

**IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM Middlesbrough County Court
(Mr Recorder Bullock)**

Royal Courts of Justice
Strand, London, WC2A 2LL
28th January 2004

Before:

**THE PRESIDENT
LORD JUSTICE THORPE
and
LORD JUSTICE CARNWATH**

Between:

Re S (A child)

**Ms J. Richards (instructed by Watson Woodhouse) for the Appellant
Mr G. Ford (instructed by Freers) for the Respondent
Hearing dates : 4th December 2003**

HTML VERSION OF JUDGMENT

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Dame Elizabeth Butler-Sloss P. :

1. This is an appeal concerning a little girl, L, born on the 7th April, 1997 who is now 6. The parents are in dispute over the issue of contact between the father and his daughter. The appeal is from the order of Mr Recorder Bullock, dated the 15th October, 2003, in which he dismissed the father's application for direct contact. He made an indirect contact order; refused the father's application for a psychological assessment of the child and, under the provisions of section 91(14) of the Children Act 1989, debarred the father from making any further section 8 application without leave of the court for the period of one year. This Court granted leave to appeal and allowed the appeal to the extent of directing the parties jointly to instruct a consultant child and adolescent psychiatrist to assess the family and the prospects of future contact. We directed that the case be restored to a circuit judge for directions after the report of the consultant psychiatrist had been filed.

We directed that the case should, if possible, be heard by a judge who would be able to retain it and provide continuity. We set aside the section 91(14) order. I now set out my reasons for allowing the appeal.

The Background

2. L's parents are not married. They met when the mother was about 18 and began to live together when the mother discovered that she was pregnant with L. They finally separated in April 1999 and the mother and L went to live with the maternal grandparents. The parents, after parting, remained on friendly terms and were able to agree arrangements for the father to see L and have her to stay. In April 2001 they went together to Disneyland and had an enjoyable holiday. Since that holiday, the relationship between the parents deteriorated to the extent that the mother on the 9th May 2001 applied for and was granted an *ex parte* injunction and on the 20th August 2001, the father gave non-molestation undertakings to the court. L had no contact with her father from May 2001 until the attempts at supervised contact in August 2002. The mother alleged incidents of domestic violence by the father, including two attempts to drag L out of the car and on one of those occasions injuring the mother on the arm. The father totally denied those allegations and alleged that the mother was unduly under the influence of the maternal grandmother. There was considerable hostility between the father and the maternal grandmother which arose from issues unconnected with the parents. It appears however that the child witnessed an altercation between the grandmother and the father and was distressed by it. The consequence of these unresolved disputes between the parents has been to sour the previously good relationship between the father and child.
3. The father applied to the county court for a contact order on the 25th June 2001. Over Christmas 2001 and during 2002 the father attempted to deliver Christmas, birthday presents and Easter eggs for L at the mother's home. The police were called. The father approached members of the maternal family and friends in his attempts to reintroduce contact with his daughter. He attended a pony club event in which L and her mother were taking part which increased the tension between the parents and the stress on the child. A further non-molestation order was made on the 7th February.
4. Four CAFCASS reports were filed, dated the 27th September 2001, 30th April, 2002, 16th September, 2002 and 10th December 2002, from two separate CAFCASS reporters. The first CAFCASS report said that the mother was unlikely to support the principle of contact at that time. She described a child who remembered happy times with her father; said she did not like him and did not want to see him, but was not upset. The CAFCASS reporter suggested that the factual disputes between the parents over incidents of violence should be resolved by court findings and that it would be premature for her to make recommendations as to contact. The second CAFCASS report described a mother who had a determined opposition to any contact at all between the father and daughter. She had formed a new relationship and was about to get married. The reporter met L at school and reported that L was socially well-equipped, but with an underlying sense of anxiety which she focussed on her father. She did not want to try out any meetings with him. The CAFCASS reporter said that a catalogue of complaints was set out in the court papers but she felt that L might be at greater risk of emotional damage from the conflict between her parents than from the overspill of physical violence. Her view was that it was difficult to imagine that, under present circumstances, any contact could offer more

by way of positive advantages than it would lose by negative side effects. There was no basis for negotiation or agreement. It was clear from her report that L was suffering distress and there was nothing to suggest that her fear was not real. There had been no further incidents alleged by the mother. The CAFCASS reporter made several alternative suggestions.

