

**IMPORTANT NOTICE** This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the child[ren] and members of their [or his/her] family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

**THE FAMILY COURT SITTING AT OXFORD**

**CASE NO: OX19C000140**

**IN THE MATTER OF D (A CHILD) AND IN THE MATTER OF THE CHILDREN ACT  
1989**

Date: 23<sup>rd</sup> July 2020

Before: HHJ Vincent

**Between:**

**OXFORDSHIRE COUNTY COUNCIL**

**Applicant**

**and**

**A MOTHER**

**First Respondent**

**and**

**A FATHER**

**Second Respondent**

**and**

**D**

**(through his Children's Guardian, KATE COXON)**

**Third Respondent**

**and**

**A GRANDMOTHER**

**Fourth Respondent**

Mavis Amonoo-Acquah instructed by Oxfordshire County Council  
Joseph Woolley instructed by Wilsons solicitors for the First Respondent mother  
Alex Hodge instructed by Johnson & Gaunt solicitors for the Second Respondent father  
Michael Trueman of Trueman's solicitors for the children's guardian  
The Fourth Respondent maternal grandmother represented herself

## **JUDGMENT**

Hearing dates: 20<sup>th</sup>, 21<sup>st</sup> and 23<sup>rd</sup> July 2020

## Introduction

1. This is the welfare hearing in respect of D, now eleven. Following a fact-finding hearing at the end of February 2020 I handed down a judgment to the parties on 16<sup>th</sup> March 2020, which sets out the circumstances which led to care proceedings being issued.
2. D has a diagnosis of DeSanto-Shinawi, a neurological condition marked by a collection of difficulties that affect emotional, social and cognitive functions. This is a diagnosis that he shares with his mother. D has diagnoses of learning difficulties and autism, which are in the appointed expert Dr Misch's words, 'major drivers' of his thought processes and behaviour, but this has also been influenced by the parenting he received and the home environment in which he lived with his parents until their separation in 2017.
3. In my fact-finding judgment I found that over a period of years D had suffered significant emotional harm because he had been exposed to domestic abuse, parental discord and dysfunction. He had been exposed to arguments between his parents over the years which had at times escalated to physical violence. I found that D's father had called his mother names, belittled and mocked her because of her mental health issues. I found that he had deliberately made recordings on his phone of the mother when in distress, and had deliberately shown a video clip to D for the purpose of making D think less of his mother.
4. I found that there had been two incidents of domestic abuse between the father and his current partner, in which the father had physically assaulted her.
5. In addition I found that:
  - (i) the father showed little understanding of his son's particular needs, had prevented a neurobiological assessment taking place, argued with his class teachers and was not proactive in supporting progress with his education in general and particular in finding the right school;
  - (ii) since separation had been inconsistent in contact, on occasions attending late, cancelling or staying only a short time which made D extremely anxious;
  - (iii) at times he found it difficult to manage his temper and had shouted at his son, on another occasion told him he would 'sort him out' in response to his son swearing, which made D fearful that he would hit him. I found that he had a disproportionately angry reaction when D would not put his shoes on at Christmas 2016 causing D to cry and scream, but his father showed no sympathy to him, which exacerbated the situation.
6. I made the following findings in respect of the mother:
  - (i) D had suffered emotional harm by exposure to his mother's mental ill health;
  - (ii) she had hurt D by biting him when he put his arms round her neck;

- (iii) she slapped him twice across the head and pushed him forwards into a room when he was reluctant to attend an appointment to have blood taken;
  - (iv) she kicked him in the leg.
7. The maternal grandparents had provided substantial practical, financial and emotional support to the parents throughout the marriage. After the parents separated, the mother and D went to live with them, but in September 2018 the mother moved to her own accommodation, leaving D in his grandmother's sole care. This followed a very difficult period for the maternal family. The maternal grandfather had died in May 2018, the mother's mental health had deteriorated significantly and D was in a very heightened state, presenting with increasingly complex and challenging behaviour. D had continued to see his father since separation, but over the summer of 2018 he had started to express very negative views about his father. In March 2019 he made an allegation against his father that was investigated by the police and bail conditions prevented any contact. No action was taken and D retracted the allegations but thereafter he has been highly resistant to any contact with his father.

#### Events since the fact-finding hearing

8. Shortly before the fact-finding hearing D's father gave him his old iPad and iPhone. In text conversations in March the father told D that he didn't mind if he accessed his accounts, and suggested some passwords to try. D accessed his father's account, and found a number of video clips made by the father during the relationship. The majority were taken in 2017 and show D's mother in great distress, crying, shouting, pleading with the father. D is present but not always seen, but at different times throughout the recordings he is seen to be crying, to plead with his father to stop, to ask to go to his nanny, he tells his father he is scared. He presents as upset and very concerned for his mother. The father's voice is heard and he speaks without emotion, when asked to stop recording he ignores his wife's or his son's repeated requests to stop. He is heard to tell D that his mother is self-harming. He tells the mother to go away.
9. There are two clips made by the father of his current partner. She is described by Dr Misch as vulnerable, distressed, but also defiant and angry – this description could also be applied to the mother in the clips in which she appears. It would appear that the father is trying to manipulate his partner as he questions her and suggests she has been self-harming, but *[the father's partner]* says no, it is he who has harmed her.
10. Dr Misch and other professionals who have seen the video clips have expressed great concern about what they show. Dr Misch identifies in the father a complete lack of empathy, and suggests his behaviour could be described as callous, sadistic, and psychopathic.
11. The last clip is a GIF and shows D reaching up on tip toes apparently to kiss *[the father's partner]* on her breast while she is wearing a bra or bikini top. They are both smiling towards the camera. It is suggested by professionals who have seen this that the blurring of sexual boundaries would be worrying for any child of D's age, but particularly D, who has a particular need for his behaviours and emotions to be safely contained.
12. The video clips were disclosed to the police and the father is currently under police investigation into three alleged offences; (i) causing or inciting the child in these

proceedings to engage in sexual activity; (ii) child cruelty; and (iii) the assault of the mother occasioning actual bodily harm.

13. In its final care plan, the local authority invites the Court to make a care order with D placed with his grandmother as his foster carer. The arrangements in respect of regular, supervised contact between D and his mother are agreed.
14. So far as contact with his father is concerned, D has clearly and consistently stated that he does not wish to see his father. In practical terms, D cannot see his father due to bail conditions preventing his father from seeing D or any member of the maternal family. But even if there were no bail conditions in place, the local authority relies upon Dr Misch's evidence and is not proposing regular direct contact between D and his father.
15. It is Dr Misch's assessment that D's father has exposed him to extreme emotional abuse, and that without any acknowledgment from his father of this, or any insight into the impact of his behaviours on his son, D remains at significant risk from his father. Dr Misch suggests that the father should be enabled to send letters or cards once a month to his son, and that in the event that D says he would like to see him, then this contact should be set at no more than three times a year in the first instance, and should be supervised.
16. To his credit the father now accepts that D should remain living with his maternal grandmother, which is in line with D's clearly expressed wishes and the recommendations of all professionals.
17. The father does not accept the local authority's care plan in respect of his contact with D.
18. YB, D's social worker has carried out a detailed parenting assessment which takes Dr Misch's views into account. D's guardian has reviewed all the evidence in the case and prepared a detailed final analysis document in which she endorses the local authority's care plan, setting out the evidence upon which she relies and giving clear reasons for her conclusions.

#### The law

19. In deciding what if any orders should be made in order to safeguard D's welfare, I have had regard to all the circumstances of the case and in particular to the factors on the welfare checklist at section 1(3) of the Children Act 1989. D's welfare remains my paramount consideration. I also have regard to both D's and his family's article 8 rights to family life and in particular bear in mind that any order sanctioning the intervention of the state in D's life can only be made where necessary to safeguard D's welfare and that any intervention must be proportionate; limited only to what is required to achieve that aim and no more.
20. Mr Hodge refers me to the judgment of Munby LJ (as he then was) in the case of *Re C (A Child)* [2011] EWCA Civ 521, in particular at paragraph 47:

*47. I do not propose to add to the jurisprudence or to attempt to state in my own words what has already been so clearly said by others. All I need do is to extract from the case-law to which I have referred the propositions upon which Mr Scott-Manderson places particular reliance:*

- *Contact between parent and child is a fundamental element of family life and is almost always in the interests of the child.*
- *Contact between parent and child is to be terminated only in exceptional circumstances, where there are cogent reasons for doing so and when there is no alternative. Contact is to be terminated only if it will be detrimental to the child's welfare.*
- *There is a positive obligation on the State, and therefore on the judge, to take measures to maintain and to reconstitute the relationship between parent and child, in short, to maintain or restore contact. The judge has a positive duty to attempt to promote contact. The judge must grapple with all the available alternatives before abandoning hope of achieving some contact. He must be careful not to come to a premature decision, for contact is to be stopped only as a last resort and only once it has become clear that the child will not benefit from continuing the attempt.*
- *The court should take a medium-term and long-term view and not accord excessive weight to what appear likely to be short-term or transient problems.*
- *The key question, which requires "stricter scrutiny", is whether the judge has taken all necessary steps to facilitate contact as can reasonably be demanded in the circumstances of the particular case.*
- *All that said, at the end of the day the welfare of the child is paramount; "the child's interest must have precedence over any other consideration."*

