

JERSEY / JUDGMENT

X (the Father) v W (the Mother)

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Family [2024]JRC234 Royal Court (Family) 27 August 2024 Before : Samantha McFadzean, Registrar, Family Division Between X (the Father) Applicant And W (the Mother) Respondent Advocate Binet for the Applicant. Advocate Donohue for the Respondent.

REASONS

the REGISTRAR: 1. The Child is a school age girl, whose parents were involved in an intimate relationship for a time. The Child's father, (the "Father") made an application to this Court in October 2023 for contact with his daughter, whom he had last seen in 2018 when she was 4 years old. The parents' relationship had come to an end some months before and the Child moved out of the family home to live with her mother, the respondent (the "Mother"). 2. Occasionally a parent will plead behaviour on the part of the resident parent intended to alienate the child from the other parent but the Father stopped short of doing that in this case in overt terms but, as the evidence will demonstrate, he did not demur from suggesting that the Mother's attitude to the Child having contact with him had hindered the progress which he hoped to make with the establishment of a relationship with his child. The Child does not want a relationship with her Father. She has written to the Court expressing her desire for those wishes, and her feelings about being forced to see her Father, to be taken into account when the Court makes a

determination.

The background 3. The Child's parents had been together in a relationship for a matter of months before the Child was conceived but I was told that their relationship broke up shortly after conception. Both parents characterised the relationship as one beset by arguments. 4. The parties accepted that their relationship came to an end in early 2017 and that contact between the Child and her Father stopped in June 2018. It was accepted by both parents that the cessation of contact at that time was the Father's choice. 5. Although the parties engaged, prior to proceedings commencing in some form of mediation, they did not agree about why the mediation took place; the Father says that the mediation related to the reintroduction of the Child to him for contact, and the Mother said that the mediation concerned her claim for the Father to pay something towards the costs of looking after the Child. Progress of court proceedings 6. Following a failed attempt to use Milli's contact centre to re-establish contact, the Father instituted court proceedings which took the conventional course, namely a referral of the application by the court to the Jersey Family Court Advisory Service ("JFCAS") to conduct initial inquiries. Subsequently, I asked JFCAS to undertake a child contact intervention ("CCI") so that they had an

opportunity to talk with each of the parents, and the Mother's husband, V, whom she had married in [redacted] and whom the Child calls "Dad". The CCI took place but was of limited success inasmuch as the JFCAS officer introduced the Child to her estranged Father but the process was not effective in establishing a firm foundation for a future relationship. 7. The Child expressed (and repeated) her wish not to see her Father in unequivocal terms. Needless to say, this was a great disappointment to the Father. 8. The parents did not agree about the quality of the CCI undertaken, which goes some way to explain the application made by the Father's advocate some months ago for a psychological assessment of the parents by Dr David Briggs and one of the Child, by Dr James Murray. This may have been the Father's attempt to understand better how and why the Child had reached the conclusion that she does not want to have a relationship with her Father following the failed CCI. 9. The Court did not agree to the instruction of these experts because of the inevitable delay to the court making a determination; furthermore, such appointments should only properly be made where the court (or JFCAS) consider that the expert evidence would be necessary to assist the court in making the required determination, by elucidating aspects of the case which reveal something otherwise obscured from the court's understanding of the family dynamic or factual matrix. Nothing I have heard in evidence dissuades me from the view that this was the correct decision; the court comprehends why the Child may feel as she does and no psychological assessment is required to explain her feelings.

10. A few days before the final hearing, the Father's advocate applied for permission to introduce evidence by James Cunningham of "James' Ark". That application was resisted by the Mother and, indeed, at first by the Court because the evidence did not seem necessary and/or immediately relevant to the determination of this application.
11. Following submissions by Advocate Binet, the Court came to understand that what the Father wanted was for Mr Cunningham to conduct a further CCI. It became apparent that the Father had concerns about the manner in which JFCAS had conducted its work.
12. These concerns were not shared by the Mother.
13. At the final hearing, I acceded to Advocate Binet's request for Mr Cunningham to give evidence first, but because no prior notice of the content of his evidence had been given to the Mother's advocate, the court gave Advocate Donohue an opportunity to cross-examine Mr Cunningham later that afternoon. His evidence was necessarily limited to his experience of supporting families. He accepted that he was not qualified to undertake CCI but hoped to do training to enable him to offer this service in the future
14. Both the Mother and the Father gave evidence under cross examination but, unfortunately, due to slight delays at the beginning of the day, there was insufficient time to conclude the evidence and the matter was adjourned part heard to the first available date in the court calendar being, unfortunately, several months later. The Father's position

15. The Father seeks contact with the Child for three hours on a monthly basis for the first six months, such contact to be supported by James Cunningham as part of a renewed contact intervention. Thereafter the Father sought three hours' weekly contact with the Child on an unsupported basis over the weekend and going forward, a further review of contact. The Mother's position
16. The Mother proposed that the Child should be made available for contact with her Father three times a year, once during the Easter, once during the summer and once during the Christmas holidays and that, in the meantime, the Mother would provide updates to the Father about the Child on a monthly basis. The Child's position
17. The Child wrote a letter to the court which was attached to the final JFCAS report. She describes in her letter how she was being forced by her Mother to attend contact sessions with her Father whom she calls "X". She explained as follows in her letter:- "my mum and dad have been forcing me to go as I've not been wanting contact because I love my life how it is and I don't want it to change. Also it's not been helping me sleep at night and (sic) not been wanting to do the things I love most such as dancing and swimming. When we went to Ransoms and ice-skating I didn't enjoy it. [Redacted] told me to write what it would be like to have contact with [X]. It would be very scary and I don't think I would be like myself. Because the the (sic) contact sessions have already made me shy. Nothing could make me feel comfortable with him". JFCAS welfare report
18. The JFCAS officer concluded that a direct contact order would be unlikely to have the desired outcome and succeed in the re-establishment of the relationship between the Father and the Child. She recommended in her written report that the court make an order for indirect contact which allows for regular correspondence between the Father and the Child and presents for her birthday and Christmas.
19. JFCAS' analysis is that one of the major reasons why the Child is taking such a firm position is because of the complexity that the addition of the Father would add to her life. Although her step-father is not holding himself out as a replacement for the Father, V had, in effect, undertaken the paternal role in the Child's recent lived experience. The JFCAS officer surmises that the introduction of the Father places pressure on the Child to decide how to weigh up her loyalties between the man who has undertaken the Father's role, her newly reintroduced Father and also her Mother. The Child does not think that her Mother likes her Father.
20. The JFCAS officer concluded that this is making the Child stressed and resentful because the Father is forcing her to do something she does not want to do and the JFCAS officer considers that "she will continue to be rude and hurtful during her interactions with him, possibly escalating her behaviours as contact progresses or making it impossible for (the Mother) to take her to contact". The Father's evidence

21. The Father was obviously frustrated by the way in which the contact intervention had failed to start the process of laying a foundation for a relationship between his daughter and himself. He told the court that although he had a rocky relationship with the Mother, and they argued frequently and did not really always get on, he loved her and characterised the relationship as a good one.
22. He told the court that he had effectively brought the Child up on his own for a period because her Mother was working five or six days a week and that he was there for the Child's first words and first steps.
23. He was asked about how and why his relationship with the Child had come to an end. The Father told the court that his relationship with the Mother finished in April 2017 and that the Child and her Mother moved into the maternal grandparents' home. He remained in what had been the family home. For about a year, he continued to have contact with the Child but he described a difficult period over that year during which his grandfather, and subsequently his grandmother, died. During the same period his best friend had also died and he and his other friends felt responsibility to look after his late friend's Mother which, in his words "took a bit of time".
24. He explained that he also felt pushed out of the Child's life and that his last contact with her was to have been in June
2018. The Child was supposed to have been with him for Fathers' Day from 8am until to 6pm. He said that it had been agreed that the Mother would bring the Child to his house and that he had had a nap and woke up to a number of missed calls and messages to the effect that she was outside waiting to drop the Child off. He conceded that the Mother was rightly upset about his failure to answer messages or his telephone so as to be available to enjoy contact with the Child.
25. A day or so later, he told the court that he went to pick up the Child from nursery and she was not there. He said that the Mother told him at this stage that he would not see the Child again. He explained that because of his recent bereavements and ensuing mental health issues, he felt "beaten down" and made the decision to step back from the Child's life. He told the court that he felt that the Child would benefit from him being out of her life at this point particularly as she was just about to start primary school. He said that he took time away to digest and to grieve. He said in his evidence that it was a judgment call which he might have got wrong.
26. He told the court that when he felt better, several years later, he got in contact with the Mother and after obtaining legal advice got in contact with Millis in an effort to re-engage with the Child. He accepted that Milli's contact centre services were shortly thereafter withdrawn but he also complained that the Mother did not attend the planned session with Millis because she was doing some sort of charity walk.

