Re E (A Child) [2011] EWHC 3521 (Fam)

Judgment in intractable contact / parental alienation case, giving guidance on case management in such matters

By the time of the final hearing the child was 8 ½ years old and had not seen the father for 3 ½ years. There was evidence that the relationship between father and child had been positive up until and including the last contact. The father's application for contact was issued in October 2006. The child began resisting contact in January 2008. The Cafcass family support worker managed to facilitate a 5 minute contact in April 2008. Contact was suspended pending a fact-finding hearing, which took place on 24 April 2009. Thereafter, the final hearing was adjourned a number of times, and a second fact-finding was listed for 12 August 2010. The matter came before a district judge who decided that the listing would be utilised for a contested interim contact hearing. A contact order was made, but contact did not subsequently take place. The matter was transferred to the High Court on 15 November 2010 to enforce/define contact. Two reports from a child and adolescent psychiatrist concluded that there was no objectively comprehensible reason for the child's resistance to contact.

The mother's position was that contact should cease. The father asked the court to make an order for contact with further professional involvement. Mr Justice Hedley found that the child's opposition to contact provided a convenient cloak for the mother to shelter behind. Although the mother had not deliberately or maliciously manipulated the child's views she had allowed the child to absorb her attitude, and making it clear to the child that contact was her choice was an implicit encouragement to resist. The judge decided to order a professional assessment of direct contact. However, his Lordship suggested that, even without professional assistance, ordering the parents to make contact happen might be preferable to abandonment. The importance of the Guardian remaining involved was also reiterated.

Hedley J commented that it is important to identify at an early stage those cases with the hallmarks of intractability. In such cases it is important to have an opportunity to give evidence on welfare (rather than fact-finding) at an early stage. Judicial continuity is important, and the High Court cannot provide it. If the matter is transferred to the High Court it should not be transferred absolutely in the first instance, but rather for directions so that a new mind can be applied to the case.

Summary by **Henry Clayton**, barrister, **4 Paper Buildings**

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Neutral Citation Number: [2011] EWHC 3521 (Fam)

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17th August 2011

Before:
THE HONOURABLE MR JUSTICE HEDLEY

BETWEEN:

D
Applicant

and

H
Respondent

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Mr Clayton (instructed by Carr Hepburn, Hemel Hempstead) appeared on behalf of the Applicant Father
Mr Watson appeared on behalf of the Respondent Mother
Miss Taylor appeared on behalf of the Guardian ad Litem

JUDGMENT

(as approved by the Judge)

MR JUSTICE HEDLEY:
1. This case concerned a girl called E, who was born on 19th January 2003, so that she is now 81/2, and she is known and will be known throughout this judgment, as 'E'. Her father is Mr D, who is aged 40. She last saw her father on 7th April 2008. Her mother is H, who is 33, and it is with her mother that E lives.

2. The parties met in 1999 and they had a relationship which existed until early 2006. It matters not quite what the nature of the relationship was. It does not appear to have been particularly close, and it appears to be accepted that the mother was never keen on having a family by Mr D. Be that as it may, E was born as a result of that relationship.

3. The matters before me effectively are an entrenched, and perhaps intractable, contact dispute. There are in practice cross-applications either to terminate contact, on the one hand, or to define and enforce contact on the other. There have been intimations in correspondence about the possibility of a transfer of residence application but Mr D made it crystal clear that that was not something that he was wanting to pursue at the present time, or at all, if a contact regime were in place.

4. It is perhaps important at the outset to advert to the litigation history of these proceedings. As I say, the parties ended their relationship and there was contact ensuing thereafter. It was stopped in September 2006 after some mediation had taken place, and on 26th October 2006, the father issued in the Family Proceedings Court applications for contact and parental responsibility. It is apparent that during 2007 contact took place, though it was often bedevilled by annoying difficulties in the organising of the actual contacts themselves, and suggests that there was a serious want of flexibility in the arrangements, which should have alerted people to the potential difficulties in the case.

