

Neutral Citation No: [2022] NIFam 25

Ref: HUM11889

*Judgment: approved by the court for handing down
(subject to editorial corrections)**

Delivered: 28/06/2022

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

IN THE MATTER OF THE CHILDREN (NI) ORDER 1995

**RE: X and Y – CONTACT, PARENTAL RESPONSIBILITY AND
NON-MOLESTATION ORDER**

**Jenny Cunningham (instructed by John Boston & Co) for the father A
Moira Smyth QC and Breige Austin (instructed by FG Patton) for the mother B**

HUMPHREYS J

This judgment has been anonymised to protect the identity of the children to whom the proceedings relate. Nothing can be published which will identify the children or their adult relatives.

Introduction

[1] Over the course of six days in 2020, McAlinden J conducted a fact finding hearing, following the principles in *Re L* [2000] 2 FCR 404, which was concerned with whether A had raped B and subjected to her to other physical violence. The learned judge delivered a detailed judgment, reported at [2020] NIFam 15. This judgment should be read in conjunction with those findings.

[2] X and Y are the two children of A and B and are now aged 7 and 3 years. There are three applications before the court:

- (i) An application by A for contact with X, pursuant to Article 8 of the Children (NI) Order 1995 ('the 1995 Order');
- (ii) An application by A for parental responsibility for X, pursuant to Article 7 of the 1995 Order; and

(iii) An application by B for a non-molestation order pursuant to Article 20 of the Family Homes and Domestic Violence (NI) Order 1998.

[3] At the outset I wish to express my gratitude to counsel and solicitors for the careful and sensitive manner in which these proceedings have been handled, as well as for the quality of the written submissions which I have received.

The Fact Finding Judgment

[4] In the *Re L* judgment McAlinden J made the following findings:

- (i) A subjected B to physical violence in June 2016, including on one occasion in front of X;
- (ii) A raped B on 14 June 2016; and
- (iii) A raped B on 25 March 2018, as a result of which Y was conceived.

[5] In relation to the findings of rape, it is clear that X was in the home at the time each of these occurred although it is not suggested he witnessed same.

[6] In addition to the findings of fact, the learned judge commented:

“[A] told the court a tissue of lies about B initiating this episode of sexual relations and he demonstrated woeful lack of insight immediately after the event when B clearly accused him of rape...A’s insensitivity and lack of regard to B’s physical and emotional integrity is unfathomable.”
[para 37]

[7] Following the events of June 2016, B and X left the family home in Bedford and sought refuge with Women’s Aid before moving to Northern Ireland in October 2016. They were successful in obtaining NIHE accommodation in Dungannon in late 2016. There was periodical contact between A, B and X until the second rape occurred on 25 March 2018.

[8] A discovered that B had become pregnant following the March 2018 rape by accessing her Amazon account without her consent. This led to a number of unwanted pregnancy related gifts and messages being sent to B by A.

The Legal Framework

(i) Contact

[9] By Article 8(1) of the 1995 Order, a contact order means “an order requiring the person with whom a child lives, or is to live, to allow the child to visit or stay

with the person named in the order, or for that person and the child otherwise to have contact with each other.” By Article 8(4), any parent of a child is entitled to make an application for a contact order.

[10] By virtue of Article 8(5), when the court is considering whether to make an Article 8 order, it shall only make an order when it considers that doing so would be better for the child than making no order at all. Welfare of the child is always the paramount consideration and the court must have regard, in particular, to the ‘welfare checklist’ under Article 3(3):

- “(a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);
- (b) his physical, emotional and educational needs;
- (c) the likely effect on him of any change in his circumstances;
- (d) his age, sex, background and any characteristics of his which the court considers relevant;
- (e) any harm which he has suffered or is at risk of suffering;
- (f) how capable of meeting his needs is each of his parents and any other person in relation to whom the court considers the question to be relevant;
- (g) the range of powers available to the court under this Order in the proceedings in question.”

