of the shift to where the parties have now arrived. Not unreasonably, the father asks, 'What should he now do before direct contact could be a possibility?'
28. The father also asserts that it is not correct to say that there should be no local authority intervention based on there being no parenting concerns on the part of the mother. He reminds the court of the findings made in October 2020 in support of this. In the alternative, if it is the case that the mother is too emotionally fragile to be able to promote contact, that represents a parenting deficiency he says, which the local authority should be asked to address by way of facilitating direct contact.

29. The mother's primary position at the outset is that she is opposed to any form of direct contact (supervised or otherwise) on the basis that she considers that the father neither has the ability or emotional intelligence in line with the complex needs of R-E. The mother asserts that a significant part of her concerns about there being direct contact is the impact that this would have upon herself as the child's primary carer, and she refers to experiencing anxiety prior to indirect contact. I note this as being a general rather than particularised observation. The mother is not entirely satisfied with the report provided by Dr Moynihan on the basis that it fails to address the skills required to care for R-E. This observation is not pressed at this hearing, and it seems that the report operates as a starting - rather than end - point given the stage that parties have now reached. There is no getting away from the fact however that the mother is reluctant to actively be involved in contact at the present time. I am aware that she is on a waiting list to receive suitable trauma-based therapy.
30. Both parties tell the court that they recognise and accept that they have discrete work to do that will fit into the overall jigsaw in being able to potentially progress contact in one form or another.
31. Wendy Dale, the Guardian, has provided a report for the court and she sets out the investigations that she has undertaken. I do not consider that anyone can legitimately assert that she has not given this matter considerable thought when looking for a way ahead. I note that she has only met with R-E on one occasion but that must be seen in the context of the circumstances of this case. What remains outstanding are enquiries with the National Autistic Society. Enquiries have been made with the local authority and with the CAFCASS Cymru lead on children with disabilities in South Wales, but the identification of suitable resources has drawn a blank. A wider search across Wales remains outstanding. Ms. Dale has facilitated indirect contact since June of this year.
32. Crucially, Ms. Dale informs the court that there is no local authority intervention as there is no concern with the parenting provided to R-E by the mother. Further, the family would not meet children's services criteria for intervention as there are no outstanding needs nor any child protection concerns with the parenting provided. I can accept the latter, but I certainly do not agree with the local authority's view on the former. I will come back to this point later. However, a family health advisor may be able to provide support and to ensure that R-E's care package was meeting her needs. There is a waiting list for this service. Regardless, the local authority through its disability advisor has informed the Guardian that it would not facilitate or observe contact between R-E and her father.
33. Enquiries were made with R-E's school. The school indicates that R-E is a child with complex needs who would struggle to settle and engage with an unfamiliar adult. The court is referred to the report provided for these proceedings which it is said is an accurate portrayal of the difficulties that R-E exhibits. The court is reminded that the school would not be available to be utilised for the purpose of contact in any form. However, the school will engage with the father in accordance with his parental responsibility.
34. Ms. Dale is clear that the barrier to direct contact between R-E and her father is R-E's complex needs. Ms. Dale informs the court that – rightly or wrongly – the father is an unfamiliar person to R-E and an introduction at this stage is likely to be negative. Ms. Dale quite properly states that the fundamental issue in this case is how any form of direct contact can be considered considering the continuing toxic relationship between the

parents, brought alongside the evident complex needs of R-E. Regrettably, Ms. Dale concludes that direct contact cannot be achieved at this juncture. I am aware that this was a difficult recommendation for the Guardian to make, as she would wish to promote contact. In summary, this comes down to R-E's needs and is in light of her age, diagnosis, and that this may be a premature point to order direct contact. Ms. Dale also strikes the tone of potential too and opines that it may be possible to move things on in the future. In her words, she does not wish to 'shut the door'. The suggestions set out in the Guardian's final analysis have now formed a basis for a route forward in this case.