5. The father was granted parental responsibility on 15th September of 2007 and as a result of the culmination of these difficulties over contact the matter was on 20th December 2007 transferred to the Watford County Court. Problems with contact appear to have escalated in January 2008, which, so far as I can see, is the earliest contact on which E positively refused to get out of the car and go to contact, and that repeated itself on a number of occasions.

6. The CAFCASS family support worker, Mrs P, was involved at this stage, and she contrived, skilfully, to effect a brief contact on 7th April 2008. That contact lasted only five minutes or so and, in fairness, that was anticipated that that might be the case on that occasion as part of the preparatory work that Mrs P was endeavouring to do. Ordinarily, a five-minute contact visit would not be of great significance but in this case it is at least noteworthy that the child appeared at ease with the father, was in physical contact with him and appeared to enjoy his presence. That, as I indicated, was in fact the last occasion in which actual contact took place.

7. There were a considerable number of factual disputes between the parties, and, indeed, criminal proceedings had occurred at one stage, and accordingly, Her Honour Judge Harris, who endeavoured to provide judicial continuity at Watford, fixed a fact-finding hearing for 17th October 2008. For many different reasons, but as a matter of fact, that hearing was adjourned on no less than seven occasions before ultimately being considered by the learned judge on 25th March of 2009 and, in respect that, the judgment which she gave on 24th April 2009. I will say more about that in due course.

8. The final hearing was then listed for the 21st and 22nd January 2010, to be taken by Her Honour Judge Harris. In fact new factual issues emerged at or in the course of that hearing and the matter was further adjourned one way and another to a second fact-finding hearing 12th August 2010. The matter came on before the district judge and on that occasion the mother decided that she would not pursue the matters which had been the subject of complaint and what happened was that there was an agreement that they would not be pursued, there was a recognition in the order that they were not matters that could be revisited or relied upon in the future and there was then a contested hearing on submissions as to interim contact and the learned judge, indeed, made an interim contact order and a final hearing was then fixed for the 8th to 10th March 2011.

9. In November of 2010 the question was raised, no doubt probably not for the first time, about a transfer to the High Court and such an order was made on 15th November 2010. There were at least two directions hearing in the High Court, as well as one which was vacated by consent, with a view to the matter being heard as a final hearing between the 11th and 13th May 2011. The case was not reached on that occasion, for reasons that I have not enquired into, and so was further adjourned and the actual result of all that was that the matter came before me on Monday of this week, the 15th August, in circumstances where neither I nor the parties had had any previous dealings with each other at all.

10. The consequence of that unhappy history is that the first occasion on which the parties have been given oral evidence in respect of the welfare of E, pursuant to an application made on 26th October 2006, was 15th August 2011, and if the parties feel aggrieved about that history, they are, in my view, entitled to feel just that. The difficulty is that with the benefit of hindsight, it is apparent not only that this case has simply drifted on far too long but that there were early signs to suggest that this case was going to present unusual difficulties, but as is all too often the case, it is in fact

extremely difficult to identify a hearing in which a wrong decision in respect of adjournment was made, that is to say, if one puts oneself in the position of the judge and the parties in respect of each hearing, one can understand why the order made was made.

11. There are perhaps one or two observations that need to be made as a result of this history. The first is that it is extremely important, both for courts and advisers, to try to spot at an early stage those cases which have the hallmarks of difficulty, let alone intractability about them. The history of contact in 2007 was a significant warning. The escalation of those difficulties at the beginning of 2008 should perhaps have been decisive. Secondly, where one is dealing with a case with intractable difficulties of this sort, it is extremely important that the parties at a relatively early stage have an opportunity to give evidence not against each other, as happens in fact-finding hearings, but in respect of the interests of the child which are all too easily lost in the maelstrom of allegations that all too often surround fact-finding hearings, and in this case the prospect of two fact-finding hearings merely indicates that the welfare of the child was sidelined for far too long.

