IN THE FAMILY COURT AT {}

Neutral Citation Number: [2025] EWFC 254

CHILDREN ACT 1989
XX22P01652

Before :
Dexter Dias KC, (initially) sitting as a Deputy High Court Judge
(subsequently as Mr Justice Dexter Dias)

- -

Between :

C **Applicant**

- and –

S **Respondent**

- -
- -

Paul Infield (instructed by **Stowe Family Law LLP**) for the **Applicant**
June Venters KC (instructed by **Venters Solicitors**) for the **Respondent**

Hearing dates: 15 April 2025
(*Judgment circulated in draft: 27 May 2025*
Corrections received from counsel: 2 June 2025
Anonymisation agreed between parties: 16 July 2025)

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JUDGMENT

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Table of Contents

Mr Justice Dexter Dias (Dexter Dias KC) :

1. This is the judgment of the court.

2. To assist the parties to follow the main lines of the court's reasoning, the text is divided into six sections, as set out in the table of contents above. The table is hyperlinked to aid swift navigation.

3. I began sitting on the case as a Deputy High Court Judge, being brought in at the request of the former DFJ for {}. Initially, a five-day final hearing was listed before the DFJ on 13-16 and 20 May 2024. But due to his unavailability, the matter was transferred to me sitting under Section 9. Towards the latter part of proceedings, although appointed as a High Court Judge, I determined that it was important to retain the case for the sake of judicial continuity due to its sensitivity and complexity. Nevertheless, the case was heard throughout in the Family Court sitting at {}.

I. *Introduction*

4. This is a judgment on costs in private law proceedings under the Children Act 1989.

5. The applicant in the main proceedings is C ("M") and is represented in the costs application by Mr Infield of counsel. She is the mother of the two subject children. They are X {} and his sister Z {}. The respondent in the main proceedings is S ("F"), represented by Ms Venters KC. He is the children's father. The court is grateful to counsel for their submissions.

6. The final hearing of the substantive part of these proceedings took place on 13 May 2024. Following submissions, the court delivered a judgment on 13 August 2024 ("the substantive judgment"), although the parties were notified in writing much earlier on 3 June 2024 of the essential findings of the court.

At first it was anticipated that there would be a consolidated final judgment to include the question of costs, but events overtook that intention and the court handed down the substantive judgment in any event. The reasons can be found in the substantive judgment at paras 4-6:

> "4. The ambition in May 2024 was to make final orders and put these complicated and prolonged proceedings to an end. The intention had been to provide one consolidated judgment in this case at the conclusion of all proceedings including F's application for costs, given the profusion of previous judgments. The court has been concerned about the depth and extent of the impact on the children, which can be gleaned from the fact that proceedings concerning these children were first issued when both of them were below the age of 3. X is now well over 15 years old.
>
> 5. However, the court took the view that in light of alleged actions by M in respect of the unsealed order of the court, it was essential to provide a judgment now. It is regrettable because it will add to the stated proliferation of court orders and judgments that has been the cause of confusion and disputation in the past. As a result of M's alleged conduct in disclosing part of the court order in a selective way, the court ruled that the previous detailed reasons be appended to the order. I emphasise that I have received no sworn evidence about M's alleged conduct and make no findings of fact. However, the risk of misuse of court documentation in the context of these fraught proceedings has led me to depart from what was previously decided.
>
> 6. There will be a further judgment about the costs dispute between parties unless agreement is reached, an unlikely eventuality in these proceedings."

7. This costs judgment must be read in the context of and in conjunction with the substantive judgment. Therefore, this judgment does not stand alone and there is no need to repeat the factual background that is set out in that earlier document. There is an extensive history of deeply acrimonious proceedings between these parents and involving their children that reaches back over a decade, resulting in litigation having been conducted for the great majority of the children's life.

8. Following the previous proceedings, there was a costs appeal to the High Court in which Arbuthnot J awarded £37,000 costs against M (summarily assessed) and echoed in material respects criticisms of M that the trial judge HHJ Sapnara voiced (see *C v S* [2022] EWHC 800 (Fam)). This costs appeal followed the ten-day fact-finding hearing conducted by HHJ Sapnara between October 2019 and January 2020 (judgment 28 February 2020) and an eight-day welfare hearing in September and October 2020 leading to a judgment in November 2020 and an order for the immediate transfer of the children's

residence to F. The Judge called this a necessary "seismic change in the children's life" to protect them from emotional harm from M. It should be recalled that M had made allegations against F of abusing the children, allegations that were dismissed by HHJ Sapnara ("unsubstantiated") who found that M had manipulated professionals and others and had "actively sought to recruit the children in her efforts to create a narrative of sexual abuse". the Judge found that M gave evidence that was "entirely disingenuous", had "fabricated" part of her account, had given other "untruthful evidence" and had "dishonestly" pursued allegations that were unlikely to be true. HHJ Sapnara found that M

> "has deliberately manipulated the facts, manipulated the children, manipulated professionals and individuals."

9. As a result of M's conduct, it was likely that the children had "suffered significant emotional harm". This is the context in which F suspended contact amid concerns that M's subsequent conduct during contact might again cause or being causing the children emotional harm. M filed a C100 and the proceedings resulted in the said substantive judgment of this court.

10. In the proceedings before me, F's original costs claim was for £169,415.65. M submits that this is an "astonishing" amount and "significantly exaggerated". F's current application for costs is in the sum of £123,825.43, a substantial reduction from his original claim. The reason for the revisions will be become evident. Put shortly, his claim has been adjusted to omit those hearings in which no order for costs was made. M submits that the original N260 was therefore "false" and the reduction of 36 per cent reflects an initial gross "inflating" of costs by tens of thousands of pounds, which is a "very serious matter" (relying on observations in *Kapoor (deceased) v Johal and others* [2024] EWHC 2853 (SCCO), at paras 62-63, 169). Against this, F submits that M's costs, as detailed in her skeleton argument, amount to £187,913.48. This is submitted to be important context for any allegations of disproportionality in F's claim.

11. There has been extensive documentation that the parties have sought to rely on throughout these proceedings and that has continued for the costs application. In terms of skeleton arguments on costs, the following have been filed: F: 27 July 2024, 10 September 2024, 13 March 2025; M: 22 August 2024, 28 March 2025.

II. *Issues*

12. For organisational clarity, it will assist to divide the wide-ranging submissions of the parties into two prime issues:

> **Issue 1**: Whether in principle F should be awarded his incurred costs ("**Costs in principle**");

> **Issue 2**: If so, the proportion of his costs he should be awarded ("**Proportion**").

13. I should add that there has been no application for a payment on account. It was open to F to do so and no application was made. Further, the extent of the costs incurred by F entails that should he succeed, summary assessment is plainly inappropriate. I received variously written submissions on a near point-by-point basis about line-disputes of the costs bill, something that it is not appropriate to determine where there will be detailed assessment. Nevertheless, I extract anything of value from those submissions where relevant to Issues 1 and 2.

III. *Law*

14. The applicable law has recently been stated by the Court of Appeal in *E (Children: Costs)* [2025] EWCA Civ 183 ("*Re E*"). While the parties in skeleton arguments relied on a series of earlier authorities, some of the submissions having been written before *Re E*, it is the Court of Appeal's recent exposition that I use as the basis for the determination of the costs dispute in this case. The position can be simply stated as the court did at paras 23-24:

> *"Orders for costs in proceedings about children*
> 23. There is a general practice of not awarding costs against a party in family proceedings concerning children, but the court retains a discretion to do so in exceptional circumstances. These include cases in which a party has been guilty of reprehensible or unreasonable behaviour in relation to the proceedings. This practice applies equally in public law and private law proceedings, and irrespective of whether a party is legally aided. Nor is there any difference in principle between fact-finding hearings and other hearings. The court can make costs orders at any time: FPR 28.1.
>
> 24. These propositions can largely be extracted from the decision of this court in the private law case of *R v R (Costs: Child Case)* [1997] 2 FLR 95 (Staughton LJ and Hale J) and the decisions of the Supreme Court in the public law cases of *Re T (Children) (Costs: Care Proceedings: Serious Allegation Not Proved)* [2012] UKSC 36, [2013] 1 FLR 133 and *Re S (A Child) (Costs: Care Proceedings)* [2015] UKSC 20, [2015] 2 FLR 208."