27. He was asked by his counsel about each of the contact intervention sessions conducted by JFCAS which had occurred over the autumn/Christmas of 2023. He complained that the Child's stepfather was in attendance at the first session and that the Child did not want him to share the table which she was sitting at with the JFCAS officer and V. He said that although he tried to ask the Child questions, she was not really engaging and not really interested in what he asked or what he had to say; he blamed this on the fact that her Stepfather was in the room. He said that he sent the JFCAS officer an email after the meeting about his concerns and that he wanted to press forward to enable him to see the Child in "fun environments" and that he had asked other parents what appropriate activities would be.
28. On the second session, he took a jewellery making kit along to the JFCAS office and suggested to the Child that they should make jewellery for her friends. He said that besides the Child shrugging and giving him "yes" or "no" answers, she was not really engaging with him. He put this down to the Child's Mother and Stepfather accompanying the Child to every session in the JFCAS offices.
29. He considered that the Child must have felt that her loyalties were torn and that was his explanation as to why she was not engaging with him. He also complained that none of the sessions had lasted the full hour because the Child had asked to leave after 40 or 45 minutes. On the third session at the JFCAS office, he brought back the jewellery making kit but the Child remained uninterested. He described her as recalcitrant with her head down and her hair hanging in front of her face. He explained that he wanted to get out of the environment of the JFCAS office to do "something fun" with the Child and suggested that they go to the park as the Child had already said in conversation that she loved hot chocolate. He complained that he did not get any assistance from JFCAS and that he thought that the JFCAS officer should have given him ideas about what he could do to get the Child to engage but all the ideas came from him.
30. Last-minute arrangements were made for a further session to take place at a garden centre. He complained that the JFCAS officer was twenty minutes late and that he was left talking with the Child's Stepfather while the Child was looking around the shop. During the session, the Child started answering basic questions and he tried to get the Child into a café to buy a hot chocolate. He then suggested buying some cakes from the shop which she could take home for her Mother and V. She agreed and she then asked for another piece of cake which he assumed was for herself. At this session, he asked the Child if she wanted to go ice-skating and, as far as he was concerned this was now arranged for the next session.
31. He attended at the ice-skating session as he thought had been planned but the Child did not appear. The JFCAS officer contacted the Mother who said that the Child was waiting at the JFCAS office. The Father described himself as quite angry and he said that he felt that there was "an element of sabotage" by the Mother. He concluded that the Mother had wanted to sabotage the little progress which he felt had been made at the garden centre.

32. On the last session just between Christmas and the New Year, ice-skating was rearranged. He said that he thought the Child seemed to enjoy herself and had started interacting a little with him including allowing him to pick her up when she fell over on the ice and allowing him to help her to do up her boots. He complained however that a member of V's family and their children had turned up and that the Child spotted them and headed over to talk to them. He said that it was not helpful for V's family member to come over and shake his hand. He said that this person should have ignored them because, when they walked off, the Child wanted to go with them. The Father struggled to understand how this meeting could have been said to be accidental and felt that this was a further effort to sabotage the CCI.
33. A debrief following the CCI took place. This involved the Father meeting with JFCAS, the Child and her Mother. During this debrief, he explained to the Child why he had not been part of her life for a number of years and he said that it had helped him. He said that the Child made it clear that she did not want to hear about the past and put her hands over her ears.
34. The Father said that it was difficult to hear the Child saying that she did not want him in her life and he said that it sounded to him as though her words were rehearsed. He said that he did not understand why, at that debrief session, the Mother did not try to encourage the Child to see her Father. He told the court that he had explained to the Child that "change is good" and that "we all have stress in our lives but the best thing for her is that I am in her life".
35. Following the failed CCI, on JFCAS's recommendation, the court had ordered that indirect contact between the Child and her Father should continue pending the final hearing. The Father told the court that he had handed a letter to JFCAS for the Child which he expected the JFCAS officer would go through with her. This did not happen because the JFCAS officer was unexpectedly unable to work for a period through illness meaning that the indirect contact did not happen in the anticipated manner.
36. The Father understood that it was the Mother who, in fact, took the Child through the letter and that the Child had been upset by the contents. He complained that no work appeared to have been done with the Child after receipt by her of the letter and he was upset by the absence of reply to the letter which he had sent. It transpires that because of the JFCAS officer's illness, the Child had not seen the further letter he had written to her with an Easter bunny nor a further letter he had sent through JFCAS in April.
37. He described the Mother's position about contact as "mind-boggling" and "of no benefit to anyone". He said that in his view the contact sessions should have included him and him alone and that it was the Child who had missed out on the opportunity to enjoy contact with her Father. He explained to the court that he had previously suggested using his sister to support contact as she has an ongoing relationship with the Child whom she sees a few times a year. His view is that the Child needs to be given an opportunity to "do fun activities" which will take her mind off what he described as the clinical process in the JFCAS office.

38. The Father denied in cross-examination that the relationship between him and the Mother had been one which she characterised as abusive. He accepted that he had used illegal substances "a long time ago" but he could not tell the court when he had stopped taking drugs. He said that he drank alcohol but no more excessively than anyone else.
39. He accepted that he had taken ecstasy in his late teens and smoked marijuana when he was younger. The only explanation, he said, for slight positive test results for ketamine, amphetamine and cocaine in the recent hair sampling was because he must have had exposure to these substances when working as a DJ. He suggested that repeated passive exposure to these substances would explain the detected concentrations at low levels in the hair sampling undertaken. He denied taking any prescription medication which might explain these positive tests and dismissed the suggestion that the test results which showed markedly different levels appearing in a drug hair strand testing before and after May 2023 were in any way related to the timing of his application.
40. Under cross examination, he told the court that he thought that James Cunningham might have more success with the CCI than the one undertaken by JFCAS based on "what he sees in front of him". He accepted that JFCAS were better qualified to conduct the work. He referred to Mr Cunningham's evidence that he had worked with some two hundred Jersey families although he could not say whether Mr Cunningham had more experience of CCI than JFCAS. He complained that not enough work had been done with the Child by JFCAS and it was clear to him that the JFCAS officer had not been able to "get anything out of the Child".
41. He accepted that, notwithstanding the Child's wishes, he still wanted to push her into contact and said that it would be detrimental for him to walk away as he had walked away years before.
42. I asked the Father what impact he thought it might have on the Child to try to redo the work that had already been done. He told me that it depended on the work being done in the background. He told the court that the Child deserved the opportunity to enjoy contact with him and that it was not too much to push her to do something if she and the Mother and Stepfather were all "singing from the same hymn sheet". He said that he thought that the Child might be scared but this was because she knows that her Mother does not like him. He does not think that the Child was given the opportunity to flourish during the period when he "wasn't there for a time". He thinks that a lot more could have been done by the Mother and V to encourage the Child into contact. The Mother's evidence
43. The Mother gave evidence about financial and emotional abuse by the Father. She said that she tried to leave the relationship five or six times and that when the relationship eventually broke down, she and the Child went to live with her Mother because the Father refused to let them stay in the accommodation which they were renting. It took her six or eight weeks thereafter to find their own accommodation.