12. Next, experience teaches that judicial continuity is of particular importance in difficult and intractable contact cases. It is, of course, over a very long period of time extraordinarily difficult to deliver. It is impossible to deliver where there are transfers between different levels of court, and, in this case, this case proceeded for a substantial period of time in the Family Proceedings Court and for a substantial period of time in Watford before it finally arrived in the High Court. It is right to acknowledge that Her Honour Judge Harris, as one might expect, made serious attempts to keep control of this case but the retrospect of the events in Watford merely illustrates how very difficult that sometimes can be.

13. The next comment to make is that the transfer of this case to the High Court was, I fear, a counsel of despair. The fact that a case is an intractable contact dispute is not of itself sufficient reason to transfer to the High Court, for the very reason that it undermines judicial continuity and the High Court, especially in London, has greater difficulty in delivering judicial continuity than pretty well any other family court, because of the obligations of judges not only in other centres in the country but in the Administrative Court, the Court of Appeal and the like.

14. If a case is to be transferred to the High Court it seems to me that it is desirable that the judge so considering the matter consults with the Family Division Liaison Judge, as may well have happened in this case, and that the matter should be transferred not absolutely but for directions with a view to a High Court judge considering whether the matter should remain in the High Court. That has the advantage, which I readily understand and accept, of a new mind being applied to the case without necessarily divesting the judge who has had continual oversight of the case from continuing in it with the benefit of such directions or observations as a High Court judge may in the circumstances be able to offer.

15. All those matters said, we are where we are, and my task is now to provide, so far as the court can, for the management of the future relationship between E and her father, dictated by E's welfare as my paramount consideration. Let us then briefly reflect on the position which each party takes in these proceedings.

16. The father has, in fairness to hi, persisted throughout in an endeavour to have a relationship with his daughter. He was at the time that it was given no doubt aggrieved by the judgment of Her Honour Judge Harris on 24th April 2009. It contained significant criticisms of his behaviour and made

a number of findings which were very much to his detriment, in particular, the learned judge observed, in respect of matters to do with aggression and anger and frustration and fuelling those without with alcohol. In most cases, sadly, that is simply met by resentment and continued persistence with the original application. It is to the very considerable credit of Mr D that notwithstanding, no doubt, his robust grievance of the judgment, he sought to do something about it, and he went to an organisation called Turning Point with a view to addressing questions of frustration and anger, and in the course of that came to accept that there were ways of controlling anger and one of them was to be cautious about drink.

17. I have two reports from Turning Point. There is no basis at all on which I should not accept those reports and, accordingly, the court would reach the view that as of the end of 2009, whatever the position may have been earlier, the father was in a position to exercise contact responsibly, and indeed, no doubt that was the view of the learned judge on 12th August 2010 when he made the order for contact that he did.

18. The mother's position is, of course, very different. It is important, I think, to set her views in the context of her own experiences. She lives with five children and is in a relationship, but not cohabitation, with the father of the two youngest children. Each of the three older children have separate fathers. In respect of the eldest child, there clearly were issues about contact in originally, because there is reference to a welfare report, but the mother says, and I have no reason to doubt what she says, that that child (young man, as he now is) has a good relationship with his father. In relation to the next child, he has no relationship with his father which the mother says, and, again, I have no reason to doubt this, is of that father's own choosing, and, sadly, that is not an uncommon state of affairs. The two youngest children, of course, have an ongoing relationship with their father because he is the mother's current partner and he exercises a paternal role, as one might expect, in relation to all the children.

19. E, as the middle child, is thus in an unusual position because the position of her relationship with her father introduces an adult who has no relationship with any of the other children but, nevertheless, he remains her father in a way that nobody else can be, and it is not surprising in those circumstances that there has been a degree of complexity and confusion in relation to the questions of contact.

20. Contact undoubtedly occurred in the early stages of the break-up, and in the early aftermath of the break-up, of the relationship between the parents. Nevertheless, it will have been apparent from what was said earlier in this judgment that this battle has now been ongoing for the best part of six years and it is important to have all those matters in mind as forming the context for the views and positions taken by the parents in this case.