## The evidence

21. I have read the contents of the bundle and I have heard oral evidence from Dr Misch, the father and D's grandmother.
22. D's social worker until very recently was YB. I have read all her statements and the parenting assessment. Her evidence is of a high quality. The parenting assessments by YB show her to be thorough and open minded in her approach. Her final evidence shows a conscientious and full appraisal of all the evidence and a well reasoned and balanced analysis. She has a very thorough understanding of D, his physical, educational and emotional needs and the family dynamics, and has worked very hard to support him and his family through what has been a very turbulent time in his life. D is now settled in a school that meets all his needs and is secure in his placement with his grandmother. He has particularly loved going to school in lockdown as he has been part of a very small group, been able to build positive relationships with his teachers and grow in confidence.
23. In his response to the fact-finding judgment, his statement dated 28<sup>th</sup> May 2020 and his oral evidence, the father showed no real evidence of reflection. He maintained his view that he has no faults as a father, that the only harm that has come to D has been through exposure to the mother's mental illness and from the malign influence of the maternal family against him. When pressed, he said that he did take some responsibility for not removing D from the situation earlier. In his most recent statement he also expressed some regret that D had been both involved in the video clips he made and that he had seen them. He acknowledged that this could be extremely detrimental to D's well-being.

24. However, in his oral evidence, he maintained that he made the films to protect himself, suggested that he was in possession of very many more, and in response to a number of questions from different individuals presented as utterly unable to consider the emotional impact on his son of being witness to these scenes. He appeared unable to identify anything of concern in his own behaviour.
25. The tone and content of his oral evidence was consistent with the conversation reported by Ms Coxon between him and her on 1<sup>st</sup> June 2020, with what he said in the parenting assessment, during evidence at the fact-find, and in the statements he filed in response to the fact-finding and on 28<sup>th</sup> May.
26. The father said he would undergo any domestic abuse workshops or parenting course if required of him, but had no real idea why it might be necessary for him to do so. In his written and oral evidence he maintained his position throughout, that the reason that D is saying he does not wish to see him is that he does not want to upset his primary carer and has been influenced against him by her. He suggested that Dr Misch was unprofessional and must have dementia to have said the things he did in his report, and that D's social worker had been 'biased towards D's maternal grandmother from the beginning.'
27. Dr Misch has prepared two detailed reports, based on interviews with the parents and having reviewed the relevant documentation including the fact-finding judgment and the recent video clips. Taking of his evidence was something of an endurance test for all of us due to poor connection and sound quality on the Cloud Video Platform. Effectively it took us a whole Court day to conclude about an hour and a half of evidence. However, although it was slow progress, his opinion was in no way undermined in cross-examination and he was an authoritative witness. In his report he said:

*I am of the opinion that both D's mother and grandmother's negative view of [the father] are well founded. The Judge finds [the father] has caused emotional harm to D through his conduct towards him. She finds that [the father] exposed D to domestic abuse, and that he belittled, and picked on D's mother because of her mental health issues. She finds that he was obstructive to having D's special educational needs met and she notes that there are repeated descriptions of mother, grandmother and teachers experiencing his behaviour as aggressive and argumentative. She also notes that [the father] caused D both anxiety and his disappointment by failing to be consistent or shortening contact.*

*In terms of my own clinical assessment of [the father], I found that his presentation was superficially charming but not convincing. I found him to be very self-centred. For example there was an absence of any true concern or responsibility for having failed to be present at his home at the appointed time of my visit. He attributed blame for all problems in his marriage to either [the mother] or her mother. He showed remarkable lack of insight or concern about the level of D's disabilities. He said that D had the potential to do anything, that he would be suited to IT and in the future would own his own house and live there with his girlfriend. He proceeded to blame others saying that D was "a very bright child, he is educationally behind because he hasn't been encouraged to learn, I did everything I could to support his learning".*

*I am extremely concerned having viewed the video recordings filmed by [the father] involving his interpersonal interactions with D, [the mother] and [the father's*

*partner]. His behaviour appears to be highly psychopathic in nature, he is emotionally detached, controlling and shows a callous disregard of both [the mother] and [the father's partner]'s emotional expressions. His behaviour towards D switches from being engaged to being emotionally abusive by deliberately directing D's attention towards his mother's distress and self harming behaviours and failing to recognise or ignoring D's emotional distress and his requests i.e. to stop the video recording.*

28. D's grandmother is an exceptional person who has devoted herself to her grandson's care and has never wavered, even when under intolerable physical and emotional strain. She has been a significant figure in his life from his birth, and since she has been his sole carer has continued to provide him with consistent, loving, attuned care, even when she was also coping with supporting her daughter through the breakdown of her marriage and the subsequent significant deterioration in her mental health. She continued to prioritise D's needs while nursing her beloved husband of fifty years through his terminal illness. She had no respite while grieving this monumental loss, she continued to support her daughter, and her grandson. Her family is everything to her and also provides a very strong network of support. In particular her youngest son [name redacted] has a strong and close bond with D and is a very important figure in his life.
29. Nonetheless, caring for D will continue to present a significant challenge in the future and his grandmother will need the continued support of the local authority. Because of his high level of need as a consequence of his diagnosis and his early life experiences, anyone caring for D would need substantial and sustained support throughout his childhood and adolescence. D is likely to continue to need intervention from a variety of services as an adult. In addition to support around his health and educational needs, D has started work with Attach to understand his life story and why it is that he is not living with either of his parents.
30. Having regard to all the circumstances, and the range of orders that could be made, I am satisfied that nothing less than a care order is required to meet D's needs. He will continue to need the support of a specialist social worker from the disability team, his carer will benefit from having a social worker to ensure that she gets the support she needs to ensure that his placement with her can be sustained.

## Contact

31. I approve the plan for D to continue to have very regular supervised contact with his mother. She loves him dearly as he does her, and throughout lockdown it has become apparent that he was very much sustained and reassured by seeing her regularly, albeit at a safe distance.
32. D did suffer physical and emotional harm as a result of the parenting he received from his mother, but it should also be acknowledged that the matters which were the subject of the fact-finding were at a time of acute emotional distress for the mother and when her mental health was causing significant difficulties for her. However, risks remain and she has bravely acknowledged that she is not in a position to meet his needs consistently. She still has very much to offer him as a parent and should be enabled to do so, although that contact will continue to be supervised.
33. I acknowledge that D's father loves his son and wants very much to be a part of his life again. However, I accept the overwhelming evidence in this case that for the

moment, for D to have contact with his father would put him at risk of significant emotional harm.

34. It is of great concern that following the hearing in February the father acted by sharing the video clips with D. D was clearly extremely distressed at the time the videos were made, and I accept his grandmother's evidence that he has been badly affected by seeing the videos again.
35. As D's grandmother and mother acknowledge, D does hold some positive memories of his father. A substantial benefit of the care order is that the local authority can support D in maintaining a link to his father, in understanding why it is that he is not seeing him, but in the event that D wishes to see his father, to review the circumstances at the time, and put in place measures to ensure that the contact can take place safely and for D's benefit. D's father can be kept informed of his son's progress at school and more generally in this way, and he can be supported to maintain contact with him indirectly.
36. On behalf of the father, Mr Hodge objects to the local authority's proposal that direct contact between D and his father should only take place if D says he would like it to happen. He says this unreasonably puts pressure on D to determine his own contact arrangements. He says that D is too influenced by the maternal family's view of his father to be likely to change his current view that he doesn't want to see him. In the event that supervised contact is arranged he queries whether three times a year would be enough and suggests there is no logic behind that suggestion. He suggests that D should be actively encouraged to write back to his father every time a letter is sent – proposed to be once a month by the local authority.
37. Contact is for the benefit of the child and not the parent.
38. The father's concern is that if he is not in D's life then there will be nobody to advocate for him, to present him in a positive light and to encourage D to change his mind about seeing him. The father's position is based on the idea that as soon as he is enabled to spend time with D then their relationship can be repaired. He has told me that the relationship was 'perfect', said to professionals that in just ten minutes of being together D would get used to him and there would be no difficulties. So the father's position is that if only someone could persuade D to change his mind then he could see him, the past could be forgotten and they could move rebuild their relationship.
39. The maternal grandmother shares the view of professionals that it is not in D's best interests to see his father at this time. Dr Misch considers her to be justified in her negative views of the father. I heard evidence from her and I do not criticise her for stating plainly her intention to advocate for what she identifies to be D's best interests so far as contact is concerned to professionals. However, I believe that if the local authority considers in all the circumstances and following proper consultation and review that some contact is in his best interests, then she will support D to see his father.
40. The father cannot rely upon the maternal family to actively encourage D to see his father. But he cannot in my judgement reasonably rely upon anyone else to actively encourage D to change his mind at this time, because the overwhelming evidence is that there is a continuing risk to D's physical and emotional safety if he were to spend time with his father. I do not accept the father's basic argument that if other adults



were told to encourage D to see his father or compelled to bring him to contact with him, that all would be well. So I do not accept the criticism that the plan unreasonably puts the burden on D to decide when contact should restart. The plan acknowledges that D's wishes in respect of seeing his father should be taken into account (whether positive or negative), but the plan is not based on D's wishes and feelings. The plan is based on an assessment of the risk the father poses to his son. The way for the father's and D's relationship to be rebuilt is for there to be a fundamental change in the father's attitude and behaviour in order for the risks to D to be reduced. It starts with the father, not with anyone else.