[11] Also of relevance is Article 12A of the 1995 Order which provides:

- “(1) Where a court is considering whether to make a residence or contact order in favour of –
- (b) a prohibited person, the court shall consider whether the child has suffered or is at risk of suffering any harm through seeing or hearing ill-treatment of another person by the prohibited person.
- (2) A person is a prohibited person for the purposes of paragraph (1)(b) if either he is or the court considers that he should be prohibited by a non-molestation order under

the Family Homes and Domestic Violence (Northern Ireland) Order 1998 from molesting another person.

(3) Paragraph (1) is without prejudice to Article 3 (and in that paragraph neither sub-paragraph limits the effect of the other sub-paragraph)."

[12] Experts in the field, and the courts, recognise the benefits which accrue to children from contact with both their parents. This is sometimes described as a presumption in favour of direct contact between a child and a parent following separation which can be rebutted in the event that contact would be inimical to the interests of the child.

[13] In *Re M (children)* [2013] EWCA Civ 1147 Lady Justice Macur had considered contact against the backdrop of domestic violence saying:

"A child's continuing relationship with a non-residential parent is highly desirable and contact should not be denied unless the child's welfare demands it. Domestic violence is not, in itself, a bar to direct contact, but must be assessed in the circumstances as a whole..."

[14] Any application under Article 8 of the 1995 Order will engage the article 8 rights to family life enjoyed by parents and children and enshrined in the ECHR. The denial of contact to a father will infringe his right to family life whilst the making of such an order, in certain circumstances, may infringe the right of the mother. The article 8 rights of a child could be affected by either course of action. A court interfering with article 8 rights must therefore do so by the most proportionate route which recognises the welfare paramountcy principle.

Parental Responsibility

[15] By Article 5(2) of the 1995 Order, where parents were not married or in a civil partnership at the time of a child's birth, the father only has parental responsibility if he has acquired it in accordance with the Order.

[16] Article 6 of the 1995 Order defines 'parental responsibility' as meaning:

"All the rights, duties, powers and responsibilities and authority which by law a parent of a child has in relation to the child and his property."

[17] By Article 7(1), parental responsibility may be acquired by a father who was not married to or in a civil partnership with the mother at the time of the birth when:

- (i) He becomes registered as the child's father; or
- (ii) He enters into a parental responsibility agreement with the mother; or
- (iii) A court orders that he has parental responsibility.

[18] The criteria governing an application to the court for the grant of parental responsibility were considered by Gillen J in *Re T and P* [2001] NIFam 19 as including:

- “(a) The degree of commitment by the father towards the child.
- (b) The degree of attachment between the father and the child.
- (c) The reasons why the father is applying.”

[19] Any application under Article 7 is subject to the welfare paramountcy principle of Article 3. It is also recognised that the article 8 rights of both parent and child are engaged. In *Strand Lobben v Norway* [2020] 70 EHRR 14 the Grand Chamber held:

“... the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life, and domestic measures hindering such enjoyment amount to an interference with the right protected by this provision.” [para 202]

[20] In the context of an application to terminate parental responsibility, the interaction of these legal principles was distilled by McAlinden J in *Re DD* [2019] NIFam 17 into the following propositions:

- “(a) The concept of parental responsibility describes an adult's responsibility to secure the welfare of the subject child which is to be exercised for the benefit of the child not the adult;
- (b) When the court is considering an application for termination of parental responsibility, the child's welfare will be the court's paramount consideration;
- (c) The paramountcy test is overarching and no one factor that the court might consider in a welfare analysis has any hypothetical priority;

