Case No: FD08P01237

Neutral Citation Number: [2015] EWHC 2839 (Fam)

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/10/2015

Before :

MR JUSTICE COBB

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Re A and B (Contact) (No 4)

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Miss Daisy Hughes (instructed by **Local Authority Solicitor**) for the Local Authority
Ms Deborah Baxter (Solicitor-Advocate from **Baxter Harries**) for M1 and M2
Miss Sarah Evans (by **Direct Access**, *pro bono*) for F1 and F2
Miss Sarah Cove (Solicitor from **Miles & Partners LLP**) for A
Ms Liz Dronfield (Solicitor from **Bindmans**) for the Children's Guardian

Hearing dates: 9 and 10 September 2015,
Supplemental written submissions: 25 September 2015

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Judgment

The Honourable Mr Justice Cobb :

For ease of reference:	
F1	**= The biological father**
F2	**= The biological father's partner**
M1	**= The biological mother**
M2	**= The biological mother's partner**
A	**= The older child (aged 14)**
B	**= The younger child (aged 10)**
NDS	**= The social worker**

Introduction

1. This judgment is the sequel to three previously published judgments concerning the subject children, known as A (now aged 14) and B (now aged 10); I expect that it will truly be the final chapter in this litigation. For ease of reference, the three previous published judgments are to be found at:

   i) [2013] EWHC 2305 (Fam) (July 2013);

   ii) [2013] EWHC 4150 (Fam) (December 2013);

   iii) [2014] EWHC 818 (Fam) (March 2014).

   I gave a further short judgment on 4 June 2015 which is unreported, but the key elements of which I discuss a little below.

2. When delivering judgment and making orders in this case in March 2014 ([2014] EWHC 818 (Fam)), I sincerely hoped that I was bringing to a long overdue conclusion this unusually complex litigation concerning these two children. At that time, I made orders for direct contact between B and her fathers, granted a 12 month supervision order in favour of X County Council, and made a 15 month-long order under *section 91(14)* of the *Children Act 1989* directed to all lay parties.

3. On 16 February 2015, X County Council applied to extend the supervision order for a further period of six months, initially in respect of both A and B, but in the event only in relation to B. Directions for that application were given on 3 March 2015. At a subsequent hearing on 4 June, the mothers and the fathers both indicated their intention to launch cross-applications for further private law orders as soon as free to do so (i.e. once the *section 91(14)* orders which I had made on 20 March 2014 lapsed). They set out their positions fully at that hearing, and with the concurrence of the parties, I proceeded as if the applications had been formally made, and determined some of them summarily. Specifically, at the June hearing:

   i) I extended the supervision order to 4 October 2015 in relation to B (but not A);

   ii) I dismissed the fathers' applications for (a) a suspended residence order, (b) orders warding the children and (c) permission to instruct a yet further expert

witness (which would, on my reckoning, have brought the tally to 19 different professionals whom the children have been expected to see);

iii) I refused the fathers' application for permission to appeal (so far as I know they did not renew that application to the Court of Appeal);

iv) I adjourned the issues discussed at [4] immediately below.

4. The issues which were incapable of summary determination were adjourned to a two-day hearing which was listed for 9 and 10 September. At this hearing I was invited to consider:

i) the fathers' application to designate an authority other than X County Council in respect of the supervision order, alternatively they requested that the work of X County Council should be supervised by an independent social worker (it is not, in the event, necessary for me to elaborate on the detailed and quite specific reasons for this application);

ii) the parties' cross-applications to vary, discharge and/or enforce earlier orders for direct contact between the fathers and B;

iii) the mothers' application for the renewal of an order under *section 91(14) Children Act 1989*.

In their position statement (dated 1 September 2015) prepared for this hearing, the fathers once again pressed their case for a suspended residence order, pleading similarities between this case and the decision of Coleridge J in *Re A (Suspended Residence Order)* [2009] EWHC 1576.

5. Thus the scene was set.

6. Wholly unexpectedly, at the outset of the hearing on 9 September the fathers informed the Court (through their counsel) that they no longer sought to pursue their applications (which I have identified in [4](i) and (ii) above), and (contrary to their position articulated in writing in their Position Statements) did not oppose the mothers' application for an order under *section 91(14)*. Specifically, they did not seek any variation or enforcement of the contact order, did not press for any direct contact with either girl, and did not invite any further consideration of a suspended residence order; they indicated that they had resigned themselves to take away from this litigation the modest expectation of continued indirect contact with their daughters.