15. The court emphasised that the general rule expressed in CPR Part 44 that costs follow the event does not apply in family proceedings involving children. Instead, costs may be awarded if there are exceptional circumstances involving the unreasonable conduct by a party. What counts as unreasonable conduct includes that which is "reprehensible and beyond the band of what is

reasonable" as Wilson J (as he then was) put it in *London Borough of Sutton v Davies (Costs)(No 2)* [1994] 2 FLR 569 at 570-571. The test of unreasonableness is objective as Staughton LJ said in *R v R (Children Cases: Costs)* [1997] 2 F.L.R. 95 ("*R v R*"):

> "The real point that has been argued before us seems to me to be this: the judge evidently found that the father had behaved unreasonably in the litigation. I do not doubt that Mr R genuinely believes that his arguments are perfectly reasonable. I do not question his good faith, but I am afraid I do agree with the judge that they did not, in reality, represent a reasonable attitude for the father to take."

16. *R v R* was cited with approval in *Re E* at para 35. The relevant parts of CPR Part 44 will be explored as and when pertinent. The parties agree that CPR 44.2(4)-(5) apply to Children Act 1989 proceedings. These provisions, as material, are:

> "Court's discretion as to costs
> **44.2**
>
> …
>
> (4) In deciding what order (if any) to make about costs, the court will have regard to all the circumstances, including –
> (a) the conduct of all the parties;
> (b) whether a party has succeeded on part of its case, even if that party has not been wholly successful; and
> (c) any admissible offer to settle made by a party which is drawn to the court's attention, and which is not an offer to which costs consequences under Part 36 apply.
>
> (5) The conduct of the parties includes –
> (a) conduct before, as well as during, the proceedings and in particular the extent to which the parties followed the Practice Direction – Pre-Action Conduct or any relevant pre-action protocol;
> (b) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;
> (c) the manner in which a party has pursued or defended its case or a particular allegation or issue;
> (d) whether a claimant who has succeeded in the claim, in whole or in part, exaggerated its claim; and
> (e)whether a party failed to comply with an order for alternative dispute resolution, or unreasonably failed to engage in alternative dispute resolution.
> (6) The orders which the court may make under this rule include an order that a party must pay –
> (a) a proportion of another party's costs;
> (b) a stated amount in respect of another party's costs;
> (c) costs from or until a certain date only;

> (d) costs incurred before proceedings have begun;
> (e) costs relating to particular steps taken in the proceedings;
> (f) costs relating only to a distinct part of the proceedings; and
> (g) interest on costs from or until a certain date, including a date before judgment.
> (7) Before the court considers making an order under paragraph (6)(f), it will consider whether it is practicable to make an order under paragraph (6)(a) or (c) instead.
> (8) Where the court orders a party to pay costs subject to detailed assessment, it will order that party to pay a reasonable sum on account of costs, unless there is good reason not to do so."

IV. *Issue 1: costs in principle*

17. F's overall case is that M's behaviour fits a continuing pattern that has caused the children and F and his partner anxiety, stress, time and money. Beyond conduct during the litigation, F also relies on M's conduct *before* proceedings, citing CPR 44.2(5)(a) (I note that this was a factor that Arbuthnot J gave permission to appeal costs on in the previous proceedings: see para 4). It is submitted that F's career has been seriously and adversely affected because of M's behaviour and the legal proceedings which have had consequences for his immediate family, not least because of their ability to own their own property. As a result of M's behaviour, the children have been involved in family proceedings for most of their life. F submits specifically that "Dr Derry's reports were clear about how this has affected both children and the Father."

18. F criticises M's conduct in the following eight respects:

1. Not engaging with ADR;
2. Unreasonable approach to procedural issues;
3. Giving false, misleading or evasive information to the court and professionals to seek alignment to her;
4. Making unsubstantiated allegations against F of acting in a punitive or alienating way;
5. Seeking to manipulate the children against F;
6. Pressurising the children;
7. Failure to accept the findings of HHJ Sapnara;
8. Acting in a way to require continuing contact supervision.

19. I examine each head in turn. M strongly disputes the allegations. She criticises F's conduct and that of the professionals he has gathered around him in the form of Alison Bushell and CFS (of which she is director). M has alleged that F has been intent on seriously curbing M's contact with the children and thus her relationship with them. Even if any of M's conduct is found by the court to be unreasonable, M points to her "personality", as found by experts. She relies in this on *Re T (Order for Costs)* [2005] EWCA Civ 311 ("*Re T* [2005]"), where the Court of Appeal said at paras 2.4 and 2.6:

> "2.4 In cases involving children in particular, costs awarded against one parent or another are exceptional since the court is anxious to avoid the situation where a parent may feel "punished" by the other parent which will reduce co-operation between them. This will only impinge ultimately on the welfare of the child or the children concerned (*London Borough of Sutton v Davis (Costs) (No 2)* [1994] 2 FLR 569; *Re M (Local Authority's Costs)* [1995] 1 FLR 533).
>
> 2.6 One has to be very careful in this distinction when, as in the case of (the mother), the apparent unreasonableness is as a result of the personality of the relevant party. In such circumstances, there is often an overlap of that party's conduct of the litigation and the conduct relating to the welfare of the child."

20. While I deal below with the chief criticisms, I emphasise at the outset that I do not address every allegation, counter-allegation and complaint between the parties and their legal teams. I am bound to observe that this has been one of the most acrimonious private law cases I have conducted, with serious allegations being made not only between the parties but also between the professionals. This pattern of hostility did not abate during the costs application, but found new (and occasionally heightened) forms of expression. This is most regrettable. Nonetheless, the court must identify what is relevant amid the maze of at times lurid recrimination.

1. ADR

21. F submits that ADR would have clarified the position, but M refused to engage. The truth is that M must have known all along what the concerns were as they were directly attributable to her conduct. M submits that her conduct did not justify the suspending of her contact.

22. It can be seen from the report of Alison Bushell that the children had told her that M was making denigrating comments about the paternal family (CB 1599) and questioning the children about their feelings for M, thereby responsibilising them. The attempts that Ms Bushell made to engage with M and inform her of concerns about how her conduct was impacting the children are clear from Ms Bushell's report. It was reported that not only had M been questioning the children about how they felt towards her, but she invited the children to breach the terms of the contact order. In this way, she compromised the children.

23. It was always open to M to apply to continue with the fact-finding hearing and establish as a matter of record what had been happening if these were false allegations, being serious and relevant to child welfare. She chose not to pursue the matter. This is significant. Similarly to how Ms Bushell documented the concerns about M's contact with the children, the children spoke independently to Dr Derry and he meticulously recorded their concerns. The children largely repeated what they had told Ms Bushell, and it was this that Ms Bushell had been trying to convey to M. I am left in no

doubt, therefore, that it was M who brought about the suspension of contact through her conduct. The children had expressed their serious concerns about M's troubling behaviour to two professionals separately. There is no reason advanced by M why her children would lie about this or could conceivably be mistaken. The broad and telling consistency in their accounts to the two professionals is extremely concerning. This evidence was part of the picture that led me to conclude that it was not emotionally safe for the children to have direct contact with M that was not supervised and that is the order in place. It has not been challenged by M.

24. There is a further important implication. By not pursuing the fact-finding hearing and the court's determination of the facts about the suspending of contact, M removed the opportunity for the court to make clear findings about these important matters following hearings with evidence presented and tested. Nevertheless, the findings of the court in the substantive judgment are clear about the nature of M's conduct. The judgment of 13 August 2024 has not been appealed.

25. I have grave reservations whether M was in any doubt why there were suspensions of contact by F. She knew what was happening because she was responsible and Ms Bushell was trying to communicate the children's concerns, shared by F. This is the context in which to evaluate the utility of ADR. M's participating in ADR was a clear opportunity to clarify any queries and seek to resolve them without litigation. This opportunity was missed by M and must be taken into account on costs. M submits that ADR was "bound to fail". That asserted inevitability would not come to pass if M adopted a reasonable and constructive approach and is very likely to have been matched by F's constructive approach, as I found in the substantive judgment that F's approach before me had been constructive (para 44). There would have been an independent facilitator who could have assisted the parents engage with the issues to avoid unnecessary litigation. M cannot but have been aware of the high degree of need to avoid further litigation. In a recital to HHJ Sapnara's final order it is recorded:

> "Upon the court indicating that these proceedings have taken a toll on all parties which the mother needs to understand and that they need to come to an end."

