

ENGLAND AND WALES / JUDGMENT

Y v X (Costs)

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[2026] EWFC 35 (B) YvX (Costs) Costs Judgment

1. This judgment addresses the ancillary issue of whether I should exercise my discretion to award costs in relation to the father's application regarding the children, which has been refused regarding direct contact but granted regarding limited indirect contact.
2. The father and / or his solicitors, seek the mother's solicitors, , to pay a proportion of his costs. The application is specifically for £21,189,06 in wasted costs against mother's solicitors.
3. The context of this Judgment is the conclusion of a Final Hearing in private law child arrangements proceedings, on which a separate Judgment has been handed down. Within the proceedings, I recorded within my Order at the end of day 1 of the Final Hearing on 22nd October 2025 that: "The Court made clear it would consider specific costs charged to the parties legal aid certificates be disallowed due to their unreasonable conduct in improper preparation of the witness statements by the solicitors, which has compromised fairness in the litigation in addition to wasted costs." Costs generally
4. The Senior Courts Act 1981, section 51 provides that, subject to rules of court, costs are 'in the discretion of the court'. In family proceedings, such rules are contained in FPR 2010, Pt 28 and PD 28A. FPR 2010 r.28.1 sets out the primary rule that the court may at any time make such order as to costs as it thinks just. FPR 2010 r.28.2 goes on to provide for family proceedings 'other than financial remedy proceedings' by applying (in a modified form) parts of CPR 1998, Parts 44, 45, 46 and 47. When applying these rules, the Court must, of course, have regard to the overriding 1 | P a g e objective in FPR Part 1 of dealing with cases justly, having regard to any welfare issues involved.
5. Under r.44.2(4) the Court must have regard to all the circumstances of the case, including the conduct of the parties. Under CPR r.44.2(5), the conduct of the parties includes:

- a. “conduct before, as well as during, the proceedings and in particular the extent to which the parties followed the Practice Direction—Pre-Action Conduct or any relevant pre-action protocol;
 - b. whether it was reasonable for a party to raise, pursue or contest a particular c. allegation or issue; the manner in which a party has pursued or defended its case or a particular allegation or issue; and
 - d. whether a claimant who has succeeded in the claim, in whole or in part, exaggerated its claim.”
6. The general practice concerning costs orders in family proceedings involving children is that there is no order for costs in the absence of “reprehensible behaviour or an unreasonable stance”. Paragraphs 11.1 and 11.2 of Practice Direction 44 – General Rules About Costs provide: ‘11.1 Before making an order under rule 44.11, the court must give the party or legal representative in question a reasonable opportunity to make written submissions or, if the legal representative so desires, to attend a hearing. 11.2 Conduct which is unreasonable or improper includes steps which are calculated to prevent or inhibit the court from furthering the overriding objective.’

[2015] UKSC 20

7. The core principles regarding whether a costs order should be made has been consistently endorsed. In *Re S (A Child)(Costs: Care Proceedings)*, the Court held that although CPR r.44.2(4)(c) does not readily fit the conduct of children's cases, it serves as an aspect of the general desirability of the parties co- operating and negotiating to reach an agreed solution which will best serve the paramount consideration of the welfare of the child. As such, it is part of the general conduct of the proceedings and the range of potential reasons for ordering costs against a party in children proceedings was not restricted simply to cases of unreasonableness or reprehensible conduct or stance. “Unreasonableness” must relate to the conduct of the litigation rather than the welfare of the child. Of relevance to this case and the conduct of F’s solicitors, the Court then identified considerations underlying the general rule at paragraphs 20 – 26: 2 | P a g e
- a. Family proceedings are much more inquisitorial than other civil proceedings and the welfare of the child is the paramount consideration; the child should be the only winner.
 - b. Generally, each of the persons appearing before the court has a role to play in helping the court to achieve the best outcome for the child.
 - c. Generally, all parties to the case are motivated by concern for the child's d. e. welfare. In most children's cases, it is important for the parties to be able to work together in the interests of the children both during and after the proceedings. In certain circumstances, having to pay the other side's costs, or even having to bear one's own costs, will reduce the resources available to look after this child or other children