7. A significant degree of consensus then emerged between the parties about the form of order, and I am required to adjudicate on only minor issues:

i) Whether an *order* should be made in relation to indirect contact;

ii) Whether there should be a preamble about F1's entitlement to school records of the children, and if so, in what terms;

iii) The duration of the *section 91(14)* order.

Background

8. To recap, I should briefly explain that the case concerns A and B; they are sisters and are now aged 14 and 10. Litigation in the High Court concerning these two young people began seven years ago, in June 2008, when they were respectively 7 and 3, and has continued almost uninterrupted since that time. A and B are the two biological children of F1 and M1; both F1 and M1 are in permanent civil partnerships (respectively with F2 and M2). I propose to refer to F1 and F2 as the 'fathers' and M1 and M2 as the 'mothers'. All four are effectively parents to these two children. The fathers have not had any routine contact with the children for many years.

9. Even a cursory review of the earlier reported judgments (listed at [1] above) will readily expose the complexities of this extraordinary case. I have extensively previously rehearsed the history of the litigation and (where relevant) the lives of the protagonists in those earlier judgments, and it is unnecessary for me to repeat that material here.

10. As I made clear (see [2013] EWHC 2305 (Fam) [7], [2014] EWHC 818 (Fam) [116]) the circumstances in which I was first involved provided a far from auspicious context for making effective orders to achieve positive outcomes for these two children and their parents. The litigation had already been ongoing for many years, there had been virtually no judicial continuity, different strategies had been attempted and multiple experts instructed in an attempt to unblock the impasse between the parties. Prominent among the steps which I took between July 2013 and March 2014 in an attempt to resolve the dispute were:

    i) The engagement of Dr. Mark Berelowitz in meeting with the children and the parties and providing his expert opinion to the court;

    ii) A direction under *section 37 Children Act 1989*; this in turn prompted an application for a public law order by X County Council;

    iii) Making an order for the separate representation of A in the proceedings, and giving her a specific voice; part of that exercise involved me meeting with A herself;

    iv) Consolidating the public law proceedings with the private law proceedings;

    v) Making a supervision order;

    vi) Endorsing a plan for interim contact between B and the fathers which took place on one occasion (December 2013);

    vii) Making an order under *section 91(14)* of the *Children Act 1989* to give the parties and the children some peace from the litigation.

11. Since March 2014, the girls have continued to live with M1 and M2. Reports of their progress are all positive. Teachers from their respective schools speak in glowing terms about their ability, aptitude, and about their personalities. Repeat social work visits to their home have yielded no specific concerns. The guardian has visited the children at home and, similarly, speaks only in positive terms about their development.

12. The social worker reported that the conclusion of the proceedings in March 2014 brought welcome respite for the girls who "slowly rallied to a more positive view of their fathers", with some "encouraging small changes" in the children's attitudes; the social worker further recorded that the mothers were "observed to openly support the care plan in front of the children". This did not, however, produce the actual contact which I had ordered.

13. In the period since March 2014, A has met with the fathers once, at a 'Child in Need' review meeting on 24 February 2015. The meeting, albeit tense, passed without upset; the social worker reported that A "gave a heartfelt and very eloquent plea to her fathers to leave her alone, and that she knew where they were should she wish to make contact in the future". The fathers responded at the meeting (the social worker reported) by acknowledging her views and telling her that they loved her. The fathers told me in their position statement that they were impressed by A's articulacy and presentation. A attended the follow-up review meeting on 1 June 2015, believing that the fathers would be likely to be there, but they had not in fact attended as they were concerned about the emotional context of a meeting with A so close in time to the forthcoming court hearing.