Evidence

35. I have read all the substantive documents in the court bundle and have been taken to the relevant pages within the court bundle during exchanges with Counsel as required. None of the written evidence is challenged because of the position reached by the parties at this hearing. I take those documents as read. That is not to say that the parties themselves accept all that is written, but I am satisfied that considering the current circumstances, the parties have quite properly taken a pragmatic approach as to the next steps for the benefit of R-E.
36. Accordingly, considering the constructive and conciliatory approach adopted by each of the parties, it has not been necessary for me to hear any oral evidence in this matter. Instead, there have been fruitful discussions both inside and outside of the courtroom and I am extremely grateful to all Counsel for approaching the matter in this manner.
37. The key documents that have been considered by the court as part of this hearing have been:
 - a. Final Statements from each of the parents;
 - b. The clinical psychological report and answers to supplemental questions;
 - c. The report of the Consultant Community Paediatrician dated 3rd September 2021 and their statement dated 20th October 2021;
 - d. A report from the school dated 27th September 2021; and
 - e. The Final Analysis of the Guardian dated 9th October 2021.
38. Given the consensus reached at this hearing, I do not consider it would be proportionate or indeed necessary to quote extensively from the above documents given that they are not challenged. A summary, if not already referred to, will suffice for the purposes of this judgment, especially as the court will be granting leave for the disclose of the reports in any event.
39. The psychologist arrived at the following conclusions (my summary):
 - a. The father has been exposed to poor models of adult behaviour during childhood, including exposure to domestic violence. The consequence is that the father has reduced resilience and a heightened sense that the world is challenging and threatening. A failure to confront issues can sometimes emerge as anger.
 - b. The father remains vulnerable to continued difficulties with anger and complex emotions, particularly within relationships. He also has a reduced capacity to understand other people and adopt their perspectives.
 - c. The father has had only a limited opportunity to demonstrate his parenting skills in circumstances where R-E's needs may be greater than the norm.

- d. The father should be given the opportunity to prove that he can identify and meet his daughter's needs effectively in light of the changing circumstances of the parental relationship.
 - e. The father needs opportunities to reflect on his family history and its impact on his adult functioning. He needs to do domestic violence work.
 - f. The mother presents convincingly as a survivor of domestic abuse, with explanations provided as to why this is the case.
 - g. The mother is abjectly opposed to any contact between father and child. Apart from obstructing contact, there are no other perceived issues with her parenting. The mother's ability to promote a relationship is considered as being poor. Contact may heighten her anxiety but not to an excessive degree in terms of day-to-day care. She would be able to tolerate the exchange of information about R-E with the father if her address is withheld.
 - h. The mother would benefit from therapy to help process her perceived traumatic experiences. Timescale is inherently unpredictable given the stance of the mother.
 - i. Both parents present with signs of a generalised anxiety disorder.
 - j. There is no appropriate joint work or family therapy that can be recommended.
40. The court has the benefit of a short report from R-E's treating Consultant Community Paediatrician. R-E was referred for a paediatric assessment by the health visitor in January 2020 due to identified delays in more than two areas of development. This is a summary of that report:
- a. R-E meets the diagnostic criteria for global developmental delay and autism although further tests were to be carried out.
 - b. She has poor eye contact. She also has speech and language difficulties, but the mother is deemed capable to provide the necessary support.
 - c. R-E has no developed concept of danger but does not like loud noises. She has poor emotional responses including biting when angry or frustrated.
 - d. R-E has an inability to play with anyone other than the mother and will only play with a ball. She needs routine and structure and becomes 'grizzly' if her routine is changed in anyway.
 - e. Reviews would continue every six months until her emotional needs are deemed settled.
41. A statement filed on behalf of the Consultant Community Paediatrician dated 20th October 2021 confirms a diagnosis of autism. As to needs, it is identified that they are because of R-E's neurodevelopmental disorders of both Autism and learning disability. Despite being nearly 4 years' of age, her cognitive skills can be estimated to be around less than 1 year of age based on her language skills. The Paediatrician also sets out the type of care needs that R-E requires and I recite them in full:
- a. "A carefully controlled environment at home and in school and a planned structure and routine to her day and evening every day by her carer consistent with evidence to support a child with Autism.
 - b. She needs consistency in care by carers and a carer who understands how to support a child with severe autism and learning disability.
 - c. Transitions between environment settings and care settings are typically stressful for a child with Autism and learning disability and need careful management and understanding.
 - d. Her disability is lifelong therefore the support strategies outlined are lifelong.