5. On the 26th July 2002, District Judge Bailey heard the father's application for contact and tried to grapple with the problems raised by this case. In a short but careful judgment he criticised both parents. He found that the father had approached the question of contact in a most inappropriate manner. The mother was also to be criticised for not preparing L for contact, even though the behaviour of the father made it more difficult. The district judge adjourned the application to enable the father to have two periods of contact with L in the presence of the CAFCASS reporter. She would then report back and would also advise if a psychological report would be necessary.
6. In the third report the CAFCASS reporter reported on two contact visits observed by her in August 2002 in the CAFCASS office. On the first occasion L clung to her mother and refused to look at her father. On the second occasion the mother was persuaded to sit in the other room and L moved between the two rooms. She did not appear to be afraid but would not willingly leave her mother. The view of the mother, who had now married, was that the father had no part to play in their present lives. The CAFCASS reporter recommended contact once a month to be supervised by the mother.
7. After that report was filed the CAFCASS reporter observed three further contact sessions with the mother present. On the first two occasions in October the child was reluctant to do anything with the father and on the second occasion the father became angry and argued with the CAFCASS reporter. Watching this L became increasingly upset and asked to go home. The father felt as a result of each of these two occasions that his relationship with L had been good but it had been spoilt by the mother and that, if he and his family were given the opportunity, they would rekindle the latent affection. On the third occasion there was no real improvement in the strained atmosphere. The CAFCASS reporter set out the widely differing perceptions of the parents – the father that if he had unsupervised contact L would be happy with him and his family – the mother that L did not wish to see her father and should not be made to go. If contact were to be forced, she feared for her physical and emotional well-being. Seen again at school after these three contact periods, L said that she did not want to see her father. She was very anxious but determined. The CAFCASS reporter commented that she, herself, found the father to be threatening and aggressive and perhaps L did too. She felt that L had now become more entrenched in her opposition to contact with her father. She concluded that 'to further pursue this matter may be considered to be abusive of the child and would perhaps diminish any prospects for the future.'
8. The mother soon after gave birth to twins and for various reasons the father's adjourned application was not listed for a further hearing until the 15th October 2003, a delay of over a year. The Recorder heard evidence from both parents. There had been no further investigation nor report on the family problems by CAFCASS since September 2002. Although the CAFCASS officer was called to give evidence before the Recorder, I understand that she had no up to date information and, according to counsel who appeared before us, she restated the points she had made in her previous report. The Recorder found that the incidents complained of by the mother were basically at a very

minor level. He recognised that the father came over as a fairly aggressive person but had no doubt that the application for contact was made with the best of motives and with a deep seated desire to see his daughter and was not brought with any intention to intimidate the mother.