14. None of the direct contact between B and her fathers which I had ordered in March 2014 has taken place. The cautious optimism which I expressed (at [147] of [2014] EWHC 818 (Fam)) proved to be misplaced. Although the supervision order and the abeyance of court process helped to shift attitudes to some extent, this regrettably had little actual impact on stimulating the relationships which I, and my predecessor judges, have all considered to be important to the childrens' well-being. The social worker reported that B at one time expressed a wish to see her fathers in "a controlled environment", and visits were therefore set up in May 2014 and February 2015; these were cancelled shortly before the appointed days when B expressed herself too distressed to attend (M2 described B as getting "cold feet" about seeing her fathers). B has since remained steadfast that she does not want to see the fathers. Both A and B have prepared a 'chart' which has until recently been kept in the family living room, which bears the title: "Why we don't want contact"; on this 'chart' B sets out her reasons for her views, making complaints which refer to events significantly in the past.

15. Indirect contact has however taken place between the fathers and the girls, with cards, gifts and letters passing from the fathers to the children with token responses in reply. Both girls have expressed their resistance even to this form of contact, but it has, in fairness, happened.

16. Lifestory work has been undertaken by the social worker with the girls and specifically with B, designed to provide a context in which B can see her fathers, to enhance her sense of family background and to reinforce the importance of the fathers in her life; this was undertaken in accordance with the expectations set out in the care plan. In some respects, both girls engaged well with this work, particularly being intrigued by the fathers' extended family network of relatives who live abroad.

17. The Children's Guardian is pessimistic (as was her predecessor in that role) that the girls' views about direct contact will soften for as long as the mothers' mindset about the fathers and contact remains unchanged. Both girls speak of contact, and the litigation, "ruining" their childhoods, and consider the fathers to be solely to blame

for the protracted litigation and its impact on M1's mental health. These views represent a recognisable echo of those expressed by the previously appointed Guardian, reporting nearly four years ago (and long before my first judicial involvement) that:

> "Whilst I have no doubt in my mind that [A] and [B] are much loved children, the dispute between the adults has blighted their childhoods. That both children are suffering emotional harm because of this and the ongoing court proceedings is without question. They are likely to suffer further emotional harm if all the adults concerned are unable to reach some sort of accommodation with each other". (November 2011) (emphasis by underlining added).

18. It remains impossible to define with confidence the prevailing reason(s) for the children's views. A letter sent from X County Council to the fathers' solicitors some two months after my order in March 2014 exposed the then current thinking of the social worker that "[B]... has become brainwashed and is now resistant to contact with the fathers". This comment was subsequently disowned by the Local Authority, but plainly in my view it has legitimacy. That the girls express themselves with ever-increasing levels of passion cannot be in doubt; in her recent witness statement, the social worker referred to an occasion in April 2014 when she met B speaking in an "excitable voice" about her fathers, standing on the dining room table, proclaiming that "the child makes the decisions in this home, they are in control here". B is described as having become "quite vocal and able to assert her views in an independent way"; she is also reported to have said to the social worker that "she has told her views to so many professionals and felt she has not been heard".

19. The social worker, NDS, has in my view worked conscientiously and constructively with the girls over the last 18 months, tenaciously, in some respects and as I have indicated above has been able to observe, if not actually stimulate, some thawing in the attitudes of both A and B to relationships with their fathers. Paradoxically, the relief experienced by A that she was not to be the subject of a direct contact order paved the way for her to consider some direct contact in the future.

20. Concluding this review of recent events, I turn to address M1's mental health. Dr. R, (M1's treating psychiatrist) prepared a recent report (July 2015), disclosing that M1 has enjoyed a relatively stable period of mental health since the hearing in March 2014, with one brief in-patient admission in July 2014 (for reasons ostensibly unconnected with the proceedings) suffering with stress. He also reports that the mothers have been seeing a family therapist, which has been assessed as helpful. Dr. R maintains his opinion that M1 has a bipolar affective disorder which is largely in remission, but has more specifically experienced episodes of acute stress disorder; his latest report concludes:

> "I believe that stress from the case is likely to cause ongoing mental suffering for [M1] and consequently difficulties for [M2], [A] and [B] until the case is concluded. This is clearly supported by the pattern of her presentation."

The fathers' position

21. As I earlier outlined (see [4] above), in advance of the hearing, the fathers had filed a position statement (1.9.15) indicating that they would be inviting me to make the following orders:

    i) A suspended residence order;

    ii) Enforcement / variation of the contact order;

    iii) An extension of the supervision order for a further 12 months;

    iv) The replacement of X County Council or appointment of an independent social worker to oversee the work of X County Council.

