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Case No: ME14P02381

**IN THE FAMILY COURT**  
**SITTING IN THE ROYAL COURTS OF JUSTICE**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 13/11/2015

**Before**

**MRS JUSTICE THEIS**

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**Between:**

**JK**  
**- and -**  
**HS and KS**  
**- and -**  
**X By**  
**Her Children's Guardian**

**Applicant**  
**1<sup>st</sup> & 2<sup>nd</sup> Respondents**  
**3<sup>rd</sup> Respondent**

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**JK in Person**  
**HS & KS in Person**  
**Mr Nicholas Anderson (instructed by Cafcass Legal) for the 3<sup>rd</sup> Respondent**

Hearing dates: 9<sup>th</sup>, 12<sup>th</sup> & 13<sup>th</sup> November 2015  
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**Judgment**

**Mrs Justice Theis DBE:**

**Introduction and Summary**

1. This matter concerns a young child, X, now 18 months old. The applicant is JK, X's biological father. The respondents to the application are HS and KS, who are civil partners and X's legal parents and X, though her Children's Guardian, Angela Adams.
2. I will refer to the parties as JK, HS, KS and X respectively.
3. HS gave birth to X and she has been in the full time care of HS and KS since. JK had some contact after the birth; he has not seen X since September 2014 when she was 4 months old.
4. I gave JK leave to make his application for contact on 30 March 2015 and the judgment supporting that decision is reported at [2015] EWFC 83.
5. In 2010 the parties entered into an arrangement, the precise detail of which is in dispute, for JK to donate sperm to enable HS and KS to have a child. The dispute centres on what role, if any, JK should have in X's life. Put simply, JK seeks an order that will enable him to have regular fortnightly contact, initially for a day, building up to alternate weekends, staying contact in the school holidays and other special occasions (for example being present at his marriage to his partner). He considers X needs a male role model, which he considers he should provide and should have the opportunity to get to know his family. HS and KS say they fully recognize JK's position as regards X's identity, but they do not support continuing direct contact. They submit it would be too stressful, caused by what they see as JK's unreliability and his undermining of their relationship as parents for X by the enhanced role he seeks in X's life.
6. As set out in my judgment in March it is quite clear these parties wholly underestimated the emotional consequences of the arrangement they embarked upon. For their differing reasons, they have each struggled to come to terms with the position they are now in. JK said he understood his role was going to be a full quasi-parental role, with regular direct contact. He bases this belief on the terms of a written agreement entered into by the parties in 2010. HS and KS whilst in part acknowledging the parties previously had a better relationship, say the position has now fundamentally changed caused in large part by JK's behaviour towards them.
7. In her report Ms Adams recommends indirect contact. She concludes that to impose direct contact between JK and X on HS and KS in the context of JK's expectations as to his future role in X's life, risks the stability of X's otherwise secure and stable placement. In her view any benefits there may be from any direct contact between JK and X are significantly outweighed by the risks to X's welfare, and the benefits can be met by indirect contact.
8. As well as considering the trial bundle I have heard the oral evidence from JK, HS, KS and Ms Adams.

9. For the reasons set out below, I have reached the conclusion that I should refuse JK's application for direct contact with X; there should be indirect contact between JK and X. Whilst there is some force in what JK says regarding the expectations he had about his role in X's life, bearing in mind the agreement they signed in 2010, X's welfare has to be looked at in the context of what her needs are now, not what the parties might have intended prior to her birth. Her legal, psychological and social parents are HS and KS. They both have parental responsibility and meet all her day to day needs. They recognize JK's position in X's life but feel threatened due to his attitude if he has more than indirect contact. In my judgment JK has displayed a lack of insight into the reality of the impact of his application and his behavior on HS and KS, with the consequent impact on X. He can only look at it through the prism of the written agreement between the adults 5 years ago; there has been no sign of any real understanding or insight being shown by him of the emotional costs of this application on HS and KS. When asked about this in his evidence, his response was to say how hard it has been for him too.

