

Neutral Citation Number: [2024] EWFC 322 (B)

Claim No: ZC21P00332

IN THE COUNTY COURT AT BARNET,
sitting at the ROYAL COURTS OF JUSTICE

Strand
London
WC2A 2LL

Date: **30.10.2024**

Before :

Deputy District Judge Velton

Re X and Y (Children) (Child arrangements, Prohibited Steps, Passports)

Between :

Father

Applicant

- and -

Mother

Respondent

Ms Campbell (instructed by **Dawson Cornwell Solicitors**) for the **Respondent Mother**

Hearing date: 28-30th October 2024

Approved Judgment

This judgment was handed down at 12.50pm on 30.10.2024 by circulation to the parties or their representatives in person and by release to the National Archives

This judgment was given in private. The judge gives permission 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 this judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

Deputy District Judge Velton:

1. I am concerned with Child X, a boy, who is now 5 years old and Child Y, a girl, who was is now 3 years old.
2. The Applicant father will be referred to as Father. The Respondent mother will be referred to as Mother. Both have parental responsibility, as they were married at the time of the children's births (and remain married).
3. The Father is a litigant in person. During this hearing he has been supported by volunteer through 'Support with Court'. Father has also had the benefit of assistance from an Arabic interpreter throughout.
4. The Mother is represented by Ms Campbell of counsel and has had the benefit of assistance from a Spanish interpreter. I am grateful to both interpreters, and to Ms Campbell for her helpful submissions.

Background:

5. I will not rehearse in full the background to the case, nor every procedural step in the case. However, by way of a brief summary; the parents began their relationship in 2015, with them marrying in 2017. The Father has dual nationality from a Northern European country and Middle Eastern country. The Mother is from a Central American country. The couple lived together elsewhere in Europe but moved to England before the children were born.
6. The children reside with Mother. They have done since birth – X initially sharing the family home with both parents, but the Mother leaving that home with X in early 2021 when he was just over one and a half years old, and whilst Mother was around 6 months pregnant with Y.
7. The Father commenced proceedings in respect of the children by way of his application dated 10.03.2021, seeking a Child Arrangements Order and a Prohibited Steps Order. His position in respect of this application is that he seeks 50:50 shared care of the children with Mother, and that he wants a PSO to prevent her from leaving the jurisdiction with the children.
8. On 14.05.2021, the Mother applied for a non-molestation order. This was made without notice to the Father on 17.05.21, and that order remains in place until further order. It is for me to determine now, as the Mother seeks to extend the non-molestation order for a further 3 years.
9. On 11.06.2021, the Mother also made an application within the proceedings for a child arrangements 'lives with' order. She continues to seek this order.
10. In addition to these applications, the Mother has also made an oral application at a previous hearing for the children to obtain passports. This issue has been live at various previous hearings, and has failed to be resolved. At the last hearing of the case on 11.01.2024, the parents gave cross-undertakings that they would not apply for any passports for the children pending this final hearing.
11. These proceedings have been lengthy. The case itself is older than the youngest child. The fact finding hearing in the case, required to determine allegations made by Mother against the Father, took place over two years ago. Whilst this final hearing was originally listed last year, it could not take place due to judicial unavailability and was adjourned. The final hearing subsequently listed in January this year was used as a directions hearing, due to the Father changing his position to wanting shared care of the children and seeking to adduce further evidence into the proceedings. The Final Hearing therefore came to be listed before me, with a time estimate of 3 days.

12. Such delay in this case is regrettable, and has, in my view, caused the case to somewhat stagnate; possibly entrenching the parties' positions further and hindering progress.

Fact-finding:

13. The Fact Finding hearing in this case took place on 27 and 28 April 2022, before District Judge Jabbitt, who handed down a written decision on 16.06.22.
14. The Judge on that occasion preferred the evidence of the Mother and made findings in respect of most of her allegations. On my count, he made 18 findings across four different categories of harm; physical harm, emotional harm, sexual harm and coercion and control. These included, but are not limited to;
- Father losing his temper and deliberately throwing items and breaking them.
 - Father slamming a door in Mother's direction when she was heavily pregnant.
 - Father being angry and provocative in his attitude towards Mother and others.
 - Father blaming Mother for his anger and losing his temper.
 - Father controlling Mother's daily activities, where she went and with whom.
 - Father forcing Mother to engage in sexual activity, saying it was her 'marriage obligation'.
 - Coercive behaviour, including financial control.
15. Following the fact finding hearing, CAF/CASS filed two reports. The first was a Section 7 report dated 18.11.22. In this, it was recommended, in summary:
- Child Arrangements Order for X and Y to live with their mother and to spend time with their father.
 - The time that X and Y spend with their father to continue to be in a Contact Centre, and to progress to a duration of two hours every fortnight which will be supported.
 - Then consideration to be given to the children's time with their father progressing from the contact centre into the community after 5 months, with paternal grandmother to provide support and handover to continue to take place at the contact centre.
 - After a further period of five months, if the arrangements in the community and handover at the centre have gone without incident, the duration of time the children spend with their father to increase to four hours each fortnight.
 - The mother to provide the father via email with an update about the children on a monthly basis.
 - The parties to each attend a Separated Parents Information Programme and the father to make contact with the Local Authority to ascertain what Parenting Programmes are available for him to complete, such as the 'Strengthening Families, Strengthening Communities Programme and the 'Triple P Stepping Stones Parenting Programme', to enable him to enhance his parenting skills.
 - The father must agree not to approach the mother in the community or to attend her and the children's home and the parties may want to consider using a separate mobile phone for text messaging in the event of an emergency, should the children be spending time with their father in the community in the future
16. The second was an addendum Section 7 report by the same author dated 10.09.24. In this report, she recommends (in summary):
- A Child Arrangements Order for X and Y to live with their mother and to spend time with their father.

