

ENGLAND AND WALES / JUDGMENT

L v M

COURT

THE HIGH COURT OF JUSTICE (FAMILY DIVISION)

BEFORE

SIR JONATHAN COHEN

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Case No: FA-2026-000074

Strand

London

WC2A 2LL

Tuesday, 28 April 2026

Applicant

Respondent

THE HIGH COURT OF JUSTICE (FAMILY DIVISION)

(ON APPEAL FROM HER HONOUR JUDGE OWENS)

NCN: [2026] EWHC 1081 (Fam)

BEFORE:

SIR JONATHAN COHEN

BETWEEN:

THE PARTIES appeared in person

L

- and -

M

JUDGMENT

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JONATHAN COHEN: I have been hearing this afternoon an application for permission to appeal and the appeal in respect of part of an order made by HHJ Owens on 16 August 2024. The hearing has been conducted remotely. 2. The Judge, who was very well acquainted with this case, had held a fact-finding hearing in March 2024 and a welfare hearing in August 2024. In respect of those hearings, the applicant father (Mr L) participated only to a small extent and that was of his choosing. I refused on paper permission to appeal as totally without merit on all grounds except for those relating to the imposition of a section 91(14) order which the Judge included as part of her order. 3. In the light of my view that there was no arguable case in respect of other parts of the order, I suggested to the parties that the order should be amended in accordance with the procedure set out at paragraph 6.4 of Practice Direction 52A of the Civil Procedure Rules 1998. I suggested that because it seemed to me that the wording of the section 91(14) order could not stand and, if the parties consent and there is good and sufficient reason for doing so, an appeal court may, in pursuance of rule 6.4, set aside or vary the order of the lower court. 4. The mother (Ms M) by written communication said basically that she is neutral on the matter and she did not attend the main part of the hearing as was her option [but see postscript]. The father is not neutral on the matter, did not agree to my proposal, and he has attended. He has done so from the hospital where he is currently an inpatient. Very unfortunately for him, he suffers from a variety of conditions and he is very concerned about his health and about his life expectancy, and it worries him that he may not be able, by reason of his health difficulties, to play an ongoing part in his child's life. 5. It is not necessary for me to go into the history of the matter at all. I will say no more other than that the Judge found that the father had perpetrated serious domestic abuse in this case. That was a finding that the father did not accept. The Judge made an order which gave the mother substantial control over their daughter's life and the father's contact was limited to indirect contact three times a year. In exchange, the mother must send to the father three times a year updates in relation to the child's Epiq Europe Ltd, Lower Ground, 46 Chancery Lane, London WC2A 1JE www.epiqglobal.com/en-gb/welfare. The father tells me, and I have no reason to disbelieve him, that he and the mother communicate respectfully by email three or four times a year about their daughter. 6. The order went on to provide this in respect to the section 91(14). Paragraph 11 reads as follows: 7. "Pursuant to section 91(14) of the Children Act 1989 no application for an order that relates to the child under the Children Act 1989, including for enforcement, should be made by the respondent without the court's permission until further order." 8. 9. It is the words "until further order" which are problematic. Paragraph 12 reads: "During the currency of the section 91(14) order any application for permission to apply by the respondent must be made on the required application forms and must be accompanied by the following documentary evidence." That is, evidence and reports in respect of his involvement and progress in specified domestic abuse perpetrator programmes. 10. It is the requirement that the application must be accompanied by other documentary evidence, which is problematic. 11. In my judgment the section 91(14) order cannot stand in the form that it is. Paragraph 11 makes the order indefinite. My reading of the Court of Appeal decisions is that the duration of a court order must spell out its reasons clearly, and an indefinite order is an acknowledgment by the court that nothing more can be done and I quote from *Re J (A Child)* [2008] 1FLR 369 and *Re S (Permission to Seek Relief)* [2006] EWCA Civ 1190: "This should be preserved for cases at the egregious end

which merit ‘the strongest degree of forensic protection for the child from further ill-founded conflict.’” 12. The issue of duration is not straightforward. The order for indirect contact appears to be working in the sense that its implementation has not been problematic. Epiq Europe Ltd, Lower Ground, 46 Chancery Lane, London WC2A 1JE www.epiqglobal.com/en-gb/ 13. The father last saw his daughter, in August 2023. The effect of this indefinite order means that he, having not seen his child for nearly three years, might find that this could go on for many more years. I bear in mind the state of his health and his uncertain prognosis and the fact he is having indirect contact. I also bear in mind that her recollection of him will undoubtedly fade as time goes on, I am going to limit the duration of the order until 16 August 2027. That will mean three years from the date of the judgment given by the judge and four years since the father has last seen his daughter. 14. I was pleased to hear that he has complied with the order for indirect contact and said that in January 2026 he sent her various books that she had chosen, some clothes and a teddy bear. He should continue to exercise his indirect contact in that way. But bearing in mind the factors that I have just mentioned, it seems to me that limiting this section 91(14) restriction to a period of three years from the date of judgment is an appropriate point for the father to have the ability to make a further application without having to go through the permission exercise. 15. The judge’s further concern was that this father, not seeing the error of his ways at all, would never satisfy conditions for the restriction to be lifted and it was with that in mind that she required any application to be accompanied by documentary evidence. 16. So far as documentary evidence is concerned, it seems to me that the cases of *Stringer v Stringer* [2006] EWCA Civ 1617 and *Re S* (permission to seek relief) [2006] EWCA Civ 1190 are conclusive. A section 91(14) order cannot be made conditional upon steps being taken or the provision of other documentation or information before an application can be made. It is perfectly permissible for the judge to say that she would expect any further application to be supported by the completion of certain steps, but the restriction on making an application for permission cannot be made conditional. I will therefore delete paragraph 12 of the judge’s order. 17. That is the order that I shall make and I direct that this judgment should be transcribed at public expense. 18. That concludes the judgment. Epiq Europe Ltd, Lower Ground, 46 Chancery Lane, London WC2A 1JE www.epiqglobal.com/en-gb/ 19. POSTSCRIPT: As I concluded the judgment, I was told that the Respondent had just joined the hearing and was waiting in the lobby. She said that she had been sent the link late. 20. I had her admitted and explained to her what I had ordered, but which could still be changed. She told me that thought that the changes that I proposed were reasonable and did not have any opposition to them. Epiq Europe Ltd, Lower Ground, 46 Chancery Lane, London WC2A 1JE www.epiqglobal.com/en-gb/ Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof. Lower Ground, 46 Chancery Lane, London WC2A 1JE Email: civil@epiqglobal.co.uk This transcript has been approved by the Judge Epiq Europe Ltd, Lower Ground, 46 Chancery Lane, London WC2A 1JE www.epiqglobal.com/en-gb/

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