### **Legal Framework**

10. I will first turn to consider the legal framework this application is being considered in. There is no dispute between the parties about this.
11. X was conceived through artificial insemination using JK's sperm and with the consent of HS and KS, who are, and were at the time, civil partners. HS and KS are X's legal parents, with shared parental responsibility. HS is her birth, biological and legal mother and, as a result, has parental responsibility for her by virtue of s.2 of the Children Act 1989. KS is X's other parent by virtue of s.42(1) of the Human Fertilisation and Embryology Act 2008 (HFEA 2008), which states as follows:

*“If at the time of the placing in her of the embryo or the sperm and eggs or of her artificial insemination, W was a party to a civil partnership, then subject to section 45(2) to (4), the other party to the civil partnership [in this case KS] is to be treated as a parent of the child unless it is shown that she did not consent to the placing in W of the embryo or the sperm and eggs or to her artificial insemination (as the case may be).”*

At the material time KS and HS were in a civil partnership and KS consented to the procedure that was undertaken.

12. KS shares parental responsibility with HS by virtue of s.2(1A) of the Children Act 1989, which states:

*“Where a child –*

- (a) has a parent by virtue of section 42 of the Human Fertilisation and Embryology Act 2008... the child's mother and the other parent shall have parental responsibility for the child.”*

As legal parents for X, HS and KS are the only people in law who can be recorded on X's birth certificate.

13. JK's status is that he is X's genetic/biological father, but not her legal father. Section 45(1) HFEA 2008 explicitly states as follows:

*“Where a woman is to be treated by virtue of section 42 or 43 as a parent of the child, no man is to be treated as the father of the child.”*

14. By operation of s.48 (2) to (5) of the 2008 Act, they go further to provide that JK is not to be treated as the father for any purpose and that this dictates the interpretation of every other legal enactment and private document. Those relevant provisions provide as follows:

*“(2) Where, by virtue of section 33, 38, 41, 45 or 47 a person is not to be treated as a parent of the child, that person is to be treated in law as not being a parent of the child for any purpose.*

*(5) Where any of the subsections (1) to (4) has effect, references to any relationship between two people in any enactment, deed or other instrument or document (whenever passed or made) are to be read accordingly.”*

15. Therefore HS and KS are X's legal parents and have parental responsibility. JK is X's biological or genetic father.
16. Having given JK leave to make his application for contact, the court's decision is governed by X's welfare being the courts paramount consideration, pursuant to s 1 Children Act 1989 (CA 1989), having regard to the matters set out in the welfare checklist in s 1(3) CA 1989.
17. A theme that runs through the law in this area is that each case has ultimately to be looked at on its own individual facts.

### **Relevant Background**

18. X was conceived following artificial insemination at the respondents' home with HS using JK's sperm. The parties had met three years previously through a website. HS and KS state that they were looking for a known donor. JK disputes this and says they were looking for a co-parent. There is an issue on the papers as to precisely what was on HS and KS' profile on the website. There are two pages of that profile in the papers: one that was printed, on the face of it, in December 2014 by the HS and KS, which indicates their status as looking for a known donor; whereas JK has produced what he says is a picture of the position as at January 2015, which indicates that in fact they were looking for a co-parent; which was what JK says he was looking for when he signed up to this website. It is not possible to make a determination on this issue, other than to observe that the uncertainty about it perhaps foreshadows the difficulties that were going to develop.
19. As part of their discussions in 2010 and as part of the arrangement they entered into they signed, on 21<sup>st</sup> November 2010, an agreement entitled “Sperm Donation Agreement Deed”. A copy is in the papers. It is, on the face of it, a standard form document, which HS and KS had downloaded from the internet in circumstances, they

say, to deal with JK's concerns in relation to any financial responsibility that he may have regarding any future child, in particular with the Child Support Agency. That is disputed by JK. He says it was done and prepared in order to set out in written form the arrangements that had been reached between the parties, in particular his role as a co-parent. In fact, within the document, at paragraph 11, it deals with the question in relation to financial responsibility for JK, and indicates that he would have no financial responsibility towards X. As to the future arrangements for any contact that JK would have with any child that resulted from the arrangement, paragraph 30 sets out extensive contact and involvement between JK and the child, looking at alternate weekend contact, holiday contact and also that his name would appear on the birth certificate.

