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Cases: OX19P00703 and OX19P00704

IN THE FAMILY COURT AT OXFORD

IN THE MATTER OF THE CHILDREN ACT 1989 AND IN THE MATTER OF
N, O and P

Date: 7 December 2020

Before: HHJ Vincent sitting as a section 9 judge

Between :

A father, F

Applicant

and

A mother, M

Respondent

and

N, O and P, children

(by their r16.4 Children's Guardian, Ruth Palayiwa)

Second to Fourth Respondents

Francesca Wiley QC instructed by Helen Fitzsimons Family Law for the applicant father

Andrew Pote instructed by Family First solicitors for the respondent mother

Oliver Powell instructed by Reeds solicitors for the children

Hearing dates: 9, 10, 11, 12 and 13 November 2020

JUDGMENT

Introduction and chronology of events leading up to the final hearing

1. I am concerned with three children, N, who is thirteen, O, who is ten, and P who is five.
2. Their parents began their relationship in 2004 when they were both studying for post-graduate degrees in [the UK]. The mother is English. She was in the process of divorcing from the father of her oldest child, Q, who was around two at the time. The father is [a national of country X]. The mother and Q moved to live with him in [father's home country] in 2006. The parties' two older children, N and O were born there. The father worked in [father's home country] as an academic, but held teaching jobs in England and in [country name redacted], which brought him to Europe for about three months a year. The mother had a fellowship at [redacted] university while they lived in [father's home country], and connected to the University remotely.
3. In April 2012 the relationship was in difficulties and the father was not living with the mother and children in [father's home country]. The mother and children came to England for a holiday in July, and the father joined them a few weeks later. The mother was offered and accepted a teaching post at [redacted] University and effectively relocated with the children to England at that point. Q was nearly ten, N was just five, and O coming up for his second birthday.
4. Thereafter the parents' relationship was on and off. The mother and children did not see much of the father who was working for nine months of the year in [father's home country]. They returned to [father's home country] at Christmas 2012 to spend time with the father and paternal family. The father was in England for three months from October 2013 but by December 2013 the parents had separated.
5. The parents were reconciled at some point in 2014 and their youngest daughter P was conceived. The children went on holiday to [country name redacted] with the father in October 2014. It appears that by the time of P's birth in May 2015 they had once again separated and the father moved back to [father's home country].
6. In December 2015 the mother took the children to [father's home country] for Christmas. She says this trip was made with a view to finding schools and her and the children relocating once again to [father's home country], and making the relationship work. However, this didn't happen. The father was in England in March 2016, and it was around this time that the relationship did finally come to an end. Each of the parents has told me that they were the one to end it. The mother said it was in response to the father losing his temper, being abusive to the children and kicking the car. The father says this is not true and it was he who said to the mother that he did not think the relationship would work out in [father's home country]. The mother and the children remained in England, the father went back to [father's home country]. In March 2016, Q was thirteen, N was eight, O five and P ten months old.
7. Q and O travelled to [father's home country] for three weeks over Christmas in 2016.

8. The father spent four months in England between March and July 2017. The children saw him regularly but relations between him and the mother were strained and there were difficulties around contact. In June 2017 a referral was made by O's school to social services which then led to a police report, following an incident where O had reported his father had poked him in the foot with a knife.
9. O had been at his father's house after school. He had told his teacher that he put his foot on the dining table and his father had then poked him with a knife. It was noted within the report that teachers had identified a bruise/discolouration. I assumed this meant it was alleged the poking was with the handle end rather than the sharp end of the knife, but no information is given about this. O is reported as having told his teacher that his father had left him alone that evening for some time while he was in his office and at one point had gone out to the shop. He is reported to have said nothing like this had happened before and said he didn't stay at his father's house often. He is reported to have said he didn't mind staying at his father's house, his mother was often busy with her work and yoga class. N was also interviewed and the note records that she said she often felt sad because her parents were so busy and she felt her parents favoured O and her older brother Q over her.
10. In March 2017 O was referred to CAMHS due to his challenging behaviour and difficulties in social interaction. On referral his mother had reported that his behaviour included throwing things, kicking, reacting impulsively towards others, punching and showing physical aggression. She had reported that it was difficult to stop him, that he screamed and refused to do things, and lost his temper easily. She reported that he found it difficult to express his feelings and thoughts and to approach his emotions, and that he was having difficulties making friends. Within the referral the mother said the children had been exposed to verbal abuse from their father and she suggested that he had mental health problems. She had apparently reported that:
 - (i) The father had left O on his own at home when he was six for about three hours;
 - (ii) That he had pushed O's head into the water when he had head lice, which scared O;
 - (iii) O had said to his mother several times 'he is not a good dad' but refused to talk more;
 - (iv) O's father had tried to persuade him to sleep with him in bed and had also asked the same of O's sister. Mother is reported as being 'not aware if children were touched inappropriately';
 - (v) The father had kissed his older daughter on the lips several times, 'inappropriately'
11. O was said to have been 'disappointed' in his father since the Christmas holidays in 2016 and said he did not want to see him again.
12. At the end of September 2017, having seen O for a number of sessions and gathered information from his mother and school, CAMHS assessed O as presenting with a large range of autism traits that met the criteria for a diagnosis of autism. A referral to the neurology team for formal assessment was made and a plan to have a multidisciplinary

team meeting was made with a view to providing support to the mother to cope with O's needs and to manage his behaviour at home.

13. N was also referred to CAMHS in 2017. A letter sent in December 2017 described the work done to help N understand anxiety, and to look at mindfulness and other techniques to manage its physical effects, and to use positive affirmations to combat negative thought patterns. The letter describes them as having *'a lot of reflection time and discussions about different aspects of N's life and how the relationship with her dad had impacted on her sense of self.'*

Proceedings before District Judge Wakem

14. In February 2018 the mother told the father she had been offered a two-year academic post in [European city]. In April 2018 she applied to the Court for permission to relocate there with the children.
15. The father was in England during May 2018, but the dispute between the parents had intensified and contact was not going smoothly. The father made a cross-application to the Court for a child arrangements order and alleged that the mother had for years been trying to remove him or otherwise alienate him from the children's lives. In her response the mother denied seeking to exclude the father, but said that N and O were reluctant to spend time with him.
16. At a hearing at the end of July 2018, the father agreed to the mother's relocation to [European country] for a period of two years from August 2018 to August 2020. However, issues remained about the arrangements for the father to see the children, and holidays abroad (the father agreed to the mother taking the children to [country name redacted], but not to [country name redacted]).
17. The mother and children moved to [European country] in August 2018. They came back to England over October half-term and for Christmas and New Year 2018/2019, when they spent some time with their father. They were in England during the Easter holidays in 2019, which trip coincided with the final hearing before DJ Wakem in April, when the father was again in England. The hearing went part-heard for a further day on 10 June 2019, and the judge then reserved judgment, which was handed down on 11 July 2019.
18. Ms Palayiwa prepared a section 7 report having met with the children on 15 October 2018 at Cafcass offices and observed contact between them and the father on 4 January 2019. N had written a letter to the judge in which she explained the reasons that she did not want to spend so much time with her father. She said that he got angry easily, and he made her angry, she didn't feel he was interested in her and didn't listen to her. For example if she said that she didn't want to go to [father's home country] he said she was a parrot, just copying her mum. She said he was horrible about her mum. O spoke with Miss Palayiwa at the Cafcass offices and engaged well but on the visit to the father's house in [redacted] O hid under the bedclothes upstairs and did not want to come down. When he did come

out and was persuaded to go for a walk, he would not join in playing with his siblings and stood apart from the others.

19. The judge found that the father had '*put his own needs above the needs of the children and that he is unable to recognise the children's needs and not his own.*' She found that he criticised and blamed the mother for problems that had arisen in his relationship with the children. District Judge Wakem's judgment including the following conclusions:

- (i) That where there was a need to re-establish a relationship between children and a parent who they had had only limited contact with or a relationship break down, it was common to build up the relationship gradually, but because the father was away for most of the year, the children had not seen much of him and when he was in England, this process had been crammed into short periods of time and had caused significant problems;
- (ii) On 7 June 2017 the father collected O from school and returned him to his mother's at 8.30 p.m. but O reported that he had been left alone for three or four hours. The judge found this to be one example of '*many occasions, where the father expects the children to fit in with what suits him, rather than prioritising the children's needs*'. O was only six years old at the time;
- (iii) On 15 July 2017 the father left N alone in the hotel room in London and she became upset and anxious. The father was downstairs in the hotel but did not check on her;
- (iv) The mother fitted in with the father's schedule and even took the trouble of bringing the children down to London to see them;
- (v) N had reported to the Cafcass officer that she did not feel her father was interested in her life in [European country] or school, what she liked doing or who her friends were;
- (vi) There were 'many examples' of the father '*being unable to listen to and see things from his children's point of view, particularly N's point of view. Rather than listening to them, he tries to bully them into agreeing with what he wants.*' The judge said that she had thought 'long and hard' before using that word;
- (vii) An example of the father's bullying behaviour was his response to a letter N had written to the judge in which she said she did not feel safe with her father because he got angry easily. Despite having been told by the judge that he should not discuss the letter with N, the judge found that the very same day at dinner the father had not only raised it with her, but had challenged her, thereby making the situation much worse;
- (viii) Holidays with the father had been reasonably successful but something seemed to have happened over the Christmas holiday in [father's home country] that had affected O's view of his father;

- (ix) The father had not taken up the opportunity of visiting the children in [European country] during February half term 2019. The judge found he had never seriously considered it and that he, *'does not put himself out for his children. He wants a relationship with them but on his terms and at his convenience.'* She found that the father did not provide the mother with any information about coming to [European country] so she brought the children to England and his response was to accuse her of breaching the Court order, and obstructing his relationship with the children, thereby taking an opportunity to criticise her when *'in reality, she was behaving perfectly reasonably'*;
- (x) On 3 or 4 January all three children were staying with the father in [England]. It was P's first night staying over with the father. The judge found that P had become very distressed, the older two children were worried about her, their father was asleep and they texted their mother for help. The judge accepted that the mother had told them to wake their father, but they did not want to because they had already asked him many times to contact her, and he refused to do so and became angry;
- (xi) The mother had done her best to promote contact even though the father seemed to expect her and the children to drop everything and fit in with his plans when he was in the UK. The mother did her best to promote contact even when the father was uncooperative and did not respond to proposals, and the mother was running around doing all she reasonably could to make sure contact took place;
- (xii) The father had criticised the mother in front of the children and did not appreciate the children's emotional needs and the need for them not to hear one parent criticise another;
- (xiii) On 29 December the children were due to spend the weekend with their father in London. N wanted to go to a party and suggested she could get on a bus and travel to London on the Saturday. It transpired that she was too young to travel alone, but the father accused her of lying to him. The judge was appalled that he had not checked for himself if there was a safe way for her to travel, but relied upon her and then accused her in this way when the plans did not work out to his convenience. The father then left O alone in the hotel in London for nearly three hours while he drove to [mother's home] to collect N. The judge found that the father was then really cross with N, and drove fast so that she felt scared. At dinner that night, the judge found that the father had continued to be cross, had lost his temper with N and had stormed out of a restaurant with O leaving N alone in London, not knowing where she was and having to run after him to keep up;
- (xiv) The judge found no evidence that the mother was manipulating the children, but found that N's views were her own and were justified as a result of his behaviour to her and her siblings;