26. That should have alerted M to the necessity to explore ways in good faith to avoid the pursuing litigation. ADR would have provided such an opportunity. She chose not to take it. HHJ Sapnara noted that before HHJ Brasse M had agreed to attend mediation, but then had a volte face and decided it would "not be helpful and she was not prepared to engage in it." There are echoes of a similarly pessimistic and inflexible approach to avoiding litigation in this case.

27. It is submitted on M's behalf that in this court's substantive judgment there is an acceptance of the criticisms, or some of them, that M makes of Alison Bushell. The paragraphs from the judgment relied on are:

> "39. Having considered all the filed evidence, I judge that F must make the decisions about direct contact. These decisions must not be delegated by him or taken by anyone else.
>
> 40. However, F may seek professional advice and consider it, so long as he actively exercises his own judgement and makes the necessary contact arrangements decisions in the welfare interests of the children himself. The court endorses the recital in the draft order of 13 May 2024 that while F may "discuss future arrangements with Ms Bushell", she "will not be the arbitrator of future arrangements."

28. M's submission misunderstands and misconceives the court's decision. It is not based on any "tacit" criticism of the motivations of Ms Bushell. Instead, the true emphasis is on the court clarifying the demarcation of decision-making about contact and the primacy of paternal responsibility. The court certainly did not prohibit Ms Bushell's involvement and it continues. F remains at liberty to seek her advice. The court emphasised the legal position that the responsibility rests ultimately with F as a matter of law and he must make the decisions. But he can legitimately make them in light of Ms Bushell's advice. Therefore, the construction put on the substantive judgment by M is wrong. It provides no assistance to her in meeting F's criticism of her in her refusal to engage in ADR.

29. The difficulty is that one can see that M was not disposed to acknowledging her errant behaviour with regard to the children despite the children's similar reports to both Ms Bushell and Dr Derry. This is nothing new. M has found it difficult to accept previous findings of the court as Dr Derry found. Accordingly, I am completely satisfied that there was no reason why M could not have attended ADR with F. Her refusal to explore this option in the particular context of this case, the toll it had had on the children and the words of warning from HHJ Sapnara, was unreasonable conduct.

30. F's claims about M's conduct have been determined in two previously contested proceedings resulting in judgments highly adverse to M, and containing significant criticism of her conduct. That picture has been repeated by the report of Dr Derry and the substantive judgment of this court in these proceedings. F's key submission is that it is M's unwillingness to accept the findings of the court that has increased costs. In response, and recognising the difficulties, it is submitted on behalf of M that the fact that she has found it difficult to accept some of the findings of the court or has simply behaved unreasonably, should not be held against her where, as is the case, that has not increased the costs.

31. It is certainly the case that the court should have regard to whether the need for any particular hearing or procedural step was caused by an identified act of unreasonable behaviour by M. However, that is not the end of the matter. Once proceedings have been filed, there are a number of procedural steps that must be taken. The court must examine the conduct of the case as a whole

since some steps are necessitated as part of the logic of proceedings once initiated.

2. Procedural issues

(a) Part 25

32. M objected to the instruction of a consultant psychologist as a Part 25 expert. It is submitted on behalf of M that "it is not uncommon for parties in proceedings to have differing views about a Part 25 application". This is true. However, the question is whether the objection to the Joint Single Expert ("JSE") is reasonable or unreasonable. Here, I judge that the instruction of a consultant psychologist was plainly and indisputably necessary. The court needed the expert's specialist knowledge and experience to assist it given the complicated nature of this case and the seriousness of the allegations being made, particularly given the pattern of M's failures to accept previous findings of the court. On behalf of M, it is submitted that she "simply wanted the children's wishes and feelings to be heard and reported to the court by way of a s.7 report from the ISW" (that is, Ms Hutson). This submission fails to engage with the true issues which are reflected in the order granted on 6 November 2023, including, and critically, the wider family dynamics. I was concerned that reports were being made of repetitions of the unhealthy patterns of behaviour by M and needed to know whether there was repetition of M's conduct towards the children causing them emotional harm. This approach was in part influenced by the judgment of HHJ Sapnara (M had opposed the judgment being included in the filed bundle). The Judge found that M's conduct had "created a very unhealthy dynamic within this family". The order this court granted provided at para 1, borrowing from HHJ Sapnara's framing of the problem:

> "The parties have permission jointly to instruct a consultant psychologist to conduct a family assessment, which shall include expert insight into the family dynamics, the wishes and feelings of the children, an assessment of the psychological/emotional impact of the current contact arrangements and the likely psychological impact of the rival alternative arrangements proposed by the parties."

33. M fully appreciated the complexity of the family dynamics, the issue having been set out in extensive detail in HHJ Sapnara's judgment. M cannot but have been aware that the Judge found that M is likely to have caused emotional harm to the children by her conduct. In this vital context, M's objection to the principle of instructing an expert was bound to fail and was unreasonable. Where she has greater justification in her stance is in respect to Dr Willemsen undertaking the report. Given M's allegations that Dr Willemsen was inappropriate and "partial", the court as a matter of prudence directed that an alternative expert be found. For costs, the concern is about M's attitude to the instruction of a consultant psychologist in principle. The best way to understand the broader picture is by setting down the court's decision on 7 November 2023. The court acknowledged that the children's wishes and feelings needed to be assessed. The report should not be restricted

to M, but also explore the wider family dynamic. Nevertheless, the court emphasised at para 4 of the ruling, with bracketed additions for clarity:

> "The court cannot ignore the procedural and factual history of the case, the concerns of the trial judge [that is, HHJ Sapnara about M's conduct], endorsed on appeal by Arbuthnot J [once more, about M's conduct], and the latest evidence about contact and concerns about its effect [the effect of M's conduct]. It is emphasised that no finding of fact is made at this point about the conflicting accounts. But the court must explore fully the question of psychological/emotional harm to the children. Further, it is necessary to establish whether and to what extent M accepts the findings of the court in order to properly evaluate contact risk and the most appropriate arrangements in the welfare interests of the children."

34. I judge that it is precisely to avoid the assessment of these issues that in significant measure lay behind M's objection to the Part 25 application. She sought to disguise this true motivation by an artificial focus on the wishes and feelings of the children, the further assessment of which there was no dispute. Dr Derry's Part 25 report provided a substantial body of expert evidence highly adverse to M and of tremendous value to the court in determining what was best for the children. It was this evidence that M sought to avoid. This is the simple explanation for her strenuous objection and why it was unreasonable, not animated by the best interests of the children, but to shield herself from expert assessment and criticism.

(b) Allegations against F

35. On 28 November 2023, the court ordered the parties to exchange their allegations against the other parent by 19 January 2024. That deadline was extended by mutual agreement and approved by the court. Instead of responding as directed by the court, M declined to indicate whether she made any relevant allegations against F. She stated that she intended to review her position following receipt of F's schedule and Dr Derry's report. M's stance resulted in F applying to the court on 7 February 2024 for a direction about whether F's schedule of allegations should be provided to M.

36. Once more, it required further direction from the court before M settled on her position. I judge that this was unreasonable litigation conduct by M. Either she did have allegations against F that were material to the welfare decision the court had to make or she did not. It was unreasonable to seek to only clarify her position once she saw what F alleged. There was no provision in the 28 November 2023 order for staged response. There should have been mutual exchange. M did not seek variation of that court order, instead unilaterally took her own course contrary to the court's order. The submission made on her behalf is misconceived. It is submitted, correctly, that the terms of the order indicated that a schedule should be filed "if any" relevant allegations were to be made. However, the existence or non-existence of important allegations that affect the welfare of her children logically cannot have depended on F's separate allegations against her. She was not given

liberty to sit back, review F's schedule and then respond or retaliate on a tit-for-tat basis. The schedules were ordered to assist the court determine what was best for the welfare of the children. However, the essence of M' approach was to grant herself without the court's permission a privilege she was not entitled to. The email from M's solicitor dated 7 February which emphasised her wish not to "heighten the conflict" (as it is termed in M's counter-schedule) fails to engage with the core litigation conduct point that M sought tactical advantage for herself. Here is an example of M's stance appearing ostensibly reasonable (wishing to avoid conflict) while in fact being strategic. This is similar to her presentation to HHJ Sapnara where M affected to be "perfectly reasonable" while conducting herself "in a manner which was not". While during the proceedings that I conducted M alleged that F was unjustifiably impeding M's contact with the children, Dr Derry found no evidence that F had tried to alienate the children. Indeed, in para 44 of the substantive judgment I stated:

> "I have concluded that F's approach to the proceedings before me has been constructive and reasonable. I have not always or exclusively ruled in his favour, but I have at no point been driven to conclude that he has been animated by vindictiveness or anything other than a genuine concern for the welfare and best interests of his children."