20. There is an issue between the parties as to whether this agreement was in fact varied in any way. JK has set out in his submissions to the court that in fact it was varied as a result of discussions between them, and the typed terms were capable of variation. HS and KS say that there was no adjustment or changes in relation to the typed terms; the only parts that were added in by them, apart from their names, were details in relation to location and signing, all of which appear in manuscript form on the agreement. Again it is difficult for the court, on the information available to reach any conclusion.
21. The parties originally attempted to conceive in 2010, but that was not successful. This, amongst other factors, led to the relationship ending. There is a dispute between the parties as to who ended their relationship, and what the precise circumstances were. There was then a gap of about eighteen months to two years before they met again, by chance, at a social event, in early 2013. This meeting led to further discussions and an agreement by them to try again to conceive a child. This led, in turn, to X being conceived.
22. There is considerable dispute between the parties about the level of involvement JK was to have in X's life. Extensive statements have been filed by all the parties, including third party witnesses. HS and KS state they viewed JK as having known donor status, with what they describe as "minimal" involvement. In their skeleton argument they expressed it as follows: "*Limited peripheral involvement, a positive role model*" was how they expected him to be.
23. JK disputes this and states his role was always to be that of what he termed a "full" parent, a co-parent, and relies in part on the deed that the parties entered into and signed in 2010. JK also relies on text messages exchanged between the parties which he says confirms that he would be treated as the father of X and have unlimited contact.
24. Following X's birth, JK had had limited contact with her, about thirteen occasions in all, which were always supervised either by HS or KS, or both of them, and they were generally only for a few hours at a time. There are a number of disputes around the circumstances in which the contact took place. There was dispute as to JK's reliability, as to whether he was late on occasions and on one occasion did not attend at all. There is some evidence to suggest that some contact went well. There was an occasion when they went out for a meal with JK's wider family, and also when X was taken in to the office where JK and HS had worked; the response and texts about that from HS indicated that it had gone very well and she was describing him as a happy father figure.

25. Relations between the adults then broke down again, which led to HS and KS informing JK on 24th October 2014 they would be stopping all contact. There is a detailed text within the papers setting out their reasons for doing that. That was caused, in part, because of what they say was his unreliability in attending contact, his unrealistic expectations regarding his role and also the distress and difficult circumstances that were being experienced by HS and KS in being able to manage his attempts to have contact with X.
26. The last time JS saw X was on 8th September 2014. Since then, he has had no direct contact. He issued his application in December 2014. The matter was initially dealt with by His Honour Judge Polden on 9th January 2015, when he made directions listing the matter before me. I gave JK leave to make his application on 30 March 2015 and made directions leading up to this hearing. I joined X as a party, Ms Adams was appointed as her Children's Guardian. She filed her report on 8 July 2015. At a directions hearing in July 2015 I directed the parties to file updating statements, which they did in October.
27. In addition to reading the court bundle I have heard oral evidence from JK, HS, KS and Ms Adams.

### **The Evidence**

28. In his statement filed just prior to this hearing JK sought the following contact:

- 2 occasions of 4 hours in December
- 2 occasions of 8 hours in January
- alternate weekend contact thereafter
- 3 – 4 occasions pa a week staying contact in the UK or abroad
- Fathers day
- 2 – 3 hours on her birthday
- 2 – 3 hours on Christmas day
- On his wedding day in December 2016

He continues in his statement *'I feel X and I have a simple human right to spend a reasonable amount of time together.'* He continues in that statement outlining what he sees as his role to *'support X emotionally and physically throughout her childhood into adulthood....I would be a positive father role model for X. I would encourage confidence and a brave character in her personality and to be challenging, prodding, playful and physically active...I can help provide a healthy self-esteem for X, which I feel is valuable for her psychological well being. I could teach X life skills, self-respect and self-confidence...I believe children will approach their mothers and fathers for different issues that they need advice for, we will be depriving X of that option if she does not have access to a father role model such as myself. I would like X to meet and build relationships with her biological family and her vast family in laws when X and I are married. The more people that are able to show X love, support and comfort is clearly for the better.'*

29. JK in his oral evidence maintained his request set out in his recent statement as to the frequency of contact. He considered X *'deserved to have a male role model, to learn my history background and interests'*. When asked about the difficulties in the relationship between the adults, he considered that could be resolved by professional intervention as he said he was *'happy to draw a line'* about the history, the adults had

got on before so he was hopeful they would in the future. He saw the benefits for X having the level of contact he proposes is so she would get to know him and his family, to have a relationship with his family. Asked if there was any disadvantages to this he responded *'only problem is if we don't get on, but with professional help we could be civil to each other'* but otherwise he could see no downside to what he is proposing.