- e. She requires a high level of adult support for all her personal and self-help needs. For example, she is not yet toilet trained but will tolerate having her nappy changed, she does not drink from an open cup but will hold a beaker / bottle to drink, and she needs high level supervision as she is always on the go and still trips over her feet when running.
- f. Carers need understanding at home and in school for a sensory diet as part of her occupation as she is very busy / restless and constantly moving e.g. flicking, stimming, flapping and making shapes with her hands and fingers. A sensory diet can be supported by advice from an occupational therapist (OT) and by school and specialist teachers.
- g. Carers need understanding of her developmental level which is not at her chronological age or will not match chronological peers needs. For example:
 - i. She enjoys toys that move or spin e.g. will spin the wheels on a small car toy / train. She also enjoys rolling a ball back and forth.
 - ii. She stares intensively at objects and tends to look at things from unusual angles e.g. sideways / upside down or out of the corner of her eye.
 - iii. Enjoys exploring the sensory toys laid out in the Sensory Room e.g. popping bubbles and playing with fidget toys and sensory massage / vibrating toys.
 - iv. Engages in sensory seeking / repetitive behaviours. Will pick up objects and throw/drop them to the floor, and sprinkle counters everywhere which is not part of naughty behaviour – its more about where she is at developmentally.
- h. Needs strategies to support communication – both her expressive language and ability to be understood as her communication is largely behaviour as she is non-verbal. Use of objects of reference to help her understand what is happening next. A Speech and language therapist and school will help with understanding how this works and can be used effectively. Traffic lights, and visual timetables are other strategies that are evidence based to work in Autism depending on learning level of the child and will be shared with family by Speech and language therapist and class teacher or SENCO or ASD specialist teacher when R-E is ready for those strategies to be used.
- i. R-E needs a carer who is connected, intuitive and relational in strategies used to connect with R-E as her behaviour is likely to be challenging when she is upset and cannot communicate her frustrations e.g. when she cannot have what she wants or as quickly as she would like it to happen. Health visitor and school or carer who has a good relationship with R-E will be able to communicate and share these strategies.
- j. She needs support in school from Autism specialist teacher to support strategies in helping develop social communication interaction and play because:
 - i. Requires a high level of adult support to develop communication, interaction and play skills.
 - ii. Significant expressive and receptive difficulties i.e. unable to follow verbal instructions or functionally communicate a want or need.
 - iii. No words, but will make some babbling sounds / noises.
 - iv. Does not respond or seem to hear when her name is called. Tunes others out and is in her own little world.
 - v. Poor eye contact i.e. brief / fleeting. Stares into space / gets lost in her own little world.

- vi. Has difficulty maintaining attention and engaging with others. Tends to move quickly from one activity to another.
 - vii. Initiate play / social interaction. Will bring a toy or hand an item to a familiar adult, for example.
 - viii. Inquisitive. Likes exploring and figuring out how things work, or how things look and feel e.g. taking apart Duplo creations.
 - ix. Does not display any imaginary play, and is unable to play reciprocal games / wait her turn.
 - x. Happy when playing alone / solitary in her play. Does not interact with other children.
 - xi. Will tolerate her peers playing alongside her as long as they don't interfere with her play.
 - xii. Cries a lot or has long periods of time where she fails to settle, especially when she does not get her own way.”
42. I have set out the above pretty much verbatim because I hope it will assist those that read this judgment to understand R-E – who she is, what she needs and why. That of course is only the first step as a formulation will need to be derived to meet the needs. The Paediatrician also refers to R-E's ability to understand indirect contact and says it would be limited given her limited communication skills. She would not be able to engage with written material or understand it. Her attention would best be gained by showing her a toy that she is interested in.