- f. The question of whether it is just to make an order for costs should as a matter of principle be determined irrespective of whether any of the parties are publicly funded
- g. Such orders should only be made in “unusual circumstances” such as where costs have been incurred because a party acted in an unreasonable way and where a party's conduct has been reprehensible or that party's stance has been beyond the band of what was reasonable (Re T (Children)[2012] UKSC 36).
- 8. More recently, in *The Mother v The Father* [2023] EWHC 2078 (Fam), Sir Andrew McFarlane P held that a finding of unreasonable conduct is merely a gateway finding, granting the Court the jurisdiction to make an order for costs, but not obliging it to do so. The Court of Appeal provided a further authority in *Re E (Children: Costs)* Lord Justice Peter Jackson re-affirmed that:

[2025] EWCA Civ 183. ‘There is a general practice of not awarding costs against a party in family proceedings concerning children, but the court retains a discretion to do so in exceptional circumstances. These include cases in which a party has been guilty of reprehensible or unreasonable behaviour in relation to the proceedings. This practice applies equally in public law and private law proceedings, and irrespective of whether a party is legally aided.’
- 9. The Court has the power to refuse to allow a firm of solicitors to charge costs to a party's legal aid certificate. Paragraph 14.1 of PD22A provides: ‘Where –
 - (a) an affidavit;
 - (b) a witness statement; or
 - (c) an exhibit to either an affidavit or a witness statement, 3 | P a g e does not comply with Part 22 or this practice direction in relation to its form, the court may refuse to admit it as evidence and may refuse to allow the costs arising from its preparation.’ Wasted Costs
- 10. A ‘wasted costs’ order is a term of art. It is different to ‘costs’ and the jurisdiction again derives from the Senior Courts Act 1981 section 51. CPR Part 46 and PD46 applies to family proceedings by virtue of FPR 2010 r28.2. Pursuant to CPR PD 46 paragraph 5.5, it is appropriate for the court to make a wasted costs order against a legal representative, only if:
 - i. “the legal representative has acted improperly, unreasonably or negligently; ii. the legal representative's conduct has caused a party to incur unnecessary costs, or has meant that costs incurred by a party prior to the improper, unreasonable or negligent act or omission have been wasted; it is just in all the circumstances to order the legal representative to compensate that party for the whole or part of those costs.” iii.

11. It is thus an order against the legal representative of a party and not the party themselves to pay a sum (either specified or to be assessed) in respect of costs to a party or for costs relating to a specified sum or items of work to be disallowed (CPR PD 46 para 5.1). The court may make a wasted costs order of its own initiative (CPR PD 46 para 5.3).
12. The leading authority remains *Ridehalgh v Horsefield* [1994] 3 All ER 848. For a 'wasted costs' order, the costs have to be incurred as a result of: '...any improper, unreasonable or negligent act or omission on the part of any legal or other representative or any employee of such a representative' or 'which, in the light of any such act or omission occurring after they were incurred, the court considers it is unreasonable to expect that party to pay'.
13. In accordance with the ordinary meaning of the words, "improper" means a significant breach of substantial professional duty and conduct that would be regarded as improper by a consensus of professional, including judicial, opinion; "unreasonable" means whether the conduct permits a reasonable explanation; and "negligent" denotes failure to act with the competence reasonably to be expected of ordinary members of the profession. After establishing whether the relevant conduct has caused unnecessary costs to be incurred, the Court must finally go on to consider whether a wasted costs order is just. 4 | Page
14. Although a legal representative should not be held to have acted improperly, unreasonably or negligently simply because they act for a party who pursues a claim or a defence which is plainly doomed to fail, they may be liable for wasted costs where their assistance in proceedings amounts to an abuse of process. Per Bingham LJ in *Ridehalgh* at paragraph 206: "... Whether instructed or not, a legal representative is not entitled to use litigious procedures for purposes for which they were not intended, as by issuing or pursuing proceedings for reasons unconnected with success in the litigation or pursuing a case known to be dishonest, nor is he entitled to evade rules intended to safeguard the interests of justice, as by knowingly failing to make full disclosure on ex parte application or knowingly conniving at incomplete disclosure of documents. It is not entirely easy to distinguish by definition between the hopeless case and the case which amounts to an abuse of the process, but in practice it is not hard to say which is which and if there is doubt the legal representative is entitled to the benefit of it." M's solicitors
15. I have considered the bundle entirely including the written submissions of the solicitors for F, and Ms Gonzalez-Jaspe for M. It is argued that M's solicitors' conduct throughout has increased the costs of F. In the skeleton argument dated 25 th November 2025 drafted on his behalf by his solicitors it sets out, at paragraph 11: "A party's non-compliance with Court directions or deadlines can delay the proceedings and cause harm to the children, by prolonging uncertainty or disrupting the timely resolution of issues. In this context, the Court must take a strict view of non-compliance, particularly if it frustrates the prompt determination of the children's welfare". Bundles