21. The mother gave evidence to me. She spoke, I am pleased to say, with a degree of freedom and fluency, which had the effect of conveying, to me at least, with crystal clarity the position which she now takes in relation to these matters. I have no doubt that she has an entrenched individual position to E having contact with her father in this case. She is firmly of the view that he has nothing to offer to E. She is deeply affected by the history and she is unwilling to acknowledge any real change in Mr D from the history as was found by Her Honour Judge Harris. It is important to recognise, as is recognised on all sides, that the history as found by Her Honour Judge Harris provided an objective and reasonable basis for an opposition to contact. Mr Clayton says that that is limited, however, to unsupervised contact. I suspect, at least from a layperson's point of view, that is

an over-sophisticated distinction, partly because contact is contact and partly because supervised contact is pretty well never employed unless there is a reasonable prospect of it being a prelude to unsupervised contact, save in very unusual circumstances. So as of April 2009 one could understand why the mother would take the position that she did, but, of course, things have moved on and the perspectives involved in the case have moved on.

22. The second thing to say is that the child's undoubted superficial opposition to contact provides a convenient cloak at the present time behind which the mother can shelter her concerns about contact. I do not believe that she has deliberately manipulated E's views to those which that child now expresses but, on the other hand, I have no doubt whatever that she not only has strong views against contact but that she does not mind who knows those views. It is beyond question, in my judgment, that E has fully absorbed not just the views but the force with which they are held and that the mother's attitude and the mother's making clear to E that contact was in fact a matter for her choice amounts in practice to an implicit encouragement to resist contact.

23. I do not think that those views are maiciously formed, nor do I believe that they are maliciously perpetrated, but I do believe that they are obstinately held and obstinately persisted in, irrespective of the impact that has on E herself. The mother's present views remain deeply entrenched but – and this is an important 'but' – I think it is probable that if the child were to be of the view that she, E, would like contact, the mother's opposition would not in fact go so far as to overrule the child's expressed wishes. I say that not just because that is what the mother said to me but because I suspect that is what has happened once before in this family, and it seems to me that is something that the court ought to take on board.

24. What about E? She is in a profoundly unenviable position. There is a rampant dispute between her parents which has continued for years. She is deeply aware of that dispute. She will be aware that she is utterly powerless to do anything about that dispute and utterly powerless to resolve that dispute. It is simply something with which she is required to live. It is a fact that she has in the past had a good relationship with her father and the importance of that final contact visit was merely to indicate that that remained the position. She will, therefore, have a store of memory of positive aspects to that relationship. It is, however, that fact that she is now expressing, by word and deed, firm opposition to a renewal of that relationship with her father.

25. I had the advantage of hearing the evidence of Dr Berelowitz, a distinguished consultant child and adolescent psychiatrist who has considerable experience of the cases that come before this court. He had a number of observations to make which were of some importance. In particular, he heard of the child's opposition to contact but had two particular observations to make about that. First, the child had said on one occasion that she may never see her father again, and he detected more wistfulness than determination in that expression of view. Secondly, he said that he could find no objectively comprehensible reason for the child's opposition. The child had expressed as a ground the fact that the father had threatened on one occasion to 'knock mummy out'. According to Judge Harris' findings, the father had indeed done that in December of 2007. The difficulty with it being a comprehensible reason for objection is the reaction of the child in contact in April 2008, and Dr Berelowitz's view was not that this child was merely parroting other views but that he could, nevertheless, not discern any, as I say, objectively comprehensible reason for her opposition.

26. The second set of views expressed by Dr Berelowitz which are of importance in this case was this. He said that although the experience of being caught up in conflict of this sort was always

harmful to a child, and that E was no exception in that regard, nevertheless, there was not the evidence one might expect to find had significant emotional harm been inflicted on E by it, and, accordingly, this is not a case in which the court can or should resort to the assistance of the local authority. Moreover, said Dr Berelowitz, some further attempt to effect contact would not produce significant harm. It will, of course, be harmful but that the harm that might be suffered is a harm that would be more than offset by the advantages of a renewal of contact.