44. The Mother explained that she had harboured safeguarding concerns about the Child being in her Father's care which she had reported to Children's Social Care when their relationship broke down. She told the court that the Father had "threatened to cut her throat and remove her ovaries". She was cross examined about why this was not reported to the police. She spoke briefly about how abuse impacts the victim, explaining why she chose not to make this report and how her complaints to the social workers had focussed on her concerns about his care of the Child.
45. She denied that the Father had cared for the Child as he had claimed. The Father had lost his job and refused to look for further work, telling her that she had to go out to work which she did, for four hours a day, five days per week between 10am and 2pm which was the time when the Child was in the Father's care. This care lasted for no more than six months but gave her much cause for concern as when she would return home, the Child would still be in her baby-walker, often wearing dirty clothes and soiled nappies.
46. The Mother complained that the Child had not been taken out during the day by her Father and that he had complained to her that the Child cried frequently. She says that she was very troubled when the Father told her he wore headphones to block out the Child's crying.
47. Because of her concerns about the Father's failure to care for the Child properly, the Child's maternal grandmother had taken over her care while she worked. She accepted that there was a short period after their separation when contact had not taken place and that there had been proceedings to address this. A contact order was agreed but she said that the Father would fail to show up or show up late for contact and sometimes when he turned up, he was smelling of alcohol. She explained that the Father has never accepted that there were any reasons for her to have safeguarding concerns about his care of the Child.
48. The Mother also told the court that even when the Father was purportedly looking after the Child after their separation, often the Father would be asleep and the Child would be cared for by his mother or sister.
49. On Father's Day in 2018, she told the court that she received no response from the Father to the various messages she sent and telephone calls she made and that she had sat in her car outside his house with the Child for fifteen minutes or so, waiting for him to answer the door to exercise contact with his daughter. She heard nothing from him until the following Tuesday and in the meantime, she had contacted his sister to express her concern.
50. The Mother told the court that he never explained to her why he did not exercise contact on that day save to say that he was asleep. The Mother was concerned that he was under the influence of substances which is why he did not answer the calls or the door. As a result of this, she wanted future contact to take place via a contact centre.
51. The parties engaged in proceedings and subsequently in limited mediation but she said that the topic for mediation was financial support for the Child. The Father made no effort to see the Child during a five-year period from June 2018 until 2023.

52. She explained to the court that the Child has retained a good relationship with the paternal aunt who takes the Child out for the afternoon once every five or six weeks. She fears that it would be damaging for the Child's relationship with her paternal aunt if the Father used this good relationship as means of getting closer to the Child. The Child enjoys being with her aunt and she is concerned that if the aunt is used to supervise contact, this will destroy the Child's faith in or damage her relationship with the aunt.
53. During the five years before the Father got in contact about re-establishing a relationship with the Child, the Mother said that the Child did not talk about her Father or ask questions about him. She told the court that after the breakdown of their relationship, she had asked the Child's school to undertake some ELSA sessions with the Child to check how the Child was feeling and the school had reported after six sessions that they had no concerns about anything untoward in the Child's presentation.
54. The Mother told the court that notwithstanding her own feelings about the Father, she has and will continue to do all that she can to protect the relationship between them to ensure that the Child's view of the Father is not skewed. When the Father made contact with her to re-establish a relationship with the Child, she discussed it with their daughter, but the Child was resistant to any contact and found it difficult to talk about having a relationship with her Father. She had proposed child-inclusive mediation to the Father so that he could understand how the Child felt but in the meantime the Father had started proceedings.
55. The Mother explained that she thought it was important for contact initially to take place indirectly so that the Father could build some sort of rapport with his daughter. She told the court that the Child was very resistant to engaging in any way with her Father and when indirect contact started, the Child did not understand why he was sending her letters and explained that she did not want to write back to him. On each occasion when the Father had sent cards or letters, the Mother explained that she had worked hard and battled with the Child to get her to reply. She was not always successful.
56. She told the court that she had concerns that the Father was still misusing drugs which is why the court was asked to order drug testing. She was not altogether happy that the drug test results appeared to show some recent usage, even if limited.
57. The Mother told the court that she had had to do a lot of work in the background with the Child to encourage her to participate in the CCI and that without her or V being there, the Child would simply not attend. She described the Child as being very withdrawn before and during the sessions and said that there had been marked changes in the Child's behaviour generally: the Child was normally bright, bubbly and confident and she was worried when the Child appeared to have lost interest in her usual activities.

58. She told the court that she and her husband had told the Child to keep an open mind but that the Child had said that she did not want her life to change and expressed anxiety that no one was respecting her or listening to her wishes. She told the court that the Child had looked up her rights on the UNICEF website and had repeatedly said that she could not understand why the Mother was forcing her to engage in contact and was not listening to her wishes and feelings.
59. As to the suggestion made by the Father that the Mother had sabotaged some of the contact intervention, she denied that this was the case. As far as the first missed ice-skating session was concerned, her recollection was that she had told the JFCAS officer that she would be unable to participate as the Child was taking part in a performance at school every day that week and she was concerned that it was not the right weekend for this activity to take place in case the Child was hurt and it stopped her participating in the performance. The ice skating took place on the following occasion; there was no question of her deliberately sabotaging contact.
60. The Mother told the court that she had to be very firm about requiring the Child to sit and listen to the letter written by her Father. She described the Child as being furious that her Father insisted on calling himself “Daddy” and referring to her as “[Redacted]” as this is [redacted]. The Mother has kept correspondence from the Father in a special box so that it is available to the Child when she wants to look at it in the future.
61. The Mother considers that the JFCAS officer was very professional in her engagement involvement and that both she and the JFCAS officer worked hard to try to push the Child into contact. She said that the Child was not happy about her own proposal, made after a suggestion by the court in attempt to bridge the gap, that the Child should see her Father, say, three times a year. The Mother said that if an order for direct contact were made, she would have to force her to attend for as long as she could.
62. In cross-examination she explained that she had not remained in the building during the CCI in effort to sabotage the progress of contact; the Child had refused to go to the JFCAS office unless she was accompanied by her or her husband. For the first couple of sessions, one or both of them had stayed in the reception area and thereafter, they had gone shopping and returned to the building towards the end of the anticipated session. She explained that unless they had accompanied the Child, she could not have been persuaded to attend.
63. She denied that she had ever spoken to the Child about her Father in a negative manner. She explained that if the Child is aware of her feelings about him, the Child must have picked these up from their limited interaction in the joint session in a room together. She accepted that they did not discuss the Father at home.
64. The Mother was cross-examined about her alleged failure to provide reassurances to the Child about contact in front of the Father as suggested by the JFCAS officer. She explained that she had already given the Child this encouragement repeatedly and that the Child has been told, time and time again, not only that she has their support but that they expect her

to participate in contact. She also explained to the court that there was no benefit to her in sabotaging the CCI; it would have been easier for her and V if the Child had been willing to engage with the Father rather than them to have to battle with the Child to participate in any way.

65. The Mother explained that her job was to be there for the Child regardless of whether the Father heard her giving the Child the encouragement he wants and that there is only so much she can do after eighteen months of unwavering opposition by the Child to contact. She explained to the court that she had had to force the Child to participate in the sessions and that she did not feel it necessary to make the encouraging noises in front of the Father to give him peace of mind; her concern is (and was) the Child.
66. The Mother was cross-examined about her assertion that safeguarding concerns had been raised with Children's Services following the breakdown of the parents' relationship. It was put to her that she had fabricated these for the final hearing. The Mother denied saving up this evidence for the final hearing and described her safeguarding concerns as being based not only on historic and continuing drug misuse but also on the Father's presentation during contact after the breakdown of their relationship and the abuse she had received from him during their relationship and thereafter. She accepted that he had suffered bereavements and that he was, in his advocate's words "having a hard time". She accepted that the Father had suffered mental health issues as a result of a difficult year, but she asserted that notwithstanding these issues, he should still have turned up for contact with his daughter.
67. She explains that the Child has no memories of her Father positive or otherwise and she said that this is because he was never a proactive Father when he was in her life and then he had simply stepped away.
68. The Mother described herself as being "the bad guy" in the Child's eyes as she is the one forcing the Child to attend contact and she had done what she could to encourage the Child to participate.
69. She explained that notwithstanding the Child's rights as a child (about which she had been taught in school and read on the internet), irrespective of her feelings, adults have to make decisions for children and she was clear in her evidence that there was nothing further that the Father could do now to improve the situation. He had done his best during the CCI.
70. When I asked the Mother why she thought the Child had taken this intransigent position she concluded that it was because her daughter was happy with her life and she did not want her life to change. She described the Child as an obedient child but one who knew her own mind and who was struggling with being forced into contact sessions. She says she fears that if forced against her will to engage further it would do damage not only to the Child but also to her relationship with those closest to her, those she trusts, including her.