37. Further, Dr Derry found that F was "genuinely trying to move to position of more open shared care with less constraints and more flexibility around contact arrangements. His approach was cautious due to his experiences in the past." I judge that M's conduct with regard to the schedule was plainly unreasonable and she deliberately departed from the court's order for her own benefit, regardless of what she had been directed to do or what was in the best interests of the children. This is redolent of what HHJ Sapnara concluded in the relocation proceedings (application to relocate children to Houston, Texas) that in respect of contact, M "felt able to breach the terms of the order when it suited her".

38. Therefore, F understandably pointed to M's approach not being isolated, but should be seen in the context of M's history of disregard of court orders. In January 2014, HHJ Brasse noted that M "has not obeyed the order of HHJ Altman" about contact. He felt "driven to the conclusion" that M made comments and adopted a stance "simply designed to raise the court's anxiety and concern about the care the children were receiving with their father". In the proceedings before me, there have been repeated suggestions on behalf of M that F has adopted an approach to improperly hinder and impair contact and thus the children's relationship with M. The court has rejected the suggestions. M's conduct in respect of the schedule of allegations echoes a decade later the concerns HHJ Brasse expressed about M's conduct. I directed that should M persist in the allegations of obstructing contact (tantamount in all but name to alienation given this family's history) then M must make the allegations clearly in a schedule and the matter would be determined once and for all by the court in a fact-finding hearing. Following the clearest directions from the court, M adopted the highly strategic approach outlined above with

little regard for the underlying welfare of the children. Here I note that HHJ Sapnara concluded that M's relocation application was "mainly motivated by seeking to place distance between the children and the father" and had little regard for their wider welfare.

39. I find that on the schedule of allegations, M's conduct was unreasonable.

(c) Section 91(14)

40. F criticises M's application for a section 91(14) order against him as being unreasonable. F had applied for such an order against M early in proceedings and the court reached a clear determination adverse to M, expressed in para 19 of the substantive judgment:

> "I have no doubt whatsoever that M's conduct overall, is such, that an order is merited to protect the welfare of the child directly or indirectly due to damaging effects of a parent carer."

41. However, in his report, Dr Derry recommended that a section 91(14) be granted against both parents and M relies on this. The sequence of events is significant.

42. M's originating application was dated 14 November 2022. In the early stages of proceedings on 31 January 2023, F applied for a section 91(14) order against M. M did not apply for a barring order against F until 13 May 2024. The application was made as a result of Dr Derry's report recommendation. This was no doubt due to his understandable concern that the children be shielded from further litigation from whatever quarter. But as the court noted in its substantive judgment, and with great respect to Dr Derry, it is not for a Part 25 expert to determine whether the legal test under section 91 is met. As said in the substantive judgment at para 55, "The section 91(14) adjudicative decision is a legal not clinical one. We do not have trial by expert in this country." The court found with no difficulty that as far as F was concerned, the test was not met. F had done nothing that justified such an application. However, in order to assess the relevance of M's failed section 91(14) application against F, one must take into account Dr Derry's recommendation. While I judged the statutory test was not met in F's case, I find that it was reasonable for M to have made the application following Dr Derry's report and grounded on it.

43. Thus, I do not hold M's failed application against her in the evaluation of her litigation conduct.

(d) Court bundles

44. As to the approach to the procedural steps necessary in this litigation, I found M's stance to be at times unnecessarily tendentious and conflictual. An example is the hearing on 6 November 2023. F sought to include in the bundle the judgments of HHJ Sapnara (as noted) and HHJ Brasse. M objected. It was not possible for parties to agree the contents of the bundle and the matter had to be referred to me. This was unnecessary and disproportionate. The previous

judgments of the court were plainly relevant. There was no credible basis for M to object. I found M's approach to this unreasonable. This is something that should not have required the judicial direction the court was obliged ultimately to give. M's submission is that "reasonable arguments between solicitors about what documents to include in a bundle are not matters which should give rise to orders for costs." First, this was not a reasonable stance by M. Second, it is not submitted by F that this matter alone should result in an adverse costs order. Third, if there is unreasonable litigation conduct by a party, that is a matter the court can legitimately take into account, whether it is a matter concerning bundles or not – the proper preparation of bundles is an essential part of litigation to assist the court and ease the smooth conduct of proceedings. Thus this albeit more minor issue is nonetheless a relevant part of the overall conduct picture. On this, M was unreasonable.

3. Imparting false information or inappropriate information

45. F makes several allegations and they are examined in turn.

(a) Draft order (ISW)

46. On 20 July 2024, M showed Charlotte Hutson the ISW a copy of the draft court order. M had no permission from the court to do so. She did not seek F's permission. It demonstrates unreasonable conduct in the litigation by taking into her own hands how sensitive and private documents should be handled and disclosed. It is submitted on behalf of M that it was "not unreasonable for the Mother to have acted as she did". This fails to engage with the prime concern: M acting contrary to the order of the court. She had no authority to disclose a draft order prior to agreement and court approval.

(b) Safeguarding letter

47. In F's schedule, he submits that in the CAFCASS safeguarding letter dated 27 January 2023, M is reported to have indicated that she did not know why contact was suspended. M submits that this is an "inaccurate extrapolation from CAFCASS's summary of a discussion with the mother." One has to look at page 4 of 7 of the letter from Lauren Fisher FCA to understand what M was suggesting:

> "She would not talk about S or the court proceedings if she was unsupervised with the children. She received an email from the head supervisor that stated that [Z] had been spoken to about the proceedings and she had been shown some of the court documents including parts of the psychological assessment. She does not know why or in what context these conversations have happened."

48. It seems to me that there is merit is M's point that she was denying the alleged whispering of inappropriate information to [Z], not that she was feigning ignorance about the reason for the suspending of contact. I therefore do not consider this as unreasonable conduct for the question of costs.

(c) False allegations 24 July 2024

49. F alleges that M made false allegations to the court on 24 July 2024. The allegation is that M said that she had no contact in June. This would be on the face of it contrary to the court's order and thus a matter of great concern to the court when the level of contact was at the heart of proceedings. Objectively, however, there was contact on 2 June 2024. M maintains that this was a misunderstanding on her part as she believed that contact was the "May" contact. I have no doubt that M presented an inaccurate picture to the court quite deliberately or at the very least unreasonably. It was about a central matter and one she knew perfectly well was of great sensitivity in these proceedings. If M believed the 2 June contact was the May session, she should have made that clear. Her failure to do so was unreasonable. It was only *after* the contact record was sent by F's legal team to the court attesting to the 2 June contact that there was email communication on behalf of M to the court "correcting" her position. It was unreasonable for such further unnecessary communication with the Judge to have occurred and it is clearly attributable to M's conduct. It is unsatisfactory for it to be submitted on behalf of M that the court was "not seriously misled". The court should not have been misled at all.

(d) Children's school

50. I do not enter into the dispute between the parties about whether and to what extent HHJ Sullivan was misled or not about the Judge's concerns as encapsulated in the order dated 2 June 2023 and in her subsequent order dated order of 18 August 2023. It is correct, as F maintains, that the Judge directed that a section 9 judge conduct proceedings.

51. However, what is clear is that on behalf of M, Z's school was contacted and information shared about proceedings. M did not have permission from the court to do so. It is not good enough to submit, as M now does, that this was an attempt to correct a false or misleading position about Ms Bushell's authority. The rules are simple and clear and M has been involved in private family law proceedings for years. I judge that she knew perfectly well what the rules are and what she was doing, and cannot fail to know them after a decade of litigation. But once more, M chose to take matters into her own hands, flouting the rules she knew applied. Proceedings in the Family Court involving children are private and the permission of the court is required to furnish any sensitive information externally, or at the very least of all other relevant parties to ensure there is no objection. This was, to my mind, was unreasonable conduct by M.