30. He was asked about the evidence of the distress his application had caused HS and KS. He questioned whether HS had situational anxiety, but said even if she had I *'have been through a lot too'*. He sought to distinguish between being a biological parent and a parent, recognized HS and KS had parental responsibility to make day to day decisions but said *'we should all be treated the same'*. When asked why X needed a relationship with him he said *'because we are her biological family'*. He said he requested X spent father's day with him as he is her biological father and this was not something that she should be deprived of now. When asked whether he considered his proposal for X to attend his wedding in December 2016 would be disruptive for HS and KS he responded *'No because by then we [the adults] will be getting on'*. When asked about the research he had done for the type of professional help that would be available for the adults apart from looking at what was available on the internet (such as the Tavistock) it was clear he had not made any enquiries about availability. He said that help would be needed to enable HS and KS to be *'at ease with me having access; make it stress free'*. He was asked about what he told the court in March about not making unrealistic requests for contact; he said he regarded his proposals as being realistic for him and X.
31. In their final statement prior to this hearing HS and KS set out the impact they say these proceedings have had on them. They describe the negative emotions they have felt as a result of this application, the impact on their health, family, friends and security. They are opposed to any direct contact but accept the recommendation made by Ms Adams for indirect contact as they say *'it would mean that our daughter could at some stage choose if and when she reads the provided information and make her own informed decision regarding what she would like to do from that point forward in regards to JK'*. If that is the order made they set out at the end of their statements conditions regarding length and content of any communication.
32. In her questioning of JK HS said that within minutes of the court giving JK leave to make his application he had posted messages about it and put pictures of X on Facebook, despite that issue being specifically raised during the hearing that HS and KS did not want X's photos on Facebook. Following a letter from HS and KS's solicitors he removed the photos, but older ones remain on there, despite requests for them to be removed. HS said this was a breach of trust and a clear indication that JK was unable to be trusted to respect their wishes. In her oral evidence HS described how she felt on receiving JK's proposals; all she could see was the disruption such contact would cause *'every social day would be marred and spoilt..as JK would be coming over'*. HS said she had lost her job, had two county judgments registered because of legal fees and they have been forced to sell their home. She said she is medicated for anxiety, she is scared to go out of the front door and described how they go to events far away to avoid the risk of meeting JK. She and KS have undergone counseling and intensive therapy as they each blamed the other for the situation they have found themselves in. As she described, what had happened will impact their lives for years.

33. She was pressed by JK about why he had been allowed to come to the scans and been asked to come to the hospital for the birth. HS denied he was invited, she said he *'assumed you were coming and we thought the other had invited you..you putting pressure on us, causing us stress. I had too much going on to be bothered to have an argument. I was ill during the pregnancy, had a difficult birth, you and KS had an argument and I was stuck in the middle of you two'*. She described agreeing to JK's request to avoid an argument, and when she did stand up for herself he would increase the frequency of his requests. As HS said *'I was not prepared for the emotional demands of having a child'*. She acknowledged they had a good relationship prior to X's birth.
34. In response to Mr Anderson she agreed JK could provide genetic knowledge but said she and KS can provide everything else. She could not see the benefit of limited direct contact. When she read JK's proposals she said she was *'terrified'*, she was not confident that their relationship would improve so they could build a relationship on trust due to the extent of the help that would be required and the pressures such intervention would place on her and KS. She said *'all I want it to be is an effective parent and I can't even if his name is mentioned'*. She described the wider male family members they had who X had a close relationship with who X was able to observe HS and KS's close relationship with as well. She was clear that X will ask questions and that is the time they will open a dialogue with her which can be built on over time. She was clear to impose anything now would be more confusing than beneficial for X.
35. In her oral evidence KS described her not expecting JK seeing X very much. From her perspective she felt JK kept badgering HS to see X. She said she had referred to him as *'Daddy'* in their text exchanges to see if he responded by calling her *'Mummy'* but he didn't. She denied she caused HS to be anxious, she said it was more down to JK informing HS's friends KS was controlling her and his unreliability.
36. In her report Ms Adams observes *'it is unfortunate that the parties did not fully discuss matters before conception. It appears that the differing expectations caused great difficulty during the early weeks in X's life...the decision [to stop contact] appears to be a result of HS and KS experiencing JK as too demanding in terms of his wishes to visit K, and undermining of their family unit, in particular of KS's role as a parent'*. She continues that whilst she considers all X's needs are being met by her parents *'I am concerned that her parents describe the application by JK as 'more stressful than anything else they have ever experienced'. They spoke of feeling that despite the law identifying them as X's only parents, they have lost control of the decisions to be made about their daughter and therefore their family life. They spoke about the loss of control of their family life being the most difficult aspect of the proceedings'*. She describes the effect on HS of the stress regarding JK *'she said she takes longer routes to avoid any possibility of seeing him, and avoids local parks and baby groups. She visualizes encounters where he is able to take her unawares and take X from her. She said these thoughts affect her sleep and her appetite and sometimes make her physically sick'*. Her GP has confirmed she is experiencing situational anxiety and has been receiving some support. Ms Adams observes the impact of the proceeding on HS and KS as X's parents as *'significant'*. X's development is dependent on interaction with her caregivers, the stress and anxiety they experience could impact on the quality of care that X receives.