- The Children to spend time with their Father for two hours every fortnight in a contact centre, which would be supported. Father's wife and his mother (if she visits the UK) may join these sessions.
- After 5 months of such contact, consideration could be given to the children's time with their father progressing from the contact centre into the community. Such progression should be gradual and start with one hour in the contact centre and one hour in the community, with Father having another adult with him.
- After a further 5 months, if such contact has gone well, then the children could spend 2 hours with Father in the community, with handovers continuing at the contact centre. (Any further increases in hours of contact would still require handovers at the contact centre).
- The mother to provide the father via email with an update regarding the children's health and development on a monthly basis, with information relating to what activities they enjoy and a designated email address to be created for that sole purpose.
- The father to agree not to approach the mother in the community or to attend her and the children's home and the parties may want to consider using a separate mobile phone for text messaging in the event of an emergency, should the children be spending time with their father in the community in the future.

This hearing:

17. The parents have both filed two statements each this year, setting out their positions for this hearing and in response to the recommendations of CAFCASS. (These followed earlier statements filed in advance of the fact finding hearing.) Put very broadly, at the outset of the hearing, the Mother generally agreed in principle with the recommendations of CAFCASS and the Father opposed the same, continuing to seek shared care.
18. For the purpose of this hearing I have read the court bundle, which numbers some 527 pages. I have heard evidence from the Mother, Father and author of the s7 report from CAFCASS. I have not summarised all of the evidence I heard, but will address some of the evidence in my conclusions.
19. On the first morning of hearing, at the start of her evidence, the CAFCASS officer changed her recommendations regarding the children spending time with Father. She confirmed that she had made her recommendations on the basis that the then current levels of contact would increase over time; that being on the basis that she had understood that whilst Father did not fully accept the findings of the Court, he did acknowledge them to some extent. Her revised view, having considered Father's latest statement was that not only did Father not fully accept the findings, but now he was asserting he wanted these findings reconsidered. In view of Father's attitude, she did not consider she could continue to recommend the children's time with Father should progress from the contact centre, even after 5 months.
20. When cross examined on this by Mother's representative, she was clear that in her view the Father lacked insight, both into the children's needs but also as to the impact of his behaviour.

Impression of witnesses

21. The CAFCASS Family Court Adviser was thorough and clear in her recommendations. She gave reasons for her change in recommendation and was live to issues I asked her about, in terms of potentially making a final order requiring contact to remain limited in duration and frequency, at a contact centre.

22. Father was very polite and respectful but resisted giving evidence initially. I think he considered this hearing and the proceedings were overly complicated. He gave the impression of being somewhat exasperated and was very concerned with the effect of these proceedings on him. He did not accept the findings of the court in any meaningful way and could not seem to grasp how and why matters have reached this stage and why he could not just simply have the contact with the children he seeks and communicate with the Mother about the children 'normally', i.e. without any restrictions.
23. I took account of the Father being a litigant in person, navigating a justice system in a country he did not grow up in, with a language barrier. I endeavoured to explain the purpose of this hearing, the way it would be conducted, and any steps he needed to follow. On the first day, I gave him a print out of s1 of the Children Act 1989 with the welfare checklist criteria highlighted, so that he knew what I would be thinking about when hearing the evidence and making my decision. I also tried to keep his focus on the children's welfare and explained I would not be re-examining allegations which were already subject to findings made by the court.
24. I found the Mother to be a very straightforward witness. Given this case pre-dates the QLR regime and PD12J of the Family Procedure Rules were engaged, the Mother had to be asked questions by me, prepared by the Father. She answered fully, and I think was fair in her responses, considering the Father's position where appropriate, but squarely putting the children at the forefront of her responses. She was clear in her answers that she is not seeking to prevent the Father from having a meaningful relationship with the children, and wants their time spent together to progress, but only in a way that she considers is safe for them.
25. In respect of the following preliminary issues at the start of the hearing, I heard representations about and gave my decisions that:
 - Father would not be allowed witness evidence from a number of family members and friends; as their evidence was likely to be irrelevant to the issues and limited to being 'character witnesses' in his favour; and
 - Father would be permitted time overnight after the first day to re-draft his questions for the Mother, his initial questions having been concerned with the allegations already subject to findings and not being focussed on the welfare issues before me.