9. The Recorder expressed concern that the arrangements for supervising contact were on the basis that the mother did the supervising. He was satisfied that the mother was not behaving positively; it was obvious that she had no intention of making contact work and she had clearly imbued the child with such notions. She stated in court that she did not want direct contact and that view had got through to the child and the child's beliefs were a direct result of the beliefs of the mother. This put the CAFCASS reporter in a very difficult position and the Recorder understood why the father believed that nobody was doing anything to assist him to re-establish the position with his own daughter. Although the mother was offering indirect contact, the Recorder commented on the statement of the mother that any presents the father sent to the child would be sent to the charity shop and expressed the view that that was an appalling position for a mother to take against a father. The Recorder had no confidence that indirect contact would really work.
10. The Recorder was asked by the father's counsel to direct a psychological assessment of the child. He rejected the application on the basis that the child was not actually suffering any emotional harm; was doing well educationally; was being brought up well; was healthy and had no special needs. He could not see that a psychological assessment was going to achieve anything. In his view the only way the case would move forward was by the mother having a change of attitude and a psychological assessment would not assist that at all. The Recorder expressed the hope that the mother would have a change of mind without which contact could not move forward. He dismissed the father's application for direct contact and made an order for indirect contact.
11. This Court has come to the conclusion that the door should not be closed at this stage on contact and, before setting out the reasons for coming to that conclusion, I turn to the general principles underpinning the approach of a family court to section 8 applications.
12. When the relationship between parents of children fails and they part, arrangements have to be made for the future welfare of those children. In the majority of cases the parents are able to agree and the case never comes to court or. This is, happily, also the result of many cases where an application is made by one parent but resolved at a preliminary stage by the judge, district judge and/or the CAFCASS reporter. Recent proposals, supported by the Government, have been made to promote pilot projects for early intervention which it is hoped will encourage parents to resolve their differences over their children before any court hearing. Such initiatives are much to be welcomed.
13. In the minority of cases where the parents cannot agree about the future arrangements for the child, the courts may become involved by the issue of applications by either or both parents.
14. The starting point for the court is section 1 of the Children Act 1989 which states
"(1) When a 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."

15. Since the implementation of the Human Rights Act 1998, the court has specifically to take into account the rights of each parent and of the child enshrined in article 8. The principle of the paramountcy of the welfare of the child is, nonetheless, recognised in the jurisprudence of the European Court of Human Rights. In *Yousef v Netherlands* [2002] ECHR 33711/96, at paragraph 73, the European Court stated

"The Court reiterates that in judicial decisions where the rights under art 8 of parents and those of a child are at stake, the child's rights must be the "paramount" consideration. If any balancing of interests is necessary, the interests of the child must prevail (see *Elsholz v Germany* [2001] ECHR 25735/94 at para 52 and *TP and KM v UK* [2001] ECHR 28945/95 at para 72).

16. The criteria set out in section 1(3) of the Children Act do not make any gender distinctions between the parents. The court is required to have regard, *inter alia* to the ascertainable wishes and feelings of the child (considered in the light of his age and understanding, his physical, emotional and educational needs, any harm which he has suffered or is at risk of suffering and under (3)(f)

"how capable each of his parents, and any other relevant person in relation to whom the court considers the question to be relevant, is of meeting his needs."

17. Section 8 sets out the meaning of a contact order and of a residence order in subsection (1)

18. "In this Act –

"a contact order" means an order requiring the person with whom a child lives, or is to live, to allow the child to visit or stay with the person named in the order, or for that person and the child otherwise to have contact with each other;

"a residence order" means an order settling the arrangements to be made as to the person with whom a child is to live;"

19. No distinction is drawn between the rights and responsibilities of the mother and the father in residence or contact applications. In *A & D and B & E* [2003] EWHC 1376 (Fam), a decision upheld by this Court, Sumner J said at paragraph 302

"both mothers and both fathers have equal rights before the court."

20. In practice, after separation, the majority of children remain with the mother who is, for that reason, the more likely parent to seek a residence order. The father is, for the same reason, the more likely parent to seek a contact order. The court recognises the importance of a relationship between the non-resident parent and the child subject to such contact being compatible with the rights and welfare of the child. In *re T (A Minor)(Parental Responsibility and Contact)* [1993] 1 FCR 973 at page 984, I said

"It is the general proposition, underpinned undoubtedly by the Children Act 1989- and indeed the father has correctly reminded us of the importance of continuing relationships between children and their parents- that it is in the interests of a child to retain contact with the parent with whom the child does not reside. The courts generally set their face against depriving a child of such contact and urge reluctant care-taking parents to make contact work, however difficult it may be for that parent who very often does not understand the importance of that continuing contact."

21. Sir Thomas Bingham MR in *re O(A Minor) (Contact: Indirect Contact)* [1996] 1 FCR 317 said at page 323

"it is almost always in the interest of the child that he or she should have contact with the other parent. The reason for this scarcely needs spelling out. It is, of course, that the separation of parents involves a loss to the child, and it is desirable that that loss should so far as possible be made good by contact with the non-custodial parent, that is the parent in whose day to day care the child is not."