71. The Mother believes that the Father should step back and not force the Child into further contact. While the Mother has taken some time to recover from the damage to her caused by their allegedly abusive relationship, she has been unable to see a suggestion of any amelioration in the Child's attitude to exercising contact with her Father: the more the Child is pushed into contact, the more resistant she becomes. The evidence of the JFCAS officer
72. The JFCAS officer's written report to the court recommended that the court order indirect contact between the Child and her Father. Her report was accompanied by a letter to the from the Child in which the child explained that she has been forced to participate in contact sessions with her Father and that she did not want the contact to continue as she said that it would be "very scary".
73. The JFCAS officer concluded in her report that the Child had made a concerted effort to make to remain "distant, unfriendly and at times, even rude and hurtful" towards her Father during the contact intervention sessions. The JFCAS officer explains that the Child already has a Father figure in her life, namely V, whom she calls dad and that "there is no emotional space for (her Father) in her life".
74. The JFCAS officer has also written that being forced to see her Father is causing the Child emotional distress and she describes how the Child is using denial as a natural defence mechanism because she is too young to face the painful fact that her Father was absent from her life for most of her formative years.
75. Furthermore, The JFCAS officer observes that although the Child was three years old when her parents separated, the Child is aware that there is a difficult relationship between her parents who "cannot hide their feelings of unease when they have met each other in (her) office".
76. The JFCAS officer also considers that the addition of her Father to her day-to-day life would add a layer of complexity which the Child is not prepared to contemplate or old enough to assimilate; she considers that "the Child would need to decide how to manage her loyalties not only towards (the Father and step Father) but also her Mother, who she thinks does not like (the Father)".
77. Notwithstanding the fact that the Father has acted impeccably towards the Child during the CCI and has offered the Child an apology and explanation for his previous absence from her life, the JFCAS officer considers that "if direct contact were to continue, The Child's academic social and emotional well-being is likely to be negatively impacted... I am also not convinced that the Child at her young age, should be making such an important decision on her own, and be allowed to cut important, supportive, and loving people out of her life".
78. The JFCAS officer writes that the Child "needs help to learn how to navigate her loyalties between all the adults around her, to acknowledge that nurturing and supportive love always has a positive emotional influence on us, and to admit that life will continue to bring changes into her life and that she should try to accommodate them. However, this will be a

long process, and the Child needs the proper environment and empathy to be able to cope with her relationship with (her Father)". She adds that the special relationship which the Child could have with her Father has the potential to increase the Child's sense of identity and offer her another person to love and comfort her but that any ability for the Child to begin to regard her Father as a positive influence will not happen if the Child continues to feel so negatively about him, feels forced into contact or, indeed, if she is able to erase him from her life and thoughts. In order to facilitate the shift in her thinking, the JFCAS officer concludes that she needs her Mother and stepfather's "gentle and slow push to realise the benefits of allowing (her Father) in".

79. She concludes that indirect contact should enable the Father to demonstrate that he is willing to remain a presence in the Child's life until the Child is ready to open her life to him.
80. A significant proportion of the Father's cross examination of the JFCAS officer focused on his criticism of the JFCAS officer about the manner in which he perceived that she conducted the CCI. The purpose of that contact intervention, ordered by the court, was to effect the reintroduction of the Child to her Father in a safe (and observed) environment. CCI further assists the JFCAS officer to observe and report to the court on the relationship between the child and the estranged parent.
81. The CCI took place over six sessions. The fifth and sixth session took place out of the JFCAS office. Significant criticism was levelled at the JFCAS officer for her failure to prepare the Father for these sessions by giving him the tools necessary to engage in an effective manner with his daughter.
82. The JFCAS officer was also criticised for: (i) not ensuring that the Child's Mother and V were not present either in or outside the sessions; (ii) failing to comply with an arrangement that the Father should be in the meeting room before the Child entered or to bring hot chocolate to a session as promised; (iii) failing to ensure that contact took place out in the community rather than in the more sterile JFCAS environment; (iv) limiting the sessions to an hour in length;
- (v) failing to respond fully (or at times at all) to email correspondence from the Father between sessions about the manner in which they might be improved; (vi) organisational issues which arose particularly around the ice skating session meaning that the Child was at the JFCAS office when the Father had bought tickets for ice skating; (vii) failing to debrief in an appropriate manner after the contact intervention so as to better enable the Father to prepare for the next session; (viii) failure to manage the process to ensure that the Mother, particularly at the debrief session following the end of the contact intervention, emphasised to the Child in his hearing that she supported and encouraged her developing a relationship with him; (ix) failing to take the Child through the cards/letters herself as she had agreed to do and to report back to him both before the final hearing and between the first and second day of the hearing and to feedback to him as fully as he would have wished.

83. These overt criticisms were made against a background in which the Father's case was that a further CCI should take place conducted by James Cunningham and that the failures that he perceived of the CCI were entirely to blame for the Child's current refusal to contemplate developing any sort of relationship with her Father.
84. The JFCAS officer explained to the court that although the focus of the CCI is to effect a reintroduction, she tries to ensure that the setting is one in which the child is comfortable. Her aim is for the child to enjoy the sessions wherever possible and to make them "fun" and she was criticised by the Father for her decision to hold for sessions in the JFCAS office where he did not consider the child could possibly be expected to enjoy herself or to let go, particularly as her Stepfather and/or Mother was waiting outside. She accepted that attendance at the JFCAS office might not be perceived as a "fun" environment but at the same time there were card/board games available and the Father, for example, brought a jewellery making kit for the Child which the JFCAS officer hoped could be used as a tool to encourage the Child to engage with her Father at least in discussions about, for example, her friends given her previous reluctance to answer questions or limited her responses to a yes or no answer.
85. The JFCAS officer explained that the Child had negotiated her attendance at the sessions with her Mother/Stepfather and that her agreement to participate was conditional upon her Stepfather or Mother being present in the building; their presence was not intended to sabotage the positive reintroduction but to offer the Child the security blanket which she needed to feel safe participating in the sessions. The JFCAS officer was adamant that the Child needed to be in the relatively safe environment of the JFCAS office to be persuaded to attend the CCI.
86. On each occasion the Child needed to be persuaded to remain in the room or to engage otherwise with the activities planned. The JFCAS officer described having to negotiate with the Child to stay for a further period, to carry out one more activity before she tried again to leave the room and rejoin her Mother/V and this negotiation appeared to the court to be a feature of the interaction which the JFCAS officer had with the Child. She described a young girl who was brought up to be polite and well behaved who, over time, became uncharacteristically rude and unpleasant to her Father as she maintained her refusal to engage with him. This was troubling.
87. Advocate Binet asked the JFCAS officer about behaviour which might be construed as showing glimmers of positive change on the Child's behalf but the JFCAS officer felt unable to concede that there had been any meaningful progress. She said that by the time there was a meeting at the garden centre (the fifth contact session), there was evidence of regression in the Child's presentation from the fourth session in which she thought she could see the Child suppressing a smile when her Father made a joke. She concluded that the Child was determinedly refusing to enjoy his company although she did permit him to buy cakes for her to take home to her Mother and V. She also eventually allowed him to buy one for her.

88. After the debrief session during which the Father took the time to explain his absence to the Child face to face, and because the JFCAS officer was unable to recommend face to face contact, the court ordered monthly indirect (letter/card/present) contact when the Child was asked to read the correspondence from her Father and to open presents. On each occasion the JFCAS officer spoke to being unable to persuade the Child to open cards and letters, let alone read them. Furthermore, she had no apparent wish to hear or listen to what her Father had written. This correspondence, the JFCAS officer said, was appropriate and heartfelt expressing his love for the Child, his wish to remain part of her life and giving his explanation for his absence but it seemed to the JFCAS officer that the Child was not prepared to absorb the contents and had remained steadfast in her rejection of her Father, focussing on the aspect of the letters that the Child found upsetting, such as referring to himself as her Father.
89. The JFCAS officer concluded that this was evidence of the Child's denial - a defensive mechanism to avoid facing or assimilating the fact that he had been absent for nearly half of her life during which time his role had been played happily by her Stepfather, V. She simply did not want or, she thought, need, her Father in her life; the JFCAS officer speculated that this was because the Child was not old enough to manage feelings which might arise about his previous absence. It was possible that coming to terms with the absence and the reason for it might cause her to blame herself. It was also likely, she surmised, that the Child felt that any relationship with her Father might hurt her Stepfather and that she would feel disloyal to the person who had undertaken the paternal role in her life if she allowed her Father "in".
90. When asked about the Mother's approach to the contact intervention, The JFCAS officer said that it had been difficult for her but that she had cooperated fully and explained to the Child that she wanted her to enjoy contact. She did not see the Mother as in any way "closed to contact". The JFCAS officer explained that most contact interventions were successful and that it was rare for JFCAS to make a recommendation for no direct contact following a CCI but that she had done so in this case because she feared that there could be unwanted consequences which would have a negative impact on the Child's welfare and potentially the Child's relationship with her Mother who would, if ordered to do so, make the Child available for contact. The JFCAS officer said that if the court made an order for direct contact, in spite of her recommendation, such contact should not be for more than an hour.
91. The JFCAS officer explained that she was aware of Mr Cunningham and that he had had a good deal of involvement over the last few years supporting families with contact arrangements. She observed, however, that she was not sure that he understood that the work that needed to be done to reintroduce the Child had already taken place. The Child was simply not emotionally prepared at the moment to deal with the reintegration. Her experience of conducting CCI was significantly greater than his and by imposing direct contact now there was a risk that it would damage any future relationship with her Father.