(e) Draft order (contact supervisor)

52. In similar vein, M showed the contact supervisor a draft of the court order which had not yet been approved. This is something M had no permission to do. Once more, it was unreasonable and in breach of court rules and proper procedure.

4. M's allegations of alienation

53. M submitted to HHJ Sullivan that F "is now well down a path which seeks to significantly curtail or end the children's relationship with their mother." It is difficult to reconcile this submission with what M told the CAFCASS officer

at the outset of proceedings, when she reported that M said she had no concerns about F's care of the children, nor any "safeguarding or welfare concerns". However, if F had indeed embarked on a determined plan of alienating the children by impairing their relationship with M as was submitted to HHJ Sullivan, that would be a very significant concern about his caring and the welfare of the children – indeed, one of the most significant in the context of these proceedings.

54. It is clear that M has consistently maintained a stance to the court that F was intent on either substantially restricting the children's relationship with their mother unjustifiably or in fact ending it altogether. This is a very serious allegation in these proceedings as the issue is the central one. However, such an allegation against F is entirely without evidential basis on any of the credible material before me. In the substantive judgment, given the seriousness of the suggestion, the court made a specific finding on the issue so there could be no further dispute about it. The judgment stated at para 8:

> "Dr Derry has found no indication that F has sought to alienate the children. The evidence before the court amply confirms the assessment of HHJ Sapnara that trust can and should be placed in F to ensure that appropriate contact arrangements are maintained."

55. In response, M submits that "these allegations were made at the outset of the case and the Mother did not thereafter pursue them not least because she wanted to focus on the children's wishes." If there was any truth to allegations of parental alienation or damaging contact and mother-child relationships, M would have undoubtedly have pursued them and would be bound to, given how the nature and quality of her relationship with her children was at the heart of proceedings. She did not pursue the allegation. As noted, the evidence before the court reveals no credible basis to support such a serious allegation. However, M's position on the issue remains in substance unchanged. For example, it is submitted on her behalf for the purposes of this costs application at para 12 of the skeleton argument submitted on her behalf that "this is a case in which a mother has fought hard to see her children in the face of fierce opposition from the Father and the social worker he had appointed."

56. This is a telling submission. It is clear that M maintains her allegation that F has in a "fierce" way sought to impede M's contact with the children. It must be stressed that this quoted submission was made *after* the handing down of the court's substantive judgment in which the court found that there is no evidence of F not seeking to promote contact. I am bound to say that throughout I found F's approach to be reasonable and responsible. It is not surprising at all that HHJ Sapnara found his evidence to her to be "forthright and straightforward".

57. In actuality, this amounts to another vivid example of M not accepting the findings or rulings of the court. The submission is directly contrary to Dr Derry's opinion and para 8 of this court's substantive judgment. I am completely satisfied that F's concerns throughout were that the children's

contact with their mother was emotionally safe while trying his best to promote their relationship with their mother. As is clear from the totality of evidence, the reported accounts of the children, Dr Derry's expert opinion and the court's final judgment, without proper supervision M presents a risk to the children. In this context, her narrative of an intent at impeding or damaging her relationship with the children by F is unfounded and unreasonable. Indeed, it is being still unreasonably maintained by M during this costs application.

5. Seeking to manipulate the children

58. The court has made no findings about this. I do not consider this for the costs application, despite recognising that HHJ Sapnara made this explicit finding.

6. Putting pressure on the children

(a) Z

59. F criticises M for speaking to Z about her self-harming when he had told M that Z did not wish to discuss it. Nevertheless, M said to her daughter early in the contact session that they should not ignore "the elephant in the room", a clear and deliberate reference to the child's self-harming. It was something potentially emotionally harmful to the child who did not wish to discuss it. F had informed M by email of Z's wish. When the session ended, M told Z "you know where I am if you need me, I love you". The contact record evidences that M's conduct upset Z (page 9). M's submission about this is that she was "damned if she did, damned if she didn't." The argument is that Z might have thought that her mother did not care. That submission cannot survive the fact that M had been told clearly that Z did not wish to discuss her self-harming. This evidences M prioritising her own needs over her child's and not attending to F's plain communication. I note that HHJ Sapnara, again in respect of Z, found that M had removed the child from a therapist who was not aligned with M's views, even though it was contrary to Z's best interests.

60. M's conduct in this contact session was contrary to what F in his role deciding on contact arrangements had passed on, and she paid no heed to his having to deal with this complex and sensitive issue about child welfare on a day-to-day basis. It also shows M to consider herself not bound by external strictures, but choosing to conduct herself as she wishes. It is a limited but revealing incident out of many and was not reasonable.

(b) Suspending sibling contact

61. I do not consider that M's suspending of sibling contact as a clear act of pressurising the subject children. The better way to look at this is that M and her husband are entitled to make best interests decisions about their son in the exercise of their parental responsibility. I ignore this allegation for the costs application. But equally, M's ignoring of F's communication to her about the self-harming, something F was managing in difficult circumstances on a daily basis in the exercise of his parental responsibility, and M causing upset to her daughter as a result was unreasonable conduct that I will return to. It is, however, of limited significance on its own in relation to the costs decision, while part of the picture. The relevant matters must be viewed holistically.

7. Accepting the findings of HHJ Sapnara

62. M's unwillingness to accept the findings of HHJ Sapnara in the previous proceedings has, to my mind, informed important aspects of her conduct. It is clear that her refusal to accept the determinations of the court in those proceedings fed into her opposition to the Part 25 application, as explained. The extent of the refusal is evident from how she framed the issue in her meeting with Dr Derry. In his report, he notes that she said that there was "an interpersonal difficulty". In fact, as noted at the outset, but needing repetition here, HHJ Sapnara concluded that M

> "has deliberately manipulated the facts, manipulated the children, manipulated professionals and individuals and has been negative towards the father and sought to undermine the quality of the relationship he has with the children."

63. It is important to rehearse two of the Dr Derry's findings that were included in the substantive judgment:

> "[There is] no evidence that she had internalised the findings of the court or developed a clearer understanding of her own capacity for manipulation of the truth."
>
> "Overall, I did not feel that [C]'s understanding of her concerns about her parenting in the past would indicate any change in her underlying attitudes or approach to her parenting difficulties. This would offer a poor prognosis for change in the future."

64. As HHJ Sapnara found, the indications that she accepted the findings of the court were no more than "doublespeak". It seems to me that M's refusal to accept the court's determinations is an important part of the overall picture, and M's resistance to previous decisions has played an important part in the unreasonableness of her conduct overall.

8. Acting in a way to require continuing contact supervision

65. As stated, the court has found in the substantive judgment that M's direct contact with the children requires supervision due to the risk of emotional harm she poses to them. The relevance of this for the costs application relates to the reason for F suspending contact, her refusal to engage in ADR and her application for resumption in light of her conduct.

Conclusion: Issue 1

66. A fundamental plank of M's resisting of the costs order is to point to what she has "achieved" during the course of the proceedings. M submits that she has achieved a measure of real practical significance: a court order setting out the contact arrangements, and while F makes decisions, it is in light of the wishes and feelings of the children. F counters that this was substantially the situation before the issue of proceedings, HHJ Sapnara in her final order having granted the decision-making to F. F submits that there has been no real change of substance.

67. The court is completely satisfied, as noted in the substantive judgment, that F was trying to promote contact between M and the children. The court further finds that it was a prudent and reasonable course for F to suspend contact with M. Presently, her contact is still being supervised and must continue to be. She did not want that. But the court judges that supervision is essential to protect the children from emotional harm. Indeed, I stated in para 48 of the substantive judgment in terms:

> "I have no doubt whatsoever that the prime driving factor for the need for costly contact supervision costs is the previous behaviour of M and the risks that expert evidence has identified. The children must be properly safeguarded."