- (d) There is ample case-law describing the imperative in favour of a continuing relationship between both parents and a child so that ordinarily a child's upbringing should be provided by both parents and where that is not in the child's interests by one of them with the child having the benefit of a meaningful relationship with both;
- (e) Where the court has applied the concept of the paramountcy of welfare, the court will have identified the correct principle to apply. If the court analyses welfare by reference to the welfare checklist, the court will have provided itself with an appropriate analytical framework against which to provide reasons for its decision. However, the court may look at other potentially relevant factors such as parenthood, commitment, attachment and motive so long as the court does not raise any one or more of these factors to the status of a competing presumption or test by which the application is determined;
- (f) The court must have regard to the fact that the removal of parental responsibility or indeed the refusal to make such an order clearly involves an interference with article 8 rights of one or more of the individuals at the heart of the case and, therefore, any such interference must be in accordance with the law, necessary and proportionate in the sense that the court must take the most proportionate route to a welfare resolution which is consistent with the best interests of the child concerned;
- (g) The test by which to judge proportionality is as described by Lord Reed in *Bank Mellat* [2013] UKSC 39. The judge has to consider:
 - (i) whether the objective of the measure is sufficiently important to justify the limitation of a protected right;
 - (ii) whether the measure is rationally connected to the objective;

- (iii) whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective; and
- (iv) whether, balancing the severity of the measure's effects on the rights of the persons to whom it applies against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter."

Non-Molestation Order

[21] Article 20 of the Family Homes and Domestic Violence (NI) Order 1998 states:

"(1) In this Order 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 Article 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 or, in a case falling within paragraph (2)(b), the person for whose benefit the order would be made; 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.
- (6A) A non-molestation order may exclude the respondent from a defined area in which a dwelling-house is included, any other defined area and any premises specified in the order.
- (7) A non-molestation order may be made for a specified period or until further order."

Domestic Abuse and Coercive Control

[22] There has been much progress in recent years in developing a societal understanding of the nature and impact of domestic abuse. In particular, the form of domestic abuse now commonly described as coercive control has been properly recognised.

[23] Section 2(2) of the Domestic Abuse and Civil Proceedings Act (NI) 2021 defines 'abusive behaviour' in relation to 'B' as including in particular:

- "(a) behaviour directed at B that is violent,
- (b) behaviour directed at B that is threatening,
- (c) behaviour directed at B, at a child of B or at someone else that –
 - (i) has as its purpose (or among its purposes) one or more of the relevant effects, or
 - (ii) would be considered by a reasonable person to be likely to have one or more of the relevant effects."

[24] The 'relevant effects' referred to are defined in section 2(3) as:

- "(a) making B dependent on, or subordinate to, A,

- (b) isolating B from friends, family members or other sources of social interaction or support,
- (c) controlling, regulating or monitoring B's day-to-day activities,
- (d) depriving B of, or restricting B's, freedom of action,
- (e) making B feel frightened, humiliated, degraded, punished or intimidated."

[25] This legislative provision reflects the greater understanding of how abuse may not entail actual physical violence but can manifest itself in patterns of coercive and controlling behaviour.

[26] The other respect in which the approach to domestic abuse has shifted is in the recognition by professionals of the impact of such abuse on children. In *Re L* (supra) the Court of Appeal in England and Wales commented:

"The family judges and magistrates need to have a heightened awareness of the existence of and consequences, (some long-term), on children of exposure to domestic violence between their parents or other partners. There has, perhaps, been a tendency in the past for courts not to tackle allegations of violence and to leave them in the background on the premise that they were matters affecting the adults and not relevant to issues regarding the children. The general principle that contact with the non-resident parent is in the interests of the child may sometimes have discouraged sufficient attention being paid to the adverse effects on children living in the household where violence has occurred. It may not necessarily be widely appreciated that violence to a partner involves a significant failure in parenting - failure to protect the child's carer and failure to protect the child emotionally. In a contact or other section 8 application, where allegations of domestic violence are made which might have an effect on the outcome, those allegations must be adjudicated upon and found proved or not proved. It will be necessary to scrutinise such allegations which may not always be true or may be grossly exaggerated. If however there is a firm basis for finding that violence has occurred, the psychiatric advice becomes very important. There is not, however, nor should there be, any presumption that, on proof of domestic violence, the offending parent has to surmount a prima facie

barrier of no contact. As a matter of principle, domestic violence of itself cannot constitute a bar to contact. It is one factor in the difficult and delicate balancing exercise of discretion. The court deals with the facts of a specific case in which the degree of violence and the seriousness of the impact on the child and on the resident parent have to be taken into account. In cases of proved domestic violence, as in cases of other proved harm or risk of harm to the child, the court has the task of weighing in the balance the seriousness of the domestic violence, the risks involved and the impact on the child against the positive factors, (if any), of contact between the parent found to have been violent and the child. In this context, the ability of the offending parent to recognise his past conduct, be aware of the need to change and make genuine efforts to do so, will be likely to be an important consideration.”

