

## Private Law Case Law Update

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### [The father v the mother & Ors \[2025\] EWHC 2135 \(Fam\)](#)

#### Introduction

Mrs Justice Lieven DBE heard a case concerning multiple applications by the father including a reopening of a fact-finding judgment, a child arrangements order, Cafcass to be replaced by an independent social worker, an extension of s91(14) order and a costs order.

Of importance to practitioners is that Mrs Justice Lieven held that when a s91(14) order was in force and an applicant was applying to reopen a fact-finding hearing, in order to determine whether to grant permission under s91(14) order, the test laid down in *Re J* should be considered first.

#### Background [1]- [18]

Mrs Justice Lieven set out the case chronology from paragraph [6] of the judgment. Without repeating this chronology, the most salient features are as follows:

This case concerned three children, A (aged 14) and twins C and T (aged 10). The applicant was the father, the first respondent was the mother, and the children were represented by the children's guardian.

The parents' relationship began in 2002 and fully ended in June 2019. The father (F) made an application for child arrangements order in June 2019, and whilst there were many delays (some due to COVID), F was having contact with the children, whilst they lived with the mother (M). These proceedings included a fact-finding hearing. F now disputed the findings, arguing that he did not have a fair hearing and the analysis of his behaviour was slanted because the Judge did not know he had ASD.

The Judge set out the relevant passages from the fact-finding judgment at paragraph [10]. Of particular note were the following statements about F:

- ‘He was, I am afraid, an unimpressive witness whose evidence was not credible. He was defensive, combative, evasive, at times sarcastic, or asked questions himself... He was articulate for the most part, but his evidence was somewhat inconsistent, and I am satisfied he was not always truthful with the court in his evidence.
- ‘What [the F's] evidence to the court demonstrated is a complete lack of understanding of the perspective of the children, what changes he could make to mitigate the current situation and what he could learn from the past to improve the future’
- ‘the father has complained in most part, in my judgment, to deflect attention, to seek to divert professionals from looking at and assessing what is right in front of them. It is, in my judgment, a significant and concerning part of this father's personality, is demonstrative of how he seeks to control and distort information, the agenda and the narrative’

Following this fact-finding judgment, an order was put in place for supervised contact between F and the children. Mrs Justice Lieven established that *'that fact finding judgment did not lead to any conclusion that the F posed a risk to the children that would prevent contact'*.

Although the contact was positive and the contact supervisors at the YMCA confirmed that in May 2023, A heard F saying a derogatory comment about M. This led to the matter coming back to Court and in October 2023, a final order was made, holding that the children lived with M and only had indirect contact with F. This was in accordance with the children's wishes and feelings. As well as this, the final order included a s91(14) order, expiring on 3 April 2025.

Almost two years later on 6 January 2025, F applied to reopen the proceedings on the basis that his diagnosis with ASD presented a material change of circumstances which should allow him to reopen the case. HHJ Bailey (who had heard the previous two applications) refused this on the papers.

In response to this, F made a C2 application asking HHJ Bailey to recuse herself on the basis of being biased against him. In hearing this application, HHJ Bailey referred the matter to Mrs Justice Lieven due to concerns that many of F's cases he relied upon were generated by AI. Mrs Justice Lieven did not find any reason for HHJ Bailey to recuse herself but did list it for a further hearing before herself to hear F's applications.

Mrs Justice Lieven firstly asked Cafcass to appoint a second officer to do joint work with the current Guardian due to F's tendency to become highly dysregulated in court, as a result of the Guardians attendance.

### **The legal approach [19]-[22]**

Mrs Justice Lieven outlined the relevant cases from paragraph [19] of the judgment. She quotes the test for reopening findings of fact as established by Peter Jackson LJ in J (Children: Reopening Findings of Fact) [2023] EWCA Civ 465. The quoted paragraphs of this judgment are as follows:

*"6. In summary, the test to be applied upon an application to reopen a previous finding of fact has three stages. Firstly, the court considers whether it will permit any reconsideration of the earlier finding. If it is willing to do so, the second stage determines the extent of the investigations and evidence that will be considered, while the third stage is the hearing of the review itself.*

*7. In relation to the first stage: (i) the court should remind itself at the outset that the context for its decision is a balancing of important considerations of public policy favouring finality in litigation on the one hand and soundly-based welfare decisions on the other; (ii) it should weigh up all relevant matters, including the need to put scarce resources to good use, the effect of delay on the child, the importance of establishing the truth, the nature and significance of the findings themselves and the quality and relevance of the further evidence; and (iii) above all, the court is bound to want to consider whether there is any reason to think that a rehearing of the issue will result in any a different finding from that in the earlier trial. There must be solid grounds for believing that the earlier findings require revisiting."*

Mrs Justice Lieven held that this test should be considered first, as, whether there was any reasonable prospect of the Court reaching a different decision, would inform the decision of whether to grant permission under s91(14) for F to bring the proceedings.