27. The third thing that Dr Berelowitz said of importance was this. He thought that it was too early to abandon the quest for contact because the benefits of contact, as he saw them, merited some further attempt being made in that direction. What he did say, however, was that he was not the right person to effect that, this was not the task of a child and adolescent psychiatrist but was the task of a psychologist, or, as the Guardian said, it was a pure social work task. I think that is a correct assessment and I acknowledge that Dr Berelowitz probably has nothing more to contribute at this stage to this case.
28. It has to be said, in fairness to the parties, that Dr Berelowitz's evidence did rather read as though he was saying that no attempt at all should be made to further contact in this case, but that was clearly not his intention, as became manifest at a very early stage of his oral evidence. He was asserting that he had nothing further to contribute, not that there was nothing further to be done.

29. So E finds herself, as I say, in a deeply unenviable position. She finds herself advancing reasons which are not objectively sustainable. She mercifully has been spared suffering the harm that many children caught up in these circumstances do suffer and one ought to go on and say this. I have no doubt, as I have indicated, that she is only too aware not only of her mother's views but of the strength with which her mother holds them, and I have no doubt that that knowledge and understanding is reinforced every time the question of contact or the question of her father arises. That is not, as I have indicated, because the mother maliciously indoctrinates her but merely because the mother is unable or unwilling to conceal the strength of her own views from E and E has been astute to pick them up. That, of course, is a complete explanation of why E is desperate for these matters to come to an end.

30. I do not doubt the truth of what the mother tells me, that E is desperate for these matters to come to an end. The question that exercises me is why she is desperate that they come to an end. Is it because she really, really does not want to have a relationship with her father, or is it because she really, really cannot take any more of this battle?

31. It is important for me to recognise in cases such as this that one must take seriously the fact that child expresses firm opposition to contact, but one must ask seriously: why that is the case? It may be that the child genuinely opposes contact. In those cases it is usually relatively simple, but not always, but usually relatively simple to identify a reason or reasons why that should be so. In other cases on finds opposition that is, of course, superficially real and genuine but is in fact a protection for the child against finding herself in endless conflict with the residential parent, upon whom, as in this case, she is wholly dependant. Both Dr Berelowitz and the Guardian recognise that may indeed be the case here, but each say, and, of course, I accept this, that is outside their personal skill sets in the context of this case to address that issue.

32. The Guardian's view is that the mother has throughout done all that she can to make contact difficult and that the way of addressing the position in which everybody now finds themselves is fundamentally an issue of social work rather than medicine. I accept that the reasons for these

endless difficulties over contact, and everything associated with contact, are for the most part, though not quite exclusively, to be ascribed to the mother, but, as I indicated, that is not as a result of malice but is the result of an obstinate determination to see through what she thinks is right in this case.

33. There are two aspects of the evidence which rather convince me that the mother was not being malicious in this case. The first is, as I have already said, the child actually advances no objective comprehensible reason for her opposition. Where there is true malice working, that is not found, the child is equipped with all sorts of alarming reasons as to why that child should be resistant to contact.

34. The second bit of the evidence was the rather bizarre evidence that surrounded the removal of the child from her school. The mother's view was that the child was removed because of fears that the father would turn up at the school. The school's view was that the mother had removed the child because she, the mother, had fallen out with someone else, a parent, in the play yard. The mother's response to that was to say that was a piece of nonsense invented by the school because they resented the removal of a star pupil. To a complete outsider, that is, to put it kindly, a bizarre explanation, but it does have the effect of negating malice in favour of obstinacy, because, if there was a true malice at work, then bizarre explanations of that sort would not have been tendered, there would have been something far more sinister and serious.