92. The JFCAS officer was clear that the Mother needed to continue to remind the Child that having the Father in her life is not a bad thing but that at the moment she was struggling with what the JFCAS officer thought she might see as his rejection of her in the past.
 93. When questioned by the Mother's advocate, the JFCAS officer said that the drug testing results were not as clear as she and the Father had expected but that she had not seen anything from his presentation during the CCI to suggest that he was anything other than sober and so she did not have concerns in this regard.
 94. The JFCAS officer explained that she has nearly thirty years' experience as a social worker but that her experience of conducting CCI had been limited to several years' work with JFCAS. The court notes that conducting CCI is not a standard court ordered facility required by English and Welsh courts of CAFCASS, NYAS or other court-appointed independent social workers but it is a service that JFCAS offer this court which has proved extremely helpful, particularly in the absence of other resources on our island.
 95. When asked by the court about the merits of the Child engaging in the therapy to assist her with her feelings about her Father, the JFCAS officer concluded that the Child is a happy child who does not need therapy although she conceded that if forced to engage in direct contact with her Father she would need emotional support or there was a risk that there would be a psychological impact on the Child in relatively few months.
 96. The Father offered to pay for the Child to participate in therapy but the Mother refused to permit the Child to participate, explaining that she did not consider it was in their daughter's best interests for her to do so, such therapy, in the Mother's view, not being required. The law
 97. The Father makes an application under article 10(1)(a) of the Children (Jersey) Law 2002 (the "Law") for contact with the Child.
 98. As the hearing, intended to take place over one day, took two days and still there was insufficient time for closing submissions to be made by counsel, and moreover, because no authorities had been put in the bundle before the court, I asked advocates to prepare brief written closing submissions, accompanied by any law on which they proposed to rely. I specifically requested that they consider whether there was any authority about the treatment by a court of a child's refusal to engage willingly with a parent as the court has a statutory obligation to take into account the child's ascertainable wishes and feelings as one of the considerations set out in article 2 of the Law:- "2 Welfare of the child
- (1) When the court determines any question with respect to –
 - (a) the upbringing of a child; or (b) the administration of a child's property or the application of any income arising from it, the child's welfare shall be the court's paramount consideration.

- (2) In any proceedings in which any question with respect to the upbringing of a child arises, the court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child.
- (3) In the circumstances mentioned in paragraph (4), the court shall have regard in particular to –
 - (a) the ascertainable wishes and feelings of the child concerned (considered in the light of the child's age and understanding);
 - (b) the child's physical, emotional and educational needs;
 - (c) the likely effect on the child of any change in his or her circumstances;
 - (d) the child's age, sex, background and any characteristics of the child which the court considers relevant;
 - (e) any harm which the child has suffered or is at risk of suffering;
 - (f) how capable each of the child's parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting the child's needs; and
 - (g) the range of powers available to the court under this Law in the proceedings in question.
- (4) The circumstances are that –
 - (a) the court is considering whether to make, vary or discharge an Article 10 order, and the making, variation or discharge of the order is opposed by any party to the proceedings; or
 - (b) the court is considering whether to make, vary or discharge an order under Part 4.
- (5) Where the court is considering whether or not to make one or more orders under this Law with respect to a child, it shall not make the order or any of the orders unless it considers that doing so would be better for the child than making no order at all.”
- 99. Moreover, the court notes the obligation imposed by the Law when considering whether to make an order under article 10 to:- (i) treat the child's welfare as its paramount consideration (article 2(1)); (ii) have regard to the principle that delay in determining a question is likely to prejudice the welfare of a child (article 2(2)); and (iii) not make an order unless it considers that doing so would be better for the child than making no order at all (article 2(5)).
- 100. On behalf of the Father, Advocate Binet reminds the court of the recent decision of the Royal Court in Z v Y (Family)
- [2024] JRC 073 in which Commissioner Binnington summarises the Law and reminds himself and the Jurats as to the application of article 8 of the Convention as enshrined in Human Rights (Jersey) Law 2000. Furthermore, the Royal Court refers to the very well-known words of Munby LJ at paragraph 47 of in In the Matter of C (a Child) [2011] EWCA Civ 521:-

"Contact between parent and child is a fundamental element of family life and is almost always in the interests of the child ... There is a positive obligation on the State, and therefore on the judge, to take measures to maintain and to reconstitute the relationship between parent and child, in short, to maintain or restore contact. The judge has a positive duty to attempt to promote contact. The judge must grapple with all the available alternatives before abandoning hope of achieving some contact. He must be careful not to come to a premature decision, for contact is to be stopped only as a last resort and only once it has become clear that the child will not benefit from continuing the attempt ... The court should take a medium and long-term view and not accord excessive weight to what appear likely to be short-term or transient problems."

101. In the same judgment, the Royal Court mentions the presumption, missing from the Law (but present in the section 1 of the Children Law 1989), that the involvement of a parent in the life of a child will further the child's welfare. In so doing, Commissioner Binnington explains that "it is a principle to which the Jersey Courts should have regard".
102. The Father also prays in aid the Royal Court's words in J v I (Family) [2013] JRC 157 in which, at paragraph 59, in the context of an application for shared residence but in particular in relation to a child's expressed wishes about which school she would wish to attend, the court says:- "We appreciate that a child's wishes are of importance, increasingly so as the child gets older, and they are one of the factors to take into account under the welfare checklist, but to simply give effect to a child's wishes without more is, we think, an abandonment of parenthood."
103. Advocate Binet also places before the court the decision of Registrar Daultrey in R v S (Family) [2021] JRC 332, citing various excerpts at length in her closing submissions of the evidence placed before the court in that case by a psychotherapist and ISW who concluded that there had been "parental alienation" of the children by the Mother.
104. On behalf of the Mother, Advocate Donohue relies on the English Court of Appeal decision in Re P [1996] 2 FLR 314 in which Wall J (as he then was) summarises Sir Thomas Bingham (MR) (in Re O [1995] 2 FLR 124) and his exposition of underlying principles to be applied :-
"(1) Overriding all else, as provided by s 1(1) of the 1989 Act, the welfare of the child is the paramount consideration, and the court is concerned with the interests of the Mother and the Father only insofar as they bear on the welfare of the child.
(2) It is almost always in the interests of a child whose parents are separated that he or she should have contact with the parent with whom the child is not living.
(3) The court has power to enforce orders for contact, which it should not hesitate to exercise where it judges that it will overall promote the welfare of the child to do so."