- (xv) The judge had her doubts as to the degree of involvement that the father had in his children's lives prior to the parents' separation. She felt that he did not demonstrate good parenting skills, did not know how to respond to his children and had rarely cared for all three of them together. He had most commonly had contact with just O;
 - (xvi) The judge acknowledged that there had been many occasions when the children had enjoyed their time with their father and that none of them was saying they didn't want to see him at all, but that they did not want to stay overnight.
20. The judge made the following orders in respect of the time the children should spend with their father:
- (i) over a three-week period in England during the summer of 2019, seeing him for four days in each week for a full day.
 - (ii) for five days with their father over Christmas 2019, again from 10am to 8.30 p.m. on each day they saw him;
 - (iii) during the Easter holidays in 2020 the father should spend time with the children either in England or [another country], spending between five and seven days with them;
21. In summer of 2020 it was envisaged in the order that they would spend more consecutive days with their father than previously, and that an overnight stay might be introduced at the midpoint. The idea was that by Christmas 2020 the children would be able to spend at least two or three nights in a row with their father.
22. The mother was given permission to take the children on holiday abroad.
23. This final order was made on 11 July 2019. The father did not give any indication to the mother or the Court that would suggest he would not be able to come and see the children in England for twelve days over a three week period in the summer holidays.
24. The mother emailed the father on 12 July asking him to give dates. In the email she told him that they could be in England from 18 July, but the children had to be in [European country] to start the new term at school on 19 August.
25. The father did not respond. She wrote to him on 20 July asking for a response and asking him whether it was true that he had said to N on the phone that he might not be coming at all. He did accept in oral evidence that he had spoken to N on the phone and told her this. He did not reply to the mother's second email. She wrote again on 25 July. He did reply on that day explaining something about his financial situation and that by Wednesday July 31 he would give her the exact time and day he would travel to the UK. On 31 July he emailed to say that he would not be coming to England that summer.

26. His explanation in Court about this focused entirely on the financial pressures on him, as a consequence of the legal proceedings and the perilous state of the economy in [father's home country]. He did not seem to have any appreciation of the impact that his failure to respond to the mother's requests would have had on her plans, nor on the children, nor the impact of having told N that he might not come in the way that he did. He returned again and again to an explanation from his perspective which is that he couldn't reasonably have made the trip to England at that time and was saving money for Christmas.

Involvement of [European country's social services department] with the mother and children

27. In June 2019 N's school raised concerns about N's mental health. She was said to be expressing suicidal thoughts and a wish to act on them. She was taken to the emergency children's psychiatric unit and a referral to the [social services] was made. The school made three more referrals regarding concern for the wellbeing of the three youngest children in the household and about the mother's ability to support them.

28. The mother and children were in England between 18 July and 16 August 2019.

29. N and her mother met with the social worker on 20 August 2019. As part of [social service's] investigation into N's circumstances, her headteacher was asked to fill in a form setting out any concerns. It is reported that N had written a letter to her English teacher that her older brother had climbed onto a balcony and threatened to jump. N had said she had to talk him in, she was looking after her younger brother when it happened and the mother did not come home until later. The headteacher expresses her deep concern for N's welfare, and says that the concern has been present for a long time but is now escalating. N is said to be arguing with her mother about having to collect her little sister from school twice a week and the rest of the time collects her little brother. N is reported as saying that her mother is rarely home, because she is at work, but also attending [European language] classes and yoga, and that they had spent the previous weekend alone.

30. On 10 September N is reported by her school to have been standing out in the rain, screaming that she did not want to live anymore.

31. An attendance note from the social worker notes a long conversation between her and the mother on 11 September. The mother had not taken N to [the child psychiatric unit] the previous day, but was reminded that she should do if N is suicidal. The mother was then said to explain more about how N's unhappiness was rooted in feelings that her father had abandoned her and felt betrayed by his failure to come and see her after the end of the trial in the summer. The mother then is reported as having made an allegation about the father having kissed N on the mouth when she did not want him to, and alleged that there was an episode where N and her brother were with their father and she had said to her mother on the phone that she did not want to sleep together with her father and that she was crying, yelling and panicking about this. The mother is reported as also having alleged during the course of this conversation that something happened to O during the Christmas visit in 2016/2017.

32. The mother's evidence is that she then had a conversation with O later that evening during which he told her he had been sexually abused by his father. She called the social worker the next day and reported that her son had 'confirmed that his father has abused him.'

33. In her witness statement and in her oral evidence the mother told the Court that over the next few weeks and months O told her of more abuse. She bases the allegations she has made against the father on the conversations she has had with O and with N. In summary the allegations are as follows:

- The sexual abuse started when O was three or four and the father had taken O to his bed, squashed him, lied on top of him and kissed him, put his hands into O's underpants and rubbed his penis;
- The father had kissed O on his legs, back, buttocks, stomach, chest, testicles and anus;
- The father had pushed O against a wall, squashed him and punched him in the head;
- His father had tied O's hands behind his back and tied him to the door of the wardrobe in his bedroom in [father's home];
- the 'toe poking incident' in June 2017 was in fact provoked by O saying to his father he was a bad father because of the sexual and physical abuse to which he had subjected him to;
- O had been sexually abused in [father's home country] during the Christmas holiday visit in 2016/2017;
- O had been sexually and physically abused in the period before they left for [European country] between [x] June 2018 and [x] August 2018 every time he stayed overnight with his father;
- during October half term 2018 when O was staying in a hotel with his father in London that his father had sexually abused him;
- on [x] December 2018 when O was staying in London with his father at a hotel in London his father had physically abused him and slapped him across the face.

34. The mother reports she had a conversation with N about a week after her conversation with O on 11 September and N had told her that her father had held her down on the bed, kissed her on the mouth, that she had fought and kicked him and eventually got him off. The mother reports that N said to her she imagined that is what it felt to be raped, but that she 'refused to speak about this in greater depth.' N is said to have also reported that when she was five years old she started feeling unsafe with her father, that she remembers him picking her up and squeezing her under the arms in a way that hurt her, and kissing her on

the mouth in a way that felt uncomfortable. The finding that the mother seeks is that the applicant held N down and kissed her on the mouth.

35. On 2 October 2019 N's head teacher contacted the social worker, reporting that N was 'in despair' over feeling she was being accused of being sexually abused, and she maintains that it is not the case. She was reported as being nervous she would be sent for therapy for sexual abuse and felt frustrated this had 'been revealed' as she felt it was taking focus from her problems relating to her mother being absent, and her and N not having a good relationship. The head teacher reported that she had reassured N that the referral to therapy was not to do with sexual abuse, but was because she was unhappy.
36. On 4 October 2019 O was seen at school by social workers. They report that his teachers were very worried about him. He is reported as saying that he does not like school, prefers to be at home, although he was not doing well with his siblings. He is reported as saying he cannot talk to his mother, siblings or anyone else although he had two good friends in class. After a while he ended up hiding under a bench and said he did not want to talk any more.

Reports to [redacted] Police

37. On 7 October 2019, the mother called [the] Police to report allegations of sexual abuse. The notes read, *'Son has reported that he woke up in the night and his father was kissing his testicles. He has also said father has taken him to his bed, held him down, squashed him and kissed all over body. Caller believes more details may emerge. Daughter having suicidal panic attacks and says she fought him off when he tried to kiss her on mouth, held her down. She had to fight him off.'*
38. On 8 October N was again reported as insisting to professionals that she had not been abused and was asking to spend a number of days a week staying at the home of the school chef.
39. On 17 October 2019 the father emailed the mother to discuss arrangements for spending time with the children at Christmas in accordance with District Judge Wakem's order (although the summer contact had not taken place). He asked for contact with members of the extended paternal family.
40. The mother contacted [the] police again on that day. It is reported that she told the police the children were open to children's services in [European country] due to self harm, that they wanted them to start trauma therapy but the children needed to be interviewed first. It is noted that the mother was going on holiday for two weeks, *'we agreed that we don't want to repeatedly speak to these children and that we will discuss further how to proceed on her return'*.
41. The mother went on a research field trip to [country name redacted] for two weeks on 18 October. The maternal grandparents come to [European country] to care for the children.

42. [European country's] children's services prepared a report, (similar to a section 47 report within this jurisdiction). The report is dated 22 October 2019. It records the mother's concerns that O suffers from anxiety and that she previously thought he was autistic. The mother was noted to have reported that O had repeatedly told her of verbal, physical and sexual assaults perpetrated on him by his father.

43. The report identifies significant concerns about the mother's parenting of the children:

In conversations with O's class teacher, the department head at [redacted], and the sister N, it appears that the mother is very absent both physically and mentally. N tells several times at school that the children are very much alone at home since the mother works a lot and in addition goes to [European language] lessons and yoga. Some days the mother does not come home until after 21.00. When the mother is not home, it's big brother Q at 17 years old looking after, N, O and P at 12 and 4 years old. The department head at [redacted] and N says that Q is often under the influence of drugs when he cares for them. In a notice from [redacted], it appears that O, Q and N have been home alone at the end of August, where Q has wanted to jump off the balcony of the home to commit suicide. N has prevented him from this. Whether O experienced the episode is unknown. O has told [redacted] that he has been alone with Q for a weekend while his mother was out with N and P where he was not allowed to come, and where Q slept all day.

Mother informs [name redacted] that she has difficulty relating emotionally to O and that it falls to her most natural to arrange practical things around the children, like making sure they get to school, have clean clothes on, and the like. The mother states that she will easily get bored with the children if they have nothing concrete to do together. The mother tells that O has a hard time finding peace, but that it helps if they two do something concrete together, like building a piece of furniture. The department head at [redacted] says that the mother never celebrates O and his sibling's birthday. O say she doesn't like his siblings, but that it is ok to be at home.

44. The author records that O's school reported that O said he did not like anything about school, was not following teaching at school, had low self-esteem and low self-confidence, got easily stressed and angry and would hurt himself by striking himself on the head, throwing himself on the floor, or running into walls. Working with the mother was described as difficult and it was said that she had not complied with agreements made with the school. There was concern that for a period during August, O aged 9 at the time had been getting himself up at 5 a.m., taken himself alone to school where he arrived at 6.15 a.m. and waited for the school to open. There followed a period where he refused to go to school.

45. The author of the report expressed concern that the mother 'does not seem worried or emotionally affected by O's serious unhappiness and having difficulty seeing her children's needs for care as well as ignoring their own needs for e.g. to travel, be away from home for e.g. to go to yoga etc.' Concern is also expressed that the mother 'herself expresses that she has difficulty relating emotionally to O and that she easily gets bored in the company of him.'

46. The author of the report appears to accept as fact that O had been physically, mentally and sexually abused by his father over a long period of time, which 'must be assumed to have traumatised him.'