41. The risks that the father poses to his son derive from the behaviour that he has been found to have demonstrated to his wife, his partner and to his son:
  - (i) he is not always able to manage his emotions and at times has lost control which has extended to the infliction of physical violence;
  - (ii) in the face of significant distress, he has shown a complete inability to empathise, and in fact has been shown to be unsympathetic, even callous. I found that on an occasion when he had shouted at D, causing him to be extremely upset, he did not console or comfort but was detached, continued to question him, 'why are you crying, making the situation worse. This is consistent with the behaviours seen in the video clips with his ex-wife and partner. If D were in his care, and distressed, he would appear to be unable to contain his emotions, to comfort him, make him feel safe, reassure him. His instinct would appear to be to disregard the feelings of others and to act in a way he identifies as being protective of himself first;
  - (iii) he does not acknowledge his son's complex physical, educational and emotional needs and has not been able to accept professional advice or engage with professionals in learning how to meet D's particular needs;
  - (iv) he cannot set clear and consistent boundaries to his son. He repeatedly told me there were no issues at all with D's behaviour but I have found that he became frustrated and angry with D on occasions. He provided him with passwords to access his and his girlfriends' accounts. He actively involved him in the disputes between the parents at the breakdown of the relationship and sought to involve D in his belittling and diminishing of the mother when she was suffering a mental health crisis. I found that he deliberately showed D the video of his mother for this purpose. The video of D kissing father's partner at the least raises questions about boundary setting;
  - (v) he has shown no insight or understanding of how his behaviour and attitude has caused D harm and continues to put him at risk of harm. His instinct is to blame the maternal family or professionals. In the circumstances, at the moment there is no positive indication that he would be able to parent D safely.
42. Unless and until he is able to demonstrate that he has some kind of understanding of any of these issues, I accept the analysis of Dr Misch, of the social work team and of the guardian that contact with the father is not safe for D.
43. It is important that life story work with D is done so that he can build up a rounded and layered picture of his father that both acknowledges the positives and the happy times they have had together, but also enables him to understand why it is that he is

not seeing him. Otherwise there is a danger that his father will become either demonised or idealised in his mind. The risk of this is that when their relationship is later re-established, D may find it difficult to connect the real person with the idea he has held in his mind.

44. If as part of this process D expresses a wish to see his father, then as Dr Misch suggests, the local authority should be open to facilitating this, but on the basis that the contact is supervised and limited to no more than three times a year in the first instance. The purpose of the contact is to help with D's life story work, it would not necessarily be the starting gun for the renewal of their relationship. An assessment will need to be made at that point of all the circumstances and the situation would be closely monitored and reviewed at that time.
45. If the father had demonstrated a wholesale change in his understanding and behaviour, then contact might be planned on a different basis, closer to the father's idea of moving from supervised to unsupervised to increasing the level of contact. However, Dr Misch's evidence is that he anticipates this change in the father to take place over a period of years, in oral evidence he thought around three years, and indicated there may never be a change such that it would be safe for D to have unsupervised contact with his father.
46. I acknowledge that it would be desirable for D to have a positive and fulfilling relationship with his father and that his father does love him. However, I consider that the risks of harm to D of having contact substantially outweigh any benefit at this time and I accept the evidence of Dr Misch, which has informed the considered and thoughtful analyses of the social worker and the guardian.
47. I approve the local authority's care plan for contact to be indirect by monthly letters together with birthday and Christmas gifts. I do not consider that D should be made to reply to his father's letters monthly, although I agree that it would be good to encourage him to send a thank you card for birthday or Christmas gifts received.
48. Given the history in this case the father's continued hostility towards the maternal family, I consider that [the maternal grandmother's] request that her new address be kept confidential should be respected and that an order mirroring the current bail conditions should be made, so as to prohibit direct contact between the father and maternal family.
49. I will make a final care order to the local authority, approving the plan that D remains living with his grandmother and spending regular time with his mother. The father's application for a section 34 contact order is dismissed, but contact between D and his father will be kept under review as part of its ongoing care planning, and the local authority shall continue to facilitate indirect contact.

Joanna Vincent

23<sup>rd</sup> July 2020

HHJ Vincent  
Family Court, Oxford



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CASE NO: OX19C000140

**THE FAMILY COURT SITTING AT OXFORD  
IN THE MATTER OF D (A MINOR)  
AND IN THE MATTER OF THE CHILDREN ACT 1989**

Date: 16<sup>th</sup> March 2020

Before: HHJ Vincent

**Between:**

**OXFORDSHIRE COUNTY COUNCIL**

**Applicant**

**and**

**A MOTHER**

**First Respondent**

**and**

**A FATHER**

**Second Respondent**

**and**

**D**

**(through his Children's Guardian, KATE COXON)**

**Third Respondent**

**and**

**A GRANDMOTHER**

**Fourth Respondent**

Andrew Leong instructed by Oxfordshire County Council  
Joseph Woolley instructed by Wilsons solicitors for the First Respondent mother  
Alex Hodge instructed by Johnson & Gaunt solicitors for the Second Respondent father  
Michael Trueman of Trueman's solicitors for the children's guardian  
The Fourth Respondent maternal grandmother represented herself

## **JUDGMENT**

Hearing dates: 24<sup>th</sup>, 25<sup>th</sup>, 26<sup>th</sup>, 27<sup>th</sup> February and 16<sup>th</sup> March 2020

## Introduction

1. D is eleven. His mother [*name redacted*] is the First Respondent and his father [*name redacted*] is the Second Respondent.
2. The mother has De-Santo-Sinawi Syndrome<sup>1</sup>, a neurological condition marked by a collection of difficulties that affect emotional, social and cognitive functions. She has a secondary diagnosis of anxiety and depression. She has received a lot of support from her parents and brothers during her childhood and as an adult. The mother has been assessed to have capacity to instruct her solicitors, but has been supported by an intermediary during the hearing.
3. D was diagnosed by CAMHS in around 2012 with global developmental delay, autism and inappropriate sexual behaviour and behavioural outbursts at home. In July 2019 he was diagnosed with ‘emotional neglect and other maltreatment syndromes’ and was referred for child psychotherapy to manage the effects of trauma and neglect.
4. The recent gene test that confirmed mother’s diagnosis also identified D as having De-Santo-Sinawi Syndrome.
5. The father is originally from Tunisia. The parents met when the mother and her family were on a holiday there. She returned for a number of visits over the following year and in April 2006 he moved to England to be with her. They were married in June 2006. They lived with the maternal grandparents and both the parents worked in their hairdressing business, mother as a receptionist, father as a barber. D was born in January 2009. Towards the end of that year they moved into a studio flat in the grandparents’ garden, but continued to spend most of their time in the grandparents’ house. D’s grandmother looked after him while her parents were at work during the day and they shared family meals together in the evenings. They continued to take family holidays together.
6. In 2010 the maternal grandparents supported the parents to take a lease on a barber’s shop and to set up their own business. At the end of 2014 the parents moved to their own house in [*place name redacted*], very close to where D was at primary school. When they were in [*place name redacted*], the mother would collect D from school and go round to her parents’ house every day and the father would often come to join them there for dinner.
7. In June 2014, before the family had moved to [*place name redacted*], D was noted to have bruises on either side of his neck. He had reported to his PE teacher that his father had caused this bruising and had hit him with a book, that his father locked him in a cupboard and his mother made him eat dirt. He subsequently retracted these statements. A referral was made to social services who carried out an assessment. At the time D was already identified as having significant global developmental delay. The parents accepted that at the time they were having arguments, often witnessed by D, and there were tensions in the relationship. Neither of them, nor any member of the maternal family suggested at this time

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<sup>1</sup> DeSanto-Shinawi syndrome is a rare neurodevelopmental disorder characterised by global developmental delay apparent in infancy or early childhood and associated with characteristic dysmorphic facial features, such as broad forehead, depressed nasal bridge with bulbous nasal tip, and deep-set eyes. Most patients also have gastrointestinal and mild ocular abnormalities, as well as behavioural problems (summary by DeSanto et al., 2015).

that these arguments ever escalated to physical violence nor that D had ever been at risk of physical harm. The assessment identified the maternal grandmother as a very positive protective factor due to the closeness of her relationship with D, ability to act protectively and the support that she and her husband continued to give to the parents to meet D's needs. She is recorded as saying that the parents would never hurt D.