Law

Children Act 1989

26. In respect of all decisions about the children, I have of course in mind throughout my consideration of this case the Children Act 1989 ("the Act") and in particular s.1 and the Welfare Checklist:

Section 1

When a court determines any question with respect to—

(a) the upbringing of a child....

the child's welfare shall be the court's paramount consideration.

27. I also must have regard in particular to the criteria of the welfare checklist which I will address shortly.

28. I have reminded myself of s1(2A) and (2B) of the Act:

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

(2B) In subsection (2A) 'involvement' means involvement of some kind, either direct or indirect, but not any particular division of a child's time.

29. I also kept in mind the general principle that any delay is likely to prejudice the child's welfare: s 1(2) of the Act.

30. I must also bear in mind the Human Rights Act 1998, including under Article 8 Right to respect for private and family life, and Article 6 right to a fair trial for all parties.

Family Procedure Rules 2010

31. As I have already stated, Practice Direction 12J of the Family Procedure Rules 2010 is engaged, and I have been referred in particular to paragraphs 35-37 - *Factors to be taken into account when determining whether to make child arrangements orders in all cases where domestic abuse has occurred:*

“(35) When deciding the issue of child arrangements, the court should ensure that any order for contact will not expose the child to an unmanageable risk of harm and will be in the best interests of the child.”

“(36)

(1) In light of–

(a) Any findings of fact,

(b) Admissions; or

(c) Domestic abuse having otherwise been established,

the Court should apply the individual matters in the welfare checklist with reference to the domestic abuse which has occurred and any expert assessment obtained.

(2) In particular, the Court should in every case consider any harm –

(a) Which the child as a victim of domestic abuse, and the parent with whom the child is living, has suffered as a consequence of that domestic abuse; and

(b) which the child and the parent with whom the child is living is at risk of suffering, if a child arrangements order is made.

(3) The Court should make an order for contact only if it is satisfied –

(a) that the physical and emotional safety of the child and the parent with whom the child is living can, as far as possible, be secured before, during and after contact; and

(b) that the parent with whom the child is living will not be subjected to further domestic abuse by the other parent.”

“(37) In every case where a finding or admission of domestic abuse is made, or where domestic abuse is otherwise established, the court should consider the conduct of both parents towards each other and towards the child and the impact of the same. In particular, the court should consider –

- (a) the effect of the domestic abuse on the child and on the arrangements for where the child is living;
- (b) the effect of the domestic abuse on the child and its effect on the child's relationship with the parents;
- (c) whether the parent is motivated by a desire to promote the best interests of the child or is using the process to continue a form of domestic abuse against the other parent;
- (d) the likely behaviour during contact of the parent against whom findings are made and its effect on the child; and
- (e) the capacity of the parents to appreciate the effect of past domestic abuse and the potential for future domestic abuse.”

Non molestation orders:

32. The power to grant a Non-Molestation Order is set out in s.42 of the Family Law Act 1996, which states:

Non-molestation orders.

- (1) *In this Part a “non-molestation order” means an order containing either or both of the following provisions—*
 - (a) *provision prohibiting a person (“the respondent”) from molesting another person who is associated with the respondent;*
 - (b) *provision prohibiting the respondent from molesting a relevant child.*
- (2) *The court may make a non-molestation order—*
 - (a) *if an application for the order has been made (whether in other family proceedings or without any other family proceedings being instituted) by a person who is associated with the respondent; or*
 - (b) *if in any family proceedings to which the respondent is a party the court considers that the order should be made for the benefit of any other party to the proceedings or any relevant child even though no such application has been made.*
- ...
- (5) *In deciding whether to exercise its powers under this section and, if so, in what manner, the court shall have regard to all the circumstances including the need to secure the health, safety and well-being— (a) of the applicant . . . ; and (b) of any relevant child.*
- (6) *A non-molestation order may be expressed so as to refer to molestation in general, to particular acts of molestation, or to both.*
- (7) *A non-molestation order may be made for a specified period or until further order.*
- (8) *A non-molestation order which is made in other family proceedings ceases to have effect if those proceedings are withdrawn or dismissed.*

33. I remind myself that “molestation” does not imply necessarily either violence or threats of violence, but can cover any degree of harassment that calls for the intervention of the court, Horner v Horner at 51G; and

34. The primary focus of the court should be upon the “harassment” or “alarm and distress” caused to those on the receiving end, Re T (A Child); and there does not have to be a positive intent to molest, Re T at [42].