16. Pursuant to Order dated 21st August 2024, M's solicitor was ordered to file and serve the hearing bundle for the hearing listed on 22nd October 2024 7 days prior. M's solicitor served the bundle on the F's solicitor on the morning of the hearing. F's solicitor argues that F's witness evidence was not included, "rendering the hearing ineffective and adjourned to a later date". I accept M's case that the hearing on 22nd October 2024 was not wasted as the court made various interim orders and directed a section 7 report which progressed matters. It is misleading to say the hearing ineffective or adjourned due to non-compliance. The order is silent as to costs. F has made no application to vary or appeal the order to seek wasted costs. F's application to recover the entire costs of this hearing (the total inclusive of VAT being £3,420.00) is therefore refused. 5 | P a g e
17. Pursuant to Order dated 30th January 2025, M's solicitor was ordered to file the bundle for the hearing listed on 20th February 2025 7 days prior. Again, the bundle was late, and a separate chronology and case summary were sent late and not agreed by F to the hearing Judge. I accept M's case that it remains unclear what F says was contained within the case summary that preventing him from being on equal footing, or how this provided a narrative that in any way influenced the decision of the court as the order records both parties agreed with the directions made (appointment of r16.4 Guardian and directing disclosure from the previous proceedings). Again, it is misleading to say the hearing was ineffective. F's application to recover the entire costs for Counsel at that hearing and instructing solicitor at Grade D, for preparing and attending this hearing, (the total inclusive of VAT being £1,620.00) is therefore refused.
18. In relation to both hearings therefore, though bundles were twice filed late by M's solicitors, regarding consideration as to wasted costs there is no causal link between the conduct complained of and the wasted costs sought by F. The conduct complained did not cause wasted hearing attendance or preparation costs.
19. However, within the skeleton argument filed on behalf of M's solicitors there is no explanation or apology for those breaches. These are significant breaches for which no reason is advanced and caused difficulty for the Court and F in preparing for the hearing. Such conduct in being guilty of such breaches and not acknowledging the same is unreasonable. M's costs of preparing the hearing bundles for hearings on 22nd October 2024 and on 20th February 2025 are therefore disallowed pursuant to r28.1 FPR.
20. Furthermore, I note that within the recitals to my Order dated 22 nd October 2025 I record that: "The Court further noted the court bundle
 - i. was filed late (the day before the hearing) and inconsistently paginated, in breach of PD27A; failed to include the father's exhibits; ii. iii. contained the mother's earlier statement which was undated, unsworn and also failed to comply with PD22A in relation to the taking of statements in a foreign language." 6 | P a g e For same reasons as set out in paragraph 19 above, M's costs of preparing the hearing bundle for hearings on 22nd October 2025 is also disallowed pursuant to r28.1 FPR. Delayed police disclosure