47. It is noted that O lives in a home where all the children are very unhappy, and where their mother is not managing to give them the mental security and care they need. Concern is expressed that the mother needs to get a realisation of O's serious unhappiness, for her own responsibility and to be able to act appropriately. It is proposed that O, Q and N are all referred to something called the 'Trauma project', but it is felt that the mother needs support to create the necessary security for the children at home to enable such work to be carried out. A course of intensive family therapy is therefore proposed in the first instance. This involved ten hours a week of family treatment in the home for a period of six months to be followed by monthly follow-ups.
48. Within the same report, N is reported as telling her social worker that she was really low while her mother was away in [country name redacted], could not concentrate, feels alone, is worried about her father and that it might be her fault if he goes to jail. Concern is raised about the mother's ability to work with professionals, and to keep to agreements made with the intention of safeguarding her children's welfare.
49. On [x] November 2019 N reported that there was violence between Q and his mother over theft and drugs and N has got caught in the cross-fire and been hit. N reports that Q is hurting the younger siblings. N is said to be disappointed that her mother has not come to visit her when she stays at the school chef's house.
50. On [x] November 2019 the mother flew the children to England and took them to the police station as previously arranged. The investigator's summary note records the mother as explaining issues around the family court and contact and that she had to let the father know by 20 November 2020 if he could see the children over Christmas. The summary of the children's interviews were as follows:
- 'N ... did not make any disclosure of a sexual nature she said that she did not want to talk about it anymore, she said that she felt like a file and was just having to repeat herself to professionals. The only thing she said to us regarding dad was that he would kiss her and sometimes hold her down and tickle her, she said she had argued with him about it and it just annoyed her. Her father would say that he is [redacted] and that's what they do in that culture. N said nothing of a sexual nature had happened to her.*
- O was assessed he did not want to talk to us, he said that it was too gross, eventually he said one thing that dad had once took him to his bed and kissed his private parts. He said gross stuff had happened since he was four years of age, O refused to say any more about this and would not give any further detail.'*
51. Neither child wanted to give a video interview. The investigator noted that if O did want to say more and give an interview then they assessed him as needing an intermediary. Q was spoken to, he said he had witnessed the father picking O up and taking him to his bed and once he said O didn't want to go and to leave him alone, but he had not witnessed any sexual abuse. P did not want to speak to officers.

52. In the note of the debrief to mother she was told that the children felt pressurised. She is noted as having been concerned about future contact and, *'said that she would go back to the courts in relation to this, and she would advise them that her children had made disclosures to her and that she reported this to the police. I explained that without accounts from the children that we would not be able to proceed with a police investigation. Mum fully understood that.'*
53. On 19 November the mother emailed the father to tell him that due to allegations regarding his behaviour that had come to light in September 2019 she would not be making the children available to see him at Christmas. She says that the allegations have been reported to the police although she does not say what they were, and she says that an investigation has been opened. She tells him the children do not wish to see him or communicate with him and that they are having trauma therapy. She informs him that she will be seeking to amend the child arrangements order.
54. On 22 November 2019 a new social work team took over in [European country]. At that stage N was still staying with the school chef a few days a week. The mother reported that O had been abused by his father since he was three or four years old, but O was not prepared to talk about it any more. The mother is reported as saying that the police did not have enough evidence to take it to Court, but the investigation is still ongoing as police believe that O has been sexually abused by his father. This was not accurate, the police investigation had not progressed beyond the pre-assessment meeting.
55. On 27 November 2019 N is described in an email to [Mr Z] from one of his colleagues as *'in despair that mother is using sexual assault to explain why her and siblings are malnourished - which N does not see as the primary cause.'* N is reported as repeatedly saying *'she is malnourished because her mother is physically and mentally absent. N says that she doesn't feel like she can talk to her mother and that she feels all alone.'*
56. On 28 November the placement committee agreed that Q should urgently move outside of the home. If the mother did not agree to this then they agreed that plans should be made for the other three children to be placed outside the home. In the event Q did not move out of the house at that time, and the family therapy work started with him still living at home. The mother told me that he does now live independently.
57. On 29 November 2019 the father's solicitors emailed the mother in response to her email to him, confirming they were instructed to seek to enforce District Judge Wakem's order.
58. The father's application to enforce the order was issued on 2 December 2019.
59. On 2 December 2019 the mother emailed [the] police stating that O had made a voice recording, describing more abuse. She asked to book another appointment for an interview, this time with an intermediary present.
60. I have listened to the voice recording which the mother says was made on 29 November. It is only twelve seconds long and comes to an abrupt end. O's tone of voice is calm,

slightly bored, rhythmic, slightly sing-song - he sounds as though he is recalling a list. When he says 'ok?' it sounds as though he is speaking to another person, or in response to another person, and is checking with the person who has asked him that he has answered their question. I have used underlining to represent the emphasis he put on certain words and punctuation to try and show the rhythms of his speech. The words that are underlined were spoken more slowly and with emphasis.

'He has punched me in the face. He has squashed me, he has hit me, he has picked me up and swung me into the wall, he has annoyed me ... erm... and he has touched my private parts, he has done all of these stuff. OK? Goodbye. When he kissed me in the private parts it was at night when I was asleep and ... I cannot - remember - when. And he did other sexual things.'

61. On 10 December 2019 at a meeting to go through the plan with N, she is recorded as saying she is worried about her mother being there during the family treatment and that the social worker won't really see what is happening, and although her mother may tell others she is making changes and she is worried about N, she doesn't think it will work at home. N appears to be saying that her mother is involving her with 'troubling issues' including the legal proceedings, and where they will live if their mother does not get a new job before July.
62. The [European country's] social services' action plan starts on 12 December 2019. The plan's stated aims are to give support and guidance to the mother to meet all four children's needs, to develop the interaction and connection between mother and children and between the siblings. The mother is reported as saying she needs help to set boundaries for P, who demands her attention all the time, takes a toll on her energy and effort and it is hard work to get her to dressed, to eat or to go to bed. Professionals are recorded as saying that P 'takes up a lot of family space.'
63. Notes of a follow up meeting with social workers in around January 2020 at the family home suggest O was not willing to come out from under his duvet. The mother was described as pushing him to come out even though the support worker said she should not pressure him. In the end he came out with his blanket over his face. He did not want to participate in the family activity at first. He is described in the report as having reacted strongly to the abuse and to have a need to be very close to his mother. Although there were difficulties starting the plan because the mother was away first in [country name redacted] and then in England, the support workers were at that time noted to be visiting the home regularly, helping the mother to set boundaries, to create routines where she was in the house and more present for the children. Social workers were spending individual time with both N and O. N was being supported in her relationship with her mother and in respect of managing conflicts with Q and generally to take on less of an adult role.
64. On 9 January 2020 the mother applied to vary the existing child arrangements order of 11 July 2019, and for the temporary removal from the jurisdiction to be made permanent. In the accompanying C1A form and in an unsigned statement, the mother alleged that the

father had physically and sexually abused O and N, and set out her position in respect of the father's allegations of parental alienation.

65. On 14 January 2020 the mother's new partner came to stay with the family for five weeks (he is someone she had known for over twenty years as a friend but the relationship only developed during the field trip to [country name redacted] in October).
66. A report was prepared following some of the family therapy work carried out by the [social services] by a psychologist, [Ms Y]. The report is not dated but I think was completed in early 2020. N is described as extremely caring of and loving towards her siblings and mother, that she acts as an adult child when at home, but also spends a lot of time on her own in her room and her mother does not know when she goes to bed. She describes N as very accommodating and smiling, asking a lot of grown up questions and extremely caring especially towards her younger brother. The mother was described as having difficulty controlling herself in the conflict between her, N and Q and needing intervention and support to stop the conversation and regroup. [Ms Y] describes O as *'an extremely introverted boy with at times, angry body language. He seeks safety in N and does not address [Ms Y] at any point. She sees him challenged in his motor skills.'* Difficulties with setting boundaries for P were outlined. In a one to one therapy session with N, N is described as saying that she was feeling unsure about the mother's boyfriend coming to stay with them, especially while the family therapy was going on, and that she feels she and her siblings come third in line behind the mother's other priorities of her work and her boyfriend.
67. N describes her feeling that she has to do a lot in the home to help and the mother lets the boys get away with not helping, using the excuse that they have autism. N is reported as saying that she feels like she is the only adult at home and often has to look after her younger siblings late at night. Even if Q is there, he is in his room and N feels the responsibility falls on her.
68. The professionals' assessment is that the mother has a lot on, is busy with work, exhausted when she gets home and not able to put a structure around meeting the children's routine. She is described as not able to set clear and concise boundaries and it is thought that this is related to her *'over-compensating for the children's traumas'*. She is described as having challenges in seeing her children's needs as well as *'severe difficulties in setting her own needs aside (work, boyfriend etc)'*. She is described as having a tendency to talk about the children's feelings in a way that *'may be self-reinforcing in the children. It will be useful for her to get tools for how to talk about and recognise the children's feelings in a more appropriate way.'* While areas of support are identified, the mother is seen to be a loving and caring mother to all her children, but who is described as *'fighting to keep daily life together for herself and her four children.'*
69. [Ms Y] recommended continued work to support the family and that everyone should have therapy.

70. At a hearing before me on 3 April 2020 the children were joined as parties to the proceedings and a guardian appointed. I dismissed the father's applications for interim care orders and for Oxfordshire County Council to prepare a section 37 report. The children were living in [European country] and receiving a high level of intervention from social services there.

71. On 5 April 2020 the father had a text message exchange with N. He sent a message to her [European language] phone telling her he loved her and would see her soon. She asked how he got her number, he replied *'love can achieve everything'*. His evidence was vague and contradictory about this, he suggested that he had always had her number. During the exchange he says that he is *'here for you and you can talk to me any time you want'*. N replies, *'I'm fine thanks. You haven't been here for me for about 7 years, why would I talk to you?'* The father responded, *'I have been always for you N. You and O and P are the most important part of my life. For example, I want to spend Christmas with you but they did not allow me. As you know I was a victim of a false allegation about sexual abuse to you and O .. I just want to see you and share with you and P and O as soon as you are ready to see me. Papi loves you!! PS I am here for you any time you want to see me or talk to me. Just let me know and I will be with you.'* He followed up with a voice message and N then replied:

'Firstly, O and I did not want to spend Christmas with you, neither do we want to see you. Secondly, YOUR NOT A VICTIM. The sexual abuse allegations are not false allegations. I'm ashamed to be your daughter. Thirdly, you need to understand we don't want to see and it's going to take a very long time before we are completely comfortable seeing you and that's your fault and not anyone else's.'

72. By September 2020 [European country] social services were reporting that great progress had been made within the family.

73. A fact-finding hearing was listed for July 2020 but had to be vacated because there were issues over the disclosure and translation of documents from [European country] social services, and because of the pandemic it was not possible for the parties to travel to attend Court, nor even to be in the same place as their legal representatives, in the event that the hearing had to be remote. I adjourned and decided that all issues between the parties could be resolved together at this final hearing. This was the course of action urged upon me by both parents, the guardian had thought it would be better to retain the fact-finding hearing.

74. In September 2020 the family therapist reported that over the summer the mother had begun to attend to the development and needs of the children in a far better way, had started to set boundaries and was trying to be more involved in the children's schools.