## The parties' positions [23]-[39]

Mrs Justice Lieven explained that during F's submissions (delivered personally due to him representing himself) he became fixated on the guardian's alleged dishonesty and hostility to him, and on M having alienated the children and manipulated him. Mrs Justice Lieven confirmed HHJ Bailey's previous comments in the fact-finding hearing that F was quick to blame others and although the F did refer to the children in oral submissions, his main focus in the hearing was on M and the Guardian.

Mrs Justice Lieven outlined the three points of F's case which were his ASD diagnosis, the Guardian being biased against him and M alienating the children from him. In relation to his ASD diagnosis, F stated that both the Guardian and HHJ Bailey did not appreciate these issues when conducting the hearing and that if his behaviours were properly understood, the Court might reach a wholly different conclusion. F submitted that PD3A and 3AA and the requirements to put in place special measures were not adhered to.

In regard to the Guardian, F argued he acted unprofessionally and lied to the court. He also alleged that the Guardian had supported M in alienating him from the children. Finally, in regard to M alienating the children, he argued M deliberately manipulated him into saying things that she subsequently used against him.

The position of M was that HHJ Bailey's conclusions were based on primary and incontrovertible evidence as he listened to three hours of audio recording between the parents. She also argued that the contact order was not due to the fact-finding judgment, it was due to the incident where A overheard F stating derogatory things about M. Overall, it was submitted on behalf of M that there was no realistic prospect of the Court changing its view given the children clearly expressed their wishes and feelings. M submitted that s91(14) order was needed due to the risk of future harm to the children if the proceedings were to continue.

The Guardian largely supported M's submissions. In the judgment at paragraph [37] Mrs Justice Lieven outlined a note the Guardian had taken of his recent visit to the Children on 27 June 2025. In this note he explained the children were anxious and did not want to discuss the situation, feeling frustrated that their father would not listen to them and leave them alone. The representative of the Guardian also pointed out that during the fact-finding proceedings, F was represented, and no special measures were requested. As well as this, it was submitted that of relevance was the fact that F had a psychological assessment during proceedings which did not suggest F had ASD and did not recommend any special measures.

## Conclusions and judgment [40]-[59]

Mrs Justice Lieven held that it was clear throughout proceedings that F struggled to engage and became highly dysregulated when someone said something he did not agree with. She stated that although F stated this was due to his ASD, *'whether this is a product of neurodiversity or not, makes little difference to the impact on third parties – whether the M in court or the children if there were to be direct contact. His conduct can only be described as intimidatory, both in court and in his written communications.'*

Mrs Justice Lieven explained that F stated that people did not understand his ASD when they did not agree with his viewpoint. In regard to whether she should set aside the fact-finding judgment, Mrs Justice Lieven held that the diagnosis did not have an impact on the case as F had claimed. Mrs

Justice Lieven asserted that *'F appears to have no insight into the impact of his behaviour and no ability to control himself. He sees himself entirely as the victim of every situation'*.

In regard to the Guardian, Mrs Justice Lieven stated there was no evidence that he had acted in anything other than a professional and appropriate matter and he had not suggested any bias against F. Mrs Justice Lieven assessed F's conduct as intimidating and stated the children had witnessed this angry and out of control behaviour by F. She stated that *'F's lack of insight, or empathy for the children, is perhaps best illustrated by him applying for the children to live with him, even though they have not seen him for a considerable time and have made clear that they don't want to see him'*. Mrs Justice Lieven stated that even if this behaviour was a function of his ASD, under an assessment under s1 Children Act 1989, the cause of his *'lack of empathy and insight is ultimately beside the point'*.

Mrs Justice Lieven stated that the most important reason for holding reopening the fact-finding judgment would not lead to a different conclusion was the views of their children, who were clear they did not want to see F. She stated there was no evidence of M alienating the children and therefore she held that it would be wholly contrary to the best interests of the children if proceedings were re-opened.

As well as refusing F's applications, Mrs Justice Lieven granted the s91(14) order applied for by M until the children's 18th birthday, due to it being in the children's best interests for the proceedings to end. As well as this, F made a costs order against the F, due to her view that the conduct was used as a way to make further allegations against M. She also referenced his failure to check the cases he had relied upon, even though he was capable of doing so, as a reason for her making a costs order.

### Conclusion

This judgment establishes the importance for litigants in person not to rely on AI to make their submissions without checking their veracity, as failing to do so may lead to a costs order.

The case applies well established principles of the importance of bringing finality to ongoing proceedings for the welfare of the children. Assessing the effect of F's conduct on the welfare of the children, led to a particularly onerous s91(14) order until the children's 18th birthday.



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