22. As I outlined at [6] above, on the day of the hearing, they indicated a radical and, speaking for myself at least, wholly unexpected change of position. It is agreed between the parties that I should summarise in my judgment the essence of the father's position at this hearing, as it was explained to the Court. I hope that I do justice to it.

23. The fathers no longer pursue any application for direct contact, but seek orders for indirect contact only; they described this as "the biggest decision of their lives". They explained that they felt that they should never have found themselves "in this situation", believing that the mothers had, from some time ago, begun to view them as a threat to the family life which the mothers had established with the girls; the fathers wished to emphasise that it was never their intention "to take anything away from" the mothers; they had wanted to "add, enhance and enrich" the children's lives, and still do. Their pursuit of contact, and of a meaningful relationship with the girls, stemmed from their love for the girls and a wish to be a part of the girls' lives; they had no wish to undermine the mothers. They informed me that they still worry about the girls, about M1's mental health and its impact on family life, and of the impact of domestic violence on the girls.

24. The fathers expressed the concern, which I readily understand and acknowledge, that the children should not believe that by not pursuing direct contact now the fathers have abandoned them; they do not want the children in years to come to blame them for not doing all they could to try and achieve the relationship which they (and I add the Court) consider to be in the best interests of the girls. They informed me that they want A and B to know that they "respect their wishes and feelings". They attribute blame for the current situation in part to the mothers, in part to the ineffectual (indeed unhelpful) efforts of X County Council, and in part to the Family Justice system. They feel unsupported by the social workers.

25. They acknowledge, with obvious sadness, that "we are where we are, whatever the rights and wrongs". They wish to emphasise that they love the children, they always will, they will always be there for them, and interested in them. They hope that the children will one day look back at the happy times of contacts enjoyed in the past. They would seek orders for indirect contact in the hope that it will happen, maintaining a link with the children on which, they hope, further relationship will build.

Response of the parties

26. I have set out in [23] – [25] the fathers' position reasonably fully (albeit not verbatim) as it represented such a significant sea-change in their approach. The other parties to the litigation responded briefly, each acknowledging – genuinely in my view – the sincerity of the fathers' wish now to relieve the children of the burden of ongoing litigation, and the courage and pain involved in making this decision. Unsurprisingly, X County Council defended its involvement over the last two years, and the work which it has been able to effect with the family, including the facilitation of one actual contact between B and the fathers (December 2013) and some mutual indirect contact, the completion of life-story work, and the engagement of the children. The mothers refuted the apportionment of blame for the current situation and pointed to the positive independent reports of the children's development from the school and others, reflecting a satisfactory home life and upbringing; it was observed that the cessation of the proceedings would be bound to have a positive effect on M1's mental health. Ms Baxter confirmed on instruction that M2 (M1 was not at court) would "encourage" the children to participate in the indirect contact, and will "encourage" direct contact in the future, and – on enquiry from me – confirmed her "support" for this if the girls, or either of them, want it to happen. The Children's Guardian and the children's solicitor acknowledged that the fathers have always acted out of concern for the girls, and in what the fathers believed sincerely to be in the children's best interests. Their stance today reflected this too.

Indirect contact: Order or no order

27. A is opposed to any form of child arrangements order in relation to her. She states that she resents the involvement of the court, and specifically invokes *section 1(5)* of the *Children Act 1989*, seeking to persuade me that it cannot be established that an order is better for her than no order. This view is shared by the mothers. There is overall less resistance to a child arrangements order in relation to B.

28. In considering whether I should make an order in respect of indirect contact between the fathers and A, I acknowledge and respect A's developing (indeed her well-developed) autonomy and independent thinking. I bear in mind (and accept) the social worker's evidence that by bringing (or at least attempting to bring) the proceedings to an end in March 2014, and not renewing the supervision order in relation to A in June 2015, A felt more free to see the potential benefits of contact, and that stepping away from making a court order now may give her further freedom to reach her own conclusions.

29. However, I consider that making a child arrangements order for indirect contact is better for A (with reference to *section 1(1)* and *1(5)* of the *Children Act 1989*) than making no order. I so conclude for the following main reasons:

    i) I wish to re-inforce to A that the ***Court*** believes that this limited form of relationship with her fathers is in her best interests;

    ii) An order will regulate the frequency of the contact, providing a structure for it; without an order, there would be no framework for the indirect contact; it is better that A and the fathers have a common, managed, expectation about the frequency and type of communication;

iii) It brings her position into line with her sister; the girls are close; both have strong views, I accept, and both are likely to benefit from this modest but important link with their fathers.