37. Ms Adams observes in her report the references in JK's early statements to him and HS being K's 'true parents' suggests a worrying dynamic. JK said to her in their meeting he fully accepts HS and KS are X's parents but did highlight how he and HS got on in contrast to his more negative relationship with KS. He considers KS rather than he was the cause of any difficulties in HS and KS relationship. These comments suggest to Ms Adams *'a pernicious attitude towards KS that would undermine the quality of X's relationship with her parents if it were a feature of her childhood'*. She observed there was little positive about HS and KS's parenting in JK's statements. In her discussions with JK she did not consider he had considered the effect on X of the conflict between the adults, his rather simplistic solution was they would put it behind them.
38. In her oral evidence Ms Adams maintained her recommendation that there should be indirect contact between JK and X. She considered JK considered his role to be more of a parents raising X. She considered his application is in large part being driven by his feelings of upset with HS and KS rather than being able to stand back and look at the position from X's perspective. For example, he queried HS situational anxiety rather than reflecting on how it might impact on X. This she considered demonstrated his lack of insight. The documents generated in the case seem more focused on the adults than supporting HS and KS caring for X.
39. She was asked about the research relied upon by JK about the need for a male role model. She considered the research had moved on to demonstrate that children learn well from their wider environment. Many of the research extracts relied upon by JK are in a different social context. She felt JK was relying on selected research, rather than give a reasoned emotional response particular to this case. Her opinion was when looked as a whole the consensus of the research was that the outcomes for children were no different whether they were brought up by same sex or heterosexual parents. She said what is an important indicator is the quality of the relationships within the family. Whilst she acknowledged it was important for X to have knowledge of her biological father it was not something that she considered should be foisted on X at this stage, when it risked de-stabilising her home. She was clear that from her knowledge of the professional help being considered by JK to help the adult relationships it was either unsuitable (SPIP) or was not realistically available (Tavistock). She considered JK's over simplistic reliance on professional help displayed a lack of insight as to why the relationships broke down. In her view that lack of insight would provide a big barrier to the effectiveness of any therapeutic work. She did not consider reduced direct contact would meet X's interests, as it would inevitably result in stress and tensions and there is a real risk JK would ask for more.
40. HS asked Ms Adams about the exchange of photos, as they feared it would be posted on facebook without their consent, as had happened earlier this year. Ms Adams considered that but still supported the exchange of photos as in her view it would assist JK's communications with X.
41. JK took issue with Ms Adams in various parts of her report. He pressed her that there was no research which said three parents were detrimental to a child's welfare; Ms Adams responded that the issue here is conflict which is detrimental to a child's welfare. In her view children readily pick up non verbal messages about the relationship between the adults and how they respond to each other.