35. That is how the case appears to me, and the question is, in those circumstances, what is the court to do? Here one goes to s. 1 of the Children Act, and I hope I shall be forgiven for being resistant to various glosses and comments on s. 1 made by other courts, because it seems to me that this section has to be applied to the individual facts of a case, and all too often mistakes are made in the application of s. 1 by an undue regard to glosses and comments from other cases on other facts. E is a unique young lady. These parents are unique human beings. The dynamics between them are unique. The problem actually presented in the case, though common in general description, is unique to them, and it is accordingly important in those circumstances that the uniqueness of the case is recognised by an application of s. 1 to their case and not to anybody else's.

36. Section 1(1) says that, "When a court determines any question with respect to the upbringing of a child the child's welfare shall be the court's paramount consideration". That is the law that this court has to apply.

37. Section 1(3) then provides a number of issues which the court ought to consider. It is important to recognise that s. 1(3) provides no answers to the question of what promotes the welfare of the child but merely questions which the court ought to ask itself in a consideration of that overall question.

38. The matters that the court ought to have regard to, so far as they are material in this case, are, first, the ascertainable wishes and feelings of the child concerned considered in the light of her age and understanding. It is quite clear what her expressed views are: she does not want contact, she wants this all to end. That much must be acknowledged. But when one considers those views in the light of her age and understanding, one has to ask oneself, "Why does she express those views?" and, as I have indicated, there is in this case a real possibility that those views are in fact a protective mechanism to preserve her relationship with her mother rather than anything else.

39. The second issue is her physical, emotional and educational needs. Her emotional needs are extremely important in this case and, of course, they raise conflicting issues, which is why these cases are so difficult. It is absolutely essential for her emotional welfare that she is able to trust, rely upon and depend on her mother for her primary care and with the exception of this particular issue, that really is not in question at all. In most respects, this child is perfectly normal, sensible, does well at school and so on. But by the same token, every piece of research that has ever been undertaken makes it clear that children with separated parents do best when they have a relationship with both their parents, and therefore, because there is a unanimous voice, the court approaches with the gravest caution any attempt to terminate or to abandon that relationship. Of course, as everybody knows, many separated parents abandon it themselves, and I have already adverted to the fact that that is the experience of one of the children in the mother's household. But it is a matter of considerable importance in the emotional welfare of children. The court's experience not only bears this out but bears out alarming tales of children deprived of a relationship who remake it in due course often at the cost of the relationship with the parent who has striven to bring them up for the years of childhood. That is a disastrous state of affairs when it occurs and is yet another reason why the court will strive, sometimes in the teeth of considerable odds, not to allow that to happen to the child for whom it is responsible.

40. The likely effect on him or her of any change in circumstances it has to be recognised that the persistence of the attempts with contact will upset this child and will frustrate her desire that things should be brought to an end. The evidence of Dr Berelowitz was that that harm was manageable and proportionate to the advantages that would accrue to the child were contact to be effective. It is right to say that the Guardian, whilst not ruling out the possibility of further work, was more cautious than Dr Berelowitz in terms of the harm that may be sustained by the child and the Guardian's view, when push came to shove, if I may use that expression, was probably that the court ought to go no further, even though it could do so, because of the Guardian's anxieties about the harm that might be occasioned to E. That is a matter that the court has to take into account.

41. The court must take into account the fact that E has been caught up in this for a very long time. The court is required to consider any harm which she has suffered or is at risk of suffering. I have adverted to that, and I have recognised that if contact is persisted with, there will be harm, just as I have recognised that if contact is abandoned, there will be harm. There is no way in which this court can spare the child some risk of harm.

42. The question is: can there be compensating benefits and are the risks proportionate to the benefits? The court then has to consider the capacity of the parents to meet the child's needs. There is no doubt about the capacity of the mother to meet the essential needs of this child, but by the same token, there is no doubt that there are emotional needs of this child to which the father has a contribution to make which the mother declines to acknowledge or facilitate, and to that extent there may be some deficiency.