8. It would appear that after the family moved to *[place name redacted]* the father increasingly spent time away from the family home and this was a source of further tension between him and the mother. The parents separated in September 2017 and the mother and D moved back to live with the maternal grandparents.
9. The maternal grandparents had been in the process of selling their original business to the parents but halted this transaction. The parents decided not to carry on with the barbers' shop, this had financial consequences for the maternal grandparents because they had guaranteed the lease and incurred debts.
10. The mother was devastated by the breakdown of her marriage and suffered a significant deterioration in her mental health.
11. The maternal grandfather had been living with a diagnosis of cancer for many years, but very sadly at around this time suffered a decline in his health. He died in May 2018. He and the maternal grandmother had been married for fifty years. Together they had created a very close-knit family unit, living and working together and supporting their three children, especially the mother, and their grandson D.
12. D was already impacted by his parents' separation, moving out of his home, and the loss of his grandfather. His behaviour became difficult to manage at home, and his mother was struggling to cope. She accepts that at times she had hit him or bitten him or got into fights with him, and that at other times he witnessed her showing signs of very significant distress or having arguments with her mother. The grandmother was doing the best she could to support D, but throughout all this time was also preoccupied by the need to care for her husband and to support her daughter. She has described the family as being in crisis.
13. In June 2018 a referral was made to children's social care from adult social services, following concerns that the mother was struggling with her mental health and struggling to manage D's behaviour.
14. The mother moved out to her own accommodation in September 2018 leaving D in the care of maternal grandmother, and has been seeing D about twice a week since then.
15. D had been seeing his father after the parents' separation, but over the summer of 2018 he had started to express quite negative views about him and his home and by October 2018 was refusing to see his father.
16. A local authority Child and Family assessment concluded in October 2018 that neither parent had the capacity to care for D but the father might have potential with further support. The maternal grandmother strongly disagreed with this conclusion and made her views known to the local authority in a letter.
17. On 3<sup>rd</sup> December 2018 the grandmother reported to social services that she was having an extremely difficult time managing D's emotions – reporting that when his father called him on the phone he refused to speak to him and hid in a wardrobe. She said she was also

struggling to manage the mother's emotions - reporting that the mother had punched her in the face.

18. A week or so later the parents separately gave their consent pursuant to section 20 of the Children Act 1989 to D becoming looked after by the local authority, but placed in the care of the maternal grandmother.
19. Over the course of 2019 episodes of D's distressed behaviour increased. The parents made a number of allegations about each other and D has made allegations about his father. With the support of the local authority, contact between D and his father had become more regulated from January 2019, with an agreement that the father should come to maternal grandmother's home every Monday. However, in March 2019 D alleged his father had touched his penis. Contact was suspended. The police investigated and concluded that father's explanation of D having memories of being circumcised aged about five was likely to be accepted as a probable explanation for the allegation. D later retracted his allegation, but has remained highly resistant to having any contact with his father since that time, apart from one recent meeting when D collected his iPad and phone.
20. The grandmother was approved as D's foster carer in June 2019.
21. D moved in September 2019 to a school for children with special needs and since then has been more settled.
22. The local authority issued proceedings in October 2019. The matters raised in the application are concerns about domestic abuse in the relationship, the mother's mental health difficulties and struggles in managing D's behaviour, the parents' failure to meet D's emotional needs, and allegations of physical abuse. The mother and maternal grandmother have made allegations against the father and the father has denied them and alleged that the allegations have been fabricated by the maternal family as part of a course of conduct intended to turn D against him and to prevent him from playing a part in D's life.
23. I hoped that threshold issues could be dealt with at final hearing but there is substantial dispute between the parties about basic facts. Because D's presentation is complex, the professional view is that there needs to be some investigation of the facts before a proper assessment of his behaviours and ultimate needs can be carried out, and of the ability of the parents or relevant other people to meet those needs.
24. To that end I have been asked to make findings in respect of a long list of disputed matters. The findings sought have been set out in a schedule with the parties' responses included.

#### The law

25. The local authority must not only prove on a balance of probabilities the facts on which it relies but must link the facts upon which it relies with the assertion that the child is at risk by demonstrating exactly why, on the given set of facts, he is at risk of significant harm, within the meaning of section 31(2) of the Children Act 1989.
26. The relevant date for determining whether D was suffering or was likely to suffer significant harm is the date D was first subject to protective measures, 12<sup>th</sup> December 2018.
27. 'Significant harm' must be 'significant enough to justify the intervention of the state and disturb the autonomy of the parents to bring up their children by themselves in the way they choose'. The Court must be satisfied that the harm is caused by the care given to or likely to

be given to the children, not being what it would be reasonable to expect a parent to give the children.

28. The burden of proof is on the local authority making the allegations to substantiate them. The person against whom an allegation is made is not obliged to prove it is not true.
29. The standard of proof is the balance of probabilities.
30. Findings of fact must be based on the evidence. In Re A (a child)(fact-finding hearing: speculation) [2011] EWCA Civ 12 Munby LJ said, '*it is an elementary proposition that findings of fact must be based on evidence, including inferences that can properly be drawn from the evidence, and not on suspicion or speculation.*'
31. I have to decide this case on the evidence before me at trial. As in a criminal case, as the jury is directed, I may come to common sense conclusions based on the evidence that I accept. However, I must not speculate about what evidence there might have been.
32. I must take account of all the evidence and each piece of evidence in the context of all other evidence:  
*'Evidence cannot be evaluated and assessed in separate compartments. A judge in these difficult cases must have regard to the relevance of each piece of evidence and exercise a totality of the evidence to come to the conclusion of whether the case put forward by the local authority has been made out to the appropriate standard of proof.'*  
(Re T [2003] EWCA Civ 558 at para 33, per Butler-Sloss P.)
33. I remind myself of the direction that, in a criminal case, would be called the 'Lucas' direction because it is based on the case of R v Lucas [1981] QB 720. If proved that a person has lied, the Court must analyse the relevance of the lie to the issues in the case. A lie may be in relation to an issue that has no relevance to the real issues before the court. Lies may be told for many reasons. A person may lie out of a sense of shame, misplaced loyalty, humiliation, embarrassment, panic, fear, confusion, emotional pressure, a desire to conceal other misconduct or for many other reasons.
34. The evidence of the parties is very important and the Court must be able to form a clear assessment of their credibility and reliability. I further remind myself that credibility alone cannot decide this case and that, if a court concludes that a witness has lied about one matter, it does not follow that he or she has lied about everything.

## Evidence

### YB

35. YB has been D's social worker since July 2018. She has prepared three statements in these proceedings and was the author of the child and family assessment in October 2018. Her written evidence sets out the chronology in detail. Her evidence is made up of her own direct experiences about which she kept detailed notes as she went along, and a review of evidence from other sources. Where referring to evidence from others, her records are consistent with the source material. When she was giving her oral evidence, she showed a very good understanding of each family member's personalities and the dynamics of the family. She was able to recall conversations or particular events from memory, she did not have to rely upon her notes, but her recollections were consistent with written evidence.



36. I found her to be a clear, consistent and reliable witness in respect of those matters within her own knowledge and in respect of her recordings of reports from other sources.
37. She has found the maternal grandmother to be a strongly protective factor for D and found her to be someone who has worked hard with the local authority and other agencies to try and do the best for him. Her experience of the father has been less positive. Where she did not have direct experience or information about an allegation she did show some tendency to express a view that the maternal family was more likely to be telling the truth than the father. I remind myself that it is for me to come to conclusions about the allegations having regard to all the evidence and I should not give weight to the opinions of one witness about the credibility of another person.

### The mother

38. The mother was assisted by an expert from Communicourt to understand the proceedings and when giving her oral evidence. Her presentation was consistent with the written assessment from Communicourt. In many ways she was very articulate, used a wide and varied vocabulary, often using a memorable turn of phrase, and was able to understand the questions put to her and gave full answers. She had some issues when asked about dates and times and her concentration flagged at times, but we took frequent breaks. While she couldn't always place a memory in a specific time she was often able to give specific details of a conversation or an event and describe how she felt at the time. At these points I had the impression that she was recalling events which were very memorable to her.
39. Her responses to questions were generally free-flowing and contained details relevant to the question asked. However, when asked to give evidence with respect to the specific allegations she had made against the father she was unable to describe in any detail the circumstances in which she said he had assaulted her or else gave quite specific details of an event which came across as a convincing account, but did not include a description of an assault.
40. In general, I thought that she was doing her best to answer the questions put to her and to be truthful. She answered questions straight away, she was not trying to second-guess the questioner or thinking about whether her answer might be well-received by me or not. She was honest and open about the mental health difficulties that she has had and at times became understandably emotional, in particular when thinking of her father, to whom she was very close, and when expressing her anxieties that she might lose D and her fears that his father wanted to create a new family unit for D and cut her out. By contrast although she said that she had experienced 'horrific abuse and violence' and 'torment' during the marriage, she said these words in a very matter of fact way, and was not able to recall to mind any single incident of abuse that matched this description. After the separation her issues with the father were about him being not very regular, being late or cancelling contact at the last minute, she was not unwilling for D to spend time with him. She said that in 2018 she was grateful to have his support, grateful to have a weekend free so she could go out with her mum and told me that she and the father were getting on really well at that time.