68. Indeed, if M did not present such risks, there would be little or no need for the supervision the court has determined remains necessary because of her. While now there is a different supervisor (Ms Hutson rather than Ms Bushell/CFS), it remains professional and independent supervision because of concerns about M's conduct. As this court set out at para 49:

> "Dr Derry has recommended supervision and the court accepts his recommendation and reaches the same conclusion holistically examining the evidence. Indeed, all the professionals who have assessed M have concluded that supervision is necessary because of M's conduct. In those circumstances, this court arrives at two conclusions: first, that supervision remains necessary because of M's previous conduct and future risk; second, that M should make more of a contribution to the continuing cost of that supervision that she has principally made necessary."

69. It is submitted on M's behalf that "it is right to recognise that the Mother has historically behaved badly, she has already paid a costs order from the previous proceedings", a reference to Arbuthnot J's order. What is not sufficiently recognised, however, is how her conduct in respect of these proceedings has been unreasonable. Indeed, Arbuthnot J having reviewed with great care the judgments from the previous proceedings, concluded that M's behaviour had been

> "reprehensible and her approach to the fact-finding hearing was unreasonable in a variety of different ways and this was not the sort of behaviour that many litigants in family proceedings commonly engage in."

70. As I noted in the substantive judgment at para 65, these are very strong words. I am not persuaded in the absence of clear expert evidence on the point that the extent of the unreasonableness of M's conduct is "caused" by her "personality" in *Re T* [2005] terms, as is submitted on her behalf. Dr Derry has certainly made clear the complexities of M's psychological make-up, but there is not any assistance on the *degree* to which she simply cannot help herself and thus should have her unreasonable behaviour excused in costs. M

is a highly intelligent person and has a responsible job, previously working for a bank (I note that HHJ Sapnara found M to be "intelligent and articulate"). No parts of Dr Derry's report or any other parts of the historic assessments of M were expressly referenced by M to support the submission that her conduct was "caused" by her personality. Thus, the submission is asserted at para 12 of M's skeleton argument dated 22 August 2024 without any supporting evidence referred to. It was open to M to justify this submission with proper reference to the evidence and this was not done. I judge that it would be perilous for the court to speculate about such causative matters without sufficient expert or other reliable evidence, and particularly when none has been referred to on behalf of M. Dr Willemsen, it should be recollected, reported that M had no identifiable mental health diagnosis. Indeed, HHJ Sapnara found that the psychological assessment did not "necessarily excuse or totally explain away the mother's determination and capacity for fabrication, manipulation and distortion." Further, Arbuthnot J at para 163 specifically referenced the fact that Dr Willemsen "found no mental health reason for [M]'s approach to the father and to his contact with the children". Indeed, on appeal Arbuthnot J "criticised" HHJ Sapnara "excusing" M's conduct in costs because of M's psychological make-up. However, I have considered the totality of the psychological assessments of M. I noted in the substantive judgment at para 67 that there appear to be occasions when she finds it "difficult" to contain herself and I judge that it is fair to reflect that fact – emphasising that difficult is not impossible – in the proportion of F's costs allowable as one of the "circumstances" the court must consider on Issue 2. It does not amount to a valid basis to refuse a costs order against her on Issue 1. But I take it into account on proportion in the next section. It will help to set out my assessment in the substantive judgment's conclusion (ibid.):

> "Dr Derry has assisted the court immensely in identifying with independence, balance and expert authority the risks that M continues to present. The judgments of HHJ Altman, HHJ Sapnara and Arbuthnot J have shared a common theme, critical of M. The children must be shielded from those times when M finds it difficult to contain or control herself. It is for this reason that the children must remain living with F. It is for this reason that their contact with their mother needs careful regulation as I have outlined above and as is mandated by the accompanying order. It is for that reason that it is necessary to protect the children through a barring order made against M in an effort, albeit now very late in the forensic day, to afford these children some respite from the incessant and harmful litigation that has marked and marred their childhood. This simply must not continue. The court will now step in. It will exercise it duty to scrutinise any further applications made by M and stop them at source if they lack merit and genuineness to avoid greater harm being done to the children. Future applications in respect of child arrangements will only proceed if they are meritorious and are genuinely necessary. It must be stressed that the court rejects any such restriction on

> F's Article 6 rights. He was completely justified in applying for an order that the children transfer their residence to live with him, as determined by HHJ Sapnara."

71. Previous judges have made observations about the extent of M's autonomy and intentionality. HHJ Brasse observed that not only had M "embellished" the evidence she gave him, but "she is aware of what she has done". Similarly, HHJ Sapnara found that M would have understood "perfectly well" the effect of the words she used. I am clear that this is very likely to be the same situation with regard to M's unreasonable conduct in this case: she perfectly understood what she was doing. HHJ Sapnara also found that M had "embellished" the evidence she gave to the court in the relocation proceedings and tailored the evidence "to fit her case", acting with great deliberation. M's approach to the allegations of F obstructing contact and damaging M's relationship with the children has underlying similarities to the very serious sexual allegations made by M against F before HHJ Sapnara. There M made the allegations and then sought to dilute or "minimise" them, but also had them put in cross-examination to F. This is very similar to the contact impairment allegations against F in the instant case and M's unreasonable approach to the schedule of allegations. HHJ Sapnara found that M's evidence was "evasive and unsatisfactory" and I am bound to observe that I found M's approach to the schedule of allegations to be accurately described by the same two adjectives. I have been troubled by M's approach to these proceedings and how her unreasonable stance in them has resulted in the unnecessary involvement of the court on repeated occasions.

72. I also do not accept M's submission that even if she was "pressuring the children" or was asking them inappropriate questions, that "is not relevant to the five hearings where costs were reserved". The difficulty with that submission is that it contends that even if M was behaving unreasonably to the requisite reprehensibility threshold, there needs to be clear causative connection between conduct and increase of costs incurred in any particular hearing. I judge that it is not as clear-cut as that. The authorities indicate that while one can examine specific and identifiable instances of unwarrantedly increasing costs (for example, wasted costs for a needlessly vacated hearing), one must also look at the conduct of the relevant party as a whole in the context of proceedings as a whole and then make a judgment about whether overall it has been unreasonable to the stipulated extent. Here, I judge that M's conduct as a whole was unreasonable. By focusing minutely on causative connection to individual hearings or lines of costs, M comes close to an issue-based costs approach, which is routinely deprecated. Naturally, F cannot claim his costs for those hearings where costs were not reserved as I will come to. Equally, the court can legitimately – and will – consider the extent to which M "succeeded" on issues in evaluating the proportion of F's costs that should be awarded (Issue 2). But this is different from artificially seeking to identify an increase in costs as a result of five out of the ten hearings as a result of M's unreasonable behaviour. M's unreasonable conduct has coloured the proceedings as a whole and I accept F's counter-submission that the five hearings in question "do not appear in a vacuum". I find that M's conduct both before proceedings (in CPR 44.2(5)(a) terms) and during it has

overall been beyond the range of reasonableness as spelled out in detail above. I reject M's core submission that the circumstances here are not exceptional. I find that they plainly are.

73. Therefore, I judge that on Issue 1, M's overall conduct is so defective that it meets the test of being beyond the range of reasonableness. I have no hesitation in concluding that F should be granted an order that M pays his costs. This is not to "punish" M. Such an award is not "penal" or "punitive", as M asserts. Instead, it is to reflect that her conduct has been beyond what is reasonably acceptable. If M's conduct had been reasonable, far fewer costs would have been incurred by F. Instead, proceedings were litigated with full vigour by M in the ways identified above, placing F in a position where he had no option but to incur legal costs to protect himself and promote as best he could the welfare of the children. I agree with HHJ Sapnara that M's conduct has resulted in F constantly "having to look over his shoulder". M's conduct has caused him serious distress and unnecessary legal expense.

Hearings with no order for costs

74. However, as noted, there were a number of hearings in which the court made no order for costs. The parties agree that that position should remain undisturbed. M submits that there were ten orders relating to nine court hearings (one was dealt with on the papers). In five, no order for costs was made, it being always open to F to make the application, but he failed or declined to do so. As to the remaining five orders, costs were reserved. This is a matter of record. One has to simply examine each order. In my judgment, F cannot claim the costs of his representation in respect of those hearings in which no order for costs was made, and in this I follow the Court of Appeal's decision in *Re E* at para 29.