30. The frequency of the indirect contact is not essentially in dispute, and will provide for the fathers to be permitted each year to send to A and to B:

i) a letter / card / gift on the occasion of Christmas and their birthdays and a newsletter in October / September;

ii) a letter / card in response to the children's January newsletter;

iii) a letter/ card in response to the children's July newsletter.

31. It is agreed (entirely appropriately in my view) that the mothers will:

i) ensure that any letters / cards / gifts from the fathers are brought to the attention of the girls upon receipt and shall encourage the children to respond to their fathers on each occasion;

ii) facilitate the sending of birthday cards from the children to each of their fathers in [the relevant month of their birthdays] of each year;

iii) facilitate the sending to the fathers of a newsletter relating to both children in January and July of each year;

iv) retain any cards / letters received from the fathers for the girls' future reference;

v) facilitate the sending of any such other communication from the children to their fathers as the children may wish.

32. Those provisions will be spelled out on the face of the order relevant to ***both*** girls.

Access to school records/reports

33. The fathers seek judicial approval for the insertion of a preamble on the face of the Order which reflects their entitlement to receive the children's school reports, and to meet the children's class teachers and/or Head Teachers on two occasions each year. F1 has secured this type of arrangement with B's school, but only after a considerable struggle; he wishes to replicate the arrangement with A's school and any schools which the children attend in the future. F1 has (pursuant to a consent order granted in March 2011) parental responsibility for both subject children. At the time when parental responsibility was being negotiated, the parties signed up to a 'Parenting Co-ordination Plan' which contained the provision that "[M2] and [M1] recognise that holding PR entitles [F1] to engage with the school independently to arrange for himself to receive school reports" (emphasis by underlining added). As the fathers submitted, F1's ability to interact with the children's schools, however infrequent, is the last vestige of his parental responsibility.

34. A (stressing that she is a *Gillick* competent young person: *Gillick v West Norfolk And Wisbech Area Health Authority and Department Of Health And Social Security*

[1986] AC 112) objects to her school records and school reports being made available to the fathers. She asserts that she has sufficient maturity and understanding of the issues, having made a reasonable assessment of the advantages and disadvantages of the course proposed, to give 'true' consent to (or, in this case, the withholding of consent to) the disclosure of information from the school.

35. The mothers join cause with A; they assert that F1 "will use any such preamble to exert pressure on the school in the course of his ongoing and combative negotiations with them about this very issue".

36. Two issues are in play here:

    i) Should F1 be entitled to have school reports and/or access to school records in the face of opposition from A?

    ii) Should his entitlement (whatever it is) be recorded as a preamble?

37. I invited written submissions on the point given that it arose for the first time only when the detail of the order was being negotiated and was not, on the face of it, straightforward. In A's written submissions her position modified slightly; it was submitted on her behalf that any preamble to the order should reflect no more than a statement of who shares parental responsibility for her, and that it would then be a matter for A's school to decide whether any information should be given to F1. As A's solicitor made clear, A remains opposed to F1 receiving her school reports and information in relation to her education from her school.

38. The arrangements for parent access to school reports and records are different between the independent and the maintained sector. A attends an independent school.

39. Having considered the submissions carefully, the position appears to be broadly thus:-

    i) In relation to maintained schools, any parent (the term is widely defined) has a right of access to a pupil's educational *record* upon written request (see *section 576 of the Education Act 1996* for the definition of 'parent', and *regulation 5* of the *Educational (Pupil Information) (England) Regulations 2005*); a 'record' is any record of information which is processed by or on behalf of the school, relates to any person who is or has been a pupil at the school and originated from or was supplied by a member of the school staff; the right of access is subject to a number of exceptions which are not relevant for present purposes; this provision does not apply to independent schools;

    ii) An independent school is required to provide to parents an annual written *report* in relation to a child's educational attainment and progress (*Schedule 1, paragraph 24* of the *Education (Independent School Standards) (England) Regulations 2010*): viz:

> "an annual written report of each registered pupil's progress and attainment in the main subject areas taught is sent to the parents of that registered pupil except that no report need be sent where the parent has agreed otherwise."