### Maternal grandmother

41. The grandmother has represented herself in these proceedings although she has had some help from a solicitor at various points.

42. I thought she was doing her best to give a fair and accurate account of events within her memory. She readily acknowledged it if she could not remember something and was prepared to accept that written evidence of accounts given at the relevant time were likely to be more reliable. She showed herself to be someone who was reflective and able to acknowledge if she had been at fault, or could have managed things better. She was not trying to put any sort of positive gloss on events. While acknowledging that she was not perfect, she did defend herself against some criticism of her actions by emphasising the context. In 2017 and 2018 her family was in crisis and she was placed in an extraordinarily difficult position. She was coping with the devastating impact of her husband's terminal illness, trying to support her daughter following the breakdown of the marriage and D. She was under huge pressure from different directions and had her own health problems. In October 2018 she did not feel that either of D's parents were able to care for him but was also struggling herself to cope with his increasingly complex and challenging needs. She was desperate that he should stay in the family but recognised that meant an enormous burden would be placed on her which she was not wholly confident she could manage.
43. Notwithstanding the huge pressures upon her, she has continued to be a devoted, consistent and loving carer to D, working extremely well with the local authority and other agencies, advocating fiercely for him, in particular in ensuring that she understood all the options so far as his education was concerned and pushing for him to be given a place. She has selflessly put his needs before everything else in her life.
44. She does not accept that she set out to turn D against his father but she did accept that she didn't like him, and that while she wouldn't have intended it, D may have heard her being outspoken about his father and arguments between her and the mother about the father. She told me that when speaking to D directly she had found it difficult because she wanted to be honest. She said D asked her if his dad was a bad man and she said, *'I say I don't like what he's done but he's your dad. Should I lie and say what your father's done is fine? He says he used to hit, punch, pinch and spit at mummy. Should I say I think he's great? What message do I give to him? He trusts me, I try to be as honest as I can without being damning.'*
45. With regard to things that she has not witnessed, she was inclined to believe her daughter or D when they made accusations about the father's behaviour towards them, and said *'they do not lie'*. She persisted in this even if she were shown that they had made contradictory statements. In these instances, I concluded that her desire to protect her child and grandchild, coupled with frustration and disappointment with the father mean she has tended in these instances to lose a bit of objectivity. Again, I remind myself that it is for me to come to conclusions based on the evidence before me, and not to form conclusions based on others' opinions of that evidence.

### The father

46. The father's spoken English was very good. He is a British citizen and has lived in this country for thirteen years. He checked the meaning of a few words here and there but I was satisfied that he understood all the questions put to him.
47. He seemed keen to paint a very positive picture of himself but this led to him giving oral evidence which contradicted much of what he had said in his own witness evidence, his response to the schedule of allegations and the evidence of other witnesses and the contemporaneous documents.

48. Some of his evidence was very hard to keep track of as his version of events changed within the space of a few answers, generating further questions which only led to more inconsistency and confusion. The impression he gave at these times was that he was making his evidence up as he went along, not recalling any single event from memory but trying to describe to me the version of events that I might find most acceptable.
49. He suggested that he had never had any single problem with D's behaviour, that they got on perfectly, he had never had any need to use any sort of parenting technique to control or manage D's behaviour because he posed no challenges at all when he was caring for him. This evidence was consistent with the evidence of YB built up through a number of different interactions with social services, teachers or other professionals where the father had been reluctant to acknowledge the level of D's special needs and to the limited extent that he accepted any problems, he had been quick to blame D's mother or other members of the maternal family for them. It is not consistent with the overwhelming weight of evidence from members of the family, social workers, clinicians, teachers and experts about D's diagnosis and presentation.
50. Despite two police reports and the evidence of his girlfriend about incidents in their relationship when arguments had escalated to physical abuse perpetrated by him, and that she had at the time felt unsafe, he denied that there had ever been any such incident and asserted that all was happy and well and had always been good in that relationship.
51. There were a few moments when he did seem to be recalling a specific event from memory and was able to provide details, for example when he talked about the time that he visited the specialist school that D is now attending, but such moments were few and far between. In general I did not regard him as a reliable witness.

#### The father's partner

52. [Name redacted] is the father's partner. Her oral evidence was generally consistent with her written statement and the contemporaneous records from police disclosure. While wanting to support her partner and perhaps seeking to minimise events somewhat, the overwhelming weight of this evidence from her and contemporaneous police disclosure was that on two occasions she and he had been arguing when the father had too much to drink, the father had assaulted her and she had called the police because she felt that she was not safe.

#### Schedule of Allegations

##### Domestic abuse

##### Allegation 1

53. Each allegation is sub-divided into a number of separate allegations. I have taken them in sections.

*D has suffered significant emotional harm through being exposed to domestic abuse and/or parental discord/dysfunction.*

*The father:*

- a. *Punched the mother in the face during 2014 whilst on holiday in Tunisia. D was present when this occurred. (C129)*

- b. Pulled the mother's hair and tipped water over her in 2016 (C130)*
  - c. Punched the mother when she asked what was for tea (C131)*
  - d. Punched the window of a car causing it to break (C132)*
54. On a balance of probabilities, I am satisfied that D has suffered significant emotional harm through being exposed to domestic abuse and/or parental discord/dysfunction. The parents had a volatile relationship and argued frequently. After they moved to the bungalow, at the end of 2014 the relationship deteriorated further, the father spent more time away from the family, working hard to establish the new business but also socialising separately from the mother. I am satisfied that the arguments between them increased in frequency and intensity over time and that D was exposed to this.
55. However, I am not satisfied to the standard of a balance of probabilities that it has been established that each of the incidents alleged at paragraphs (a) to (d) occurred. The local authority relies principally upon the mother's evidence about these events but I am not persuaded that her recollection is reliable.
56. The mother was not able to describe anything about how, why or when the father is said to have punched her in the face in Tunisia. She said she had a shocking memory and wouldn't be able to remember something like that off the top of her head but was reminded by seeing a photo she had posted on Facebook which she now says shows her with two black eyes. I have seen this photo. I do not believe that it shows her with black eyes, only that her eyes are in shade.
57. She says she did not tell anyone, but says D told his grandfather about it. If so, the grandmother was not aware of this. The grandmother's evidence is that she and her husband were extremely close. She could not conceive of her husband being told that their daughter had been physically assaulted and him not sharing this information with her.
58. The mother was very close to her father and he was very protective of her, it was not in her nature to hide things from him. She said that when she moved back with her mum and dad she didn't want to burden them by telling them about the physical abuse she had experienced, because of all they were dealing with in 2017. That may have been the case but it does not provide an explanation for not speaking out about an incident alleged to have happened in 2014.
59. The maternal grandmother who saw the mother virtually every day during the marriage confirmed that she had never seen any injury on her daughter, nor any sign of physical abuse, nor had her daughter ever told her of any incident of physical abuse during the time that the parents were together.
60. The mother did not report any of these specific allegations to social workers once they became involved with the family in 2018. The October 2018 report records the grandmother's belief that the mother was scared of the father and that she would give in to any of his demands. It was her belief that D had witnessed physical violence from father to mother. However, the mother had reported at that time that the abuse was more mental.
61. In November 2018, the first time she made an allegation of specific domestic abuse to the local authority she said she had been pinched. She also said that D had said 'my daddy

gave my mummy a black eye’, but it is not clear whether she herself was saying this had happened or if so, when. D later said this was not true.