21. Pursuant to Order dated 26th March 2025, M's solicitor was ordered to file and serve police disclosure by no later than 30th April 2025. F's solicitors argue that M failed to comply with this direction without any explanation or application being submitted to the Court. M's solicitors point out however that on 16 th May 2025 they filed a C2 application, by consent, seeking the hearing on 20th May 2025 to be vacated as the police disclosure had not been received from WMP. On 19 th May 2025 the court granted permission for M to file and serve the police disclosure by 16th June 2025. They therefore did not fail to comply with the directions of the court without explanation or application.
22. A further extension was subsequently required at the adjourned hearing on 2 nd July
2025. F argues that for a second time M's solicitors had failed to comply with the deadline and did not notify the parties or the Court as to why this Court direction was not complied with. F argues this undoubtedly caused a delay to the proceedings and caused a wasted hearing on 2nd July 2025. The order is silent as to costs, however F has made a formal N244 application in relation to the wasted costs of this hearing. M's solicitors counter that F's solicitors were made aware of the issues with obtaining the police disclosure ahead of the 2nd July 2025 hearing and F did not take issue with the conduct of M's solicitors in their attempts to comply with the previous order at that hearing.
23. A further PDO was made at that hearing. Police disclosure was filed on 22nd August 2025, some 4 months later after it was initially ordered to be disclosed by the Court. Those delays require explanation. I accept from the evidence I have seen that M's solicitors made every attempt to obtain the police disclosure and were faced with delay in receiving the sealed orders from the court and further delays by WMP in providing the disclosure. Their conduct was not improper, unreasonable or negligent. Furthermore, the hearing on 2nd July 2025 was effective in progressing matters forwards by way of narrative statements which were sought at F's invitation as he was seeking a fact-finding hearing. F's application to recover the entire costs of his solicitor at Grade A, for preparing, attending and travelling to and from this hearing, (the total inclusive of VAT being £1,872.00) is therefore refused. 7 | P a g e
Narrative statements
24. F's solicitors argue that: "without sight of the police disclosure on the agreed date, F and M could not meet the deadline for filing Narrative Statements on 25.07.2025, as the statements would need to take into account the police disclosure". F's solicitors contacted M's solicitors on 25th July 2025 seeking agreement for an extension of time as F's "narrative statement cannot be finalised in the absence of such [police] disclosure", sent 5 minutes before the deadline for narrative statements and on the last working day of the week.
25. The proposition that narratives were to consider police disclosure is incorrect. F's solicitor filed a C2 application to the Court on 27th August 2025 requesting an adjournment of the hearing listed on 2nd September 2025. I refused this request by Order dated 30th August 2025. My order confirmed that: "narrative statements are to be filed by both parties regardless of the availability of police disclosure as such statements are not contingent upon

that disclosure”. I also directed both solicitors file statements setting out why there has been wilful lack of compliance with the direction to file narrative statements and why wasted costs orders should not be made.

26. On this issue of delayed narratives and associated delay in concluding proceedings therefore both parties wilfully breached my orders. I have no doubt that there was no misunderstanding about the direction regarding the deadlines for filing statements. I reiterate the general desirability of the parties co-operating and negotiating to reach an agreed solution which will best serve the paramount consideration of the welfare of the child (Re S (a child)). I considered the issue of non-compliance by both solicitors at the hearing on 2nd September 2025 and it is recorded the solicitors “apologising for lack of compliance with the order dated 2nd July 2025 and for the failure to notify the court of the slippage in the timetable”. Those acknowledgements accept unreasonable conduct.
27. However, that is not the end of the matter. At the hearing on 2nd September 2025, the parties were granted a final extension to file and exchange statements by 16 th September 2025. Though I determined that a fact-finding hearing was neither necessary nor proportionate at that hearing, statements as to welfare remained outstanding. F complied with this direction, but M failed to do so and did not make any application for an extension of time, until 2nd October 2025, the day after the F’s solicitors had made their own C2 application to the Court, notifying the Court of M’s non-compliance. 8 | P a g e
28. In his N244 dated 1st October 2025, F sought wasted costs for the previous hearing on 2nd September 2025 and the hearing on 22nd October 2025 should it be ineffective due to further non-compliance with the directions for narrative statements. On 6 th October 2025 on the papers I directed that F’s solicitors file and serve a N260 in respect of the costs they asserted had been incurred unreasonably and disproportionately by the conduct of M’s solicitors throughout the proceedings including the breaches of the order of 2nd September 2025. On 17th October 2025 F’s solicitors filed two N260’s for “breach of order dated 2nd September 2025” (£3,125.60) and “previous proceedings” (£3,420.00).
29. F’s solicitors seek their costs of “for preparing and attending the wasted hearing on 2nd September 2025”. As F’s C2 application was refused, the costs for preparing and filing the C2 application (£1,546.00) are not recoverable. Both parties are guilty of unreasonable conduct regarding delayed narratives up to 2nd September 2025 as recorded in the Order of that date; it is not proportionate or just to penalise only one party in costs. I accept that M’s conduct complained of did not cause wasted preparation costs as it was initially F’s failure to comply with the direction to file his narrative statement, compounded by M’s equal failure, that led to the court directing statements from the solicitors. F’s application in respect of asserted fees £2,016.00 for the preparation and attendance at the hearing on 2nd September 2025 by Counsel and solicitor are also therefore refused as it was an effective hearing.