Welfare Check list

35. I will now consider the “Welfare Checklist”:

(a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding):

- The children are both too young to have a full understanding of their situation and express their views. X was not interested in speaking with the CAFCASS Family Court Adviser on her most recent visit to him.
- I note that contact reports of the time the children spend with Father are largely positive. The author of the s7 report also noted that the children present as being excited to see their father and have responded positively towards him.
- However, she also reports that: “The children’s time with their father has been limited and whilst X and Y appear to enjoy the time they spend with [Father], they have not experienced him being responsible for their care for more than very short periods that have been one, and sometimes two months apart. X and Y recognise [Father] and are aware that he is their father however I do not consider them to have developed a strong relationship with him given the lack of time they have spent together.”
- I can presume that the children would wish to continue having a relationship with both of their parents, in a way that is safe for them and ensuring their needs are met.

(b) his physical, emotional and educational needs:

- No particularly complex needs have been brought to my attention in respect of either child. They are described by the Mother and CAFCASS as very active children, and the CAFCASS Family Court Adviser did indicate that X can be defiant on occasion; however as far as I have been made aware the children have the usual physical, emotional and educational needs of any young children of their ages.
- The Father expressed a concern about Y’s development in his evidence, as she does not speak to him. However, the Mother was clear in her evidence that Y is verbal, and so if she is not speaking with Father during their time together, that is due to a lack of trust or closeness with him.
- Like any children of their age, they need a safe and secure home and support. It will benefit the children for their immigration status to be regularised, as uncertainty around this could potentially cause stress to their carers (and they themselves, as they grow up).
- They will certainly benefit from having a relationship with both parents as they grow up and the issue for me to decide is how this can be best managed and developed over their childhoods until they are in a position to make their own decisions.

(c) the likely effect on him of any change in his circumstances:

- If I follow CAFCASS’ recommendations, there will be no significant change to the children’s circumstances.
- However, there would be a substantial change in their circumstances if I was to accede to the arrangements suggested by the Father. He proposes that the children spend half their time with him, and away from the only primary

carer they have ever really known, their Mother. X has not lived with his Father since he was just over a year and a half old, and Y has never lived with her Father. She has never spent longer than an hour in his care. To move from that to living with him half the time would be a huge change for the children.

- The Father has a new partner whom the children have not met, and he also suggests the children should move from their current education setting(s) to a school associated with his Northern European nationality.
- These would be extreme changes for two such young children, and in my judgment could be very distressing for them and harmful unless done for a very good reason.

(d) his age, sex, background and any characteristics of his which the court considers relevant;

- X is a 5 year old boy, in Year One at primary school. Y is a 3 year old girl, who has recently started nursery.
- The children were born in London with mixed heritage; their Father and paternal grandparents being from the Middle East, and their Mother and maternal grandparents being from Central America.
- Both parents are Muslim.
- The Father speaks Arabic, and the Mother speaks Spanish, with both having some English. The children speak Spanish at home with Mother, but X speaks English at school.
- There are no other particular characteristics which differ from any other children of their age.

(e) any harm which he has suffered or is at risk of suffering;

- On 27 and 28 April 2022, DJ Jabbitt made findings about the behaviour of the Father during his relationship with the Mother. As detailed already, the Judge made serious findings about physical harm, emotional harm, sexual harm and coercion and control that the Father perpetrated. There is of course, a risk, that the children suffered harm if exposed to this (X whilst living with both parents, and Y in utero).
- That Judge did accept, when discussing the allegations of physical harm and in particular an allegation that Father had shaken X when he was a baby (which the Judge did not find had happened), that Father loves his children and would not harm them.
- I accept on the evidence that I have heard and read, that this Father does love his children. I concur that I do not believe he would deliberately physically harm them. He described to me in evidence that as he is their Father, he cannot be a danger to them and is their protector.
- However, there remain concerns in two respects about the Father. Firstly, there is a practical issue in that the Father has never been sole primary carer for these children. His ability to care for them safely for any longer than an hour by himself is untested. He is not familiar with their routines and performing their basic care tasks. These are children who are vulnerable by virtue of their young ages, and made more vulnerable by their inability to

communicate with Father about their needs. The children do not speak Arabic, and Father does not speak Spanish or English (fluently). There is therefore a limit to what communication the children and Father can have at this time. These limitations as to practical care experience and communication could place the children at risk of inadvertently coming to harm in the Father's care.