62. She said in her oral evidence that it was her current partner, a friend of the father’s, who had reminded her that he witnessed the father punching her in the face in the kitchen. In a conversation between her partner and Dr Misch, he is recorded as saying that he was no longer friends with the father because of his general childish and disrespectful behaviour towards others. *‘He said that he had seen [the father] hold D on the ground and forcibly brush his teeth for him. He said he had also seen [the father] mistreating [the mother] by pushing her in the kitchen when his friends came round to the house.’*
63. She had no explanation for why Dr Misch had not put down that the father had punched the mother and said, *‘I’m not saying Dr Misch is lying but I remember him saying about the punch but maybe Dr Misch decided to put one in but not the other, I don’t know why.’*
64. She was not able to give any description of the context for the alleged punching – she appeared to have no direct memory either of the alleged incident in 2014 nor of being punched in the kitchen.
65. Similarly, she could not describe any detail or context in respect of pulling her hair, throwing water or punching a windscreen. She did not report any of these incidents to any member of her family at the time. She said to me in her oral evidence well she didn’t do this because of the trouble she would get from her husband but was unable to describe in any way what this would have been like.
66. In the parenting assessment completed in August 2019 she said that she ‘wore the trousers’ in the relationship. She was asked in cross-examination about this by Mr Hodge. She said at first in the relationship she felt what she said would go – so she would make the decision that they needed to go shopping or they needed to get something for D to eat or they would go to a family wedding. After they moved to the bungalow she said this changed and the father would have his own social life and would not tell her where he was going and sometimes he would stay out all night and this would make her upset. The mother reported to the parenting assessor that the father was often verbally and physically abusive towards her and this intensified towards the end of the relationship. She was consistent about this in her oral evidence, saying they would have arguments and she said sometimes the arguments would ‘get physical.’
67. Other findings are sought in respect of the father having at times lost control of himself during an argument and pushed or slapped another person. I note also that she has accepted that she has resorted to physical abuse when arguing with her mother and with D, and I have made findings to that effect. On a balance of probabilities, I am satisfied that it is likely that arguments between the parents during the marriage at times escalated so that as the mother said, they ‘got physical’.
68. When pressed for details of physical abuse, she could not describe any single incident. She described her feelings about the breakdown of the relationship, *‘I was so sad and angry that we finished. We were supposed to move into another property .. I felt hurt and lied to and used. Because I tried all in my power to save the marriage even though he used to say to me one day I’m going to leave because I don’t want to be with you but I was thinking empty threats and he was speaking hot air.’* Of course, I recognise that a victim of domestic abuse may still invest fully in the relationship and hope for a happier future together. I also recognise that a person does not need to fit a particular set of

characteristics or to have been seen to have behaved in a certain way in order to be identified as a victim of abuse.

69. However, when having regard to all the evidence, although the mother has made generalised statements that, *'I was the one taking the beatings and black eyes'*, or *'it got physical'*, these statements were delivered with no visible emotion (in contrast to other areas of her evidence). She could not describe any incident where she suggested the father had beaten her or given her black eyes. She consistently described in really quite a robust way the nature of the arguments they had, both during and after the relationship, which seemed very much to focus on her laying down the law or wanting things a certain way.
70. For all these reasons I am unable to make findings to the standard of a balance of probabilities that each of the specific incidents pleaded happened, but I am satisfied that D was exposed to parental disputes which could be characterised as domestic abuse.
- e. *Told the mother she was a bad Mum (C130)*
- f. *Called the mother names such as bitch, fat cow, nuts and ugly spastic (C130) (F55-13.3.2019)*
- g. *Was critical of the mother's use of medication to assist her mood (C131)*
- h. *Was controlling towards the mother telling her to 'shut up' when she was talking when visiting her parents and dictating what she ate, wore and where she went. (C153) (138c)*
71. The father accepts that he told the mother she had poor parenting skills. I find to the standard of a balance of probabilities that he did tell her she was a bad mum (e) and also that he did use the terms of verbal abuse set out at (f). In his response in the schedule he makes a partial admission, saying *'he never called her names in the presence of D'*.
72. The mother's evidence about being called names, being belittled, and picked on because of her mental health issues was detailed, clearly from direct recollection of conversations and accompanied by emotion as she recalled it. She did report this to her own mother. She described in detail to me a time when she was in Tunisia with her husband and his family, was struggling with the heat and the food and her father came out to stay with her. She told me that her father had told her that the father had said to him she should be sectioned. The maternal grandmother separately recalled her husband telling her about this and that this was not the only occasion. I accept this evidence.
73. D has reported in group work at school that his father had said to his mother that she was nuts.
74. The father effectively accepts (g) and I find it proved. He says in his response to the schedule that he had always felt the mother should have taken more responsibility with her medication.
75. I am not satisfied to the standard of a balance of probabilities that the father dictated what she ate, wore or where she went. He may have told her to shut up at some point but I do not find that he restricted her in what she could say to her parents or otherwise controlled any part of her relationship with them. She said in 2015 she stopped working in their shop because of a row about money; she wanted to take money from the till to spend on clothes and other items, to treat herself, she said the father said no, they had bills to pay, but did give her money to buy what they needed. He did not object when she said she was going

back to work for her father. She said that following the breakdown of the relationship they had got on pretty well but described a couple of times when she had insisted that her son be returned to her – after her father died, and on another occasion when the father took D to Portsmouth. She was clear that she had made a fuss, felt sure of her position, and the father had done as she asked. None of this suggests she was subjected to coercive or controlling behaviour.

76. While the grandmother acknowledged her worries that the mother would do anything for her husband, but there may be a number of reasons for that, it should not automatically lead to a finding that he was exerting control over her. To Dr Misch, the grandmother said that her daughter was in love with her husband and would concede to his wishes.

77. Allegation (h) is not proved.

*D told his Nurture worker at school on 5 February 2019 that “Dad punched Mum once”.*

78. It is reported that D told this to his nurture worker and I accept that he said it. However, having had regard to all the evidence I am not satisfied that this can be taken as evidence to the standard of a balance of probabilities that the father did punch the mother. He subsequently said he was joking.

*In 2014 [the parents] accepted that there had been verbal disputes which D was aware of.*

79. Both parents accepted in 2014 that there had been verbal disputes between them and that D was aware of them. The father has pulled back somewhat in his response to schedule but I am satisfied to the standard of a balance of probabilities that D has consistently been aware of verbal disputes between his parents going back many years and certainly before 2014.

*The mother failed to protect D from exposure to domestic abuse.*

80. As both parents were involved in the domestic abuse and both were responsible for D I am satisfied to the standard of a balance of probabilities that both of them failed to protect him from being exposed to domestic abuse.

## Allegation 2

*The father has been resistant to measures necessary to progress D’s wellbeing including preventing a Neuro-Biological assessment taking place. (C137) (C155)*

*The father argued with D’s class teacher in 2018 regarding D’s learning needs. (C155) (DM9)*

*The father was not proactive in supporting progress with D’s ECHP delaying his education progress. (C155-157)*

*D’s educational progress was limited as a result of his Parents failing to engage with his school sufficiently to enable an EHCP and appropriate schooling to be identified. (C155-157)*

81. YB’s evidence sets out both the delays in getting D’s needs assessed and the difficulties that D’s teachers had in getting the father to accept that D had additional needs and to support D in having those needs met. This is generally consistent with the father’s evidence that he himself has no difficulty in managing D’s behaviour, and regards any

difficulties that might arise as a result of the parenting he has received from the maternal family, or failures in the school.

82. I have had regard to the evidence of YB, the evidence of mother, grandmother, contemporaneous notes from the school, and assessment documents, including the child and family assessment completed in July 2018. In that assessment D's class teacher is noted to have reported that the father had told her she was wrong about D's learning needs and that the school were reporting the father was not accepting of the advice they were giving him:

*'School have raised that [the father] was extremely restrictive on what school could access in terms of support for D. Examples being that he would pull him out of assessments that had taken great time and organisation to acquire. The neurobiological assessments being an example. D was a premature child and his neurological pathways may be different to other children and this assessment would help him. [The father] refused to give consent for this to happen.'*

83. The father accepted in his formal response document that he argued with D's class teacher in 2018 but suggested this was a dispute because she did not like him recording their conversation. In his oral evidence he denied that they had any sort of dispute at all. I did not find him to be a reliable witness.
84. I am satisfied to the standard of a balance of probabilities that the father has been consistently argumentative with teachers, and blaming of them, reluctant to accept that his son has special educational needs, and has been reluctant to engage with social work and educational professionals so as to progress assessments and the EHCP.
85. I would accept that there have also been other factors at play causing some delays in assessment including issues around paperwork and lack of local resources.
86. The recent assessments, and the recent school move were achieved at the last minute largely due to the persistence of his grandmother who despite being told that a place was not available, challenged relevant agencies and eventually secured him a place. The parents may well not have had her skills, drive or tenacity. However, I am satisfied that they had been made aware at a much earlier stage of the need to consider an alternative school provision for D and told they needed to make enquiries including visits. Neither parent was able to engage with this process, which meant that there was unnecessary uncertainty hanging over D for the whole of the summer holidays.

### Allegation 3

*The father has failed to be consistent with contact. The father has on multiple occasions cancelled contact or attended late and/or for short periods of time which makes D extremely anxious.*

87. Both the mother and the grandmother gave compelling evidence about this, in their witness statements and their oral evidence. Their evidence is reinforced by YB, and the contemporaneous notes of the school support worker who met with D once a week – there are numerous entries which show D being disappointed that contact was arranged but did not take place. The maternal grandmother gave compelling evidence about D's anxiety and then disappointment that his father did not come to visit him at Christmas 2017, and then when he did eventually arrive, stayed for only ten minutes.