- (4) Cases do, unhappily and infrequently but occasionally, arise in which a court is compelled to conclude that in existing circumstances an order for immediate direct contact should not be ordered, because so to order would injure the welfare of the child: see *Re D (A Minor)* (Contact: Mother's Hostility) [1993] 2 FLR 1, 7G, per Waite LJ.
- (5) In cases in which, for whatever reason, direct contact cannot for the time being be ordered, it is ordinarily highly desirable that there should be indirect contact so that the child grows up knowing of the love and interest of the absent parent with whom, in due course, direct contact should be established."
105. The Mother also relies on the decision of the Royal Court in *In the matter of G* [2012] (1) JLR Note 14:- "On an application for a contact order under art. 10 of the Children (Jersey) Law 2002, the conduct of the child's parents is only relevant if it affects the child's welfare (which, as provided in art. 2 of the Law, is the court's paramount consideration). There may be circumstances where the conduct of one or both parents towards the child is such that the court is so concerned for the child's physical, psychological or emotional welfare that contact will not be permitted at all, or will be subject to stringent conditions. Very exceptionally indeed, it might be that the impact of the conduct of one parent towards the other parent, with whom the child resides, is such that the court considers that contact between the non-resident parent and the child would be damaging to the child's physical, psychological or emotional welfare, with the result that no, or restricted, contact will be permitted (*Re O* (Contact: Imposition of conditions), [1995] 2 FLR 124, considered; *In re L* (A Child) (Contact: Domestic Violence), [2001] Fam. 260, considered; *C v. D.* 2000 JLR 334, considered). The disadvantages to the child of having no direct contact with the non-resident parent, in the context of past domestic violence, include (a) deprivation of a relationship with that parent; (b) loss of the opportunity to know the parent firsthand, with the loss of information that will go towards the child's formation of identity; (c) loss of the opportunity to know that parent's family; (d) loss of any positive opportunities that the parent could provide; (e) loss of the opportunity for any repair to relationships or to the harm done; and (f) lessening the likelihood of the child being able to make contact or form a relationship with the parent at a later stage (*In re L* (A Child) (Contact: Domestic Violence), considered)."
106. In the absence of authorities being put before me specifically dealing with how the courts have treated a child's expressed wishes and feelings, the court notes that in *In Re D (A Child)* [2006] UKHL 51, albeit in the context of an eight year old child's opposition to being forced to return in Hague proceedings, Baroness Hale says:- "As any parent who has ever asked a child what he wants for tea knows, there is a large difference between taking account of a child's views and doing what he wants. Especially in Hague Convention cases, the relevance of the child's views to the issues in the case may be limited. But there is now a growing understanding of the importance of listening to the children involved in children's cases. It is the child, more than anyone else, who will have to live with what the court decides. Those who do listen to children understand that they often have a point of

view which is quite distinct from that of the person looking after them. They are quite capable of being moral actors in their own right. Just as the adults may have to do what the court decides whether they like it or not, so may the child. But that is no more a reason for failing to hear what the child has to say than it is for refusing to hear the parents' views."

107. In *Re H-B (Children) (Contact)* [2015] EWCA Civ 389, on appeal from a decision of HHJ Wildblood, in which the judge found himself exercised by the tension between what might be described as the "principle of a presumption" mentioned by Commissioner Binnington in *Z v Y (Family)* and the intractable hostility of the children to engage in contact, at paragraphs 70 and on, addressing the parents, the former President of the Family Division, Sir James Munby said this:- "70. They also need to consider very carefully – both of them – the judge's next words: "I predict that it will only be in later life that the manifestations of what these parents have done to their children will become apparent as the children struggle to function as adults following the skewed childhood that their parents have both chosen to give them." This is a matter to which I must return. For the moment I confine myself to this. I very much hope that Judge Wildblood's prediction does not become reality. But I very much fear that unless their parents, the Mother in particular, take urgent steps to improve things, this will indeed be the future for J and K. It is a future which does not bear thinking about.
71. Judge Wildblood referred to 'parental responsibility'. It is a legal phrase, defined in section 3(1) of the Children Act 1989: "all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property". (emphasis added) Too often, warring parents focus on their "rights" whilst overlooking or minimising their "duties" and "responsibilities". As McFarlane LJ pointed out in *Re W (Direct Contact)* [2012] EWCA Civ 999, [2013] 1 FLR 494, para 47, "The phrase under consideration is not 'parental rights' but 'parental responsibility'." He went on, and I entirely agree: "where two parents share parental responsibility, it will be the duty of one parent to ensure that the rights of the other parent are respected, and vice versa, for the benefit of the child." He returned to the point (para 74): "along with the rights, powers and authority of a parent, come duties and responsibilities which must be discharged in a manner which respects similarly-held rights, powers, duties and responsibilities of the other parent".
72. However, and I wish to emphasise this, parental responsibility is more, much more, than a mere lawyer's concept or a principle of law. It is a fundamentally important reflection of the realities of the human condition, of the very essence of the relationship of parent and child. Parental responsibility exists outside and anterior to the law. Parental responsibility involves duties owed by the parent not just to the court. First and foremost, and even more importantly, parental responsibility involves duties owed by each parent to the child.
73. Deriving from this, another aspect of parental responsibility, rightly emphasised by McFarlane LJ (paras 74, 76), is that: "it is the parents, rather than the court or more generally the State, who are the primary decision makers and actors for determining and delivering

the upbringing that the welfare of their child requires ... the courts are entitled to look to each parent to use their best endeavours to deliver what their child needs, hard or burdensome or downright tough though that may be. The statute places the primary responsibility for delivering a good outcome for a child upon each of his or her parents, rather than upon the courts or some other agency.” I agree with every word of that.

74. In relation to contact, McFarlane LJ said this (paras 77-78): “[77] Where there are significant difficulties in the way of establishing safe and beneficial contact, the parents share the primary responsibility of addressing those difficulties so that, in time, and maybe with outside help, the child can benefit from being in a full relationship with each parent ... the only interests that either parent should have ... in mind [are] those of each of their two children.
- [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.” Nor, I should add, is it acceptable for a parent to shirk their responsibility by sheltering behind the assertion that the child will not do, or even that the child is adamantly opposed to doing, something – and this, I emphasise, is so whatever the age of the child.
75. As McFarlane LJ observed (para 75), the responsibility of being a parent can be tough, it may be ‘a very big ask’. But that is what parenting is all about. There are many things which they ought to do that children may not want to do or even refuse to do: going to the dentist, going to visit some ‘boring’ elderly relative, going to school, doing homework or sitting an examination, the list is endless. The parent’s job, exercising all their parental skills, techniques and stratagems – which may include use of both the carrot and the stick and, in the case of the older child, reason and argument –, is to get the child to do what it does not want to do. That the child’s refusal cannot as such be a justification for parental failure is clear: after all, children whose education or health is prejudiced by parental shortcomings may be taken away from their parents and put into public care.
76. I appreciate that parenting headstrong or strong-willed teenagers can be particularly taxing, sometimes very tough and exceptionally demanding. And in relation to the parenting of teenagers no judge can safely overlook the teaching of *Gillick v West Norfolk and Wisbech Area Health Authority and anor* [1986] AC 112, in particular the speeches of Lord Fraser of Tullybelton and Lord Scarman. But 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. I accept (see *Cambra v Jones* [2014] EWHC 2264 (Fam), paras 20, 25) that a parent should not resort to brute force in exercising parental responsibility in relation to a fractious teenager. But what one can reasonably demand – not merely as a matter of law but also and much more fundamentally as a matter of natural parental obligation – is that

the parent, by argument, persuasion, cajolement, blandishments, inducements, sanctions (for example, 'grounding' or the confiscation of mobile phones, computers or other electronic equipment) or threats falling short of brute force, or by a combination of them, does their level best to ensure compliance. That is what one would expect of a parent whose rebellious teenage child is foolishly refusing to do GCSEs or A-Levels or 'dropping out' into a life of drug-fuelled crime. Why should we expect any less of a parent whose rebellious teenage child is refusing to see her Father?" Discussion

108. It is becoming increasingly frequent for the court to hear that a child is opposed to, or otherwise expressing a lack of interest in, developing a relationship with a parent, estranged or otherwise. The majority of our young people grow up nowadays with a strong sense of their rights; they are educated to understand that they have a voice and may be forthright in expressing their wishes and feelings. Current society encourages young people to make choices and, one might posit, exposes them to options which were not considered age appropriate only a generation ago.
109. The Child has exercised what she has been brought up to believe is her right not to establish or re-establish any sort of meaningful relationship with her Father. She asks the court to pay heed to her wishes and feelings. It is against this background that the court is faced with the thorny issue of balancing each of the Child and her parents' respective rights to a family life under article 8 of the schedule to the Human Rights (Jersey) Law 2000 against the matters which I am bound to take into account under the Law.
110. It is clear to the court that the Mother has brought the Child up to be a strong-minded young girl, who is used to having her wishes and feelings taken into account. I heard the Mother's evidence about the adverse impact that her relationship with the Father had on the Mother's self-confidence and am satisfied that the Mother was determined to ensure that the Child grows up with the confidence to stand up for herself because the Mother told the court that it had taken her a long time to get over what she described as an abusive relationship.
111. I pause to comment that I am not asked by the Mother to make findings about the nature of that relationship and I do not need to do so because the Mother does not oppose contact on the basis of that alleged abuse which the Mother told me that it had taken her a long time to recover from. I observe that the Mother spoke candidly about how the difficult and (she says) abusive relationship has fed into her parenting of her daughter and the court takes into account the evidence of historic drug misuse and how that may have impacted the Father's decision making in 2017/2018. I do not, however, consider that this aspect of the Father's past needs to weigh heavily on my consideration of how capable each of these parents are of meeting the Child's needs.
112. Furthermore, and in spite of the questioning on behalf of the Father suggesting that the Mother sabotaged the prospect of the Father being able to establish a relationship with the Child, the Father is not specifically asking the court to make findings about any "alienating" behaviour leading to the Child's determination not to engage with her Father. I was

surprised that the Father relied to the extent that he did in closing submissions on evidence of so called "parental alienation" made in R v S (Family) to support his case when he will have been advised that evidence from a different case, and particularly expert evidence is of no import in a different matter. Furthermore, allegations of this nature made against a background of allegations of domestic abuse need to be categorically pleaded and evidenced so that identified and disputed facts can be considered and findings made.