30. M's statement was eventually filed on 8th October 2025, some 3 weeks late. The skeleton argument on behalf of M to explain that breach is brief and unapologetic, suggesting F was not in any prejudiced (paragraph 47): "there was no consequential impact on the final hearing listing nor F as he had ample time to consider her short statement which only echoed her position as it had been for some time." As is the case with M's solicitors late filing of the court bundles, such conduct in breach of an order and a failure to explain and acknowledge the same is unreasonable. M's costs of preparing the witness statement filed on 8th October 2025 are therefore disallowed pursuant to r28.1 FPR.
31. Whilst I do some have sympathy with F's subsequent 1st October 2025 application in the face of M's further non-compliance for breach of the order dated 2nd September 2025, the costs sought of are not supported by N260 setting out the breakdown of the costs. M is right to point out that the fee for a C2 application is £190.00, but it is 9 | P a g e unclear why F was charged a further £1,356.00 for preparing such an application. I agree these costs are disproportionate to the work undertaken for a C2 application. By way of summary assessment, 1 hours at Grade A fee earner / case holder rate (£300 per hour) and 2 hours at Grade D rate (£170 per hour) plus VAT in respect of work on documents (the application) and attendances over 3 weeks (chasing M's solicitors) is reasonable and proportionate. A wasted costs award of £958 is therefore made in respect of work necessitated by M's solicitors' non-compliance for breach of the order dated 2nd September 2025, which could have been avoided had M filed her narrative statement by the agreed deadline. That conduct requires explanation and none is given. I find it is just to make that Order in all the circumstances.
32. There were then several deficiencies within M's late narrative statement drafted by her solicitor which I set out within the recitals to my order dated 22 nd October 2025 as follows: "The mothers witness statement produced for this Final Hearing
- i. was drafted by her solicitors before having been confirmed to the mother in her native language thus was not compliant with PD22A FPR and caselaw guidance (NN v ZZ & Others [2013] EWHC 2261 (Fam)); ii. did not include support options in accordance with the Guardian's final analysis and as had been directed by Order dated 2nd September 2025; iii. sought to make a Specific Issue application as to schooling without iv. any formal C2; it was also filed late on 8th October 2025 though due 16th September 2025, leading to the father's C2 application for wasted costs dated 1st October 2025."
33. F is right to point out that I therefore directed further statements before day two of the Final Hearing to remedy the defects and omissions within M's statement. M's solicitors argue that whilst the basic principles on preparing witness statements for non-English speakers is set out in NN V ZZ & Ors [2013] EWHC 2261 (Fam) , this case can be distinguished as the statement was not produced for a hearing at which M was to give oral evidence but "only to address final proposals for orders and support". It was prepared in English for "expediency" and was confirmed by M in court on 22nd October 2025 as correct. However, the document is contradictory in asserting that: "...they drafted the statement on M's instructions and could not put forward proposals for support that were not being made by their client"; and it was

“prepared on the basis of M’s position well-known by her solicitor who has represented her throughout the proceedings”. The statement did not contain what the Court had directed, namely, “proposals for support in accordance with the 10 | P a g e Guardian’s recommendation in her final analysis”. At day three of this Final Hearing, I was told that M hadn’t realised that she could or should go to her GP for the purposes of advancing counselling for the children. This has been the clear advice of the Children’s Guardian for the past 5 months.