22. The court must also have regard to the parent who is the primary carer. Sumner J said in *A&D* (above) at paragraph 304

"Where parents do not live together, the court recognises the importance of the particular bond which exists in most cases between a child and the parent with the principal care of the child.....It does not give that parent greater rights. It does mean that the court will take care to safeguard and preserve that bond in the best interests of the child."

23. Wall J gave part of his recent judgment in *re O, A Child* [2003] EWHC 3031 (Fam) in open court and said

"(3) The courts recognise the critical importance of the role of both parents in the lives of their children. The courts are not anti-father and pro-mother or vice versa. The court's task, imposed by Parliament in section 1 of the Children Act 1989 in every case is to treat the welfare of the child or children concerned as paramount, and to safeguard and promote the welfare of every child to the best of its ability.

(4) Unless there are cogent reasons against it, the children of separated parents are entitled to know and to have the love and society of both their parents. In particular, the courts recognise the vital importance of the role of non-resident fathers in the lives of their children, and only make orders terminating contact when there is no alternative."

24. The problem arises for the court when there are serious disagreements between the parents which interfere with the ability of one or both parents to agree sensible arrangements about the children. Some parents engage in longstanding contact disputes which continue to return again and again to court. There are many reasons for these long-drawn out parental disputes over contact. In many such cases, the parents may not be able to agree because they have allowed their feelings of hurt and guilt at the separation together with anger post separation to poison their perception of the other parent. Such feelings lay the foundations of continued hostility to the other parent and an unwillingness or even an inability to agree or even to discuss anything with him/her. This continuing animosity over the failed relationship and inability to communicate with the

other parent creates a serious impediment to any kind of fruitful relationship between the child and the non-resident parent. There are other impediments to contact such as a desire to exclude the other partner in the failed relationship from the new life, the influence of new partners or spouses or of grandparents, excessive use of drink or drugs, the mental or physical ill-health of one or both parents, a parent who has been violent, intimidating, or harassing of the other parent and/or the child, or allegations of physical, sexual or emotional abuse.

25. Sir Thomas Bingham MR pointed out in *re O* (above) at page 324

"Neither parent should be encouraged or permitted to think that the more intransigent, the more unreasonable, the more obdurate and the more uncooperative they are, the more likely they are to get their own way."

26. This court set out at some length in the case of *Re L, Re V, Re M, Re H (Contact: Domestic Violence)* [2000] 2 FLR 334 guidance on contact in cases of domestic violence and more generally. Even in cases of proved domestic violence this Court did not rule out the possibility of contact by the offending parent with the children. The fact of violence and the seriousness of the incidents would, however, be highly relevant to the decision whether and in what circumstances contact might be ordered.
27. Article 8 reflects the pre-existing principles of domestic family law. The right to respect for family life is subject to all the factors set out in article 8(2) in respect of which the element of proportionality is highly significant. It is, in my judgment, crucial that the court has the greatest flexibility in deciding on the type and quantum of contact according to the circumstances of each individual case. It has been suggested by parents that there should be a presumption of equality of time spent by a child with each parent. This approach to contact would not be in the best interests of many children whose welfare is the issue before the courts. The court is not and should not be tied to a certain number of days which would be automatically ordered to be spent by the absent parent with the child. Children of all ages and circumstances may be the subject of contact orders and one blanket type of order may inhibit the court arriving at the decision which reflects the best interests of each individual child.
28. Some situations remain extremely difficult to manage from the point of view of the court and the CAFCASS reporter who may be advising the court. One example is the unreasonable mother who is implacably opposed to contact and without any good reason, wants to cut the father out of her and the child's future life. An even more difficult situation is the child who, either influenced by the mother or by his own viewpoint or a combination of both, refuses to see the father. The third situation which may be combined with the first two situations or may arise entirely separately is the father who believes that he is 'perfect', that the mother is to blame for everything and the child is prevented from a natural, loving relationship with him solely by the intransigence of the mother. In such a case the father may believe that an order by the court for unrestricted contact would have the result of a happy resumption of a loving relationship between him and the child. Such a father is able to see the beam in the eye of the mother but is wholly unable to see that there is a beam in his eye also and that his conduct has not been perfect. He may well have been responsible for unfortunate scenes with the mother in the presence of the child, from inappropriate behaviour under increasing frustration, and that behaviour has added more fuel to the flames of opposition by the mother and often by the