The use of the term 'parents' suggests that the report must be provided to all parents.

iii) If a parent requests access to school *records* outside of the two situations outlined above, information may be obtained from any school is by way of a Subject Access Request under the *Data Protection Act 1988*. However:

a) The right of access is a right of the 'data subject', namely the child itself. A parent may exercise this right on a child's behalf, however a competent child can refuse to permit such information to be disclosed;

b) There is no set age at which a child can express a wish to prevent such information being released, although the Information Commissioner's Office (ICO) suggests 12 years as a guideline:

> 'Even if a child is too young to understand the implications of subject access rights, data about them is still their personal data and does not belong to anyone else, such as a parent or guardian. So it is the child who has a right of access to the information held about them, even though in the case of young children these rights are likely to be exercised by those with parental responsibility for them.
>
> Before responding to a SAR for information held about a child, you should consider whether the child is mature enough to understand their rights. If you are confident that the child can understand their rights, then you should respond to the child rather than the parent. What matters is that the child is able to understand (in broad terms) what it means to make a SAR and how to interpret the information they receive as a result of doing so."

c) The ICO also suggests a number of factors that are relevant, namely:

i) where possible, the child's level of maturity and their ability to make decisions like this;

ii) the nature of the personal data;

iii) any court orders relating to parental access or responsibility that may apply;

iv) any duty of confidence owed to the child or young person;

v) any consequences of allowing those with parental responsibility access to the child's or young person's information. This is

particularly important if there have been allegations of abuse or ill treatment;

vi) any detriment to the child or young person if individuals with parental responsibility cannot access this information; and

vii) any views the child or young person has on whether their parents should have access to information about them.

40. The submissions of the parties seemed broadly to confirm that F1 was entitled to receipt of the girls' school reports unless and until there is an order providing otherwise. As A is competent to conduct the litigation in her own name, it was open to her to instruct her own legal team to seek a prohibited steps order restraining such disclosure. She made no such application.

41. If F1 wished to seek information as to aspects of the children's educational records going *beyond* the school reports themselves, he would need to do this via a Subject Access Request under the *Data Protection Act 1988*. At this point however, the girls' objections would become relevant, and would it seems to me be likely lead to a refusal of the request in A's case but also quite possibly, in B's case.

42. It follows from the above that absent a prohibited steps order, F1 is entitled to the school annual reports; it will be open to the school to offer more information, and it is a matter for the school how they wish to respond to the father's request for meetings (akin to a parents' evening meeting). Such meetings, no more than twice per year, seem perfectly reasonable to me. However, as a *Gillick* competent young person, A's agreement to the sharing of wider information from the school *records* would appear to be necessary.

43. The fathers powerfully argue that A's welfare is paramount, and the Court could override the young *Gillick* competent person's wishes, where the child's welfare demands it. However, no convincing case is made out for giving the fathers access to greater level of information than would be contained in a school report. I therefore decline to direct that they should have wider access to the school records.

44. In view of the uncertainty generated by this issue between the parties, and the possible uncertainty generated within the school, I consider that it is in the girls' interests that a preamble be attached to the court's final order which should record for the avoidance of doubt that:

i) F1 has parental responsibility for A and B;

ii) F1 has the right to receive annual school reports from the children's' schools.

Extension of the order under section 91(14)

45. The mothers seek a renewal of the order under *section 91(14)* of the *Children Act 1989*; this provides that:

> "On disposing of any application for an order under this Act, the court may (whether or not it makes any other order in response to the application) order that no application for an

> order under this Act of any specified kind may be made with respect to the child concerned by any person named in the order without leave of the court."