The hearing

75. Both the parents planned to attend the final hearing and the father came over from [father's home country] and spent two weeks in isolation before the hearing to enable this. The mother had booked flights from [European country] but due to an increase in cases there over the week before the trial the quarantine rules changed and [airline] cancelled her

flights at the last minute. The final hearing was therefore a hybrid hearing with mother, guardian and Mr Powell attending by CVP and mother's counsel, solicitor in Court and father, and his legal team also in Court.

76. I heard evidence from the mother, father, guardian and in addition the father's sister. I also heard from [Mr Z] the social worker, also ably assisted by a translator, and from DC X who had met with N, Q and O at the police station last November.
77. The documents from these proceedings and the previous ones came in three separate pdf bundles, which in total amounted to over 2,000 pages. Even though the bundles had been bookmarked for me, and pdf X-Change Editor makes it slightly easier to navigate, it has been time consuming and a pretty miserable experience to do so. Needless to say, although I have read an enormous amount of documents, I was referred to only a small proportion of them during the course of the hearing. The documents were not all paginated in order, and a lot of the documents which had been translated from [European language] did not have a header on them stating what they were, when they were created, who by, or for what purpose. Where there were dates it was not always clear if the date given signified the date it was made or the date it was downloaded for the purpose of disclosure. I am extremely grateful to all counsel who helped me find my way around the bundle, and for their orderly and helpful written submissions.

Issues for the Court to determine

78. First I am asked to carry out a fact-finding exercise. The mother seeks findings that the father physically and sexually abused O and N, as set out in her schedule of allegations and summarised above.
79. The father seeks findings that the mother has sought to alienate the children from him in a number of different ways, as follows:
- (i) Obstructed the children from spending time with, communicating with and having a full relationship with their father;
 - (ii) Breached District Judge Wakem's order;
 - (iii) The mother has made false allegations of sexual abuse against the father with a view to disrupting his relationship with the children;
 - (iv) The mother has prevented the father from exercising his parental responsibility, not kept him informed about their health and education, and has not included him in important decisions about the children;
 - (v) The mother has referred the children to trauma therapy on the basis that they have been sexually abused when they have not;

- (vi) The mother has entrenched and highly negative views about the father and is intent on alienating the children from him;
- (vii) The mother has encouraged or permitted the children to develop an enmeshed relationship with her which is harmful to the children.

80. Thereafter, the parties' positions are as follows.

The mother

81. The mother seeks determination of her application for permanent relocation.

82. If the allegations against the father are proved, the mother proposes that the children should continue to live with her in [European city] and to have indirect contact only with their father. If the allegations are not proved, she would still seek for the children to remain living with her in [European country] and that contact arrangements would broadly follow the July 2019 order, providing travel and other restrictions imposed by Covid-19 regulations allow it, starting with the father spending five days with the children during the Christmas holidays in 2020, then a further five days at Easter and then ten days over the summer holidays 2021. She proposes that the contact should take place either in [European country] or England.

The father

83. On the basis that I make the findings the father seeks, it is submitted on his behalf that it would be inappropriate to permit permanent relocation to [European city] at this stage. He suggests that the proceedings cannot conclude at this stage. The father invites the Court to find that it is necessary for there to be formal psychological assessment of the mother's capacity to change her approach to the children's relationship to the father and wider paternal family before any decision could be made about relocation. The father has made an application for assessment by individuals who work at the Family Separation Clinic.

84. Providing that significant change was implemented, the father would prefer to leave the children in [European city] with their mother, but has expressed concerns about the ability of the mother to support the children or to effect change.

85. The father reserves his position as to whether he will seek to renew applications previously made for the local authority to prepare a section 37 report and/or for interim care orders to be made to them in respect of the children.

86. It is suggested that the children could be made wards of Court using the inherent jurisdiction while they remain living in [European city] to test whether the mother was able to facilitate the children's relationship with the father and to share parental responsibility with him responsibly.

87. The father's longer term position is that in the event that the mother were found unable to make or sustain the changes he says would be needed, then he would wish the children to live with him, in [father's home country], [other country] or England.

Children's guardian

88. If no findings of sexual abuse were made the guardian in principle would support the re-establishment of contact, again in line with the direction of travel of District Judge Wakem's order, with the children spending consecutive days with their father in the holidays, building up eventually to an overnight stay. However she would prefer to have the opportunity to consider the judgment before confirming her views.
89. She supports the mother's application for the children to remain living with her in [European country].

The law

Fact-finding

90. I have been referred to two cases of Macdonald J, Re P (sexual abuse (fact finding)) [2019] EWFC 27 and AS v TH (false allegations of abuse) [2016] EWHC 532 Fam. He sets out very fully the approach he suggests the Court should adopt in a fact-finding of this nature, and the reasons for it. I have read both cases and take into account all that he says, but extract only some key paragraphs from each judgment below. From paragraphs 23 of the AS v TH case, Macdonald J says as follows:

Burden and standard of proof and evidence

*23. The burden of proving a fact is on the party asserting that fact. To prove the fact asserted that fact must be established on the balance of probabilities. The inherent probability or improbability of an event remains a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. As has been observed, "Common sense, not law, requires that in deciding this question regard should be had, to whatever extent appropriate, to inherent probabilities" (**Re B [2008] UKHL 35** at [15]).*

*24. The decision on whether the facts in issue have been proved to the requisite standard must be based on all of the available evidence and should have regard to the wide context of social, emotional, ethical and moral factors (**A County Council v A Mother, A Father and X, Y and Z [2005] EWHC 31 (Fam)**). Where the evidence of a child stands only as hearsay, the court weighing up that evidence has to take into account the fact that it was not subject to cross-examination (**Re W (Children)(Abuse: Oral Evidence) [2010] 1 FLR 1485**).*

25. If a court concludes that a witness has lied about one matter, it does not follow that he or she has lied about everything. A witness may lie for many reasons, for example, out of

shame, humiliation, misplaced loyalty, panic, fear, distress, confusion and emotional pressure (*R v Lucas* [1981] QB 720).

26. The court must not evaluate and assess the available evidence in separate compartments. Rather, regard must be had to the relevance of each piece of evidence to other evidence and to exercise an overview of the totality of the evidence in order to come to the conclusion whether the case put forward has been made out on the balance of probabilities (*Re T* [2004] 2 FLR 838 at [33]).

27. There is no room for a finding by the court that something might have happened. The court may decide that it did or that it did not (*Re B* [2008] UKHL 35 at [2]). However, failure to find a fact proved on the balance of probabilities does not equate without more to a finding that the allegation is false (***Re M (Children)*** [2013] EWCA Civ 388).

28. In principle the approach to fact finding in private family proceedings between parents should be the same as the approach in care proceedings. However, as Baroness Hale cautioned in *Re B* at [29]:

"...there are specific risks to which the court must be alive. Allegations of abuse are not being made by a neutral and expert Local Authority which has nothing to gain by making them, but by a parent who is seeking to gain an advantage in the battle against the other parent. This does not mean that they are false but it does increase the risk of misinterpretation, exaggeration or downright fabrication."

29. Within this context, it has long been recognised that care must be taken not to focus attention on statements made by the child at the expense of other evidence, particularly where allegations of abuse arise in the context of private law disputes. The Best Practice Guidance of June 1997 Handbook of Best Practice in Children Act Cases Section 4, Annex para (k) cautions that:

"Any investigation which focuses attention on the statements of the child runs the risk of producing a false result if what the child says is unreliable or if the child's primary care taker is unreliable, particularly where the allegation emerges in bitterly contested section 8 proceedings."

Allegations of sexual abuse

30. In accordance with the foregoing general principles, when assessing whether or not allegations of sexual abuse are proved to the requisite standard, the court should focus on all of the relevant evidence in the case, including that from the alleged perpetrator and family members (see *Re I-A (Allegations of Sexual Abuse)* [2012] 2 FLR 837).

31. The court should adopt a two stage process. First, is there evidence of sexual abuse? If so, is there evidence of the identity of the perpetrator (*Re H (Minors)*; *Re K (Minors)*(Child Abuse: Evidence) [1989] 2 FLR 313 and *Re H and R (Child Sexual Abuse: Standard of Proof)* [1995] 1 FLR 643).

91. The burden of proof is on the party making the allegation, there is no burden on the Respondent party to prove the contrary. This is true whether it is for a matter such as sexual abuse or parental alienation.

92. Mr Pote reminds me that a failure to find a fact proved on the balance of probabilities does not equate, without more, to a finding that the allegation is false (see *Re M (Children)* [2013] EWCA Civ 388). Having heard and considered the evidence, it is open to the Court to conclude that the evidence leaves it unsure whether it is more probable than not that the event occurred and accordingly, that the party who has the burden of proving that the event occurred has failed to discharge that burden (See *The Popi M Rhesa Shipping Co SA v. Edmunds, Resha Shipping Co SA v. Fenton Insurance Co Limited* [1985] 1WLR 948). The Supreme Court has made clear that whilst not routine, this outcome is permissible in cases relating to children. In *Re B (Care Proceedings; Standard of Proof)* [2008] 2 FLR 141 at [32], Baroness Hale stated that:

“In our legal system, if a Judge finds it more likely than not something did take place, then it is treated as having taken place. If he finds it more likely than not that it did not take place, then it is treated as not having taken place. He is not allowed to sit on the fence. He has to find for one side or the other. Sometimes the burden of proof will come to his rescue; the party with the burden of showing that something took place, will not have satisfied him that it did. But generally speaking, a Judge is able to make up his mind where the truth lies without needing to rely upon the burden of proof”.

93. When considering the evidence of the witnesses I must take care to identify those parts of their evidence which is part of their direct recollection, and those parts of their evidence where they are reporting what someone else has said, and to assess the relative weight of such evidence accordingly.

94. Mr Pote highlighted the difficulty of analysing evidence, particularly if hearsay evidence, from a child. Frequently, there will be concerns that the child may have been influenced by other people when making allegations, particularly if they arise in the context of disputes between parents. Per Baker LJ, *Y and E (Children) (Sexual abuse allegations), Re* [2019] EWCA Civ 206:

‘In most cases, there will be no physical evidence of sexual abuse, and the evidence will often consist only of statements made by the child. Evaluating that evidence can be extremely challenging, especially where the child is very young, and/or if, as in most cases, he or she is not called to give evidence in court and therefore not subjected to cross-examination. Frequently, there will be concerns that the child may have been influenced by other people when making the allegations, particularly if they arise in the context of disputes between parents. Unpicking what exactly the child said when and to whom, often through layers of hearsay, can be very difficult.’

95. At paragraph 259 of *Re P*, Macdonald J, gives guidance about hearsay evidence:

259. In family proceedings, evidence given in connection with the welfare of a child is admissible notwithstanding any rule relating to the law of hearsay (see the Children

(Admissibility of Hearsay Evidence) Order 1993). The weight to be attached to a piece of hearsay evidence is a question for the court to decide (Re W (Fact Finding: Hearsay Evidence) [2014] 2 FLR 703). Within this context, a serious unsworn allegation may be accepted by the court provided it is evaluated against testimony on oath (Re H (Change of Care Plan) [1998] 1 FLR 193). It is very important to bear in mind at all times that the court is required to treat hearsay evidence anxiously and consider carefully the extent to which it can properly be relied upon (see R v B County Council ex parte P [1991] 1 WLR 221).