88. I am satisfied that this allegation is proved.

#### Allegation 4

*D has suffered emotional harm by exposure to his Mother's mental ill health.*

- *D has witnessed his Mother headbang;*
- *D saw his Mother in an agitated state where she smashed plates and then push his Grandmother into the sideboard and hit her;*

89. All parties accept this and the evidence is overwhelming that D has suffered emotional harm by exposure to his mother's mental ill health, particularly since the break-up of his parents' marriage.

#### Allegation 5

*The father deliberately recorded the mother whilst emotionally distressed and deliberately showed D or failed to take appropriate safeguards resulting in him viewing the video. (C130) (F71 – 11.6.19)*

90. The father's evidence about this was inconsistent, muddled and unconvincing. The mother's evidence was compelling and there is also a contemporaneous note of D describing to a teacher that his dad watched people on his laptop, including videos of his mum and that his parents had an argument about the videos he had of her. D was asked to focus on reading his book and then is reported to have made a threat to the effect that if a person was mean then they could be watched in this way.

91. The father accepted in his evidence that he had filmed the mother on his phone when she was having a severe mental health episode. I consider that he was lying when he suggested he had done this for his own protection. I am satisfied that he was also lying when he suggested that D had only seen it accidentally and find that he did intentionally show it to D for the purpose of making D think less of his mother.

#### Allegation 6

*The father has caused emotional harm to D through his conduct towards him:*

- The father has shouted at D when he told his Father he did not want to see him*
- In March 2019 the father told D he would 'sort him out' when D swore at him on the telephone. D took this to be mean the father would hit him and begged for the doors to be locked;*
- The father had a disproportionately angry reaction to D not putting his shoes on during Christmas 2016 causing D to cry and scream and require substantial time to settle. The father showed no sympathy to D asking him why he was crying which exacerbated the situation.*

92. I am satisfied that the father is a person who is not always able to control his emotions when he feels frustrated. I base this finding on my conclusions in respect of recent domestic abuse between the father and his current partner as well as the witness evidence

of mother and grandmother, and the police disclosure. Further, there are repeated descriptions of mother, grandmother and teachers experiencing his behaviour as aggressive and argumentative. It is clearly recorded that back in 2014 both the parents were struggling to manage D's behaviour. The father does not accept that he has ever had any difficulties but in my judgement he is seeking to present a falsely positive view of the situation and the reason he is doing so is to conceal the fact that he has in the past lost his temper with D.

93. There are a number of reports of D swearing directly at his father and swearing when talking about his father.
94. The matters which are the subject of the allegations were witnessed by the maternal grandmother and she reported what she had seen and heard to social workers or school within a very short time so that contemporaneous notes have been made. She has set them out in her witness statement and her oral evidence was consistent with what she had written.
95. I am satisfied that each of these allegations is proved as drafted.

### Allegation 7

*D has suffered physical harm as a result of inappropriate chastisement or inappropriate conduct by his Mother:*

- a. *The mother bit D around June/July 2018 as he had his arms around her neck.*
- b. *On 25.09.18 the mother slapped D twice across the head and pushed into a room whilst attending a hospital appointment to have blood taken.*
- c. *The mother kicked D in the leg on 10 September 2018 witnessed by the grandmother.*

96. Allegations (a) and (c) are accepted by mother, but she denies allegation (b).
97. The evidence is clear that throughout this period of time the mother was acutely unwell and that D was also in a very heightened state, and both his mother and grandmother found his behaviour extremely difficult to manage.
98. The appointment on 25<sup>th</sup> September 2018 was for blood to be taken for genetic tests. Both mother and grandmother recall that D was very anxious about the test and the mother has also given evidence that she has anxiety around needles, but also felt under pressure to ensure that D would have the test.
99. I have seen a note in D's medical records from the nurse who recorded, '*When D arrived in the department he stated he did not want a blood test. When D was called in for his blood test he didn't want to go into the room. Mum .. tried to push D into the room and when he did not go into the room she repeatedly pushed and hit D on the back of the head until he got into the room.*'
100. The phlebotomist made a note a couple of days later, stating, '*As I called the family into clinic to carry out the blood test I witnessed mother hitting D on the back of the head and trying to push him into the room in a disturbing manner. When mother realised I had*

*turned and saw her behaviour toward her son she looked away, not in embarrassment but appeared worried I had seen what she was doing.'*

101. D reported to his nurture worker on the day after the incident that his mum had hit him four times around the head.
102. Mother denies that this happened. The maternal grandmother was at the hospital but walked into the room in front of D and his mother and didn't see anything. She says that she cannot believe the mother would do this. If she had done, she would have expected D to cry out or remonstrate with his mother or to fight back. It is right to note that the mother has admitted to other times when she has kicked, bitten or hit D. On those occasions her mother did witness it and reported it.
103. I take this into account, but I find the evidence of the contemporaneous notes to be compelling. The phlebotomist and the nurse were in a position to see mother and D come into the room. It is highly unlikely that they would either separately or together have fabricated their accounts. Both mother and D were anxious and the mother was this time struggling to manage his behaviour. I accept that she has accepted the other matters but not this one, but I have not found her to be a wholly reliable witness of fact.
104. Having regard to all the evidence I am satisfied to the standard of a balance of probabilities that the account in the medical notes is correct and that the mother did push D into the room and slap him around the head. In my judgment she was so concerned to get him into the room and for the tests to be done that she lost sight of his emotional needs at that point.

## Allegation 8

*D is showing signs of emotional distress related to the conduct of his parents:*

- a. *D is refusing to see his father and has alleged that his Father inappropriately touched his penis. (PD25)*
  - b. *D hid in his Uncle's wardrobe when his Father telephoned (C138c)*
  - c. *On 20 December 2018 D referred to his Father as 'a fucking piece of piss' and refused to see him. (C99)*
  - d. *D has asked his Grandmother to phone his Father and tell him not to attend the home for contact.*
  - e. *D has told his Nurture Worker at school that:*
    - i. *he would not go to live with Dad, (15.10.18) (F33)*
    - ii. *he never wants to go to see his Father because his Father punched him in the face (03.12.18) (F40)*
    - iii. *that his Father would swear at him when he lived with him (28.01.19) (F48)*
    - iv. *that he does not want to see his Father (04.02.19) (F49)*
    - v. *that he does not really care about Dad (11.02.19) (F49)*
    - vi. *Dad might smack him, said has smacked him before a long time ago (F53 – 8.3.19) (A14)*
105. Allegation 8 is drafted in a way that could lead to misleading findings.
106. Plainly D is showing signs of emotional distress. The conduct of his parents has contributed to that, but the overwhelming picture is of something much more complex, with a number of factors likely to have played their part. It is for this reason that Professor Misch has been instructed to advise the Court.

107. I have made findings that both D's mother and father have struggled to manage his behaviour and have inappropriately used physical force as a result –, the mother to a much greater extent than his father.
108. I was not persuaded by YB's evidence that all D's negative behaviours could necessarily be ascribed to him 'mirroring' behaviours he had seen from his father towards his mother. There is some evidence of this, for example his comments to his teacher about using videos of people as a means of threatening them, and concerns that he was disrespectful to female students and teachers in ways that his mother and grandmother have described his father being to them. However, it is also noted that many of these concerning behaviours developed once he was living apart from his father and when his mother was having a severe mental health crisis, which included being physically violent to her mother (specifically, punching her in the face) and to D (kicking, pinching, slapping, biting), head banging and smashing plates. It may be that following professional assessment I am asked to and am able to come to a conclusion about the relative effect of his parents' conduct upon his behaviours. I am not able to do so at this stage.
109. While all the findings sought as drafted hint that the basis for D's negative views of his father are his father's conduct towards him. Again, this may be right. However, I am also of the view that D's views of his father have also been influenced over a period of time whether consciously or unconsciously, by the opinions of his mother and grandmother.
110. Both of them in evidence admitted to me that D was likely to have overheard them speaking about his father in a negative way. The grandmother accepted that she had said directly to D words to the effect 'that she did not like what his father had done but he was his father'. His mother accepted that she had showed D pictures of his father with another woman and discussed his infidelity with D and made him aware how upset she was about this. The father alleged that the mother's new partner was dealing in drugs. A little later she made the same allegation about him, but accepted there was no evidence of this. Nonetheless there is evidence that she shared her worries with D about this. He also developed a fear, likely influenced by his mother, that social services would take him away from her.
111. In the notes from the school nurture worker a picture emerges over the summer and autumn of 2018 of D starting from a position of wanting to see his father and complaining only that he would like to have more time with him and go swimming with him rather than his girlfriend being there as well, to expressing much more negative views about him. Part of this appears to be informed by his father being inconsistent around contact but there are other negative comments that creep in. For example, D repeatedly starts describing the area where his father lives as a rough area and somewhere he is frightened to be. It is likely that this is something he has picked up from adults around him. In the summer of 2018 the grandmother instructed D's school not to let the father collect him from school and described him as a flight risk. Both she and the mother told me of their terror at the thought of the father taking D away to Tunisia, and the steps they put in place including cancelling his passport. However, there was no evidence that the father had made any sort of threat to leave the country. D however developed a fear that his father would take him away from his mother to Tunisia.
112. I have not been asked to make any finding about the allegation that the father touched D's penis and I consider this should be removed from the schedule as it is unfairly prejudicial to the father. The police investigation was satisfied with the father's

explanation that D may have remembered the care his father gave to him after he was circumcised. The maternal grandmother has referred to the circumcision as child abuse. There is some inconsistency in the evidence about whether the mother actively consented to this or felt pressured into it. I have evidence that D has made the allegation, but I have not any evidence that he is suffering emotional harm directly associated with making this allegation or that harm has been caused either related to his father's conduct, or whether the harm has been caused by the maternal family's response to the allegation.