[27] The court considered the views of the experts, Drs Sturge and Glaser:

“Dr Sturge and Dr Glaser considered the question in what circumstances should the court give consideration to a child having no direct contact with the non-resident parent. In their view there should be no automatic assumption that contact to a previously or currently violent parent was in the child’s interests, if anything the assumption should be in the opposite direction and he should prove why he can offer something of benefit to the child and to the child’s situation. They said

‘Domestic violence involves a very serious and significant failure in parenting - failure to protect the child’s carer and failure to protect the child emotionally (and in some cases physically - which meets any definition of child abuse.)

Without the following we would see the balance of advantage and disadvantage as tipping against contact:

- (a) some (preferably full) acknowledgment of the violence;
- (b) some acceptance (preferably full if appropriate i.e. the sole instigator of

violence) of responsibility for that violence;

- (c) full acceptance of the inappropriateness of the violence particularly in respect of the domestic and parenting context and of the likely ill effects on the child;
- (d) a genuine interest in the child's welfare and full commitment to the child i.e. a wish for contact in which he is not making the conditions;
- (e) a wish to make reparation to the child and work towards the child recognising the inappropriateness of the violence and the attitude to and treatment of the mother and helping the child to develop appropriate values and attitudes;
- (f) an expression of regret and the showing of some understanding of the impact of their behaviour on the ex-partner in the past and currently;
- (g) indications that the parent seeking contact can reliably sustain contact in all senses.'

They suggested that without a - f above they could not see how the non-resident parent could fully support the child and play a part in undoing the harm caused to the child and support the child's current situation and need to move on and develop healthily. There would be a significant risk to the child's general well-being and his emotional development.

'Without these we also see contact as potentially raising the likelihood of the most serious of the sequelae of children's exposure, directly or indirectly, to domestic violence, namely the increased risk of aggression and violence in the child generally, the increased risk of the child becoming the perpetrator of domestic violence or becoming involved in domestically violent relationships and of

increased risk of having disturbed interpersonal relationships themselves.’

They added to the list (h) respecting the child’s wishes:

‘whilst this needs to be assessed within the whole context of such wishes, the older the child the more seriously they should be viewed and the more insulting and discrediting to the child to have them ignored. As a rough rule we would see these as needing to be taken account of at any age: above 10 we see these as carrying considerable weight with 6-10 as an intermediate stage and at under 6 as often indistinguishable in many ways from the wishes of the main carer (assuming normal development). In domestic violence, where the child has memories of that violence we would see their wishes as warranting much more weight than in situations where no real reason for the child’s resistance appears to exist.’

In addition to the above, other evaluations of how the contact would benefit the child would need to be made. The purpose of contact needed to be answered, whether it was designed to provide information and direct knowledge of the non-resident parent or to continue or develop a meaningful father-child relationship.”

[28] In *Re H-N* [2021] EWCA Civ 448, the court observed:

“The child can be harmed in any one or a combination of ways for example where the abusive behaviour:

Is directed against, or witnessed by, the child;

Causes the victim of the abuse to be so frightened of provoking an outburst or reaction from the perpetrator that she/he is unable to give priority to the needs of her/his child;

Creates an atmosphere of fear and anxiety in the home which is inimical to the welfare of the child;

Risks inculcating, particularly in boys, a set of values which involve treating women as being inferior to men.”
[para 31]

[29] The balancing exercise which the court is called upon to perform between the negative effects of domestic abuse against the benefits of parental contact will necessarily be a fact-specific one. As a result, references in some of the case law to a presumption in favour of contact is not necessarily a helpful one. In law, presumptions can be useful devices to reach a conclusion in the absence of evidence or to reverse the burden of proof but in family law cases concerned with the welfare of children, this is not the correct starting point. There will always be evidence in such cases which the court should carefully scrutinise, bearing in mind the principles underpinning the 1995 Order and the rights of the parties under article 8 of the ECHR.