C. THE LEGAL FRAMEWORK

Children Act 1989

43. In circumstances that may require me to make orders in respect of a child's welfare, I remind myself of the relevant sections of the Children Act 1989.
44. Firstly, under section 1(1) of the Children Act 1989, when the court determines any question with respect to the upbringing of a child, the child's welfare shall be the court's paramount consideration. Secondly, pursuant to section 1(2) any delay in determining a question about the upbringing of the child is likely to prejudice the welfare of the child. Thirdly, there is a presumption, unless the contrary is shown, that the involvement of the parent in the life of the child concerned will further the child's welfare.
45. Contact between a parent and a child is a fundamental element of family life and almost always in the interests of the child and should only be terminated in exceptional circumstances where there is no alternative: *Re C (A Child)* [2017] EWCA Civ 521; *Re M (Children)* [2013] EWCA Civ 1147. Section 1(2A) of the act confirms that there is a presumption that the involvement of a parent in the life of a child will further the child's welfare unless the contrary is shown. I stress that 'involvement' means 'involvement of some kind, either direct or indirect, but not any particular division of the child's time'. That proposition is particularly resonant in this matter.
46. In all decisions made under the Children Act 1989 regarding the child's welfare, my consideration always has in mind the applicable provisions of the 1989 Act and in particular Section 1 and to the welfare checklist set out at section 1(3) of the 1989 Act. For the avoidance of doubt, the welfare checklist sets out the following considerations

and I list them so that the parents can appreciate the range of factors the court has to balance when considering what the outcome in the case should be. Not all of the factors are significant in every case, and some will be more important than others:

- a. the ascertainable wishes and feelings of the child concerned (considered in the light of their age and understanding);
 - b. the child's physical, emotional and educational needs;
 - c. the likely effect on the child of any change in their circumstances;
 - d. the age, sex, background and any characteristics of the child which the court considers relevant;
 - e. any harm which the child has suffered or is at risk of suffering;
 - f. how capable each of the parents is of meeting the child's needs; and
 - g. the range of powers available to the court in the current proceedings.
47. The father is asking the court to make a child arrangements order. I appreciate that his position has shifted from when he first made the application as to the terms of the order he is seeking. Nevertheless, an order for indirect contact still comes under the same section 8 umbrella.
48. Whenever the court is making a section 8 child arrangements order, it is also able to make a family assistance order under section 16 to "advise, assist and befriend". As the name suggests, this enables the court to have a nominated person in place so that they can help the parents and the child and to provide some oversight. It also provides a mechanism for the court to be alerted to any problems that may arise which could require the court to determine matters further. However, the primary purpose is to provide support if the parties agree to the making of such an order. In essence, where the court makes a contact order, the family assistance order may direct the officer concerned to give advice and assistance as regards establishing, improving, and maintaining contact between the father and child.
49. Finally, as this is a case that concerns a family who reside in Wales, the relevant provisions of the Social Services and Well-being (Wales) Act 2014 also apply. Under Part 3 (sections 21 and 24) of the 2014 Act there are provisions for assessing the needs of individuals if it appears that care and support in addition to that provided by the child's family is required. This includes children and those that care for them including a parent. Part 4 of the 2014 Act (sections 37 and 40) contains a duty to meet the assessed needs of a child and/or carer. It is a wide-ranging duty and allows support to be given in a variety of forms. The outcome of such an assessment is that a Care and Support Plan can be put in place (CASP) and can work in conjunction, and therefore in combination, with other support or services being provided by specific teams in a local authority.

Practice Direction 12J

50. I have taken into account the contents of Practice Direction 12J of the Family Procedure Rules 2010, this being necessary whenever the court is determining a question about contact between a child and a parent and where the court thinks that an order should be made. There is a presumption that any such incident of domestic violence must be harmful to the children, directly or indirectly. I must be satisfied that any contact that I may order between the child and the parent must be safe and in the best interests of the child.

Human Rights Act 1989

51. I also remind myself that the Article 8 right to private and family life under the Human Rights Act 1998 is engaged in this case, as is the right under Article 6 to a fair trial. Any orders that the court makes, even if it is an agreed order, must be proportionate and necessary.