- Secondly, there is the risk posed by the Father's lack of acceptance of the findings made against him, and his lack of engagement with support offered by CAFCASS and ordered by the Court in respect of the same; i.e. 'Strengthening Families, Strengthening Communities Programme' and 'Triple P Stepping Stones Parenting Programme'. I appreciate there were practical/financial difficulties with Father engaging with the same, but it is notable that he has not sought out any support whatsoever to address the concerns raised by the findings made by the Court. Those concerns therefore remain live, and in fact were heightened for the CAFCASS Family Court Adviser when she read Father's most recent statement, which sought for the Court to re-open and re-examine those findings.
 - Clearly, in this case, I am required to consider PD 12J of the FPR 2010, and must be cautious about the risk of future harm to the children when ordering child arrangements, keeping in mind (amongst other things) that the capacity of the Father to appreciate the effect of past domestic abuse and the potential for future domestic abuse (as per para 37(e)) is likely to be minimal if he does not accept the findings and has done no work to address the Court's concerns.
 - I heard in Mother's evidence her concerns about the Father having possibly found out her (confidential) address, and her level of fear, which has resulted in her resorting to installing security cameras inside and outside of her home. I also heard about the parents being in conflict (indirectly) about relatively minor issues pertaining to the short and infrequent contact Father presently has, for example him giving the children sweets on every occasion and the location of the contact centre; and also about more significant issues such as the children obtaining passports and travelling abroad with each parent.
 - I am concerned that ongoing parental conflict, especially if there is direct communication between the parents after proceedings conclude; and stress and fear in their primary carer (Mother) as a result of her anxiety about whether Father may attend her home and be abusive towards her; places the children at risk of future emotional harm.
- (f) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;
- The Mother adequately cares for the children. There are no concerns from professionals about the care they receive from Mother, with CAFCASS reporting that "X is a physically healthy, well cared for child..." and Y "... presents as a shy little girl who had a close bond with her mother." She observed Mother to be a very attentive parent.

- The Father has enjoyed positive contact with the children for short period in the confines of a contact centre. He has never cared for the children alone for long periods, and as such, his parenting capability is untested.
 - Contact has not progressed at the rate envisaged by the Court or CAFCASS at earlier stages in the proceedings, and so Father has not been able to demonstrate he could care for the children for longer periods and CAFCASS' and Mother's concerns about his ability to do so persist.
- (g) the range of powers available to the court under this Act in the proceedings in question.
- I have the options of making various orders under the Children Act – I can make a Child Arrangement Orders under s8 of the Act determining who the children should live with and how they should spend time with the other parent.
 - I can make orders as sought in respect of passports and/or a prohibited steps order restricting travel with the children.
 - I can continue the existing NMO, or discharge it.
 - I could consider making no orders, in line with Section 1 (5) of the Act which requires the court to ask itself the question whether to make an order would be better for the children than making no order at all.

CONCLUSION

36. In determining the issues in this case, I bear firmly in mind that X and Y's welfare is my paramount concern. I have considered the provisions of the welfare checklist at section 1(3) of the Children Act and I have also weighed up the possible "pros and cons" of each party's positions.

37. I make the following determinations:

Child arrangements:

38. I have carefully considered each party's position about the children's arrangements, and given a great deal of thought to CAFCASS' revised recommendations.

39. Clearly the children enjoy their time with their Father, and I am assuming that they would wish to continue spending time with their Father. However, I am satisfied that CAFCASS' and Mother's concerns about (i) Father's lack of practical care of the children and lack of contact progression during proceedings; and (ii) his lack of acceptance of the findings made against him and resulting lack of insight into the risks, mean that it would not be in the children's best interests to progressing to spending half their time in their Father's care.

40. I share the concern of CAFCASS that the Father's desire to share the care of the children may be more about his 'rights' than what is actually in the children's best interests. I am troubled by his lack of insight, when I asked him direct questions, about what the challenges might be if the children's residence and X's schooling suddenly changed, and how he might respond to those challenges. His responses were naïve at best, saying simply he would deal with challenges and move on. He said he and the Mother would need to just be flexible, but when I queried how this would work given they had not been able to agree on much during proceedings, again he glibly replied that they would need to 'be flexible and move on'.

41. It is the Father's position is that he has done the best he can to build his relationship with the children. I have sympathy that sometimes in cases such as these, the non-resident parent may be presented with a criticism at the final hearing that they have not cared for the children enough and so lack the experience to do so now, when they have been restricted from further caring due to lack of agreement to increasing contact time or orders preventing further time spent with the children. However, that is demonstrably not the case presently. This Father has had the opportunity to take up more than 1 hour per month of spending time with his children. Spending time arrangements were recited, as agreed, in the order of 09.09.21 as being fortnightly for two hours, and CAFCASS in fact recommended in their initial s7 report that there should be a progression to contact in the community after a period of such fortnightly contact. That hasn't happened because Father has not committed to that level of contact.
42. Father asserts that he has not been able to take up fortnightly contact for two hours because he has limited means to do so. He has confirmed in evidence that he is on Universal Credit. He told me contact at the current location costs £67 per hour (supported) or £110 (supervised). I have sympathy for the Father's difficult financial position. However, I am mindful that the Mother provides for the children alone, using her Universal Credit and Child Benefit. She receives, according to her evidence and not disputed by Father, no financial support from Father. So, at present, the Father's only financial commitment to his children is paying for contact arrangements. He committed to seeing them for one hour per month, which was what he said he could afford, and even that has been missed on occasion, meaning the children have on occasion gone longer than a month without seeing their Father.
43. Whilst I have not done a forensic assessment of his finances, I note that the Father did give evidence about travelling, having been abroad this year to Syria (via Lebanon) and Jordan. Even allowing for the fact he may have been staying with family or friends, travelling to these places will not have been 'budget travel' of the kind he described in his evidence about '£10 flights'. He takes these holidays, he told me, so he can travel for medical and psychological reasons, so he can feel 'relaxed and refreshed' and be 'in a good mental state to see the children'. He also points out he has family abroad, as does his current partner, whom they wish to see. Mother has done no travelling, and seen no family abroad, since their separation. She cannot afford, she says, to pay for three passports for herself and the children and take them on holiday. She described wishing to be able to do so, and the children also wanting this, but explaining to the children they cannot afford it and that they should be grateful for what they do have, whilst she studies and works to improve their situation.
44. Father's financial difficulties have also been given as a reason for him not engaging with the 'Triple P parenting programme'. He was unable to engage with the other parenting programme, due to residing in a different borough than the children, which CAFCASS fairly brought to my attention, and the Family Court Adviser accepted that was not something he could resolve. However, it was open to him to engage with the Triple P programme online, at a cost, but did not do so as he says he could not afford it. In his evidence, he indicated to me that he did not think that attending online would have any value anyway, as he told me 'They are commercial companies, as long as you pay, they will give you course. They will give you certificate even if you don't attend online.'