46. As I observed in another context earlier this year (see *Re T (Section 91(14)* [2015] EWCA Civ 719), orders under this subsection are very much the exception not the rule, and are only made where the welfare of the child requires it, having regard to the guidance given by the Court of Appeal in *Re P (Section 91(14) Guidelines)(Residence and Religious heritage)* [1999] 2 FLR 573. In my March 2014 judgment I set out those Guidelines (see [160]), summarised the views of the parties, and continued as follows:

> "[162] I am satisfied that, against the background of this lengthy and troubled litigation, the children desperately need the reassurance of knowing that for a period of time there is at least a limited brake on further applications being brought before the court. I am equally sure that time needs to be given to relieve M2 of the "*unacceptable strain*" (per *Re P*) of these proceedings which I am satisfied have had such a deleterious effect on her mental health; recovery of her good health will, of itself, be of significant benefit to the children.
>
> [163] For the next twelve months, and for as long as the supervision order is in place, there is local authority monitoring of the family. At the end of 12 months, the local authority responsibility under *Part IV CA 89* will fall away, unless it applies to extend the order (*schedule 3, para.6 CA 89*). It remains to be seen whether A and B are still assessed at that time as children in need (entitled to services under *Part III CA 89*). By that time, I expect that a pattern of contacts will have been established, but if not, I recognise that the fathers may have (although they should not interpret this as encouragement) a legitimate case for restoring the matter to court.
>
> [164] I propose to make an order under *section 91(14)* providing that no application under *Part II CA 89* may be made with respect to A and B by F1, F2, M1 or M2 without leave of the court until 19 June 2015 (i.e. for 15 months, the duration of the supervision order, plus three months). This will allow the local authority time and opportunity to work with this family. I am satisfied that the relatively short duration of this order, while the supervision order runs its course, strikes the correct, and proportionate, balance between intruding on the rights of the parties to bring disputes concerning their children before the courts, while promoting the welfare of the subject children. I make the order for this period conscious that a specific duty is imposed on the local authority (*section 35(1)(c)(i)*) to apply to the court during the next 12 months for variation of the

> supervision order where it considers that the order is not being wholly complied with".

34. The mothers initially sought to persuade me that orders under *section 91(14)* should be made in respect of the girls until 2021, namely B's 16th birthday. By the conclusion of the hearing, consensus had emerged between the parties that (a) it was appropriate and in the girls' interests that an order should be made, and that (b) subject to my approval, a period of two years would be proportionate.

47. I need no persuading that further application to the court in the near future by either party is likely to be harmful to the children, and in particular to the stability of their family life; any resumption of litigation would be likely to have a deleterious effect on M1 whose fragile mental health can withstand few challenges. Moreover, as things stand it seems to me that no court order is likely to achieve any change in the current situation. I am wholly unpersuaded that it would be principled or proportionate to impose an order which would last for another six years as the mothers initially proposed. Given the obvious interference with these parties' fundamental access to justice, I recognise that I ought to impose an order for the minimum period necessary, having regard specifically to the harm which it is intended to avoid (see *Re P*, Guideline (10)). In these circumstances, it seems to me that an order for two years from now would indeed be appropriate.

Conclusion

48. The fundamental change of position adopted by the fathers at this hearing paved the way for a significant level of agreement about the shape and form of the order to be made. That agreement did not, however, profoundly alter the underlying dissonance between the parties. The order of course remains the Court's responsibility; I would be abandoning my responsibilities if I were to approve an agreement and make an order reflecting its terms if not satisfied that it accorded with the best interests of the children.

49. A and B are girls with promising futures, bright and inquisitive minds, and they enjoy good health. They are receiving good quality physical care in the homes of their mothers. The significant void in their lives is the lack of any meaningful relationship with their fathers. I share Dr. Berelowitz's concern that the 'high-wall fortress' which the mothers have constructed around the family, which excludes the fathers, (per Dr. Berelowitz; see [2014] EWHC 818 (Fam) [26]) will for the children's minorities remain solid and impregnable.

50. I remain clearly of the view that the fathers have something of real value and importance to add to the lives of the girls, a point both Hedley J and I have made repeatedly in the past (see for illustration, [2013] EWHC 2305 (Fam) at [26]). I continue to hope, though with increasing pessimism, that A and B will one day come to recognise this, and seek out F1 and F2. As for the mothers, as I indicated in my March 2014 judgment, I hope that they can fully absorb and accept that:

> "From a child welfare point of view, M1 and M2 have nothing to fear from the contact; indeed I would like to think that they may find that accepting and supporting contact is

> less arduous and emotionally draining than fighting it." ([2014] EWHC 818 (Fam) at [140]).