child to contact. If the father becomes unreasonable there is a risk for him that his behaviour may become so unacceptable that he may, himself, make it impossible for contact to be resumed. In such a case the court may well call a halt and refuse to make a contact order, as Wall J did in *re O* (above).

29. Wall J chaired the sub-committee of CASC which reported in 2001 on enforcement of contact and made very useful recommendations to the Government. In that Report the inadequacies of the current aids to enforcement available to the judiciary were highlighted. If a mother is truly recalcitrant, the court can commit to prison for contempt or fine the mother. Most mothers do not have enough money to pay a significant fine and this sanction is seldom used, particularly since she is the primary carer of the child. Equally the sanction of prison for mothers who refuse to allow contact is a heavy one and may well be a self-defeating one. It will hardly endear the father to the child who is already reluctant to see him to be told that the father is responsible for the mother going to prison. Prison is a sanction of last resort and there is little else the court can do. At this stage also the court may have the evidence that the continuing efforts to persuade the mother to agree to contact are having a disproportionately adverse effect upon the child whose welfare is paramount and the court may be find it necessary, however reluctantly, to stop trying to promote contact. That is a very sad situation but may be necessary for a short or for a longer time if the welfare of the child requires it. One aspect of proportionality which has to be weighed in the balance is the length to which a court should go to force contact on an unwilling child and on the apprehensive primary carer. At this point the factor of proportionality becomes all-important since there is a limit beyond which the court should not strive to promote contact and the court has the overriding obligation to put the welfare of the child at the forefront and above the rights of either parent.

30. In *re O*, Wall J said at paragraph 6 of his judgment

"The court system for dealing with contact disputes has serious faults, which were identified and addressed in Chapter 10 of the Report of the Children Act Sub-Committee(CASC) of the Lord Chancellor's Advisory Board entitled ***Making Contact Work***. In particular, the court process is stressful for both parents and children, it is expensive for those who are not publicly funded; it is slow and adversarial. It tends to entrench parental attitudes rather than encouraging them to change. It is ill adapted to dealing with the difficult human dilemmas involved, notably when it comes to the enforcement of its orders."

31. At paragraph 9 he said

"Fortunately, most separating parents are able to negotiate contact without the need to go to court. Contact disputes are best resolved outside the court system. ***Making Contact Work*** identified a number of ways in which this could be achieved.

(10) Contact in my experience works best when parents respect each other and are able to co-operate; where the children's loyalties are not torn, and where they can move between their parents without tension, unhappiness or fear of offending one parent or the other."