45. The Father has not taken any proactive steps to engage with any other support which may have been warranted by the findings made by the Court – he has not sought out any anger management classes, any domestic abuse programmes, or even any language classes to try and bridge the communication difficulties with the children.
46. Parenting is fraught with difficult choices, and often a parent must make a sacrifice to prioritise the needs of their child, especially where budget constraints make such decisions necessary. I think the Father has failed to prioritise building and developing his relationship with the children, and addressing the concerns about his behaviour, over the course of these proceedings, and that has left me in a position where I cannot be satisfied he is capable to meet their care needs for half the time, or in an unsupported setting.
47. I am concerned that if I accede to Father's wishes, I will be exposing the children to a huge amount of change and a risk of harm, without any evidence that such change and risk is warranted and in their best interests. I also consider that to change to shared care without any progression of the children's arrangements within the proceedings means that I would be setting up the parents to fail – it is hard to see how they could move from no direct communication with one another during the course of these proceedings to immediately effectively co-parenting, especially where the Father does not accept the findings against him. I cannot accept that Father's proposals would ensure the physical and emotional safety of the children and their Mother was secured before, during and after his time with them if it was split 50:50 and unsupported.
48. For these reasons, I am ordering that the children will live with Mother. This will be a final child arrangements (lives with) order. I accept the submission on behalf of Mother (via her position statement) that this will provide the children as they grow up with a greater sense of security about the arrangements that exist (*B v B (A Minor) (Residence Order)* [1993] 1 FCR 211) and/or to add to a Mother's peace of mind (*Re G (Children)* [2005] EWCA Civ 1283).
49. I am ordering that Father will continue to have supported contact in a contact centre to be agreed by the parents. My view is that such contact could be increased to two hours fortnightly, and for up to 6 hours per fortnight when it falls in a school holiday. However, such an increase would be reliant on the Father agreeing to cover the costs of the same. I am not satisfied, on the basis of Mother's evidence in answer to Father's questions, that she should pay for such arrangements out of her own or the children's benefits, which is what she uses to provide for all of their other needs.
50. Father's answer to my question as to whether he would continue to spend time with the children if I ordered it should continue in the contact centre was that 'it really is too much financially...the past 4 years have been a real struggle...I can't take it any more it's too much'. I hope he will reflect on what I have decided and consider whether he can organise his spending to allow for more time to be spent with the children.
51. I expressed my concern to the CAFCASS Family Court Adviser that making such an order regarding the children's spending time with the Father would be atypical – it is in my view not ideal that the children will be subject to a final order permitting them to spend time with their Father in a contact centre only. I fear that this will increase the likelihood of further litigation at a later date.
52. However, in considering the children's welfare now and into the future, I am satisfied that this order is necessary and appropriate to safeguard them; and that their safety

now outweighs the risk of possible emotional harm in the future caused by exposure to further litigation if either parent applies to vary my order.

53. I considered whether I should only make an interim child arrangements order, and order a progression of contact with a further review hearing at a later date. However, considering the no delay principle; the fact that these children have been in proceedings for most (or all, in Y's case) of their young lives, and that the Father has had the opportunity previously to increase his time spent with the children and did not do so; I therefore did not consider that extending the proceedings any further would be in their best interests.
54. I also considered whether it would be appropriate for me to make a s91(14) order, if I felt that the risk of future litigation about the children's arrangements would be harmful to them or constitute a continuation of the domestic abuse found. I am not satisfied that it would, or that such an order is required.
55. I anticipate, as I signalled in my questions to CAFCASS and Mother, that there may come a time that the children do seek more time with their Father and outside of the contact centre. Mother in evidence was clear that she would not oppose this, if the Father had shown he had changed; in her view he needed to show more interests in the children, about their likes and needs, and build his relationship with them to demonstrate this to her. My decision gives him the opportunity to do so.
56. I hope that if the Father can do this, then the Mother would be agreeable to varying my order with her consent, to arrangements that best suit the children's needs in future. However, if such variation could not be agreed in future, then I would expect any future application by the Father to be supported by evidence of what steps he has taken to develop his relationship with the children and address the concerns of the Court.