43. The consequence of considering all those matters, and reflecting on them, is to leave the court with, really, three options in this case. The first is to abandon the quest for contact, for the reasons that I have indicated. The second is to persist in the quest for contact by the enlisting of further but specialised professional help in that regard. The third is to say that contact at the end of the day is a matter for parents and that the court, if it thinks that contact is right, should simply make a contact order, leave the parents to handle the consequences of it and enforce its contact order as against both of them to secure compliance with it. That is, of course, the usual approach in these cases and

it has much to commend it, because it puts the responsibility for contact where it belongs, namely, on the parents.

44. I have thought with great care about these matters. I have considered the picture that has been painted in this case in the context of s. 1 of the Act and reflected on them in relation to the options that seem to be available to the court. I am entirely satisfied that the court could not justify at the present time abandoning the quest for contact. It seems to me that the court is confronted with circumstances in which this father has something to offer to this child. It may be pretty limited, but he has something to offer to this child and that is an important aspect, by no means the most important, but it is an important aspect in this child's long term welfare. That view is fortified by these matters: first, Dr Berelowitz's evidence, which I accept, that the child has not suffered significant emotional harm and that the harm that she will suffer by the persistence with contact is proportionate to the advantage that may be achieved by it; secondly, the Guardian recognises that there may be more work to be done, even if the Guardian is, as I have indicated, much more cautious about the harm likely to be suffered. I have taken into account, and accept, the evidence of Turning Point, in that the father presents in a different position to that in which he was in March and April of 2009, and, most importantly of all, I have to give proper weight to the child's reactions in the past to the father, that I have chronicled, and the absence of any comprehensible reason for her present stance other than to protect her relationship with her mother, and that needs to be weighed in the balance, and those things added together would not justify me in abandoning the quest for contact.

45. However, I am equally satisfied that at the present time it would be wrong for the court just to leave this matter to the parents, and that is one thing on which everyone seems to be agreed. It would be wrong because it would expose the child to a risk of serious potential conflict without any mediating presence and it would also, in fairness, expose the father to risk of serious and possible irreparable failure in his relationship with this child. But I have to make it clear that i do not altogether exclude that, because I am not at the moment persuaded that that, with all its obvious risks, may not be marginally preferable to a simple abandonment of contact, but that is not for now, because the way ahead, in my view is, indeed, to seek some further professional assistance.

46. It is vitally important that no false hopes are raised by doing this, and I am not prepared to authorise a named professional in this case unless and until I have a proposal in which the person concerned has indicated that they have read all the papers, including my judgment, that they have had experience of cases such as this, that there is an outline proposal of a plan of work and that the person concerned is willing to say that on what they know, they discern some reasonable prospects of progress. This should not involve E at this stage. Whether the expert concerned wishes to involve the parents, and whether the parents wish to be involved with the expert, is a matter for them, but at this stage the court is merely requiring that from the expert before being willing to approve. Of course, once approved, then the plan of work will determine very much the precise shape and substance of the order that is to be made to implement it. I am alert to Mr Clayton's anxieties of not allowing a lacuna at the end of the proposed plan of work before, if it be appropriate, a regime of contact is implemented.

47. I apologise for the length of this judgment but these are serious matters and the parties are entitled to a full explanation of why I think what I think. Moreover, the purpose of this judgment is not just to explain the conclusions that the court has reached today, it is also to provide the foundation for the future development of this case in a way which will prevent any reversion to

matters that happened before this hearing. Moreover, it is intended to cover a sufficiently wide range of issues to prevent the need for further contested hearings with oral evidence, and further, it is intended that this judgment shall be transcribed and one of its purposes will be that it should be on E's CAFCASS file so that in the event, as an adult, that she wishes to have recourse to what has happened to her in the course of her childhood, she has at least an objective outsider's view of how it all looked on 17th August 2011.