The Evidence of the Parties

[30] On 20 July 2021 B was walking home from town with the two children when A drove past them. This was completely unexpected since A had been living in England. B had no reason to believe that A would be in the Dungannon area. Having observed their presence, A did a U-turn and pulled over in his car. A proceeded to hug X and informed B that he was looking at houses in the area.

[31] A couple of days later A contacted B using the Alexa app. Following the meeting in the street, X had been upset and keen to speak to his father and B then gave permission for X to call A. It is important to note that since the second rape occurred there had been no contact whatsoever between A and X. A second call took place some three days later. A then sent an electric toothbrush as a gift for X through Amazon, thereby demonstrating that he was aware of B’s address. It appears that he became aware of this during the litigation process.

[32] On 11 August 2021 B obtained an ex parte non-molestation order restraining A from using or threatening violence, intimidating, harassing or pestering B or from entering within 200 metres of B’s home.

[33] In February 2022 A moved from Bedford to a property he had purchased about a mile from B’s home in Dungannon.

[34] When cross-examined in the course of this hearing by senior counsel for B, it became apparent that A did not accept the findings which had been made by McAlinden J. He made the case that these were simply wrong, that B had assaulted him and that no sexual violence had occurred. When asked if he had taken steps to address his behaviour, A replied that no work was required as he had never been violent to a woman. On being pressed, he indicated that he would attend a course ‘if required.’

[35] In relation to the recent move to Dungannon, A's evidence was that he was planning to move to Belfast but a deal fell through and he 'randomly' ended up purchasing a house very close to B. He accepted that there was no need for him to move to Northern Ireland or to locate so close to his former partner but he did wish to rebuild a relationship with X.

[36] When questioned about his intentions in relation to Y, A stated unequivocally that he would be immediately making an application for contact with her also.

[37] B's evidence was that she has suffered serious psychiatric harm as a result of A's actions. She has symptoms of post-traumatic stress disorder as well as sustained anxiety and depression. The position has been exacerbated since the encounter in July 2021 and A's move to Dungannon. The experience of giving evidence, both before McAlinden J and in this hearing, has caused her to relive the traumatic events. She described feeling petrified at the thought of him living nearby and of the assertion that he was going to seek contact with Y.

The Psychiatric Evidence

[38] On 20 May 2020 Dr Maria O'Kane, Consultant Psychiatrist, produced a report in relation to the mental health of B which is considered by McAlinden J in his judgment at paragraphs [3] and [14]. In the opinion of Dr O'Kane, B is suffering from the effects of Post-Traumatic Stress Disorder and is fearful of her ex-partner. She has required a variety of antidepressant and anxiolytic medication. During the previous court hearing, she suffered a significant stress reaction triggered by the presence of A and the reliving of past traumatic experiences. As a result, special measures were put in place which permitted B to give evidence by way of video link both at the previous adjourned hearing and during the hearing of these applications.

The Evidence of the Court Children's Officer

[39] The Court Children's Officer, Ms Nadine McGorrey, prepared a report dated 27 January 2022, following the outcome of the fact-finding hearing, and which related to the question of contact between the child X and his father A. The report was based on five meetings with B, two meetings with X and one meeting with A as well as considering input from X's school, medical evidence and documents from the fact finding hearing.

[40] Ms. McGorrey noted the following significant issues:

- (i) B felt that A was motivated to control her in a coercive fashion;
- (ii) B acknowledged that A loved X and vice versa;
- (iii) B was concerned about the impact of contact on her own well-being;

- (iv) B believed that if contact progressed with X this would lead to A seeking contact with Y;
- (v) The lack of contact with his father has had a detrimental impact on X and his behaviour;
- (vi) A claimed that the July 2021 contact was unintentional;
- (vii) B was very concerned about the presence of A near her home;
- (viii) B had demonstrated 'resilience' by permitting indirect contact between A and X following the July 2021 meeting.