75. F accepts this in his skeleton argument dated 10 June 2024 and identifies the orders as those dated 2 June 2023, 18 August 2023, 25 October 2023, 6 November 2023 and 28 November 2023. F's legal team apologises for erroneously including the sums in the original claim and provided an "updated" N260. Thus F's costs relating to the "no order" hearings must be removed from the overall costs total. The sum must be agreed or determined on detailed assessment.

76. The next question is what proportion of the consequently adjusted costs total should be awarded to F.

V. *Issue 2: proportion*

77. The determination of the proportion of claimed costs to be awarded is an exercise of the court's discretion. As noted, CPR 44.2(6) provides that the court can order that the paying party pays "a proportion of another party's costs". The proper approach is to take into account "all the circumstances" (CPR 44.4), including the extent that M succeeded or failed in her applications (CPR 44.2(4)(b)).

78. F's recognises that he must be "realistic", allowing for the fact that M has succeeded in part. He submits that the correct proportion is 75 per cent. The court sought submissions from M about what the appropriate proportion should be. Counsel submitted that "it was impossible to pick a figure." Instead, M submitted that she has succeeded to a "not inconsiderable" extent, and "Whatever view the court takes of the Mother's conduct of these proceedings she has achieved, through them, much more than she was offered. She was motivated throughout by what she thought was best for her children."

79. This contains two propositions. I cannot entirely accept either of them. That she has achieved "much more" than offered, does not bear objective scrutiny. I accept that M has not left "empty-handed", as it was put, and has succeeded in part, but overall and on balance she has not been successful. The second assertion about her motivation is one the court cannot accept. I am clear that throughout M has prioritised her own needs and desires, such as during the contact session where she raised the issue of Z's self-harming even though M had been told in terms that the child did not wish to discuss it. It upset her daughter, entirely predictably. She did know or should have known that.

80. There are two further matters. First, the involvement of Alison Bushell and CFS. F criticises M for a track record of seeking to have removed professionals "if they do not succumb to her narrative". F relies on previous proceedings where he says that a CAFCASS officer and a counsellor at the children's school were removed at the instigation of M. In these proceedings, M filed an application for a prohibited steps order in respect of Ms Bushell and CFS. It is not necessary and disproportionate for the court at this point to make findings about the history of the dispute about Ms Bushell's involvement. It is sufficient for this costs determination to observe that F recognises that "a mistake was made by the Father and Alison Bushell". F accepts that "The criticism of Alison Bushell acting in the belief she was a court appointed officer to work with the children, including supervision, is justified." Ms Bushell had no authority to instruct the school to restrict information about Evie.

81. CFS is no longer involved and supervising contact. Ms Bushell's role is different and advisory. The court in these proceedings has clarified in its ruling that F must make the decisions about contact arrangements in the exercise of his parental responsibility. However, it also ruled that it is permissible for F to consult with and take advice from Ms Bushell. I judge that this is a material difference to the pre-existing position. F accepts that the court's ruling "has distanced Alison Bushell from the Mother". This change is a matter that M has achieved during the course of proceedings. As such, it is a factor the court should properly take into account in assessing the proportion of allowable costs.

82. Second, the nature and extent of contact arrangements. M's C100 states that for most of 2022 she had monthly contact of between two to three hours. In the position statement for the hearing before HHJ Sullivan, she stated that between July 2022 and January 2023, she had three hours' contact each

month. However, F suspended contact in both November 2022 (15 days, following concerns about M whispering to children) and March 2023. The position presently following proceedings is that M has monthly contact with supervision. Therefore, what she has achieved must be understood in this light.

83. M submits that she has obtained through these proceedings "an order for direct contact". The contrast is drawn between this and the position after proceedings before HHJ Sapnara where "no contact was defined" and arrangements could not be agreed between the parents. Instead of hotel supervision, there is contact in the community under the supervision of the ISW Ms Hutson. The court has directed that the indirect contact should not be recorded, although F or his partner can be in the background to support the children rather than monitoring the contact. This can be considered a "success" for M in costs terms.

84. Yet M has failed in significant and substantial respects. M initially disputed that her contact with the children required supervision. When she spoke to the CAFCASS officer for the purposes of the safeguarding letter, she stated that she would not talk about F or the court proceedings if she had contact unsupervised, and that the contact arrangements were "not normal". In her early position statement, she did not "accept" that she needed to be supervised but merely agreed to it "for self-protection". Yet the court has found that M's contact with the children needs supervision for the protection of the children from potential emotional harm from M's words and behaviour.

85. M wished for contact to take place in her home and that is something the court has not authorised. She initially opposed F's application for a section 91(14) order against her. It has been granted by the court despite her equivocal stance towards such an order against her. Even in the oral submissions at the final hearing M's stance displayed the kind of "doublespeak" that HHJ Sapnara found. It was submitted of her behalf, as detailed in the substantive judgment at para 53:

> "M's position appears to have been in oral argument that there is "no need for an order against M", but there "needs to be one for F and also for M". Therefore, M's position contained an intellectual inconsistency."

86. This was a characteristically unreasonable stance for M to take. Following the report of Dr Derry there could be no question but that a section 91(14) order was necessary in respect of M. I do note that for reasons of proportionality and the fact that X is 15 that its duration should be 2 years instead of the 3 years F applied for. But one sees again why she objected to an expert report from a consultant psychologist. The report she objected to, ultimately prepared by Dr Derry, was of great value to the court and adverse in significant respects to M. She applied for Ms Hutson to prepare the section 7 report, which was refused. She applied for the appointment of a Guardian under rule 16.3. This has also been refused. However, the court agreed that Dr Willemsen should not prepare the Part 25 report.

Conclusion on outcomes

87. Therefore, on balance M has not succeeded. However, she has achieved some positive outcomes and that must be reflected in the proportion of costs awarded. There should be a reduction of 30 per cent due to the outcomes M has succeeded in securing in the proceedings.

M's impecuniosity

88. M submits that an award of costs against her will have serious financial consequences and may result in her financial ruin. She submits that she does not have sufficient assets or income to satisfy the costs demanded "or anything approaching that amount". She states she owns no real property, the house in which she lives is solely owned by her husband, [B], having been purchased by him on 25 August 2016. She inherited a flat from her late mother but the net proceeds of the sale of that, some £419,000, "have all gone". M's financial situation is said to be "parlous" and any substantial order for costs "would simply have the effect of rendering her insolvent and bankrupt".

89. In response, F submits that such a claim of a risk of bankruptcy should not fetter the court's decision, particularly having regard to the fact that the court has charged F with the primary responsibility of caring for the children, who live exclusively with him with no lives with order at all in favour of M. Further, F submits that there may well have been manipulation of M's husband's employment situation. This is because M's husband has been served with a notice of redundancy with effect from 13 November 2024 despite, as F points out, his having been employed by the same employer for around 13 years. F believes that the actions of the M's husband regarding his employment have been with the intention of the M avoiding any financial liability in respect of the F's costs arising from these proceedings, were the court to make such an order. F believes that it is no coincidence that the M's husband has set up his own limited company around the date the hearing of this costs application had been listed. It should be remembered that HHJ Sapnara found that M and her husband "colluded" on the evidence they presented to the court and were "untruthful" and "unreliable witnesses" (plural). Furthermore, F believes that it demonstrates the lengths to which the M and her husband will go to avoid meeting any costs order in F's favour. F relies on the comments of HHJ Wildblood in *Re B (A Child) (Unnecessary Private Law Applications)* [2020] EWFC at para 44:

> "Do not bring your private law litigation to the Family court here unless it is genuinely necessary for you to do so . . . If you do bring unnecessary cases to this court, you will be criticised, and sanctions may be imposed upon you."

90. In the previous proceedings Arbuthnot J was moved by M's conduct to state in terms:

> "I consider that not making a costs order may encourage the Respondent [M] to feel that she can raise allegations at will which are later unsubstantiated at no cost to her. At the same

> time, an order to contribute towards the Appellant's costs is not made to prevent or deter the Respondent form pursuing reasonable applications."

91. This court finds itself in a comparable position after proceedings stretching over 18 months in which it has found overall that M's conduct was unreasonable. I also accept that M's evidence in relation to her finances must be viewed cautiously and her assertions of penury bear little relation to the objective facts of her life, employment status and that of her husband. In exercising caution, I am reminded of what HHJ Brasse said about M in 2014, which was that "there were a number of reasons" why he felt "the court needed to proceed cautiously in relying on what she said." HHJ Sapnara subsequently expressed similar concerns about M's credibility and reliability and how M had "manufactured" evidence and found certain of M's evidence "utterly unconvincing and untruthful". These are serious criticisms of M. Both HHJ Sapnara and Arbuthnot J noted that M alleged that F had assaulted her at the children's school and that the police, after being called, concluded that M's allegation was unfounded and "possibly malicious".