113. In this case, neither parent asked for findings but the allegations of sabotage made by the Father must be addressed because of the Father's assertion that this is part of the evidential picture leading to the failure of the CCI. He says, for example, that the Mother deliberately failed to bring the Child to the ice skating session which he believes that she was keen to undertake, that she and V had stayed at the JFCAS office to undermine the meetings taking place between the Child and him and that the Mother had failed, in front of him, to tell the Child that she should engage with her Father and that she had her Mother's blessing to do so. Furthermore, the Father alleged that at the second reorganised ice-skating session, the Mother/V had arranged for V's family to be there so as to distract the Child from enjoying the time with her Father.
114. The Mother's evidence about the CCI was tolerably clear; she understands the importance to the Child in the medium/long term of having a relationship with her Father but she accepted that the Child might well have picked up on her own feelings about him, which she explained by giving the court some detail about his behaviour in the past which led to the cessation of contact, including his misuse of illicit substances. She harbours residual concerns about his lifestyle choices and his past behaviour and parenting, given her experience of being in an intimate relationship with him. She would, I find, prefer him not to be in her daughter's life but understands that it is, on balance, better for the Child to know her Father than not. I accept, though, that as a responsible parent she has recently done what she can to promote the Father, in spite of her feelings about him, albeit perhaps not with the alacrity which the Father would desire or which the Child needed for a foundation to be created to build a bond. That much is clear from the historic evidence.
115. Has the Mother's overt behaviour sabotaged the CCI? I do not accept that it has. However, I suspect that the Mother's residual concerns and feelings about the Father have meant that the Child has grown up broadly unaware of his existence. The Mother says that the Child had not asked about the Father and they have not talked as a family about the Father until his relatively recent approach to request contact. I suspect that this explains why, to a degree, the Child is now resistant to the re-introduction of him into her otherwise happy life. I also find that she has not needed to look for a father figure because she has had the benefit of the constant presence of V in her life over the last several years; there is simply no gap in her life which needs to be filled. I also suspect that the Child perceives the Father as a threat to the family foundation which she has enjoyed over recent years in which her Father played no part and to which he made no contribution. The CCI

116. I must express some disquiet about the manner in which the Father sought to persuade the court to order a further CCI using the services of Mr Cunningham. Mr Cunningham offers a valuable service to the community in Jersey as a Father who has used his own experience to help others, both as a medium for supported contact and also as a McKenzie Friend. The court acknowledges this work that he does and the help he has offered to many grateful parents.
117. However, it does the Father no credit to suggest that Mr Cunningham is qualified to undertake a further CCI where JFCAS efforts have, in the Father's view, failed. This suggestion rather undermines the enormous contribution which JFCAS, a small cohort of very well qualified social workers with many years of experience, make to the judiciary, the welfare of children and the support of parents across Jersey and beyond. JFCAS offer CCI because they want to bridge gaps which may exist in public services in Jersey and they do so to support children who would benefit from an opportunity to engage or reengage with a parent. It is not part of their primary role as court appointed social workers and advisers to the judiciary and representatives of children as guardians to offer bespoke solutions to problems created by parents. That they try to do so is a benefit to all court users.
118. The Father's in depth and at times uncomfortable questioning of the JFCAS officer was not welcome or necessary; from the JFCAS officer's responses, it appears that there were some organisational issues and that a contemporaneous period of ill health meant that JFCAS were not able to offer the administratively perfect support to the CCI which the Father felt he should have been offered and which the Child deserved. It is a shame that the promised assistance to the Father was not always effectively offered particularly when letters which the Father sent to the Child were sent were not acknowledged but were these omissions by JFCAS to blame for the failure of the CCI?
119. The fact that the Father suggested that JFCAS should have better advised him about how to engage with and entertain the Child at the initial sessions speaks volumes about the factual matrix which underlies this dispute; the Father chose to step out of the Child's life for five years when she was only four years old. He did not do so because the Mother was making contact difficult for him or being obstructive and it is for this reason that the Father's allegations of sabotage do not find favour with the court. To the Mother's credit, she was attempting to maintain the relationship in spite of the strength of her feeling about him.
120. The court was concerned to hear that contact ceased after the Father failed to wake up to exercise contact with his four year old daughter. Contact did not cease because of obstacles placed by the Mother or practical impediments like distance or health. I accept that the Father's mental health may have been suffering but he chose to step away from the Child for almost half of her life and now complains that others are to blame for the fact he is not welcome in her life. That he does not know or understand his [redacted] daughter is not anyone's fault but his own and I rather took from the tenor and content of his evidence that he finds it difficult to accept that the Child's current presentation is about his historic choices. He accepted that he had made a poor choice many years ago but appears to think

that it was a bad decision that can be remedied now.

121. I accept that before/ during this prolonged period of absence he experienced bereavements but I am afraid that these do not excuse his absence from the Child's life. Parental responsibility is, as HHJ Wildblood, McFarlane LJ, Munby LJ and Hale LJ have explained, more about a parent's duty to a child than a parent's right to make decisions on a child's behalf. The Father has failed the Child in the past and the court must now consider as its paramount consideration how her welfare may be served by imposing contact on her now, against her wishes.
122. The court refused to order an expert assessment in this case because it is obvious why the CCI failed; the blame is not to be laid at the feet of the Mother (although I accept that her personal feelings about the Father will not have kept the notion of his existence alive and present in the Child's mind during his absence), nor can the blame be placed on the shoulders of JFCAS for failing to serve the Father in the manner he felt he deserved. I do not accept that JFCAS owe the Father any duty; their service is to the court and to the children with whose welfare the court is concerned. The Father chose to walk away, not for a few months, but for years and the Child simply has no wish or need to find a space for him in her very happy life now. She has no unmet needs, emotional, physical or educational.
123. It is to the Father's credit that he has endured what must have been a very difficult few meetings with the Child; she has been candid in her strength of feeling and clear in her wishes and I can only imagine how hard it must have been for him to be rejected by her after his various attempts to win a place in her affections, now that he wants to be reintroduced into her life. The Mother and the JFCAS officer accept that there was nothing more that the Father could now do; I fear that is simply too late for him to reprise the role that he now wishes to undertake and I accept what JFCAS tell me that no number of forced encounters may change the Child's feelings. To what extent are a child's wishes and feelings the overriding factor?
124. I fully accept that at her age, the Child may not understand the choice or the repercussions of the choice she has expressed in writing to the court. She is on the cusp of secondary school and will soon enter the difficult years where opposition is often written through a teenager like Brighton through a stick of rock.
125. There is a material difference between hearing and understanding the voice of a child and blindly following those wishes as though they are the only or most compelling factor in a court's determination. Needless to say, and as those judges better qualified than me have already observed, the extent to which the wishes and feelings are taken into account may well depend on the age and maturity of a child.
126. I also accept that it is incumbent on a parent to promote the other parent in a child's mind, notwithstanding their personal views. As adults we understand at one end of the spectrum, the importance to a child of having a sense of belonging and heritage, and at the other end of the scale, we appreciate that a child benefits from the knowledge that they have loving

parents to support, encourage and provide an example of what a good, responsible adult life can look like, while at the same time, offering boundaries and discipline where needed. It is not an easy job and it is one which the Mother appears to have done well, although I find that her own experiences of the Father have meant that she has not kept him as present in the Child's lived experience as would have been ideal. But were it not for the Father's choice to walk away from the Child's life, this would not have likely had the impact it has on the Child.