D. DISCUSSION

52. I have already set out what appear in my view to be the key components in trying to understand what R-E's welfare needs are. I am satisfied that the court has sufficient information that falls under the broad heading of physical, emotional, and educational needs. It is also clear in my judgment that there are significant challenges in being able to ascertain the wishes and feelings of R-E, if that can be done. Similarly, I am satisfied that at first blush a change of circumstances for R-E – however subtle or nuanced – could run the risk of causing at best short-term upset, but at worst have a longer impact unless there is a clear structure and proper thought given from the outset and beyond. The characteristics of R-E are unique to her, and she therefore requires bespoke care and management that will continue for the rest of her life. That is why a standard approach to the issue of contact with the father will not work in this case.
53. HHJ Parry did not make any findings that R-E had suffered physical harm. Many of the allegations are dated prior to her birth, but not all. However, the risk of emotional harm from January 2018 onwards cannot be ignored as a direct consequence of the poor relationship of the parents. In retrospect, it is not difficult to arrive at a conclusion that in the circumstances of R-E, any such emotional harm is likely to have had a varying impact upon her. She may have been oblivious or alternatively the impact may have been somewhat greater - but we may never know.
54. In my judgment, the issues in this case as now identified come down to in large part to the ability of the parents in meeting those needs. The mother has had to adapt and grow with the emerging needs of R-E over time. She has also had the benefit of receiving support from health and education professionals, although that would not have been immediate. However, I recognise that the father has not had the same opportunity and he is quite clearly at a disadvantage. Considering the psychological assessment of the father, and the findings made by HHJ Parry regarding the father's other children, it is apparent that the father certainly needs to work on his parenting ability if he has not already done so. But R-E falls into an entirely different category. She does not have the ability to absorb or to understand conflict or hostility and would, it seems, be unable to apply any kind of perspective of what she may observe between adults. But when considering the specific physical, emotional and educational needs of his daughter, the father will need to equip himself in such a way that ensures he has a solid understanding of what is required and how to meet those needs. That will take time. Alongside that, he will need to do the work that will assist him in managing his anxiety, anger, and his inability at times to understand and comprehend others. Those represent two significant pieces of this inevitable jigsaw.
55. I cannot criticise the mother's ability to meet the everyday needs of her daughter and no-one suggests that she is not doing this. Her ability is evident on several fronts, save for one which in my judgment is quite significant. The mother is not able to meet the discrete emotional need of being able to promote a relationship with the father. That is

compounded by her need to undertake therapeutic work. That is her part of the jigsaw. However, in my view it seems that even if she can adjust over time to become tolerant of a father and daughter relationship, she will need assistance with R-E on a practical level to make this a reality. Taken together, it is simply not possible for the court to be able to attach a precise time scale to how this can be progressed.

56. Work that the parents need to do individually is at the mercy of waiting lists, the time to successfully engage and then putting into practice what is learnt. Managing and meeting R-E's needs have a certain predictability because she requires structure and routine. The impact of change or adjustment is not so predictable and will require careful management.
57. Taking the above into account, it is my judgment that the court is not able to make an order that provides for direct contact at the present time. Not because the father presents a direct risk to his daughter. That is not the case. The barriers to being able to do so are the unique needs of R-E. The appropriate approach must be an order set at a level that preserves a relationship and enables the family – for that is what they are – to progress in accordance with the needs of R-E. I appreciate that this is not what the father set out to achieve but he appears to be taking a more pragmatic approach now. The mother too is also approaching this with a more co-operative approach, and I am satisfied that both parents are being child-focused and looking for a consensus for the benefit of their daughter. I do not forget though that their differences with each other remain, but they must set those aside - if possible - even if that takes more time.
58. I said earlier that the mother is not able to meet the discrete emotional need of promoting and indeed facilitating a contact relationship with the father. Even if the mother puts aside her own difficulties, there are still the more practical problems of how contact can take place and what is required to make it successful. I do not agree that the mother is meeting all the parenting needs because clearly this discrete need is not being met. That should not be seen as a criticism but as a significant gap that most, if not all, parents would struggle to bridge in the circumstances. Unless this can be seen though the individual needs of the child, I do not see how this can be resolved. This is very much within the remit of a local authority, and I am supported in that view by the relevant provisions of the Social Services and Well-being (Wales) Act 2014.
59. R-E is a Welsh child who is entitled by statute to have her well-being promoted. Section 2(3) in the 2014 Act is clear that 'well-being' *includes* 'welfare', the latter being as interpreted for the purposes of the Children Act 1989. R-E is a disabled child with challenges that prevent a standard contact approach and package being put in place. A view from a local authority that it will not facilitate or observe contact between father and child is simply too narrow a perspective and is not in-keeping with the spirit - let alone the provisions - of the 2014 Act. I remind the relevant local authority that as a Welsh local authority, it is bound by the provisions of the 2014 Act, which is itself underpinned by the United Nations Convention on the Rights of the Child that was ratified in Wales in 2011. That is how legislation is now formulated in Wales. The United Nations Convention on the Rights of Persons with Disabilities is also relevant and was ratified by the United Kingdom in 2009 with the purpose of protecting and promoting the human rights of disabled people. There is now a commitment for the latter Convention to be incorporated into Welsh domestic Law and it is not restricted based on age. It is perhaps beyond comprehension to believe that it is not possible to readily assist