34. I find that the conduct of M’s solicitors was unreasonable and the reasons and mitigation provided as set out above do not provide reasonable excuse for the failures I have identified at paragraph 32. The omissions and errors within M’s statement, are such that I determine it is just to disallow the M’s solicitors their costs arising from its preparation.
35. As to wasted costs, M’s solicitors do however correctly note that both parties’ statements were flawed: “The father’s witness statement produced for this Final Hearing
 - i. misrepresented facts (e.g. “the investigatory process has confirmed the presence of alienation among the children”, which is wholly untrue); ii. asserted the Judge had previously erred in law and fact; iii. referred throughout to the Judge as “DJC” which was clearly disrespectful and inappropriate. ...the father confirming he was not inviting the Judge to recuse herself and apologising to the Judge. The Judge indicating it was his solicitors who needed to apologise, which they did.” iv.
36. Both parties were required to make corrections and in addition address the issue of a family assistance order, section 91(14) orders and change of school if the children were to reside with M. No submissions were made on behalf of F objecting to the necessity for him to file a statement. F submits that the costs incurred, for both the translation costs and its legal costs incurred for preparing a further witness statement and filing a skeleton argument, are recoverable from M’s solicitor by way of a wasted costs order. F’s application to recover the entire costs for his solicitor at Grade A drafting and preparing his additional witness statement dated 21st November 2025 necessitated in order to respond to a corrected statement by M, together with translation costs, is refused.
37. The court directed skeleton arguments on 22nd October 2025 due to the F’s application on 1st October 2025 for wasted costs and retrospective costs for hearings / work dating 11 | P a g e back to 2024. The costs of drafting the skeleton argument is a consequence of F’s own application. His application to recover the costs of drafting the skeleton argument in support of costs, (the total inclusive of VAT being £3,349.08) is refused. Failure to disclose to Local Authority
38. Pursuant to Order dated 2nd September 2025, M’s solicitor was ordered to serve the parents’ evidence and the Guardian’s analysis dated 22nd August 2025 on the legal department for Wolverhampton Children Services. M’s solicitor failed to do this. Responsibility was passed onto the solicitor for the child, and the legal department were served. M’s solicitor therefore argues that any failure on W Children’s Services in ensuring the documents reached the

social worker, author of the section 7 Report directed to attend to give oral evidence, was not their fault and their conduct was not improper, unreasonable nor negligent.

39. This failure, however it arose, did result in significant time at day one final hearing being spent by the social worker reviewing the documents. F argues that as a direct consequence, the hearing went part heard to 17th December 2025 as there was not enough time for the Children's Guardian to provide her evidence and could have been avoided had M's solicitor complied with the Court's direction. However, 1 hour over lunch was given for the purpose of the social worker considering the parties' statements. Though M's solicitors had failed to provide the social worker with any updates since her last involvement after filing her Section 7 report 9 months previously in the run up to trial, both parties and indeed the Children's Guardian had failed to identify the issue at all and therefore had not provided those updates on the morning of the hearing, though I had given time for extended pre hearing discussions to 12pm. Indeed, this particular issue only came to light at 12.15pm when I asked the social worker in confirming her name and adopting of her report what her view was on the parties' positions. The social worker confirmed she had no idea what they were as she had not received any of the documents which were ordered to be disclosed by M's solicitor. The need for the final hearing to go part heard was not that of M's solicitor alone.
40. This was not a wasted hearing; it was effective in hearing the Social Worker's evidence and directing a trial of indirect contact. F's application to recover the entire costs of preparing for and attending this hearing on 22nd October 2025 (the total inclusive of VAT being £5,820.00) is therefore refused. Equally the need for day 2 of the hearing became necessary not as a result of M's solicitors' conduct. F's 12 | P a g e application to recover the entire costs for Counsel (£2,400.00 incl. VAT) and of his solicitor at Grade A, for preparing, attending and travelling to and from the 17 th December 2025 "wasted hearing", the total inclusive of VAT being £5,820.00, is also therefore refused. F's solicitors
41. However, it cannot be said that F's solicitors' conduct has been unimpeachable. I am informed that criticisms of their litigation conduct by M's solicitors or delayed welfare enquiries by the Children's Guardian have led to personal insults of professionals. That lack of respect has extended to myself as set out at paragraph 35 above. I do further therefore consider the conduct of F's solicitors and whether this amounts to an abuse of process for which I could make wasted costs orders of my own initiative:
 - a. F's witness statement dated 16th September 2025 was drafted by his solicitors and not in the F's own words, as required by Part 22 FPR and associated Practice Directions; b. I agree with M's solicitor's case that the misrepresentation of facts in F's statement dated 16th September 2025 as recorded at paragraph 35 above is serious and significant as this could have misled a different court;
 - c. F's solicitors continue to misrepresent the history of this case within the skeleton argument filed by them on F's behalf. Regarding the hearing on 22 nd October 2025: "...the Applicant's Narrative Statement was deemed inadmissible and District Judge Cockayne commented that

