

PRIVATE LAW CHILDREN

September 2024

Successful appeal by the Mother setting aside an order for contact with the Father, who was imprisoned for two offences of rape committed against her.

M (Children: Contact in Prison) [2024] EWCA Civ 1104

Lord Justice Peter Jackson

Handed down – 24 September 2024

Full judgment can be found [here](#).

Overview:

This was a successful appeal against an order made for contact between two children and their Father ('F'), who was imprisoned for two offences of rape committed against the Mother ('M'). Paragraphs 1 and 2 of the order of 2 July 2024 were set aside, and the matter was remitted for directions to be given for a final rehearing.

Background:

This appeal involved two children aged 10 and 12. M is a serving police officer, as was F until his conviction. The parents were married but separated when F began a relationship with another officer, Ms V, which is ongoing. In August 2019, M and the children returned to the family home, during which time F twice raped M. In April 2024, F was convicted of two offences of rape against M. In June 2024, he was sentenced to 12 years' imprisonment.

F does not accept his convictions and is appealing, supported by Ms V. Although it has been accepted in Family Court proceedings F has a strong relationship with the children, due to him not accepting supervised contact while on bail, he has not seen them for several months.

F asked the court to order phone and video contact twice a week, and direct contact once a month, with the children being brought by Ms V. He also asked the court to order independent contact with Ms V and her family.

M asked for the contact to be in writing only, which was supported by the Guardian.

The Judge ordered M to make the children available to spend time with F:

(1) for a one-off visit in prison facilitated and supported by the Guardian and her solicitor on 13th August 2024 for up to 2 hours,

(2) for visits to prison three times a year for four hours, accompanied by Ms V, with the children being handed over to her at a public car park for that purpose, and

(3) for telephone contact once a month for 30 minutes.

The Judge also made a section 91(14) order for a year but gave the Guardian liberty to apply in relation to subsequent visits if the one-off visit proved (in the Judge's word) disastrous.

M, supported by the Guardian, appealed this order on the following grounds:

(1) The Judge failed to take account of the recommendation of Cafcass, which was based on the risk of the father and Ms V undermining the mother.

(2) The Judge took no account of the impact on the children, who are not now distressed, of seeing their father in prison.

(3) The Judge did not consider the risks that the children, as children of a police officer, would be exposed to in visiting a sex offenders prison.

(4) Telephone calls cannot be supervised, which risks emotional harm to the children from the father and Ms V, who deny the offences.

(5) No account was taken of FPR PD12J, by which the court was obliged to have regard to the harm caused to a victim of domestic abuse, when the order will cause grave distress to the mother, who is a sole carer.

(6) The Judge failed to recognise the level of manipulation and abuse on the part of the father, and her order exposes the children to further harm.

(7) The order does not allow the family to move on with their lives.

Peter Jackson LJ assessed that there were four elements of the welfare checklist relevant to this case [17]:

(a) the ascertainable wishes and feelings of the children, considered in the light of their age and understanding.

(b) their emotional needs.

(e) any emotional harm that they were at risk of suffering.

(f) how capable each parent, and any other person in relation to whom the court considers the question to be relevant, was of meeting their needs.

These elements were to be considered alongside PD12J, in particular paragraphs 36 and 37.

Peter Jackson LJ agreed that the judge was right to consider this a difficult case but found that she had said little to support her conclusion. She did not take into account or adequately evaluate [20]:

(1) The fact that the father has been convicted of domestic abuse of a most harmful kind, a finding which binds the Family Court.

(2) The impact of the rapes and of the order on the mother, as required by PD12J.

(3) The significance of the father's unrepentant attitude since conviction as a measure of his ability, and that of Ms V, to meet the children's needs.

(4) The weight that was properly due to the children's wishes in the light of their limited understanding of the family situation and their apparently settled state.

(5) The balance between their need for contact with their father and their need for continuity of secure care by their mother.

(6) The potential for unsupervised contact to unsettle the children and harm their relationship with their mother by exposing them to conflicting narratives.

(7) The appropriateness of Ms V being the facilitator of contact, given her identity of views with the father.

(8) The practicality of telephone contact being supervised.

(9) The justification within the evidence for rejecting the expert assessment of the Guardian.

Practical Consequence:

When considering contact with a parent who has been found to have committed domestic abuse against another, the Court must consider all relevant matters arising under the welfare checklist and PD12J, giving thorough evaluation and reasons to support the decision.

Accordingly, the appeal was allowed, and paragraphs 1 and 2 of the order were set aside.

Prepared by:



Eleanor Hull

eleanor.hull@stmarysfamily.co.uk