## **Submissions**

42. I have considered the written documents submitted by JK, HS and KS. They each eloquently set out their respective positions.
43. In his document JK apologises for putting the material on facebook immediately after the hearing in March. He submits he is open to suggestions regarding the amount of contact he has with X, and wishes to negotiate and compromise with HS and KS. He shows some understanding for what HS and KS have been through, but considers it is in X's best interest to spend a reasonable amount of time with him; he submits the mother's feelings towards him should not hinder the chance of X to bond with him, her biological father.
44. HS and KS raise concerns about the way JK has been selective in the research he has relied upon, not putting it in the context of the particular study and the circumstances of those taking part. They support Ms Adams conclusions that the current research demonstrates that there are no different outcomes for children whether they live in a same sex family or not. They set out their concerns about JK approaching his application as a separated parent, the real extent he wishes to be involved in X's life and the strain it would put on their household. They submit the way JK has behaved in the proceedings in producing documents late and the material he placed on Facebook are indicators of the way he will behave in the future, which makes it difficult to have confidence in what he says. They fear his application is being driven by his own needs and his own feeling of injustice, rather than a welfare decision for X. They consider any direct contact he is given will be used by him to push for more.
45. On behalf of X Mr Anderson submitted that there is evidence in the past that the relationship between the adults was much better. The text exchanges at the time confirm that. However, those relationships significantly changed in the period up to September 2014 and since. The impact of that on HS in particular was profound and continues. JK's indication to the court in March that he would not make unrealistic expectations for contact has either been ignored in his recent proposals, or he lacks insight into the realities of the situation. JK has displayed little understanding of the role he can play in X's life; what he seeks would be imposed on X's parents by an order sought by the person who they perceive as having caused the difficulties. The role he seeks would be undermining to X's parents. Any benefits there could be by direct contact between X and JK are outweighed by the risks and can be managed by the indirect contact recommended by Ms Adams.

## **Discussion and Decision**

46. There can be little doubt these proceedings have been stressful for the parties. It has been obvious for the court to observe during the hearing and is very apparent from the papers. I also have no doubt the parties each love and care deeply for X.
47. The lodestar that guides the court in its determination of this application is X's welfare needs; it is the court's paramount consideration. Each case must be determined on its own facts, there is no universal solution but as Thorpe LJ observed in *A v B and C (role of the father)* [2012] EWCA Civ 285

*'Human emotions are powerful and inconstant. What the adults look forward to before undertaking the hazards of conception, birth and the first experience parenting may prove to be illusion or fantasy'.* This case is another illustration of parties who enter into such arrangements being unprepared for the unexpected emotional consequences that inevitably flow from them.

48. As is often the position in these cases there is voluminous information about the adult conflict, and precious little about the child. In her report Ms Adams provides a useful assessment of X, she is described as having *'a smiling disposition, with what appeared to be a calm and contented personality. X moved with ease between her parents, seeking attention and enjoying receiving it. It appeared she felt secure with both of her parents, that she is the focus of affection and attention in her family upon which she thrives'*. She is meeting all her developmental milestones and is in good health. In Ms Adams view all of X's needs are being met by her parents, HS and KS. She has a stable home and secure care. I agree.
49. I have found the numerous references to various extracts of research unhelpful. I unhesitatingly accept Ms Adams thoughtful and perceptive evidence about this. Taken as a whole the current research concludes that there is no significant difference in outcomes for children whether they are brought up in a same sex family, or not. The critical welfare considerations are the stability and security of the relationships within the family.
50. Whatever the consequent legal status of the parties as parents HS and KS chose JK to father their child, he had some involvement in the preparation for the birth and was allowed some contact in the first four months of X's life, but it was very limited, always in the presence of another. I agree with Mr Anderson, there was a stage when the relationship between the parties could be described as good, but the evidence demonstrates it started to deteriorate before X's birth and began its rapid decline soon afterwards. The result is JK has not seen X for 14 months. She has no existing psychological relationship with him.
51. It is clear on the evidence that until very recently JK considered himself to have a future parental role in X's life. It is only in his closing submissions does he start to indicate any willingness to negotiate his proposals for contact. Prior to that the tenor of his detailed written material demonstrates he wishes to play a significant role in X's life. It is most recently stated in his skeleton argument lodged for this hearing, where he states at paragraph 14

*'..the Respondents will not give X the choice to get to know me without Her Ladyship granting the Child Arrangements Order. I can become one of X's primary carers once she forms an attachment with me, children adapt well to new environment, X being at this young age will make the transition a lot easier'.* That message could not be clearer. In addition, it comes with the additional insidious message that X's needs are not being fully met by HS and KS.

52. In his oral evidence JK sought to draw back from that, stating that he recognized HS and KS as parents for X but that rang hollow in the light of the content of his skeleton argument. What he says in his recent skeleton argument is consistent with his view with was what was agreed should be his role in 2010, and it is a recurring theme in all his

written statements. I am clear that is his view as to the role he should play in X's life. That conclusion is supported by the proposals he put forward in September for extensive contact with X, consistent with that of a separated parent which in my judgment is what he considers his position to be. There was no indication in his contact proposals in September that he had taken on board any of the matters set out in the detailed report from Ms Adams, filed two months earlier. There is no real insight shown by him that welfare considerations for a child are not fixed in stone, they are dynamic and change over time.