Passports/travel/prohibited steps order:

57. The Mother has confirmed in evidence that she would like the children to have British passports and passports/ID documents from the Northern European country from which Father has nationality. The children have pre-settled status at the moment.
58. The parents agree that they do not seek for the children to have passports from the Central American country of Mother's origin.
59. The Mother in evidence confirmed that she has no means or plans to travel with the children at present. She says she has no intention to take them out of this jurisdiction permanently, pointing out that the children are in education settings here, she is a student, and she wants them all to obtain British citizenship. The child arrangements (lives with) order I have just made will in any event require the Mother to obtain the Father's permission if she is to remove the children from the UK for more than 30 days (s13 of the Act).
60. The Father in his evidence was somewhat confusing – initially saying he wished to travel with the children and extolling the benefits that such travel would bring the children, but indicating that he would not wish the Mother to have the same freedom to travel with them. He said *“In Europe it's okay [for her to travel with them], but not Canada, USA and [Central American country]. [The Central American country is] Dangerous country. Leave it. Don't need it. If Canada, USA – they have right to stay there due to [my] nationality. I won't be able to ask them to come back, she'll make allegations again”* When he was asked further about this, he changed his position and

said actually “*There is no need for children to travel, even with me, leave it. Not worth the risk.*”

61. I accept Father’s initial evidence that the opportunity for children to travel will enrich them – with such a lot of family in different countries, it is hard to see how the children could not experience emotional, social and cultural benefits if they were able to travel. However, I am not persuaded that there is an inherent risk of relocation if I permit passports to be obtained and travel to take place.
62. The Mother in her position statement respectfully referred the Court to the following discussion in respect of Prohibited Steps Orders in *Re C (A Child)* [2013] EWCA Civ 1412, *per* Ryder LJ:

“15. A prohibited steps order is a statutory restriction on a parent's exercise of their parental responsibility for a child [...] There is accordingly a high responsibility not to impose such a restriction without good cause and the reason must be given. Furthermore, where a prohibition is appropriate, consideration should always be given to the duration of that prohibition. [...]

16. The principle which is engaged when a prohibited steps order is being considered by the court is the welfare of the child concerned. [...] There has to be a persuasive case supported by evidence of objective fact (rather than expressions of suspicion or anxiety) that the respondent intends to exercise his parental responsibility in a manner which is likely to harm the child or otherwise be adverse to the child's welfare having regard to the factors described in section 1(3) of the 1989 Act. The applicant must give evidence of the (alleged) underlying facts and the sources of any information and belief that are relied upon.” (Mother’s emphasis added)

63. I am not satisfied that on this case there is evidence of objective fact which warrants the making of a Prohibited Steps Order. I refuse the Father’s application for this order.
64. I consider that the children’s welfare will be improved by obtaining passports for them, both in terms of giving them the opportunity to travel in future and hopefully to assist with their applications for settled status in the UK. Again. Father’s evidence was not entirely clear on the issue of the passports – he seemed to not oppose them being obtained, but indicated that he should be the one to do so when he was sharing the care of the children – as if one factor were contingent upon the other. I am not persuaded he must be the one to obtain the passports, or that he should only support with this if he is sharing the care of the children.
65. For that reason, I am persuaded to order as a Specific Issues Order under s8 of the Act that:
- Mother has the Court’s permission to obtain British and [Northern European Country] passports, and [Northern European country] ID cards for the children, the Father not having objected to the same being obtained.
 - The costs for such documents should be shared equally by the parents – the parents to agree the practicalities of how such payments should be made.
 - Permission for the Mother to disclose the order to any relevant passport office or embassy.
 - Respectful request to the relevant embassies/passport offices to provide passports/ID cards as soon as possible.

66. In view of this decision, I discharge the undertakings given by the parents on 9 September 2021 and 11th January 2024.

Non molestation order (“NMO”):

67. The NMO was initially made on papers alone, without notice to father, on the basis of no findings or admissions being made on 17.05.21. It was made until 16 May 2022, but then extended until further order during the proceedings.

68. Looking at the test for a NMO, I am satisfied that there is evidence of molestation. There is no statutory definition of this, but I am satisfied that the findings made by the Court at the Fact Finding Hearing would constitute molestation. I therefore must go on to consider whether the Mother or children need protection; and on the balance of probabilities, whether an order is needed to control the Father’s behaviour. In considering that, I should have regard to all the circumstances including the need to secure the health, safety and well-being of the Mother and children.

69. The Father says a NMO is not necessary, as there have been no incidents during the course of the proceedings and he should just be allowed to communicate ‘normally’ with the Mother about the children.

70. I accept there have been no incidents of the Father communicating with Mother directly against her wishes, or any other direct harassment etc during the proceedings.