*260. In this case, these principles are thrown into particularly sharp relief in circumstances where none of the children who have made allegations of sexual abuse have given oral evidence at this hearing and been cross-examined on behalf of those against whom they level those allegations. Mr Bagchi and Ms Bains, citing the American jurist John Henry Wigmore, who observed that "Cross-examination is the greatest legal engine ever invented for the discovery of truth", remind the court that oral evidence given under cross-examination reflects the long-established common-law consensus that the best way of assessing the reliability of evidence is by confronting the witness (see **Carmarthenshire County Council v Y & Others [2017] EWFC 36** at [8] per Mostyn J). Within this context, I remind myself that the Court of Appeal has made clear that where the evidence of a child stands only as hearsay, the court weighing up the evidence must consider the fact that it was not subject to cross-examination (Re W [2010] 1 FLR 1485). I make clear that I have done so.*

261. In circumstances where, in this case, the allegations are comprised of hearsay evidence from children concerning (at least in respect of the children) events which are alleged to have occurred some years prior to the allegations being made, I also remind myself that a court considering the hearsay evidence of a child must consider not only what the child has said, but also the circumstances in which it was said (R v B County Council, ex parte P [1991] 1 FLR 470) and, again, that it has long been recognised that care must be taken not to focus attention on statements made by the child at the expense of other evidence (1997 Handbook of Best Practice in Children Act Cases).

- 96.** Within Re P, Macdonald refers to psychological research about memory, guidance in respect of evaluating children's allegations and achieving best evidence from children and the need for caution. Earlier, at paragraph 6 of his judgment he says the following:

'More generally, human memory is not a single, simple system. What is remembered of an experience by a child or young person, will not be a complete picture akin to a photograph or CCTV recording, and will vary depending on the age at which the experience took place. What an adult may consider to be a key element of a remembered experience, and therefore key to assessing reliability of the memory, may not be significant from the child's perspective. The psychological processes involved in encoding, storage and retrieval of memories are susceptible to internal and external influences. With all this context, children's accounts can be affected by their level of functioning, their emotional state and the levels of suggestibility. It is possible for a child to 'remember' an event that has not in

fact occurred, or it has not occurred precisely in the way remembered. The child's recollection of past experience can be influenced by the process of questioning the child.'

97. Finally I remind myself that the evidence of the parents 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.
98. Any findings of fact are for the Court to make based on the evidence before it. No weight should be given to the opinions of others about the credibility of a particular witness.

International relocation

99. Miss Wiley QC has referred me to the line of case authority via Payne v Payne that led to a series of cases in which it was emphasised that while other cases may offer guidance as to the types of factors that might be relevant, the only principle to be applied in determining applications for relocation was that the welfare of the child was paramount:

'The focus from beginning to end must be on the child's best interests. The child's welfare is paramount. Every case must be determined having regard to the welfare checklist though of course also having regard, where relevant and helpful, to such guidance as may have been given by this court.'

Per Munby LJ, Re F (a child) [2012] EWCA Civ 1364, see also Re C (internal relocation) [2015] EWCA 1305.

Role of the guardian

100. The Guardian is independent of the parties, but this does not mean that she is neutral, and should have only a passive or bystander role in the fact-finding process. In the case of Cumbria CC v KW [2016] EWHC 26 (Fam), Hayden J said at paragraph 58:

'I record that the Guardian thought it appropriate not to advance any submissions on the findings sought by the Local Authority. This is a wide spread practice which I would, for my part, strongly deprecate, in most cases. The importance of strong, intellectually rigorous representation on behalf of the child's lawyer and his Guardian, has been emphasised regularly see GW and PW v Oldham MBC [2005] EWCA CIV1247; Re U (A Child) [2005] 2 FLR 444; Islington LBC v Al-Alas and Rway [2012] 2 FLR 1239. These principles apply just as vigorously, in my judgement, to the fact-finding process. A position of neutrality motivated solely by desire to be independent and objective in the eyes of the parents loses sight of the primary professional obligation to the child. I am aware that others take a different view.'

101. I am grateful to Mr Powell, who in my judgment fulfilled this role admirably, both in his cross-examination of the witnesses, and in his rigorous and careful examination of the evidence in closing submissions.

Evidence

102. Each of the parents has prepared a number of statements in these proceedings and the proceedings before District Judge Wakem. They have had private e-mails, text messages and conversations with others laid bare for the Court.
103. The mother gave her evidence remotely. She was cross-examined by Miss Wiley QC from the Courtroom. Her representative Mr Pote was in Court. The father was cross-examined within the Courtroom by Mr Pote. There were many times during the hearing when the atmosphere could be described as emotionally charged, but we took a number of breaks throughout the course of the evidence and I did not consider either one of the parents was at any stage overwhelmed with emotion or the occasion, so that it adversely affected their ability to give evidence.
104. Nobody sought for any of the children to prepare a statement or to give evidence to the Court.

The father

105. I did not find the father to be an impressive witness. His description of events was so skewed to his own world-view that it rendered much of his evidence unreliable.
106. Consistent with District Judge Wakem's findings, I too found his evidence to be heavily focused on self-justification on the one hand and relentless negativity towards the mother on the other.
107. He showed no curiosity or ability to give credence to the views or feelings of his children. Faced with evidence that contradicted his own perspective or feelings he was very quick to assert that it was not true, if from the children, that they were lying or that they had been coached by their mother to say what they did, or simply to say that things did not happen.
108. I would agree with District Judge Wakem that he seemed only to see his situation through the prism of parental alienation and he lays all the blame for that at the door of the mother.
109. He accepted that he should not have left O alone in the hotel in December when he went to collect N, but really on the basis that he had now been told he shouldn't have done, not because he seemed to understand that leaving an eight year old boy alone in a hotel was not a good idea, or to think about how his son might have felt. He was not able to address the fact that he had previously been advised (at the time that the 'toe poking' allegation was made to the police) that he should not leave a young child alone, and seemed to suggest that it had only been something raised with him after the hotel incident.

110. With reference to the same weekend, he maintained strongly that really it was N who had been to blame for ‘lying’ to him about being able to get a bus to London and seemed still to feel that he had been justified in showing her his anger that evening in the restaurant. Although he told me he had done a course which helped him understand to listen to his children, he was apparently unable to consider that they had voices or opinions that were separate from their mother, or that their voices or opinions could have been informed by experiences of time spent with him.
111. There were a number of matters about which District Judge Wakem had made findings of fact based on evidence that the father had given, which at these proceedings the father now sought to say were not true. The judgment has not been appealed. The father denied strongly that he had talked to N about the letter she had written to him, notwithstanding this seemed to be an accepted fact in the previous proceedings.
112. At times his evidence was vague, imprecise and therefore unconvincing. For example, he accepted that he had texted N in April of this year, but failed to give an explanation as to how he had got N’s [European language] number. N asked him directly how he had got it, and he texted back that love could achieve everything. In oral evidence he said he had always had her [European language] number, but in that case it is surprising he did not simply say that in response. Further, this does not seem consistent with what he said in his statement of [date redacted], in which he complained that his username, email and phone number had been blocked from all the children’s phones and devices by their mother. I accept that does not exclude him still having the children’s numbers in his possession but N’s response to him was not that he was using a different phone to reach her but that she wanted to know how he had obtained her number.
113. The text messages at the time of this exchange show the father directly involving N in the adult dispute, being self-pitying and blaming of others and apparently seeking to get her on his side. It is not surprising that the allegations against him have evoked strong emotion, but if he were able to think about N’s feelings before his own, he would have realised that her need was for him to show an interest and commitment to her, and to protect her from the adult dispute. N evidently felt very let down in the summer of 2019 when the father did not come over to England. The father chose to use N as the means of communicating this to her mother and when questioned about what the impact on N of him telling her this over the phone, his answers focused entirely on the situation from his point of view, the difficulties he faced which meant that he felt he could not travel. He did not seem to be able to appreciate the effect his behaviour would have had on his daughter.

The mother

114. The mother’s evidence was more coherent, but like the father, she seemed unable or unwilling to accept perspectives other than her own. She appears to be looking only through the prism of sexual and physical abuse, and to identify her children’s experiences and behaviour as being consistent with and informed by that.

115. I formed a sense that she perceived a need to collect and gather evidence from her children, for the purpose of presenting to the Court. In assuming responsibility in this way, her influence on that evidence is clear and I have to take care to tread with caution, as the source material by that means is necessarily affected. For example, in written statements and in her evidence to me, she said that O had ‘told’ her that his father had touched him on various parts of his body, including his testicles and his buttocks. In fact, she described a much more elaborate event whereby O was in her bedroom, she asked him where his father had touched him, named different parts of the body, and told me that O tapped her leg to indicate where his father had touched him. So it was not quite the direct ‘telling’ that is envisaged from her description in her written evidence. It was a response to guided prompting by her, interpreted by her, recorded by her. Further, she told me that she had not used the words she referred to in her witness statement or her oral evidence – I had queried whether O did use the words ‘stomach’, ‘testicles’ or ‘buttocks’ as she reported to me he had said, and she said no, those were not the words she had used. So her description to me of him jumping up and shouting ‘*yes I woke up in the middle of the night and he was kissing my testicles!*’ was not true, that was not what he said.
116. The context in which these allegations were said to have been made is also very significant. The mother was not an objective listener. It is clear that she had been wondering about the possibility of something ‘inappropriate’ or that made the children uncomfortable happening when they were in their father’s care for some time, because she had hinted as much to professionals both in England – CAMHS – and in [European country] – before she had any conversation with O. She made these hints and remarks and passed this information over always in the context of more negative information about the father, that he had mental health issues, that the children were scared of him, did not like spending time with him. This is evidence of her own pre-existing suspicions, which means she is less likely to have listened to O in an open minded and objective way, and was therefore at risk of confirmation bias – if she was already suspicious that he had been sexually abused, then when O told her that his father had touched him, that confirmed her suspicion and she was less likely to entertain the possibility that such touching might not have been sexual, or might not have happened at all.
117. The mother does appear to have sought confirmation from professionals that her suspicions were well founded, and then to have used their responses as corroboration for her case. However, their responses were informed by what she had told them. In my judgment it was disingenuous of her to say that she had no thought of anything inappropriate or their being any abuse of her children when she reported these matters to CAMHS. The context was that she volunteered that information directly in response to questions about whether there had been abuse. Further, at the same time she was saying other very negative things about the father to professionals – that he had mental health issues, that the children were scared of him, he had held O’s head under water. The danger is that by packaging information in this way, a professional may be regarded as effectively being invited to consider more sinister explanations for things which otherwise would not raise alarm bells.