53. The effect of JK's view of his role in relation to X on HS and KS is palpable. They fear he will undermine their position as parents for X; they vividly described this to Ms Adams and in their oral evidence. The impact of these proceedings and JK's requests is they consider they have lost control as parents in making decisions about X and their family life. This they described as the most difficult aspect of these proceedings and the consequent impact on their relationship. They have both required considerable emotional support to manage the feelings about this fear and JK's application. When HS gave oral evidence her level of distress was tangible, even making due allowance for the inherent stress in this type of application. She has recently been diagnosed with situational anxiety and her descriptions of the steps she was taking to avoid meeting JK in the area were illustrative of the daily effect of the strain she feels under.
54. I agree with Ms Adams assessment of the impact of this on X *'given that X is so young, her development is dependent upon interaction with her caregivers. Their preoccupation with anxious thoughts may result in less responsive care, which may have an impact on the quality of care that X receives. Her young age means she is wholly dependent upon her parents to meet all of her needs, both physical and emotional, so the impact of stress upon parents of very young children is an important consideration'*.
55. HS and KS were clear in their evidence, which I accept, that they recognize that X is going to ask questions about her genetic background which they will need to deal with. What they want to do is deal with such questions at her own pace, fully recognizing that X may wish to meet or have more information about JK in the future. They agree with the recommendation of Ms Adams that an annual exchange of letters is the best way in the circumstances to keep this option available for X in the future.
56. When considering the welfare checklist the following are relevant considerations:
  - (1) X is too young to express any views about contact with JK. She has no existing relationship with JK.
  - (2) All her physical and emotional needs are being met by the excellent care being provided by HS and KS. She is wholly dependent on them.
  - (3) Any direct contact between X and JK would bring little positive benefit to X and it would put at risk the security of her placement, both in the short and long term. Infrequent direct contact will not maintain any existing relationship between X and JK and would very likely lead to the expectation by JK that it should increase. Any direct contact would be against the express wishes of HS and KS and that may further undermine X's secure placement with them.
  - (4) JK's view about his future role in X's life as being, in effect, akin to that of a separated parent will undermine X's security of placement with HS and KS,

such that it could adversely impact on her welfare. She would very likely pick up on negative messages from JK about HS and KS which would risk causing her emotional harm.

- (5) JK's lack of insight and focus on his rights and the adult conflict without considering the reality of X's position and those who care for her, make the prospect of any sustainable change in his behaviour very unlikely. This is supported by his somewhat over simplistic view that they can put the past behind them with professional help.
  - (6) X's need for information about her genetic background can be met by a combination of indirect contact and the recognition by HS and KS of the need for X to have this information and knowledge.
57. Having considered the matters set out above and keeping X's welfare needs as the court's paramount consideration I have reached the conclusion that there should be no direct contact between X and JK. To order it would place X at an unacceptable level of risk of emotional harm by putting the security of her placement with HS and KS at risk. Indirect contact once a year meets her current welfare needs to have information about her biological father. This conclusion is supported by the careful analysis undertaken by Ms Adams which I accept. Her report was a model of its kind, supported by her oral evidence which was measured, balanced and well reasoned.
58. I only differ from Ms Adams on one aspect. I have carefully considered the position about photographs. HS and KS fear that JK will post any photographs on social media. They rely in particular, on the unfortunate events in March when within moments of walking out of court where the issue of not putting photographs on Facebook had been specifically raised in court JK did just that. It was not until his closing submissions, some seven months later, that he has specifically apologised for that. The distress it caused HS and KS was obvious, and his lack of insight about that is revealing.
59. Whilst I understand the point made by Ms Adams about a photograph assisting the written communication, I consider there is a real risk that JK will be unable to resist putting any photographs on social media with consequent distress to HS and KS, which is not in X's interests. The written communication to JK will not include photographs of X until 2019 to allow for three exchanges of written communication to take place, for there hopefully to be a re-building of trust and it will be a condition of any order that none of the material sent to JK (photographs or otherwise) is to be posted by JK on social media of any kind.