48. Nest we need to consider the orders that may be required today. Let me deal, if I may, with indirect contact. I think that it is important in this case. Indirect contact can be very effective. It can also be very difficult, because for the most part it needs to be shorn of any significant emotive contact. What I propose to do is to say that there should be indirect contact, reasonable cards and presents, Christmas and birthday, and reasonable communication at other times not to exceed once a month, with the following conditions attached to it: first, that the mother shall cause all communications to be drawn to the child's attention, secondly, the mother shall encourage the child to respond to those communications, thirdly, that the mother shall facilitate any such response. Because the Guardian is going to remain in the case, if the mother were to receive a communication which she genuinely thought was unduly emotive, she can seek the advice of the Guardian but she has no right of her own to refuse to draw it to the child's attention. If she prefers to give undertakings in that regard rather than submit to conditions, those undertakings will be accepted by me.

49. I think it important that the Guardian should continue in this case in these circumstances, even if the Guardian is not going to be involved in work on the ground. It is important that the Guardian, with his knowledge of the case, retains some oversight of what is taking place and important that each party has access to someone who knows the case on the ground but access which does not involve an application to the court.

50. So far as the future management of the case is concerned, applications, at least for the time being, are reserved to me. The reason for that is to prevent any attempt to re-trawl matters that precede this judgment and also to permit urgent matters to be disposed of, either in summary hearings or submissions or in paper applications supported by written submissions. It may well be that the final detailed order in this case will have to await the approval of the expert and a plan of work which the expert has in mind. The expert should be jointly instructed by the father and the Guardian. The mother is, of course, at liberty to join if she wishes to do and, if she does, then the expert will be jointly instructed by everybody, but that is a matter for her judgment and her choice.

51. The issue then arises as to what are the orders that are specifically to be made in respect of the mother with a view to pursuing these contact proposals? The court's power is limited to requirements as to how adults are to act, for the court cannot compel the assent or agreement of any party. Nor indeed should it ever want to do so, because assent and agreement are valueless unless freely given. The mother must be entirely free to form her own views about what she thinks or what she agrees to. Her only obligation at law is to act as required by an order of the court. That said, it is important in cases such as this that the orders need to be in clear and mandatory form, which is why, of course, it may not be possible to formulate a final draft of the order until the expert's plan of work is actually known.

52. That said, it may be useful to me to indicate the kind of orders that I have in mind but which I recognise may need refinement in the light of the plan of work. The mother should, of course, be

required to make the child available to the expert as required by that expert. Secondly, it is important that the mother is required to make the child available for contact as required by the expert or as directed by the court. It is important that the mother is required to use her best endeavours to encourage the child to go to contact. It is important that the mother is required not to say or do anything to discourage the child from going to contact, including telling the child that contact is her choice. It is not, it is a direction of the court and, of course, the court may be blamed for making that direction. Next, it will be important that the mother is required to comply with any of the conditions of the contact that are advised by the expert.

53. Because the matters cannot be more precise than that at this stage, what I propose to do, rather unusually, is to say that the father or the Guardian are to have liberty to apply in writing, in the light of the professional advice, to crystallise the above orders into specific date, time and place orders and conditions. If such application is made, other parties must respond in writing within seven days of being served with the application, and if there are no responses, the court shall thereafter make such order as it thinks fit and shall, in any event, make such an order on consideration of all written representations which are provided to it.

54. I am going to rise for a few moments to allow the parties to reflect on what orders actually could be made today and what must be made in the light of the approval of an expert and an expert's plan of work in this matter. I do not want long and detailed discussions to take place. I simply want to know the extent to which any of these matters can be incorporated in an order and I want to know whether the mother wishes to join in the instruction of the expert or not, and I wish to know whether the mother wishes to deal with any of these matters by way of undertaking rather than by way of order or a condition, but beyond that, I very much doubt we can take the matter, and, as I say, the making of the detailed order will probably have to await the final submission of the plan.

55. I should also like to hear from the mother as to whether she will require personal service of this order on her, because, of course, it will contain a contact warning, or whether she is content for the order to be served in the usual way, since she has been present and heard what has been said.