118. So far as the police are concerned, the mother was not straightforward about the status of the investigation. It was made clear to her that the conclusion of the pre-interview assessment was that the children had not said anything that would lead them to think they should be formally interviewed. DC X said the file was effectively closed there and then. The father was not under investigation, but the mother gave him the impression he was and in meetings with social workers apparently said that the police investigation was continuing and that the police ‘believed’ the father had abused the children.
119. There is another context to the conversations the mother reports she had with O. Firstly, there is a wider context from the social services records from a theme that emerges of the children feeling that their mother is absent physically and emotionally, she is reported as saying that she struggled to engage with O. There is a further theme of the mother seeking to explain N and O’s distressed behaviour as a response to trauma inflicted upon them by their father as opposed to the parenting they were receiving from her.
120. Against that background, I must be cautious about the weight I give to evidence of conversations she had with O. Firstly, in a context of him being paid special attention, in her bedroom or cuddling up with him on the sofa, and her being already receptive to the idea of abuse. It could be said that in this way O may have felt encouraged to make allegations, because he perceived that it led to special attention and interest from his mother. There is some evidential support from this within the social services records and also in text messages where N sent messages saying that she hated her father he was ‘at it again’, and the mother’s response was to thank her and send kisses.
121. Further, the chronology appears to suggest that the mother had conversations with O about his allegations or spoke to the police at times when it might be said she was feeling under attack – for example when pressure from social services was increasing or in response to contact from the father’s solicitors, or a need to respond to him within a certain time.

[Mr Z, European country’s social worker]

122. [Mr Z] is a social worker working in [European city]. He was allocated to the mother and children in December 2019. He gave evidence remotely, ably assisted by an interpreter. He explained the support that had been provided to the family by his department, the school and psychological counselling. He had a very good knowledge of the family, the dynamics and the issues that had troubled them. He gave his evidence in a straightforward way making clear what was from his direct knowledge, and where he was relying upon information obtained from a colleague, in a meeting or from reading papers. The amount of resources and time that the professionals were able to devote to the children and their mother is very impressive, as was the evident level of care, and a joined up and sensitive approach. For example, O has been assessed as needing support in school as he finds large groups difficult. Funding for an additional support worker was provided jointly by the school and social services to enable his class to work in smaller groups, rather than for a person to sit alongside O and single him out as in need of support. The work has been of benefit to all and it is proposed to step down to another team in the near future – [Mr Z]

was brought in at the time when removal of children from the family home was being contemplated.

123. [Mr Z] was taken to a number of the documents prepared by colleagues and translated in the bundle, and was able broadly to confirm their contents accurately reflected the observations and concerns of professionals at the time the various attendance notes, referrals and reports were written.

124. There is specific reference within many of these documents for the children to have trauma therapy and it appears to be envisaged that so far as O is concerned, some professionals envisaged that would be in response to sexual abuse that they understood he had experienced. However, [Mr Z] was clear that when he referred to trauma therapy he did so in a more general sense and with regard to these children, anticipated that the therapy they needed was in response to their experiences of their parents' divorce, the parenting they had received and the frequent moves in their lives, not specifically the trauma of sexual abuse.

DC X, [the] Police

125. DC X and a colleague met with the children at the police station in November 2019. She was able to refresh her memory by looking at contemporaneous notes and emails but it was clear she also had a direct memory of conversations with the mother and of speaking with the children. She told me that her first impression of the mother was that she was very keen for the children to talk to her. She had a clear memory that O was not at all keen to talk, she said to me he just didn't want to tell us anything. It had stuck in her mind that N had said she felt like a file and she was sick of talking to professionals. DC X said N just seemed really fed up, and it was her assessment that N felt pressurised. Her evidence is consistent with the contemporaneous emails and notes of the conversations. I have paid less attention to an email from father's solicitor to DC X, in which she was asked to confirm the contents of a conversation between herself and the mother, but told me she did so without reference to her notes.

126. She said that O did not want to speak to her at all. Within the records there are notes that suggest he did speak a very little bit about his father. It is noted that he said his father was cross and angry, and had said *'he's hit me, shouted at me, squashed me, sat on me, he laid on me he squashed me'*. The note reads that his father had *'done stuff in [father's home country] ... did something in [country name redacted] when I was four ... I want him to go to prison ... he kissed me in the private parts and I didn't like it.'*

127. DC X said her recollection of the mother was that there was *'a lot of emphasis on the father and children not seeing their father.'*

Paternal aunt

128. Permission was given to the paternal aunt to provide a statement only in respect of the allegation that the father sexually abused O at the [redacted] hotel in London on the

weekend of 19 to 22 October. The paternal uncle and aunt were staying in the same room. The paternal aunt lives in [father's home country] and does not speak English yet her statement was detailed and far ranging and written in English. It transpired that the father had prepared the statement for her.

129. Despite the very best efforts of the translator, the audio and video quality of the call was very poor and broke up a lot and as a consequence the oral evidence she gave was extremely difficult to understand. Some of the answers she gave were bizarre – for example that it was commonplace not just for O to share a bed with his father, but also for her and her mother to sleep in the same bed as them. I was not sure whether this was something lost in translation. What was not in doubt was that the paternal aunt had a great deal of affection for the children, that when they had lived in [father's home country] they had been very close and spent a great deal of time with her, and she was grieving for the loss of their relationship.

Ms Palayiwa

130. Ms Palayiwa was the family court adviser in the previous proceedings and has been appointed the children's guardian in the current applications. Consistent with her written analysis, her chief concern in this case is the impact that the parents' separation and their continued dispute has had on the children.

131. Obviously she had no evidence to give in respect of the allegations of sexual abuse.

132. She has had to steer a difficult course of making recommendations before the Court has reached conclusions on the allegations in dispute. However, I thought in her written and oral evidence she maintained a careful balance between carrying out a welfare assessment based on the evidence she did have, and her knowledge and understanding of the children and the family dynamics, in particular informed by her long-standing involvement with them, and making clear those areas where any conclusions would be dependent on any findings the Court may make.

133. Ideally, she would like to have the opportunity to reflect on the judgment before giving a view on the father's applications for further assessment, but in general she was able to say that whether findings of sexual abuse were made or not, she recommended the children should stay in [European country], which was in line with their strongly expressed wishes and feelings, and in their best interests given the disruption they had experienced and the stability they now felt in [European city], with strong networks of support around them from school and social services. If no findings are made against the father, Ms Palayiwa recommends that contact should restart and should be in line with District Judge Wakem's order, although that had not even reached its first stage.

134. Miss Palayiwa did express some concern that the father had not really taken on board District Judge Wakem's findings, and that he still did not accept there was any basis for the children to have said they didn't want to see him. Ms Palayiwa said N had made it

clear she had felt let down by her father, and that he wasn't interested in her, but in her view, the father did not seem to have understood or accepted that. She felt his emails were not particularly child focused and although he said he had been on a course which taught him to listen to his children more, he had not yet demonstrated any ability to do that.

135. Miss Palayiwa has recommended that if the Court makes an order for contact between the children and their father that before it starts he should write to the children to demonstrate that he has taken on board their wishes and feelings and that he is committed to developing their relationship in the future.

Fact-finding

Mother's allegations of physical and sexual abuse against the father

136. I have reviewed all the evidence carefully. I find that the father has not physically abused any of his children and I find that he has not sexually abused any of his children.
137. I find that as N has described, and the father too, he did in the past play a game with her where he kissed her, held her down, and tickled her. I do not find that this was necessarily on the mouth. I accept the evidence that comes from N that this was not sexual; she was clear that it was not abusive. N's voice throughout these proceedings has emerged as mature, clear sighted and objective. She has been consistent in what she has said, and although of course it is with some caution that I accept this hearsay evidence, I note that nobody has challenged any of the contemporaneous notes of what she has said to police, teachers or to professionals, that what she has said has been consistent with the letter that she wrote.
138. The mother suggested that N did not remember telling her headteacher that she was concerned about going to therapy for sexual abuse. However, there is more than one contemporaneous note of N raising concerns about the allegations, of feeling, *'in despair over feeling that she is being accused of having been exposed to sexual abuse, and maintains that she has not. N is nervous about having to go to therapy as a result of being sexually abused.'* This is consistent with what N said to the police and to other professionals.
139. The mother said that N had told her that her father had kissed her on the mouth and she had fought back and it was like being raped. I do not find the mother to be a reliable witness when it comes to reporting the allegations, because in my judgement she had a long-standing preconception that the children had been abused and she has filtered information and directed evidence towards professionals and other agencies that has sought to confirm those preconceptions and suspicions she held, rather than listening to her children with an open mind.
140. In Re P, Macdonald J refers to the 1991 Orkney Enquiry, and the difficulties of starting from a point that the 'child must be believed':

"[15.22] It is recommended as matter for guidance that all those involved in investigating allegations of child sexual abuse must keep an open mind and not fall into the trap of confusing the taking of what a child says seriously with believing what the child has said.

[15.23] The preservation of an open mind requires a concentration in listening with care to what a child says, absorbing all that is said and weighing the child's words objectively. A mind coloured by suspicion or a mind already moving towards a diagnosis can readily undervalue or ignore material that does not fit with the preconceived picture. Similarly material which does appear to fit may be over emphasised and highlighted in such a way as to distort the child's further account of the situation ... as much care should be given to assessing a denial as examining an allegation ... Where allegations are made by a child regarding sexual abuse those allegations should be treated seriously, they should not necessarily be accepted as true but should be examined and tested by whatever means are available before they are used for the basis of action."

141. In my judgement the mother has fallen into the error of hearing only what fit with her notion of what had happened and cannot be regarded as an objective witness.
142. For reasons given above, the mother's account of the conversations she had with O have to be treated with great caution because they are obviously influenced by her part in them. On her own evidence, she initiated the way that O 'told' her of the abuse, she named the body parts, but then renamed them for the benefit of the Court. She put her own interpretation on the reason that O in her view 'hesitated' on the word 'penis', later deciding that what he had indicated was sufficient to form the basis of further conversations and then apparently a more detailed allegation. The mother did not tell the police that the conversation had taken place this way. Her evidence to the Court significantly repackaged what had actually been said.
143. For reasons given above, there is reason to consider that the mother may consciously or unconsciously have had an agenda in obtaining information from her children that pointed towards their father being an abuser. This would mean that she is not an objective and therefore not a reliable witness. This conclusion is formed by looking at the context in which these allegations were apparently made to her and when. In the context of criticism of a lack of connection to her children, these conversations with O could indicate both to him and to professionals that she was in fact intensely interested in him, what he had to say and that she supported him. It is noticeable that the mother reported the allegations to professionals at times when she was under pressure from social services or the father either directly or through his lawyers.
144. I accept that the father's evidence about when the children might have shared a bed with him or how often was inconsistent. However, I do not find that to be probative of him being an abuser. It is a response that is also consistent with a person finding themselves under attack, being bewildered as to what it is they are accused of, or over what period of time, or of trying to think of something that might explain the basis for a misunderstanding or misinterpretation of events.