92. I emphasise that the decisions in this case are not prescribed or determined by these earlier findings, but nor can the conclusions of these experienced judges about M's unreliability be entirely ignored. They build a clear picture of lack of credibility and manipulation found by different judges at different times over a period of years. This cannot be cast aside when this court is being asked to believe M's claims on trust, here of impending bankruptcy.

93. F invites the court to have full regard for M's propensity not to tell the truth and manipulate. While M's loose regard for the truth has been commented on by HHJ Sapnara ("utterly disingenuous" about her knowledge of F's finances) and her facility for manipulation by Dr Derry, HHJ Brasse also noted that M was prepared to "feed the school" information that was not properly supported or that was inaccurate to "raise their level of anxiety about [her child's] emotional state", and he also found that M had attempted to "manipulate the views of the CAFCASS officer". M has in the past been found to be less than candid about her finances. In particular, the court was referred to HHJ Sapnara's judgment (8 April 2015) on M's application to relocate to the USA with her current husband. HHJ Sapnara observed that:

> "the mother when she gave evidence, in my view, was far more keen to paint a picture of significant financial hardship in the UK. [B] was not so stark in the evidence that he gave."
> …
>
> "I found the mother to be a most unsatisfactory witness. She lacked consistency in respect of material issues. She presented as very rigid in her thinking. In my judgment, at various points in her evidence, she advanced responses which were frankly lacking in credibility and logic. I found her to be evasive at times and at other times that she embellished the account that

> she gave to an extent that she was cutting the cloth to fit her case at various points."

94. HHJ Sapnara concluded starkly that M was "making this up as she was going along".

Discussion on ability to pay

95. The starting-point is that CPR Part 44 does not fully apply in family law proceedings involving children. I pause to note that a party's ability to pay is not a factor listed in Part 44 as relevant to the "amount of costs" to be awarded in civil proceedings (CPR 44.4). The usual rule in civil proceedings is that the ability to pay of the paying party is not taken into account in the amount of costs to be awarded. It may be relevant at the enforcement stage. To cite but one out of many authorities that have considered the point, in the much-cited case of *Secretary of State for Transport v Cuciurean* [2022] 1 WLR 3847 ("*Cuciurean*"), the Court of Appeal stated at para 65:

> "It is no doubt the case that an award of costs against a defendant may cause hardship. It may affect their credit rating and in some cases may drive a defendant into insolvency. Countless unfortunate litigants have been driven into bankruptcy by costs orders made against them. But that has never been a reason either to refuse an order for costs in civil proceedings or (save in those cases where the CPR makes specific provision) to limit the amount of costs to an amount which the defendant can in practice afford to pay."

96. *Cuciurean* was a contempt case. The White Book states at 81.3.17 that "Contempt cases are not in a special category for costs purposes, and will normally follow the event pursuant to CPR Pt.44". However, in contempt cases, the court may (not must) take into account ability to pay where there is the imposition of a financial penalty or a committal to prison. Therefore, in *Attorney-General v Dowie* [2022] EWCA Civ 1574 ("*Dowie*"), Jackson LJ said at para 44:

> "In these cases, and others before them, it was held that costs will normally follow the event in committal proceedings and a contemnor will normally be ordered to bear the costs of the proceedings in addition to any penalty imposed. However, the court will seek to make an order which is fair, just and reasonable in all the circumstances. It may consider the contemnor's means when making an order for costs, but it is not required to do so".

97. I am conscious that this is a family law case and not a civil case and costs do not follow the event in Part 44 terms in the same way as the Court of Appeal clarified in *Re E*, where Jackson LJ also delivered the judgment of the court. Allowing for these differences, there is an aspect of the approach of the Court of Appeal in *Dowie* that I find to be of assistance. It seems to me that special ("exceptional") nature of a costs award in Children Act proceedings is evident

from the recurrent theme in the jurisprudence and in assessing the amount of costs to be awarded the court seeks to arrive at a figure that is "fair, just and reasonable", to lean on Jackon LJ's helpful formulation in *Dowie*. These seem to me to be useful yardsticks to guide the court's costs discretion and in accordance with FPR 28.1 that provides that the court should make such order as it thinks "just". Indeed, Arbuthnot J's award of £37,000 costs in F's favour was what she determined to be the "just and reasonable amount" (para 183).

98. Thus, it seems to me that ability to pay is a potentially relevant factor in the amount of costs to be awarded, particularly where there is a link to child welfare. To take a clear example: if the children were residing with M and she were the primary caregiver, I can entirely envisage that a substantial costs award against her may impact her ability to meet the children's needs. That would to my mind be of high relevance. However, the children reside with F for their own emotional safety and welfare. M's contact with the children is limited by the terms of the orders of the court and it must be under strict and sustained supervision. M claims that the award of substantial costs against her would affect her ability to continue to pay for the supervision. The court has directed that she pays two-thirds of the supervision cost due to her unreliable and potentially emotionally harmful conduct necessitating the supervision in the first place. (In passing, it should be noted that there is a dispute between the parties about whether the obligation includes a requirement to pay for the same proportion of the costs of written supervision notes (F's position) rather than just the "physical" supervision (M's position)). In his final skeleton argument, F informs the court that M applied to the CMS to vary the maintenance costs for the children to take into account the costs defrayed in her contact supervision. The application is said to have failed. M states that the matter is irrelevant for costs purposes. In any event, the application was made by M in 2023 and was finally rejected by the CMS in February 2025.

99. I must consider therefore whether a substantial costs order is likely to impact M's ability to continue to pay for supervision and thus maintain and promote her relationship with the children, which is a matter directly related to their welfare. I emphasise this because operating under aegis of the Family Court jurisdiction, the welfare of the children is of central and enduring importance. M submits that "although in reaching a determination as to costs, the child's welfare is not a paramount consideration, it is legitimate for the court to take it into account along with other relevant factors." This has much force and echoes the Court of Appeal's observations in *Re T* [2005] about costs orders that adversely impact child welfare. As to the associated question of whether a costs award would damage the relationship between the disputing parties, I concur with Arbuthnot J who said at para 177:

> "Very sadly, an order for costs will not worsen the relationship between the Appellant and Respondent, which is at its lowest possible ebb."

100. Nothing that has unfolded before me quells concerns about the severity of the mutual suspicion and ill-feeling. It is difficult to conceive how a costs order would make things worse from this very low point.

101. Having reviewed all the rival submissions made and the documentation provided, I am unconvinced by the submissions on behalf of M that a costs award would drive her into bankruptcy. She is married to a professional who owns a property. I am also conscious that the court has previously found that she has "inflated" the desperation of her financial situation. I am clear that she is likely doing so again. I very much doubt that a costs award in this case will result in her bankruptcy. While conduct as a whole during these proceedings has been unreasonable and in costs terms "reprehensible", against this I weigh that M is paying two-thirds of the supervision costs on an ongoing basis. It is for that reason that I judge there should be a reduction in the proportion of costs.

Conclusion: Issue 2

102. Doing the best the court can do, the reduction should be one of 20 per cent for M's supervision obligations in combination with a reduction for the "difficulties" M sometimes encounters in containing her behaviour, as previously explained.

103. This reduction of 20 per cent is in addition to the 30 per cent reduction due to her successful outcomes.

VI. *Disposal*

104. To summarise, the court finds:

1. F should exceptionally be granted a costs order due to the extent of the unreasonableness of M's overall conduct;
2. The proportion of costs that F should be awarded is 50 per cent, being reduced from the amount claimed by:
    a. 30 per cent due to the extent M succeeded in the case;
    b. A further 20 per cent because of her ongoing requirement to pay two-thirds of the contact supervision costs and her psychological make-up;
3. The figure from which 50 per cent should be calculated must exclude the costs of F's representation at any hearing where no order for costs was made;
4. There must be detailed assessment if costs are not agreed.

105. I direct that the parties agree an order to reflect the terms of this judgment.