127. The focus of my determination is therefore not on how the Child says she feels and what she wants but on how I consider that the Child's wishes may impact her going forward. The Mother has, quite properly, tried to cajole the Child into establishing a relationship with the Father but against the background of those wishes and feelings, JFCAS told the court that there is a significant risk that forcing the issue will be counterproductive. The Child has been brought up to be respectful and obedient but also to have her feelings and thoughts taken into account. JFCAS suggest that to order direct contact may result in the Child's faith and confidence in adults being undermined.
128. I am satisfied that the Mother's feelings about the Father may have played a part in how the Child perceives him; she is close to her Mother and Stepfather and it is easy to understand how at her age, she has not yet learned the skills/ nuanced thinking required to appreciate that she may be able to develop a relationship with the Father without being disloyal to her Mother and Stepfather and that, in fact, he does not present the threat to the stable family life which she enjoys.
129. The Child is at the cusp of years of significant growth and change and I suspect that, in part, this may explain why any additional and, what she perceives as unnecessary, change and complication is unwelcome. Equally, she is an age where firm and gentle boundaries and expectation setting may materially benefit her as they appear to have done to date.
130. For young and old alike, duty in some form or other can be irksome but understanding one's role and value in a family and society as a whole is part of growing up. We learn what we like and aspire to by seeing for ourselves not only good examples but also by exposure to situations which may be less than ideal. I suspect that the JFCAS officer is correct when she surmises that exposure to her previously absent Father may force the Child to think about matters which she would prefer to ignore. I find that she is currently not at an age where to force her to face these matters could be said to be in her best interests.
131. While accepting the established premise that it is usually in a child's best interest to know both of her parents, this needs to be weighed up against any harm which may be caused to her; I accept that forcing the Child to engage in regular direct contact at this stage may undermine all that the Child has been brought up to be and to believe as much as I also consider that, in due course and over the coming years, she may be curious about her Father and she may be willing to challenge herself by asking him herself why he made the choice to be absent for a good part of her formative years.

132. The Child has been determined in her opposition to direct and also indirect contact. The JFCAS officer suggests that indirect contact continue for now and that the Mother continue to encourage her to read letters/cards/emails so that when she is ready to engage with her Father, the link between them is there, however tenuous.
133. The Father's suggestion that a timetable for regular monthly contact be put in place now (accompanied by a further contact intervention) to be followed by weekly contact after six months is, I find, unrealistic in light of the Child's wishes and feelings. I suspect that to make this order will cause the Child emotional harm and may force the Child into conflict with her Mother who has already had to bargain and negotiate with the Child to secure her attendance at the CCI. I accept that therapy to meet a need which the Child does not think exists is unlikely to be helpful at this age and stage of her development. To what extent is there a need for an order?
134. I am mindful that the Law requires me not to make an order unless I consider "that doing so would be better for the child than making no order at all". I have been exercised by this mandate because I cannot say with any degree of certainty that an order for direct contact now is better for the Child than no order at all. She speaks in her letter about her sense of wellbeing being disturbed by the Father's appearance into her life. I fear that enforced direct contact will cause the Child emotional harm and as my paramount consideration is her welfare, this weighs heavily on my determination. Conversely, I am certain that an order for indirect contact is in the Child's best interests with the invocation to her Mother that she complies with her parental responsibility fully to ensure that the Child reads the letters and learns to accept that her long term welfare and ability to understand who she is will be served by understanding that her Father has a part to play, however much she currently wishes to bury that.
135. At a case review hearing earlier this year I said that I anticipated that the court might make an order for a limited amount of direct contact between the Child and her Father so that the Child understands her role in her broader family and her responsibility to participate in that family life. After hearing the evidence, it seems to me that too much time has passed to insist on patching up a broken connection; this is not a case where the court is driven by the imperative to reestablish in short order a relationship between a child and her parent broken down at the time of the breakup of her parents' relationship but one in which a relationship needs to be created de novo and I think that it would be wrong to force that on the Child until she is ready. The court cannot force an adult to engage in a relationship he or she does not want and I am not convinced that in view of the Child's implacable hostility, it would be right to insist on direct contact for this child, at this age and stage in her development. There should be no doubt that the court has weighed up all options given the presumption endorsed by the Royal Court that contact is usually in a child's best interests.
136. I am certain that nothing could have been done by JFCAS to change the outcome of the contact intervention for the Child that was not done - in spite of the Father's criticism which, although unjustified, is understandable. The consequences of our decisions may be

unpalatable and it is rather easier to blame others when no obvious remedy to heal the damage is apparent. I cannot see how a further CCI conducted by someone not adequately qualified to undertake this work (however well meaning) is in this child's best interests given her opposition to her Father.

137. I am heartened by the knowledge that the Child has a good relationship with the Father's sister which offers her a tangible link with the paternal side of her family but this is not quite enough to be sure of building a bond with her Father in the future.
138. I am satisfied that the door to a future relationship must be kept open but I fear that by forcing the Child to see her Father now, her sense of pique and resentment may cause irreparable damage to any future possible relationship with him and, eventually, to her welfare. I have reconsidered what I originally indicated to the parties and, taking all of the matters which I am bound to into account and as difficult a decision as this has been to reach find that, for now, an order for direct contact, even a few times a year, is not in the Child's current best interests.
139. My view is that the Father needs to exercise patience and "play the long game" by diligently exercising indirect contact, recognising that the Child needs him to show that he can be consistent, reliable and present and progress at her pace. Furthermore, he needs to demonstrate to her that he is not the threat which she perceives him to be.
140. I do understand that this will be a great disappointment to the Father but I am afraid that his feelings must be marshalled to ensure that the Child understands that, not only does he respect her and her wishes, but that he loves her and is willing to wait to engage on her terms when the time is right. Change of name
141. The Mother seeks an order for a change of the Child's surname so that the Child shares her married name and the name of her eagerly anticipated new sibling. The Father opposes that application in spite of the fact that the Child does not bear his surname.
142. I did not hear full argument about the issue and consider that it would be unfair to make a determination on the question without giving both parties the opportunity to give evidence on the issue as this was raised rather late in the hearing and was unexpected, certainly by the court. I only observe that a key factor on an application for a change of name is that of retaining a child's identity as part of her Father's family and that, in this case, it is not the Father's surname which she bears but her Mother's maiden name.
143. I have prepared a letter to the Child which appears as a postscript to the judgment which explains to her why I have made the decisions which I have. Postscript "Dear [Redacted] Thank you for letter, telling me how you feel about your father, [X]. As you know, I have been speaking to your mum, [X] and [redacted] about what sort of contact you should have with your father, [X], in the future. It is my job to make a decision and I wanted to tell you about the decision I have made. You've said that seeing [X] has made you unhappy and worried and I have listened to what you have said about contact. I want you to know that I

understand why you feel the way you do but, as a judge, my job is to think about not only what you want now, but also what you might want and need in the future. Often, as we grow up, we want to find out about what makes us who we are and I think that you might want to get to know [X] when you are a bit older, but I want to give you the chance to do this in your own time. I have decided that, for now, you need to get on with your life without being forced to see your father. I think that [X] just wants to get to know you as you grow up and I have asked [X] to write to you every month and as part of the deal of me listening to what you want, I would like you to read the letters that I have asked [X] to send you. I would also like you, a few times a year, to write or email [X] to tell him about what you are doing, who your friends are, what you are doing in your spare time and what you are hoping to do in the future. I have asked your mum to help you do this. [X] needs you to give him a second chance to get things right; we all deserve that, don't we? Your mum has told me what a kind and clever girl you are and I know that you will try your best to play your part. I wish you a very happy life. Judge Sam" Authorities Children (Jersey) Law 2002. Z v Y (Family) [2024] JRC 073. Human Rights (Jersey) Law 2000. In the Matter of C (a Child) [2011] EWCA Civ 521. J v I (Family) [2013] JRC 157. R v S (Family) [2021] JRC 332. Re P [1996] 2 FLR 314. Re O [1995] 2 FLR 124. In the matter of G [2012] (1) JLR Note 14. In Re D (A Child)

[2006] UKHL 51. Re H-B (Children) (Contact) [2015] EWCA Civ 389.

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