a disabled child in Wales in 2021 in being able to communicate with all facets of their individual world, including their family. For a local authority to view this as a request for, or to observe, contact simply misses the point in my judgment.

60. What this family requires – all three of them – is support and assistance under the 2014 Act. If this can be provided by a children with disabilities team or another team, and whether under the auspices of a Care and Support Plan, or otherwise, the net result would be that R-E's welfare - and in turn her wellbeing - would be promoted and supported. In my judgment, this case goes beyond whether there should be an order for contact following a relationship breakdown due to domestic abuse. That is an important part of the background circumstances, but it should not define this child.
61. I have considered whether the matter should remain before the court but given that there are no time scales that I can define, I do not believe that a continuation of litigation at the present time will assist. There does need to be review and indeed support and I am of the clear view that concluding the proceedings with an order for indirect contact, with the support of a family assistance order to try and progress matters is the proportionate and appropriate step to now take at this juncture. I am grateful to Ms. Dale for her indicating that she would be prepared to be the nominated officer for that purpose. I believe that she will do all she can to assist, support and befriend this family. To that end, the parties have been able to agree a route map going forward, in terms proposed by the Guardian. A copy of the route map will be annexed to the final order, and I endorse the same. It sets out what each parent has agreed to do going forward and what Ms. Dale will do too. It is a significant document by which to underpin the family assistance order. I am grateful to the parents for signing up to that document.
62. I expect the father to engage with health and education professionals regarding R-E in the manner that he is entitled to do given that he shares parental responsibility with the mother. He may consider that this is pointless if he is not directly seeing his daughter. Not so: it will keep him informed independent of the mother, and allow him to ask questions, to be better informed and equipped, and to improve his knowledge in general about his daughter.

E. OUTCOME

63. Section 1 (5) of the Children Act 1989 provides that: 'where the Court is considering whether or not to make one or more orders under this Act with respect to a child, it shall not make the order ... unless it considers that doing so would be better for the child than making no order at all.' This provision does not create a presumption one way or the other. It merely demands of the court that it asks itself the question whether to make an order would be better for a child than making no order at all. However, I am entirely satisfied that this is a case where an order is justified for the benefit of R-E's welfare.

F. ORDERS

64. I will grant the father's application for a child arrangements order in line with the terms agreed by the parties, enabling indirect contact.

65. To support the child arrangements order I will also make a family assistance order and I invite CAFCASS Cymru to appoint Wendy Dale as its nominated officer. I think that is crucial considering the circumstances in this case and would perhaps be the less unsettling approach for R-E. I will make the order for a period of twelve months, and I shall direct that the nominated officer report to the court by 31st August 2022 on any relevant matters regarding the section 8 order, and whether the family assistance order should be varied or discharged. A variation could of course be an extension of the order if the parties agree.
66. I will also reserve any future applications to myself if available.
67. I have had the benefit of considering the agreed draft order and I will approve that draft subject to any further discussions at the conclusion of this judgment.

G. CONCLUSION

68. I do hope that this marks a turning point for this family and that the ultimate beneficiary will be R-E. This is a complex case that has been resolved through co-operation rather than a continuation of conflict. That must continue if there is to be any hope of progress in the future.
69. That concludes my judgment.

Postscript

70. Following the handing down of this judgment, I canvassed with the parties whether it should be published in an anonymised form. Unanimously, it was agreed that the unique circumstances of this case should be promoted, and awareness be drawn to the difficulties that now face this family, as it could assist others that are in a similar position. The anonymised version has been agreed by the parties.
71. I also take the view that there is merit in a copy of the judgment being provided to the Children's Commissioner of Wales to further draw attention to the issues that arise.

Recorder Neil Owen-Casey
Sitting at The Family Court at Pontypridd

21st October 2021