71. However, on behalf of Mother, it is put to me that the Father has ascertained the Mother’s address against her wishes, as she has sought to keep that confidential from him within the proceedings. She alleged that this arose due to the help she sought in respect of the children’s immigration status. The charity supporting her with this changed the children’s details with the Home Office, having told the Home Office the particular facts of this case and that Father should not be provided with such details. However, Father then received a notification from the Home Office that the children’s details had been changed. Mother says Father now knows her current address. A complaint has been made to the Home Office.

72. In his evidence on the first day of the hearing, initially when speaking about the location of contact centres, Father discussed them with reference to journeys from his and Mother’s home respectively. When asked about this by Mother’s representative, he clarified that he meant the distance from her Local Authority council location, that having been assumed by him to be a nearby place as he knows the relevant borough she lives in, not her actual address.

73. When asked if he had accessed her address via the Home Office, his response was *“No. I don’t know her address. Home Office is governmental authority, not straightforward, they have to verify you before giving you any details, let alone details about someone else.”*

74. On the second day, Mother in her evidence detailed a letter which had been sent by the charity assisting her, which she says evidenced that Father had accessed her address. This was not in the bundle, but after giving Father the opportunity to consider the letter and hearing representations from both parties about whether I should admit it into evidence (Mother seeking for it to be admitted, Father opposing) I gave my reasons and did admit it.

75. Father at that point wanted to make further comments about the letter, so he was sworn back in and gave evidence about it. He said he got an SMS from the Home Office, telling him the details of his child were changed, and asking him to call them

if he was not the one who made the changes (as he was registered as the Applicant for X's application). He did call, and said he had not made changes, but that his son was not living with him, so if it was the Mother who made changes, he was fine with that. He says he never asked what details had changed, and they never told him the address changed. He says, they told him only that the phone number had changed, and he said if it was Mother's number, that was fine.

76. I asked the Father why he hadn't said any of this in evidence on the first day, and he said he didn't think it was something important or relevant. Again, I make allowances for the Father being a litigant in person, and so accept he does not have a lawyer to perhaps explain to him the relevance of all information. However, he was asked a direct question about finding out information from the Home Office and he did not mention either receiving the SMS or having a call with them about any changes. I therefore find his evidence in respect of this lacks credibility, and I don't feel satisfied that I can be confident he does not know the Mother's address or phone number.
77. Therefore, in view of all of the circumstances, I am persuaded that I should extend the NMO for a further 2 years, until 30.10.2026. I will vary it to allow the parents to communicate directly via a co-parenting 'app'. Which app is to be used may be agreed between them, but I consider it necessary for them not to communicate via their usual phone numbers/email addresses in the interests of the Mother's health, safety and wellbeing. They should communicate only about child arrangements.
78. This concludes my decision. I know this is not the decision the Father wanted, but I hope he will be able to reflect on my reasons and engage with the time I have ordered he may spend with the children to develop their relationship.

POSTSCRIPT

79. I handed down my decision on paper to the parents, so that they would have an opportunity to go through it with their respective interpreters in private, before anyone addressed me on the order.
80. When parties returned to the hearing after considering my decision the Father addressed me to tell me that whilst he generally accepted my decision, due to his financial and emotional capacity, he would not be taking up the spending time arrangements I ordered. He indicated he would only wish to see the children once every six months, for one hour a time.
81. The Father indicated he does not want to communicate with the Mother via a co-parenting app and will find it upsetting to receive monthly updates from her about the children's wellbeing and development, so he does not want these.
82. My order will therefore recite what arrangements I was willing to order, but the order itself will reflect what arrangements the Father agrees to commit to.
83. The Father also confirmed that he consented to the children having passports and ID documents from both countries sought, and this consent will be reflected in the Specific Issues Order.

Publication of judgment

84. When I handed my written decision down, I indicated to the parties that I was proposing publishing the same, in line with the 'Publication of Judgments' Practice Guidance issued on 19 June 2024 by the President of the Family Division. I explained the purpose of such publication, and how the identity of parties and the children

would be protected if the judgment was published, to the Father in particular, and asked for the parties' views.

85. Mother did not oppose publication, with appropriate anonymisation.
86. Father opposed publication on the basis that he felt he had been victimised in these proceedings and did not want anyone else to witness this victimisation. I do not accept he was victimised.
87. I determined to publish the judgment for the following reasons:
 - Family court litigation is always likely to feel distressing or upsetting to a party/parties.
 - The principle of open and transparent justice is my starting point, and it will generally be in the public interest for case decisions to be published, even if the case is heard in private.
 - The children's welfare can be protected through appropriate anonymisation of the judgment.
 - There remains a tension between the parties' and children's Article 8 rights and Article 10 - The Father's general unhappiness with the outcome of the case is not a compelling reason to prioritise his Article 8 rights above Article 10.
 - It is my view that it his feelings about the case outcome are secondary to the public interest, which is that parents like him who are litigants in person should have access to decisions from the Family Court so that they may understand how and why Judges make the decisions they do about children.