145. In response to a question by the police when was the last time something happened, O said in [place name redacted] last Christmas. Again, even accepting that he said these words, that is not a basis on which the Court could reasonably make a finding of sexual abuse. It would appear that the mother's case is that O's behaviour when Ms Palayiwa arrived to see him in January 2019 was very out of character and could well have been a response to some sort of traumatic incident. O subsequently behaved in a similar way in [European country] – hiding under a blanket, not wishing to join in a discussion or participate in family activities. O had struggled to engage with CAMHS and needed a great deal of support from his mother in 2017. Even having had the benefit of the mother's hints and suggestions that O's behaviour might be a response to experiences with his father, the working diagnosis was that O was displaying traits of autism. I do not consider that I have any real basis for reaching a conclusion to the standard of a balance of probabilities, that O's behaviour whether when Ms Palayiwa visited or on other occasions should be interpreted as a response to some specific incident of abuse rather than a whole range of other potential reasons.
146. The father's explanation that O's reaction was because he was not good with strangers was not convincing – O had in fact already met with Ms Palayiwa less than two months before. However, it would be a very big leap from there to ascribe O's behaviour on this occasion to having experienced some assault.
147. The mother said in her oral evidence that all of the professionals in [European country] had told her they did not think O has a diagnosis of autism and that his behaviour is the result of trauma. I have not been taken to any entry within the records where that assessment is formed. There are entries where it has been recorded as a fact that O has been sexually abused and this must have affected him, but that is not the same thing.
148. The mother was also struggling to manage P's behaviour at home, as well as having a very difficult relationship with N, and O, and Q. This was affecting everybody in the home. The view of the local authority, supported by evidence obtained in the course of their assessment, was that the mother needed support to improve her parenting. Standing back and looking at all the evidence, and accepting that all the children had different experiences and were at different stages of their development when their parents separated, it is improbable that as the mother now asserts, the explanation for O's behaviour and presentation at that time was trauma in relation to historical abuse, as opposed to the parenting he and all his siblings were receiving from her at that time, and the challenges of adjusting to life in a new country, a new school, a new language and a new home environment.
149. Beyond telling their mother, it is only O who has said anything to other people that could be construed as sexually inappropriate misconduct by his father, when speaking with DC X and her investigating partner.
150. Even accepting that O said to the police that his father 'did something to him in [country name redacted] when he was four', or that he said his father had 'done stuff in [father's home country]', that is no rational basis on which to base a finding of sexual abuse.

151. The allegations such as they are, are imprecise, have no details of time or place, or context, or of what happened. The only one that has more detail is the allegation about being tied to a wardrobe came in the context of increasingly dramatic allegations, all presented by the mother and uncorroborated by any other source. I do not find this evidence to be credible.
152. There was very little information about the way in which the phone recording was made. Again its timing would appear to be significant, it appeared to be made in response to a request, and in it O does not give evidence that in my judgement is sufficient to form the basis for or to provide corroboration for any other allegation of sexual abuse.
153. [The] police conducted pre-interview assessments with O and N (and spoke to Q). Those preliminary enquiries did not lead to an open investigation, nor did the police think it appropriate to move forwards to formal ABE interviews of the children, or to speak with the father. The Court heard from DC X, investigating officer, who has been undertaking child abuse work for 6-7 years, and interviewing children is one of her specialist skill sets. Her evidence to the Court was clear: the children had not made allegations that would enable an investigation to be opened with a view to getting formal evidential accounts from the children. She said in her oral evidence that the mother was told this on 14 November 2019. In terms of N, DC X said it struck her that N described that she felt like a ‘file’ and was sick of talking to professionals, she did not really want to tell the police anything. She just seemed ‘*very fed up*’.
154. While I have found the evidence from N about her own experiences with her father compelling, N saying to her father in a text ‘*I know that you would do such things*’, has little or no probative value. She was angry with him at the time, she is not specific about what ‘such things’ are, and ultimately, this evidence is only of her saying that she believes he could do something, it falls a long way short of corroboration of the allegation of physical or sexual abuse of her brother.
155. The father has no criminal convictions or cautions or involvement with third party agencies for inappropriate sexual conduct towards children and, beyond the case now levelled against him, there is nothing to suggest that the father would have an unhealthy interest in young children (e.g. inappropriate material on electronic devices, or any form of inclination towards a sexual interest in children). In his statement the father asserts that the parents had a healthy sex-life, and that assertion was not challenged.
156. In relation to the alleged physical assaults of O (slap, punch, being tied up, being pushed or slung against a wall, and being punched in the testicles), there is no corroborating medical or third-party information to support those allegations after the event (pictures of bruising or injuries, hospital admissions etc). In relation to the alleged ‘toe poking’ incident in June 2017 there were contradictory accounts about whether any mark or bruise was seen. The local authority section 47 investigation ‘*found no evidence to sustained (sic) that O was actually pocked (sic) with a knife on his feet.*’ The allocated social worker and police officer ‘*thoroughly examined O’s foot visually and did not observe any mark or bruising that could indicate that the incident happened.*’ The school account is that there was ‘a

slight bruise/discoloration.’ The subsequent Child and Family Assessment did not identify *‘any significant concern in regards to the welfare and safety of the children involved.’* Within the previous proceedings, the mother reported to the family court advisor who produced the safeguarding letter (dated 19 July 2018) that she thought the incident as described by O was unlikely but that the social worker had said he was giving a truthful account. The mother did not raise any allegations about this in the previous proceedings.

157. The mother’s subsequent assertion that this incident was in response to O confronting his father about being an abuser and telling his father he was a bad man is not independent and is not credible.

158. While the paternal aunt’s testimony was not particularly helpful, both she and the father were clear about the open plan layout of the hotel room in which they were staying with O in London in October. There is no evidence to corroborate the second hand report of the mother about sexual abuse on this occasion and I do not find it proved.

159. For all these reasons, I do not find any of the allegations one to eight proved.

Parental alienation

160. The father’s case is that the allegations now raised by the mother are part of a course of conduct, started some time ago, with a view to excluding him from the lives of the children that they share. His first statement asserts that the mother is using the children as ‘firearms’ against him and his family to achieve three goals; (i) prevent contact; (ii) enable her application to live in [European country] to succeed; and (iii) to eradicate him from the children’s lives.

161. The mother denies alienating the children from the father as forcefully as the father asserts it. On her case, the children’s rejection of their father is the result of the abuse, inconsistency from the father in the children’s lives and insensitive parenting.

162. Allegation 1 is that the mother has obstructed the children from spending time with, communicating with or having a full relationship with their father from 2016 to date. The father blames the mother wholly for the children’s negative views of him. In my judgement this is not a fair assessment of the evidence and the father must take responsibility for his own part in the breakdown of the relationship between him and his children.

163. The mother does have entrenched and negative views of the father, as he does of her. She has been persistently negative about him, but I do not find that she has been intent on alienating the children from him since 2016. This question was canvassed in detail before District Judge Wakem who made clear, reasoned findings based on the evidence before her and the findings she made. Her judgment has not been appealed. The judge found that the mother was not trying to alienate the father and was *‘a mother who is doing what she can to promote contact’*. The email trails from the first half of 2019 show that the mother was trying to make arrangements with the father for him to see the children but he was uncooperative and not forthcoming with plans. In the circumstances, it is not

reasonable for the father to suggest that it was the mother who was being obstructive or trying to prevent contact.

164. I see no basis for suggesting that Judge Wakem's findings are now in some way undermined by subsequent knowledge obtained from records including the CAMHS records. The children's wishes and feelings were found by District Judge Wakem to be as a response to the father's behaviour towards them, the way he parented them, his inability to be consistent, reliable and interested in his children, but instead was angry at them, capricious, called N a liar, and left them on their own for long periods of time. The father's suggestion that the judge was biased because of the contents of N's letter is not borne out by any evidence.
165. There is a substantial body of evidence, not least from Miss Palayiwa's section 7 reports and in particular N's letter, that makes it clear the judge had been presented with an accurate account of the children's wishes and feelings.
166. The guardian used the Child Impact Assessment Framework within her investigation in these proceedings. She concluded that N felt justified in her refusal to have contact with her father due to the way she felt he had treated her, preferring her brothers to her, being angry with her for no good reason, calling her a liar, instead of listening to her voice through the letter she wrote him, challenging her on its contents, not taking an interest in her, only having limited contact with him and feeling let down by him, is likely to have contributed to her wishes and feelings. The guardian wrote in her report, it *'is of note that N was able to explain the reasons for her views and these could be seen as a justified, and proportionate response, should her experiences, as expressed, be correct.'*
167. The mother has sent fortnightly updates to the father, which have included photographs.
168. The mother has been very negative about the father, but he has also played his own part in causing his children to feel disappointed in him and to say they do not wish to see him. Although he says he had good reason, he did not take up the chance to see the children in [European country] in February half term 2019 and in the Summer holidays of 2019 in England. He has not demonstrated any insight into the impact on the children of this, but focused on the financial and political situation in [father's home country] which caused him such difficulty.
169. N felt that the father preferred the boys. There does seem to be some evidence of this. When he had the chance to spend time with all three children, he often had just O, sometimes N as well, but rarely P. In previous proceedings the mother was found to have encouraged P's relationship with her father, this would suggest that the mother has not sought to influence P against her father.
170. It does seem that the father is still not able to prioritise the children's needs above his own; he cannot control or hide his feelings so that if he is angry and upset, he makes sure the children know this. This is evidenced by the fact that he sent the text to N talking about the false allegations of sexual abuse. He still seems to have anger directed towards the mother and blames her rather than examining his own behaviour.

171. District Judge Wakem's judgment was made having heard evidence from both parties and the Cafcass officer (now guardian) Ruth Palayiwa. She was aware of the CAMHS referral and that mother had hinted of concerns of 'inappropriate' behaviour by father towards the children and had suggested the father had mental health issues. The judge's conclusions were carefully thought through based on an assessment of the evidence she heard. The father presented in this case in a way that was entirely consistent with District Judge Wakem's description of him and there is no basis for suggesting that any of her findings can be undermined by subsequent evidence.
172. The father did present to me as a person without an ability to accept that his children have a different perspective from him, or perhaps if they do, that it should be listened to – he told me that he was a traditional [redacted] father who expected what he said to be listened to. He said he had gone on a course to understand better a different way, which is a positive step, but I saw no evidence at all that he had in fact taken much on board. He continued to be self-justificatory, blaming of his children, principally blaming of their mother, and had completely closed his mind to the possibility that the children's responses to him might in large part be a response to their experiences of his parenting, both when in his care and during the long periods of time when he was in a different country to them.
173. For these reasons I do not find allegation one to be proved, as I do not accept that the evidence supports a finding that the mother has obstructed the children's relationship with their father since 2016.
174. The picture gets more complicated from September 2019 onwards. In November, the mother relied upon the allegations of sexual abuse as a reason for the children not to see their father, but did not tell him what he was accused of having done. She was trying to gather evidence for the purpose of preventing contact. With the benefit of hindsight she was not open minded about this, quick to accuse and to conduct her own enquiry when she should have trusted in professionals. I do not find that she fabricated these allegations for the purpose of preventing contact at that time. In the context of all that was going on at the end of 2019 and the father having postponed his trip to Europe, on a balance of probabilities, I am not satisfied that she 'breached the order without lawful excuse' as has been pleaded.
175. The father asserts that both N and O have been told to, or encouraged, or subconsciously persuaded, to make false allegations against him.
176. The picture is a complex one. I find that the mother has herself, to the detriment of her children's welfare, and unfairly to their father, pursued allegations of sexual abuse against him. I have found some difficulty in whether or not it could be said that N and O have in fact made allegations of sexual abuse against their father.
177. My criticism is levelled at the mother for the way in which she harvested allegations, that she did not do so with an open mind, that she interpreted words to fit her own preconceptions of what had happened and she packaged evidence and information for professionals in a way that could have tended to them forming a conclusion that the children may have been abused. In my judgement there are grounds to consider that she

unreasonably pursued the allegations of sexual abuse against the father where the height of the evidence was speculation. She would appear to have given the children particularly O, a very confused message as to what sexual abuse is and to have induced O to have repeated conversations with her about it, notwithstanding that both a social worker and [the] police cautioned her against putting pressure on the children by asking for more and more information. I find that they did feel pressurised to speak to the police and the pressure came from their mother. O did say some things to the police but it is difficult ultimately to interpret them as any kind of formed allegation of sexual abuse. It is the mother's spin on what he has said that has formed the basis of the allegations. N had clearly said to the police and to others that she had not been sexually abused, yet her mother refused to listen to that and has persisted with maintaining that her own interpretation of N's experience must be correct.