[41] X expressed his desire for contact with his father to Ms McGorrey and was curious to understand why he was not permitted to have a relationship with him. Despite the express finding in the judgment of McAlinden J, the CCO recorded that X had not witnessed any abusive behaviour between his parents. However, she does expressly recognise the potential impact on the mother's emotional and psychological well-being of contact and how that could have a direct impact on X.

[42] Ms McGorrey specifically recorded:

"[A] has not to date been required to or asked to engage in any work, course or counselling regarding perpetrating abuse, coercive and controlling behaviour within relationships. [A] reports that he does not believe that he requires such work, however would comply if required to do so."

[43] The recommendations of the CCO were that contact be considered with A in a contact centre on either a midweek evening or Saturday morning up to two hours. Such contact would not be fully supervised but staff would be present in the room. If contact progresses well, it could move out of the centre and be facilitated by some other suitable adult. Ms McGorrey also commented that A may benefit from engaging in some form of work, course or counselling to address abusive behaviour. She also expressed the view that X would benefit from a "shared narrative" from both his parents.

[44] Ms McGorrey's conclusions were robustly challenged in cross-examination by senior counsel for B. Her repeated reference in her report to the "allegations" made by B, rather than the acknowledgement that these had been found to have occurred in a fact-finding hearing by a judge, failed to properly reflect the context in which the report was sought. The absence of any reference to the fact, as found by McAlinden J, of violence being inflicted in front of X was troubling in light of the express statutory requirement imposed by Article 12A of the 1995 Order.

[45] The court has taken the opportunity to set out in some detail the approach to issues of domestic abuse considered in, inter alia, *Re L* and *Re H-N*. It is apparent from these that the attitude of the abuser is highly significant in the required balancing exercise. There was no reference in the CCO report to the fact that A utterly rejects the findings of McAlinden J. Ms McGorrey does recommend that A partake in some work or course in relation to abusive behaviour but his conscious decision not to do since the fact finding judgment of September 2020 was not referenced.

[46] When questioned, Ms McGorrey did accept that A's behaviour constituted coercive control. This stood in contrast to the finding that B had demonstrated resilience by permitting indirect contact in July 2021. The alternative analysis, that this represented an instance of B submitting to A's coercive control was not considered.

[47] Ms McGorrey also accepted that B did refer to other issues which may have had an impact on X's behaviour aside from his lack of contact with his father.

[48] The CCO report also did not address the question of the impact on Y of A having contact with X but not with her, or the assertion by A that he would be making a contact application in respect of Y.

[49] I have taken account of the findings and recommendations of the CCO and I consider these together with all the other evidence in making my welfare assessment as required by the 1995 Order.

Consideration

(i) Contact

[50] There are a number of options open to the court in considering an Article 8 contact application:

- (i) No order;
- (ii) No contact order;
- (iii) Direct contact order;
- (iv) Supervised contact order;
- (v) Indirect contact order; and
- (vi) Adjourn the application.

[51] As required by Article 3(5) of the 1995 Order I have considered whether the making of an order would be better for X than the making of no order at all. In common with the analysis of Keegan J in *B v D* [2020] NIFam 7, and in light of the traumatic events which have been documented, I have concluded that the interests of clarity, security and stability of this family require the making of an order.

[52] I have carefully considered all the evidence, the legal principles and the welfare checklist in coming to the following conclusions.

[53] A has completely rejected the findings of McAlinden J and has demonstrated no insight whatsoever into the impact of his behaviour. He does not accept that he caused any harm and seeks to blame B for the events which occurred.

[54] A's behaviour can demonstrably be categorised as falling into that of coercive control. In particular, this is evidenced by:

- (i) The gifts sent to B once A discovered she was pregnant through her Amazon account;
- (ii) The conscious decision to move from England to a location just one mile from B's home;
- (iii) The events of July 2021 when A caused his car to U-turn and stopped in the street to speak to B and the children;
- (iv) The further contact which he procured through the Alexa app;
- (v) The sending of a gift for the purpose of demonstrating that he knew B's address.