32. Those wise observations ought to be widely disseminated among parents before they are locked into their entrenched positions of conflict with the other parent of their children.
33. No parent is perfect but 'good enough parents' should have a relationship with their children for their own benefit and even more in the best interests of the children. It is, therefore, most important that the attempt to promote contact between a child and the non-resident parent should not be abandoned until it is clear that the child will not benefit from continuing the attempt.
34. In the present appeal, on the findings of the Recorder, although the father had a somewhat aggressive manner, his desire for contact was genuine and the failure of contact was to be laid principally on the shoulders of the mother who had no intention of making contact work. Having found the mother primarily responsible for the failure of direct contact and that her offer of indirect contact was a 'sop to the court' and not genuine, the Recorder then effectively closed the door on any form of contact for the foreseeable future. The prospect of the mother changing her mind without any incentive to do so was manifestly improbable and the order for indirect contact was accepted by the Recorder as unlikely to be effective. The father was debarred from making any application without leave for a year. After that length of time there would be no realistic prospect of success if the father were then to reapply and no break upon the mother's clear intention to shut the father out of the child's life and to continue to portray him in a totally negative light to the child. The effect of the Recorder's decision has been, in reality, to abandon any possibility of a relationship between father and child for the foreseeable future. This may eventually be the sad outcome of this dispute, but, in my view, with a child of under 7 and a genuinely motivated father who some years before had regular contact with his daughter, the decision to abandon all hope of achieving some contact is premature.
35. The application by the father's counsel for a psychological assessment is the possible key to a reconsideration of future contact. I well understand the Recorder's hesitation and indeed the hesitation of the district judge to an assessment of the child. The application was couched in too restrictive terms and neither the Recorder nor the district judge looked beyond the form of the application. It is not the child alone who needs to be considered in an assessment, although there can be little doubt from the reports that L has, by now, suffered some emotional harm from the behaviour of her parents towards each other. What is needed in this case is a broad assessment of the child in the context of the family, that is to say the father, the mother and the child to gauge the depth of the hostility and the rancour from the failed relationship of the parents, the extent to which the child is saying what she has learnt from her mother and her own concerns about her father. It would also be necessary to investigate whether the father, who has shown somewhat unrealistic expectations that the child would on ordinary contact respond to him affectionately and who has acted, from time to time, in an aggressive and even intimidating manner, could be brought to a more sensible and sensitive approach to this very difficult problem.
36. I do not under-estimate the difficulty in trying to rekindle the relationship between this father and this daughter. The mother has some grounds for objecting to the approach of the father to contact. She also has the strong incentive to dismiss the father from her life and to concentrate upon her marriage and her new family. The father's contact would be an intrusion into that new life. The child may well have underlying concerns about her

father as well as those she has learnt from her mother. The father's aggressive approach to contact and his unrealistic and idealised concept of the prospects of good contact with L and that he is a 'perfect father' are real barriers to a sensible approach to a truly difficult problem as to whether an attempt should be made at all to restart contact and, if so, how to do so. I am however satisfied, for my part, that the problems should be explored and that the judge who takes over this case should have the information as to whether and in what circumstances a further effort should be made.

Section 91(14)

37. I wish to add some comments on the section 91(14) direction in the order. The Recorder was asked by mother's counsel to make a section 91(14) direction which was opposed by counsel for the father. The Recorder said

"... as regards the section 91(14) order, I have recorded, and will record again, that this application is not brought frivolously, it is not brought in any vexatious manner at all, but there has to be some breathing space for everyone and I am simply going to say that no further application be made for a period of one year from this date, without the leave of the court."

38. In making those observations and in imposing a one year restriction on the father, the Recorder failed to have regard to the guidelines laid down in this Court in several decisions, principally in *re P (a child) residence order: child's welfare* [1999] 2 FCR 289 at pages 310 *et seq*; *re C (children: contact)* [2002] EWCA Civ 292; [2002] 3 FCR 183; *re G (a child) (contempt: committal order)* [2003] EWCA Civ 489; [2003] 2 FCR 231 paragraphs 35-37. I said in *re P*, at page 310, that section 91(14) should be read in conjunction with section 1(1). In *re G*, I summarised the guidance at paragraph 36

"It is a discretionary power to be used in the best interests of the child concerned. It is a draconian order to be used with great care and sparingly. Its use must be proportionate to the harm it is intended to avoid."

39. There will be cases where a breathing space is needed, even though the parent against whom the order is made, has not behaved unreasonably. In *re P*, in guideline (vii) I said that in such a case

"the court will need to be satisfied first, that the facts go beyond the commonly encountered need for a time to settle to a regime ordered by the court and the all too common situation where there is animosity between the adults in dispute or between the local authority and the family and secondly, that there is a serious risk that, without the imposition of the restriction, the child or the primary carers will be subject to unacceptable strain."