113. I will consider the evidence of relevant professionals about the causes of D's emotional distress in due course, but for the moment would leave in headings b to e, but delete the first lines of the finding as follows:

*D is showing signs of emotional distress ~~related to the conduct of his parents:~~*

*~~a. D is refusing to see his father and has alleged that his Father inappropriately touched his penis. (PD25)~~*

### Allegation 9

*The father would leave D in the mother's sole care despite having concerns about her ability to meet his needs.*

114. This allegation does not refer to any specific time period. The situation was presumably very different before and after separation. The impression I have formed from the evidence is that the father was generally unsupportive of the mother's mental health issues and increasingly towards the end of the marriage was spending more time away from the home, either at work or socialising. He formed a relationship with his current partner in February 2017.
115. For the purposes of the Children and Family Assessment in October 2018 the father said that he was concerned about the mother's ability to meet D's needs. In his response to the schedule the father indicated that he made a conscious decision only to leave D with his mother for short periods of time and would restrict his activities so that he could look after D.
116. The father's responses when questioned in cross-examination were very different, he emphasised that he was mainly out of the house working, that it was right he had the chance to play football and do other activities and he was very preoccupied with setting up his business. The impression I formed was that he was trying to formulate an answer that made him look most responsible, but was not based in his actual knowledge or experience.
117. As I understand it the mother was heavily dependent on her parents and most of the time she was looking after D when he was not at school, they were at the family home.
118. I cannot say whether the issues that arose in the way D was parented were caused by him being too much in the sole care of his mother or if so, for what period of time. In my judgement this allegation is too vague and I do not find it proved.

### Allegation 10

*There have been incidents of domestic abuse occurring between the father and his partner [name redacted] and D would be at risk of emotional and physical harm if he is exposed to such:*

- a. *Around midnight on the 24.08.18 the father and the father's partner had an argument involving raised voices, screaming and swearing, during which the father grabbed the father's partner and threw her to the floor, causing her to hit her face on the floor and hurt her face [PD15];*
- b. *Around midnight on 03.01.20, the father returned home intoxicated and during an argument with the father's partner slapped her across her face [PD41].*

119. The father's evidence was inconsistent, and unbelievable. Although his partner originally claimed in her statement that nothing of any concern happened on either occasion, when she was cross-examined her evidence was largely consistent with the reports from the police disclosure. Both she and the father agreed that the police log was accurate in details of who called the police, who was present when the police came, and the conversations had. In the circumstances it would be extraordinary if the police report was accurate as to all details save for the recording of the description of the incidents themselves.

120. Although the father's partner sought to minimise the level of physical abuse, her evidence was convincing. I note that the mother also recalls a time when the father's partner texted her to cancel contact with D because the father had come home drunk and she did not consider it was safe for D to come.

121. I am satisfied to the standard of a balance of probabilities that these two incidents of domestic abuse happened as pleaded and that as such, there is a risk of emotional and physical harm to D if he were to be exposed to further such incidents.

#### **Allegation 11 (made by father)**

*The maternal family has lied about the allegations they have made against the father to ensure that D is not placed in his care and divert attention away from the volatility in the relationship between the mother and the maternal grandmother.*

- a. *This includes an incident in 2009, when there was an unprovoked attack by maternal grandmother after she had been drinking cognac. She grabbed his neck leaving a mark, threw furniture and a plant and made a false complaint to the police about the incident. (C180-181)*
- b. *The maternal grandmother has been unreasonably controlling of communication and time the father has spent with D. (C181-2)*
- c. *The maternal family have influenced D against the father. (C181 -2)*

122. For reasons given above, I do consider that the maternal family has, consciously or unconsciously, played a part in influencing D against his father. D has also direct experience of his father shouting at him, hitting him, and on my findings, being inconsistent and unreliable in respect of contact. However, it has to be noted that he has also experienced significant physical assaults from his mother and been exposed to significant arguments between her and the maternal grandmother, some of which have been physical. He does not hold negative views about them in the same way that he does about his father. The picture is complex, likely to be multi-factorial, and one for professional assessment.

123. I am satisfied that the mother and grandmother have a loving and close relationship. There have been times at which it has been volatile due to the mother's mental health issues, but it is fundamentally a secure and stable relationship. I am satisfied that the mother and grandmother have done their best to be honest and open with the local authority and the Court and I do not believe they have deliberately set out to portray the father in a bad light. I have not found the specific incidents of physical assault pleaded to have been proved to the standard of a balance of probabilities for the reasons given, but I do not consider there is any basis for making a finding that these allegations have been deliberately fabricated.
124. The father's account of the incident in 2009 is very one-sided and not consistent with the evidence gathered by the police at the time. The grandmother accepted that her memory now of the event was likely to be less reliable than the account she gave at the time. From the witness statements I have read, it would appear that both the father and the grandmother had been drinking, the father took offence at a joke the grandmother made at dinner and after they had moved to the lounge remonstrated with her. There were raised voices and in her statement to the police the grandmother admits that she 'lost it' and she did grab at his neck and scratched it. The police report however notes that there was pushing and shoving on both sides and that the father had apparently pushed the mother over and she ended up on the floor at one point.
125. This incident happened when D was about 9 months old. Following this argument, the parents continued to live with [maternal grandfather] and the grandmother, moving into their studio flat in the garden and working in business together. On any view the maternal family have done a great deal to support the mother and father in their home and working lives. Back in 2009 there was plainly fault on both sides and I do not regard this incident as relevant to the question of D's present situation.
126. I do not find that D's grandmother has been unreasonably controlling of communication and time the father has spent with him. Whatever her own views about the father's conduct and the way the relationship with her daughter came to an end, she continued to make her home available to the father so that contact could take place, and facilitated phone calls. YB did express concern about what D may have overheard and the danger of him being influenced by grandmother's and mother's negative views of the father. However, her view is that the grandmother has been generally receptive of discussions about this and would be likely to engage with professionals in the future. Having heard the grandmother give evidence I am convinced of her commitment to supporting D to have a relationship with his father and that she will work with Dr Misch or any other agency to enable this to happen.

## Allegation 12

*The maternal grandmother has pinched D as a form of chastisement, leaving a mark.*

127. The professional assessments of the grandmother are that she is a loving, committed carer to her grandson. There are a number of records of D's behaviour towards her being aggressive and violent but no evidence to substantiate father's recent allegation that she has ever used any form of physical chastisement. D has not been slow to make reports of his mother or father hitting or slapping him, but has never made any report against his grandmother.
128. This allegation is not proved.

## Section 20/issue of proceedings

129. During the course of the hearing I expressed some concern about the use of section 20 in circumstances where mother had some learning difficulties, English is the father's second language and there was a note within the records querying whether they understood the process. The local authority assured me in written closing submissions that the parents' section 20 consents were properly obtained<sup>2</sup>. I did not hear evidence or legal argument about it and make no findings.
130. Similarly, I queried whether proceedings could or should have been issued sooner. The local authority has a duty to safeguard and promote the welfare of children in its care, including the need to assess a child's needs for services to achieve or maintain a reasonable standard of health or development and prepare a care plan for the child, to be agreed with the parents if practicable<sup>3</sup>. YB has worked extremely hard over this period to get to know D, to understand his needs, and to put in place measures to support him, but nonetheless, the grandmother carried a huge burden during the whole year of the section 20 period. Relations between the maternal family and father deteriorated and D stopped having contact with his father altogether. Again, I have not heard evidence or legal argument about this and make clear I have not formed any conclusion. It is unlikely to be proportionate or relevant to consider further, but having raised it as an issue during the hearing felt appropriate to explain my thinking.

Joanna Vincent

16<sup>th</sup> March 2020

HHJ Vincent  
Family Court, Oxford

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<sup>2</sup> Coventry City Council v C [2012] COPLR 658, Re N (adoption: jurisdiction) [2016] 1 FLR 621.

<sup>3</sup> LB Hackney v Williams [2019] 1 FLR 310;