[55] Nothing has changed since McAlinden J made the finding that A's lack of regard for B's physical and emotional integrity was "unfathomable."

[56] In line with the principles set out above, I regard the physical and emotional abuse which A has caused to B as being a very significant failure in parenting. As a result of his conduct, B, X's primary carer, has been caused to suffer really serious harm.

[57] Moreover, A has taken no steps whatsoever to address his past or future behaviour. There has been no recognition of the violence, let alone its impact, nor has there been any demonstrated willingness to undertake any course of treatment or therapy. The statement that he would undertake such a course "if required" is revelatory of the attitude of A and his utter lack of appreciation of the harm he has caused. Equally, there is no suggestion of any contrition on his part.

[58] As a result, I have determined that the level of harm caused together with the approach adopted by A tip the balance strongly against direct contact. The court is particularly cognisant of the fact that physical violence was used against B in front of X and both rapes occurred while he was present in the property. The readiness of A to engage in such behaviour in close proximity to the child also shows a complete ignorance of the likely effect the conduct will have.

[59] Having had the chance to observe the demeanour of A whilst giving evidence, I am also concerned that he has a particular attitude towards women which he is likely to inculcate in X. Unless and until A develops an understanding of the nature and effect of his behaviour this risk will be present.

[60] I have therefore concluded, without hesitation, that there should be no order for direct contact, whether supervised or unsupervised, in this case.

[61] I am conscious of the admonition in *Re K* [2016] EWCA Civ 99 that the courts should grapple with all available alternatives before abandoning hope of contact. Whilst it was not actively pursued by either party at hearing, I am therefore obliged to consider the question of indirect contact.

[62] This gives rise to somewhat different considerations. The risk of harm associated with such an order may be less but it does exist, particularly in light of the history in this case of unwanted gifts being sent by A. I have determined that the proportionate interference with the article 8 rights of the parties, when considered in tandem with the welfare assessment, is to make an order for indirect contact. I am minded to make an order which would permit indirect contact in the form of birthday and Christmas cards from A to X. It may be that a suitable conduit could be identified to facilitate this process.

[63] I therefore invite the parties to agree the terms of this contact order, failing which they should set out their respective positions and I will determine the form of the final order.

(ii) Parental Responsibility

[64] In light of my findings in relation to contact above, I have determined that the application for parental responsibility brought by A must be dismissed. In the context of the findings of coercive control, I cannot be satisfied that the application is brought for well motivated reasons. Whilst A undeniably seeks to have a relationship with X, there is a very real risk that parental responsibility, with its concomitant rights, could be used to exercise control over B and thereby cause harm to X.

[65] Bearing in mind the paramountcy of the welfare principle, and the article 8 proportionality exercise, it has not been established that the making of an order of

parental responsibility would itself be in the best interests of X. I therefore dismiss the application.

(iii) Non-Molestation Order

[66] When taken together, the findings of fact made by McAlinden J and the evidential conclusions which I have drawn in these proceedings lead clearly to the conclusion that the statutory test for the making of a non-molestation order is met in this case.

[67] B was subjected to serious physical violence, and domestic abuse, and such an order is required to protect the health and well-being of B. Having heard her evidence, I am satisfied that she continues to live in fear of A. His recent move to live in close proximity to B has only served to exacerbate this situation.

[68] In light of all the circumstances, I propose to make the order in identical terms to the interim order already obtained, which will therefore include an exclusion zone of 200 metres from B's property. The order will continue until further order of the court.

Conclusions

[69] I make the following orders:

- (i) An indirect contact order in favour of A in respect of X;
- (ii) The application for parental responsibility is dismissed;
- (iii) There will be a non-molestation order in favour of B, in identical terms to the interim order, until further order of the court.

[70] I will hear the parties in respect of any consequential relief.