40. There was no evidence in the present case of such a situation. The Recorder was in error in imposing a section 91(14) restriction and this Court set it aside.

THORPE LJ:

41. I have had the advantage of reading the President's judgment with which I agree.

42. Those who are abused in an intimate relationship or in its aftermath, and those who perceive themselves to have been so abused, have high expectations of redress in the family justice system. They are often disappointed in those expectations and naturally find some solace in association with others who share their experiences. An obvious illustrative group is of those, usually fathers, who perceive that they have been denied their due role in the upbringing of a child after the disintegration of the family. One of their commonest indictments of the family justice system is that it does little or nothing to uphold the relationship between father and child which depends for its most obvious outlet and expression on contact arrangements. If a paradigm case were wanted to illustrate the indictment it lies here in the present appeal.
43. Following the separation of the parents contact arrangements were agreed without any apparent problems. After some two years of relatively successful operation they foundered. The father applied to the court for a contact order. His application dated 21 June 2001 is the only application he has ever issued. In its subsequent pursuit he has from time to time probably been both belligerent and insensitive. Certainly he has given that impression to independent observers as well as to the mother. However throughout he has been committed and steadfast.
44. In July 2002 the mother proposed that a psychologist be instructed to carry out an assessment of their daughter's apparent antipathy to contact. The proposal did not find favour with the district judge. When the father applied in December 2002 for a direction to the same effect the mother opposed the application. The district judge upheld her opposition. The father sought to appeal. The circuit judge refused him an extension of time in the exercise of his discretion. The good reason for refusal given by the judge was that there was another hearing imminently listed for further consideration of the father's contact application. That fixture on 19 March was adjourned because the welfare officer was not available. The next fixture in July was also adjourned on the grounds that the mother had just given birth to twins. Thus when the case was eventually put before the Recorder on 15 October it was more than twelve months since the last unsuccessful attempt at supervised contact. In the circumstances the father's counsel recognised that an order directing the immediate resumption of contact was problematic. Accordingly her realistic target was to obtain a direction for an assessment by a mental health professional. It will at once be seen that fifteen months had elapsed since that option was first mooted, fifteen months of relative sterility.
45. On 15 October the case had a stale look. The CAFCASS officer's report was dated 10 December 2002. The father's most recent statement was dated 25 February 2002. On 21 July 2003 the mother had issued an application for an order under section 91(14) of the Children Act 1989 and had supported that application with a statement sworn on 14 July.
46. However the Recorder heard oral evidence not only from the mother and father but also from the court welfare officer. It is of great significance that his subsequent findings and assessments rest on that foundation. He was clearly not much impressed by the mother's complaints of the father's past conduct. He was clearly impressed by the father's emotional attachment to his daughter and the sincerity of his motives in pursuit of the contact application. He rejected the court welfare officer's assessment of the roots of the child's antipathy. He was trenchant in his criticism of the mother for having implanted in the child her determined opposition to a regime of contact.

47. Against those findings his rejection of the father's application (for the appointment of an expert) and his grant of the mother's application (for a partial bar on the father's right of access to the court) seem to me little short of perverse. Whilst recognising the recorder's sense of frustration confronted with a complex problem with little prospect of foreseeable improvement, it is an outcome such as this which attracts justifiable criticism. Whatever the difficulties, however scant the prospects of success, the courts must not relent in pursuit of the restoration of what had been a natural relationship between father and daughter, absent compelling evidence that the welfare of the child requires respite.
48. Of course judges in cases such as the present have very little resources upon which they can call to support their endeavours. This deficiency was plainly identified by the report of the sub-committee of the Lord Chancellor's Family Law Advisory Board chaired by Mr Justice Wall. But at least the judge can refer to a child and adolescent mental health professional and the initial assessment may identify local services able to offer either family therapy or therapy for individual family members. It is to be hoped that judges will in future be able to look to CAFCASS to provide more support in the implementation of contact orders. Local mediation services should also be amongst the range of options considered by the judge.

CARNWATH LJ:

49. I agree with both judgments.