she was unable to deal with the issues at this hearing because of the Applicant mother's missing information/proposals for support. As such, the final hearing went part heard and the matter was relisted again". All of those assertions are incorrect – the statement was not “inadmissible”, and the hearing was in reality adjourned due to the failure to update the social worker as outlined above;

- d. F's solicitors have made criticism of the children's guardian for not seeing the children earlier in January 2026. The children's guardian is also aware that the school have felt pressured by the father's solicitor to become embroiled in these proceedings;
 - e. By a direct uninvited email from F's solicitor at the end of January 2026 I was rebuked for granting the children's guardian's request to delay the filing of her Position Statement for day 3 of this Final Hearing, granted in light of difficulties in seeing the children any earlier. F's solicitor's approach was to attach a 50 page bundle of correspondence, which to my mind demonstrated a 13 | P a g e hostile and critical response to relatively routine enquiries and requests from M's and the children's solicitors. Counsel for F conceded in closing submissions that F's solicitors have represented him passionately in written communications and at times that can come across as aggression when that is not the intent.
42. I find both parties' solicitors have acted with “unreasonableness” in relation to the conduct of the litigation. Rather than their focus being on the welfare of the children, professional grievances and breaches of court orders and the requirements of the Family Procedure Rules have distracted from that paramount concern.

Conclusion

43. In considering a solicitor's conduct as so significant as to warrant a wasted costs order I would have to consider their assistance to be an abuse of process of the court. While there are a number of failings, M's solicitors' conduct cannot be said to have been dishonest or misleading. However, they are responsible for preparing the bundle, complying with directions for police disclosure and filing narrative statements. The court's directions were not complied with on multiple occasions. Thereafter there was no permission sought for extensions in a timely manner. I find negligent conduct has led to repeated failures in respect of all those matters by M's solicitors, the result of which has not furthered the overriding objective and has risked the interests of justice. Such conduct has caused delays and F's solicitors to incur some additional costs. Those costs have been in chasing up and seeking the court's assistance to rectify non- compliance.
44. However, I find that certain assertions by F's solicitors have been misleading and negligent in the statements they have drafted on F's behalf and in support of their application for wasted costs as I have already outlined. M's solicitors do not however make an application for wasted costs in their own right, nor at Final Hearing did they advance that F's solicitors should be disallowed their costs in any respect. In those circumstances I do not find it just to

make any adverse costs orders against F's solicitors but record my finding as to their own unreasonable litigation conduct in respect of these proceedings, from which there must be reflection and lesson learnt.

Orders

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45. The rates to be applied are as at the guideline hourly rates, for £288 for a Grade A (national 1) and £139 for Grade D (national 1) and/or in the alternative the "compelling justification" for increasing them as per Samsung Electronics Co. Ltd & Ors v LG Display Co. Ltd & Anor [2022] EWCA Civ 466.
46. There is no order as to costs save for a detailed public finding assessment of M's costs which must take into account the following:
 - a. M's costs of preparing the hearing bundles for hearings on 22nd October 2024, on 20th February 2025 and on 22nd October 2025 are disallowed pursuant to r28.1 FPR: £54.90 x 3 = £164.70
 - b. M's costs of preparing the witness statement filed on 8th October 2025 is disallowed pursuant to r28.1 FPR: £192.15
 - c. A wasted costs award of £756 inclusive of VAT (£190 disbursement plus 1 hour Grade A and 2 hours Grade D) is made in respect of the preparation and filing of F's C2 application dated 1st October 2025 in respect of M's solicitors non-compliance for breach of the order dated 2nd September 2025, such costs to be paid within 21 days of this Judgment being made final.
47. This is my Judgment. District Judge Cockayne 11th February 2026 15 | Page

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