51. Whatever the position of the parties, the Family Court has the responsibility to ensure that the orders it makes are in the best interests of the child in the individual case. For some time now, there has been a tension in this case between judicially-driven efforts to achieve the restoration of meaningful contact (which would be of immeasurable benefit to the girls) and the considerable disadvantage and detriment of prolonging the proceedings (with its obvious adverse impact on the girls, on the mental health of M1, and on the family as a whole). Two years ago I declared that I was:

> "… pessimistic about ever restoring contact in a manner which could be in the interests of the children, and I am concerned that efforts to achieve contact are causing more harm to the children than the good which may come from a relationship with F1 and F2." ([2013] EWHC 2305 (Fam) [86]).

In my more recent judgment I expressed concern that the childhoods have been "irredeemably marred by the ongoing court conflict" ([2014] EWHC 818 (Fam) @ [148]). I can do no more than repeat those sentiments here, with renewed emphasis.

52. As I conclude this judgment, I am bound to reflect that this is not a forensic success story; the Family Court has not been able to achieve what I, and my predecessor judges, have considered to be best for these girls. As Black LJ recently acknowledged in *Re H-B* [2015] EWCA Civ 389 at [61]/[62]:

> "Sometimes, family cases present problems that regrettably the courts cannot solve despite all their endeavours…. The fact that the courts cannot solve the problems presented by a case such as this one does not mean that they are insoluble. The solution so often lies in the hands of the parents".

This is one such case. A similar point was made by McFarlane LJ in *Re W (Direct Contact)* [2012] EWCA Civ 999, [2013] 1 FLR 494, para 78:

> "Parents, both those who have primary care and those who seek to spend time with their child, have a responsibility to do their best to meet their child's needs in relation to the provision of contact, just as they do in every other regard. It is not, at face value, acceptable for a parent to shirk that responsibility and simply to say 'no' to reasonable strategies designed to improve the situation in this regard"

And echoed by the President in *Re H-B* (supra) at [76]

> "… parental responsibility does not shrivel away, merely because the child is 14 or even 16, nor does the parental obligation to take all reasonable steps to ensure that a child of that age does what it ought to be doing, and does not do what it ought not to be doing"

53. All of these statements chime in the instant case. While systemic failings in the management of the case in the past have I believe contributed to the failure of contact (the lack of judicial continuity being the major factor: see [2013] EWHC 2503 (Fam) @ [129]), the system should not be blamed for the outcome today. The Family Court cannot work miracles; it has had to work in this case with highly intelligent people with "disordered" relationships and "distorted" thinking ([2013] EWHC 2305 (Fam) [33]). Court orders are blunt tools which are devised to regulate parties' actions, but they cannot change personalities, and cannot change the way people function as people; see in this regard McFarlane LJ in *Re A (Intractable Contact Dispute: Human Rights Violations)* [2013] EWCA (Civ) 1104 [2014] 1 FLR 1185 (see also [2014] EWHC 818 (Fam) [15]).

54. There is no reason to think that any new strategy deployed now would yield any different (or better) outcome (see *Re Q* [2015] EWCA Civ 991); indeed there is a real risk of producing something far worse. I have already found that the children have suffered significant emotional harm ([2013] EWHC 2305 [102] / [106] / [151]) attributable to the care given to them by their mothers, and remain of the view that all the parties in this case have paid a "very high psychological price" (see [2014] EWHC 818 (Fam) [117]).

55. The previously appointed Guardian told me two years ago that the proceedings had been "enormously stressful" for the children, and she cried out "for everything to end" ([2013] EWHC 2503 (Fam) [123]). That call must now definitively be answered. There is no proper basis for further court intervention; the children are, as they have been for some time, both weapons and victims of the battle between the parents, evermore resistant as the months have passed to having any direct contact with the fathers ([2013] EWHC 2305 (Fam) [63]). I am obliged in all the circumstances to sign off this order in the girls' best interests, although do so somewhat unenthusiastically given its limited contact provision.

56. I conclude this judgment as I opened the first ([2013] EWHC 2305 (Fam) [1]), by remarking that making contact happen, and making contact work, is one of the most difficult and contentious challenges in the whole of family law. Those who have had the patience and perseverance to read the judgments in this case in their entirety will see how this case illustrates the point all too vividly.

57. As discussed with the advocates, I propose to write again to the children separately to advise them of this outcome and to explain (in appropriate terms) this final judgment.

[END]