178. Allegation three is that the children *'have made false allegations against the father. This is causing the children emotional and psychological harm and where the allegations are of a sexual nature are causing the children sexual harm.'* I find that it is the mother who has pursued the allegations, and that it has caused emotional harm to the children in the ways described above.
179. I do not consider the mother to have been a reliable witness to what her children have said. In the circumstances, I am not satisfied that it could be said that O has in fact made an allegation of sexual abuse. He has said words that his mother has interpreted and then reported as sexual abuse. He may well now understand that what he has said amounts to an accusation of sexual abuse, but that is not the same as me finding that there is evidence of O making any credible 'disclosure' of sexual abuse, even to the police.
180. I accept what N said to the police and her teachers and do not find that she has made any allegation of sexual abuse.
181. The fourth allegation is in respect of trauma therapy. I accept [Mr Z]'s evidence, corroborated by contemporaneous records, that the trauma therapy is intended to be directed to the children's whole experiences, rather than specifically the question of therapy for sexual abuse. I would accept that the mother has been keen for the children to access this therapy and that was based on her belief that the children had been sexually abused.
182. For the reasons given within this judgment, and by District Judge Wakem, I do not find that the mother has abrogated the father's parental responsibility as alleged.
183. The mother does have entrenched and highly negative views of the father as the father does of her. However, I do not find that she has been 'intent on alienating the children from him.'
184. The children have been very negative about their father (not P), but they are not so aligned to their mother as they might be if this was a case of parental alienation. N and O have been outspoken about their differences with their mother. In all the circumstances I cannot find that they are 'enmeshed' with her as has been alleged.

Welfare considerations

Application for permanent leave to relocate to [European country]

185. I agree with the guardian's assessment that the main area of concern for these children right now is the impact of their parents' separation and their continuing dispute upon them. It appears that the children endured years of disruption and uncertainty while their parents' relationship was playing out and have been exposed to the parents' highly negative views about the other and at one time or another and to varying degrees have felt their parents have tried to use them as weapons against one another. In his closing submissions, Mr Powell described the guardian's view as follows:

'...the children have been exposed to a high level of stress, instability and uncertainty as a result of the litigation embarked upon by both parents. [Mr Z] was clear in his oral evidence that the children are experiencing ongoing stress from the court case and ongoing stress from the conflict between the parents; additionally, they are experiencing stress he said from the thought of having to see their father, but are likely also to be experiencing stress from not seeing him. Moreover, if the abuse allegations are found proven then N and O have suffered significant sexual and/or physical harm, which will have lifelong consequences for them for obvious reasons. Equally, if the abuse allegations are not proven then both children hold in their minds a view of their father that is incorrect and amounts to an incredibly unhealthy distortion of their father which will also have lifelong consequences for them, if it cannot be changed, in the way described by the guardian in her oral evidence – they would be unlikely to be able to re-establish a relationship with him and that could have a long lasting impact on their ability to develop relationships in other areas, their emotional and mental health could be impacted, and research indicates that there is a connection with addiction if children are not able to have a relationship with a loving parent.'

186. The parties will need some time to reflect upon the findings made within the judgment and make representations to me about whether or not final orders can be made or whether, as the father asserts, further assessment is needed before that can happen.

187. However, it does seem to me that the mother's application to remain in [European country] can and should be dealt with now.

188. The children have expressed strong views that they would like to stay in [European country]. I am satisfied that these views are their own, held independently of their mother and are based on sound reasons. N's voice is particularly compelling, she has in my view shown great maturity, insight and understanding. She has been very upset by a feeling that at one time or another each of her parents has failed to listen to her, it is crucial that her voice is now heard and given some weight.

189. What the children most need right now is stability, security, continued support and a significant shift in the parental dynamic.

190. The father's suggestion that the mother should move to England is in my view unreasonable and unrealistic. The children have experienced a great deal of disruption, have worked extremely hard to establish themselves in [European country] and are now expressing a strong wish to remain there. The support they have from their schools and from social services is at a much higher level than they would receive in this country and an enormous amount of work has gone in to establishing relationships, building up an understanding of the children and their particular needs and identifying the support they need. It would be very much against their interests to turn away from that now.
191. The mother has been in work almost constantly in her career, as well as parenting four children, for very significant periods of time on her own. She gave persuasive evidence about the attempts she is making to find new work now and it would appear that her prospects are rather better in [European country] than they would be in England. The children have a place to live, schools to go to and are establishing networks of friends. The Mother is able to stay in [European country] after the 31st December 2020 because she has already been living there under the transitional agreement between the UK and the EU.
192. Many items on the list of factors relied upon by the father as reasons that the mother should not be allowed permanently to relocate were about the difficult dynamic between the parents, and would continue to exist wherever the parents lived in the world. They did not seem to me to constitute reasons for the mother and children to relocate to another country. Having heard the mother's evidence, I consider she is on balance much better placed to support herself and the children in [European country] than if she moved to England.
193. The mother's capacity to parent her children was called seriously into question by the investigation by [European country's] social services. However, she has engaged fully with the programme, has made very good progress and Q has left the home. The support is designed to continue to be in place for a little longer and the evidence is that the children are doing very much better and are safe in her care, albeit still receiving a significant level of support from the [social services] and at school.
194. It is to the mother's credit that she has worked constructively with professionals in [European country] and improvements have been identified. [Mr Z]'s updating case summary brings together the various strands of support provided to the family, with a 'positive upswing' being observed among N and O with 'steady progress' seen.
195. This improvement is mirrored at school where O's wellbeing is said to have improved this school term and N is said to be becoming increasingly confident with no new concerns noted.
196. The mother does not have a property or a job in England. The children do not have school places here. She has given evidence which I accept that she would be financially better placed if she remains living in [European country]. Any move would be very detrimental to their stability and security.

197. The father's plans for the children to live with him were extremely sketchy, not based in any sort of practical reality and have to be regarded as wholly unrealistic while his relationship with his children is as it is, and he has not shown any ability to acknowledge that he bears significant responsibility for that. His arguments that it would be harder for him to spend time with the children if they were living in [European country] than if they were living in England were not sustainable. The children still have a strong connection to England and previously when the father was available to spend time with the children in England the mother worked hard to make sure that happened. In time, and providing the relationship has been sufficiently repaired, there is no practical reason why the children could not go on holiday with the father to [country name redacted] or other European destinations. There is no reason why the father could not come to [European city] to see his children.

198. The children's habitual residence will change and that will bring questions over enforcement of any orders. The parents have agreed to abide by any orders that are made in this jurisdiction and to share the judgment and any orders with [European country's] social work or other professionals. Given the children and their mother have now been living in [European country] for two and a half years, it would be better that future applications concerning the children are made in that jurisdiction.

199. I have had regard to the evidence of all parties on this issue and pay close attention to the guardian's view confirmed in her oral evidence:

'it is clear to me that the children are happy and settled in their mother's care and she is able to meet their day to day needs. N and O are clear that they wish to remain living in [European country] and it is difficult for me to see a scenario in which I would be recommending a change in their living arrangements.'

200. Having regard to all the circumstances, the welfare checklist and bearing in mind that the welfare of the children is my paramount consideration, I consider that it is overwhelmingly in the children's welfare for the children to be told now that they will remain living in [European country] with their mother, that they will remain at the schools they attend and will continue to receive support from professionals with whom they now have established relationships, and that [European country] will be their settled home. I will give permission to the mother to relocate to [European country] with the children.

Applications for child arrangements orders

201. Resolving the question of where the children will live still leaves the question of the child arrangements order outstanding.

202. The guardian set out the children's current wishes and feelings on the issue of contact with their father in her final analysis. Despite their views, and in the absence of any findings of abuse, the guardian cannot see any significant safeguarding concern that should restrict the children from spending unsupervised time with their father. However, the guardian acknowledges that the process of reintroducing contact, if no abuse findings are

made, is still likely to be a challenging task. There needs to be an agreed narrative between the parents and professionals to help the family repair. The guardian also explained in her oral evidence that she can of course understand how confusing it will be, particularly for O, if on the one hand he believes the abuse has happened to him, but on the other hand he is being told he should see his father. It was acknowledged that there may be benefits, in this sense, in further work being done with a view to re-establishing contact. It is also recognised, however, that the children are likely to continue to feel divided and stressed if proceedings continue with further or other assessments being ordered.

203. As I understand the mother's position, she is not against the idea of the children having contact with their father in principle, given that the Court has not made findings against him.
204. Some work will now need to be done with the children to understand the findings of the Court and to help them re-establish their relationship with their father, for him to learn a different, more positive way of engaging with them, and for each of the parents to try and learn not to be so relentlessly negative about the other. This will require a substantial change in attitude and approach on both sides and a commitment to doing whatever work may be required to repair relationships.
205. I would agree with the guardian that as a general proposition the father will need to take some responsibility, show the children he understands what they are saying and that he is committed to making changes for the better.
206. The mother too will need support to show the children that she trusts the father to take care of them and that the children would not be regarded by her as disloyal or betraying her if they sought a relationship with their father and their South American family.
207. Thought will need to be given about how to manage the parental dynamic so that the children are not exposed to conflict between their parents and that while the children's voices are heard, the children do not have to take on responsibility for making their own arrangements with their father at risk of being drawn further into the parental dispute.
208. [European country's] social services recommend therapy for N now, and O also, being careful to ensure he is ready for the same. It is said to be generic therapy targeted at the children's holistic emotional needs. I would agree that this therapy should now be allowed to start.
209. The guardian also considers it necessary for O to be assessed to determine if he has a diagnosis of autism. Both parents seemed to agree to this assessment in the course of their oral evidence.
210. When I hand judgment down, I will hear submissions about how all this may best be achieved, how contact could be reintroduced, whether final orders can be made in respect of all the applications before the Court and deal with any other matters arising.

HHJ Joanna Vincent

Family Court, Oxford

Draft sent by email: 10 December 2020

Approved judgment handed down: 17 December 2020

Postscript

The case concluded without a contested welfare hearing and no further orders on the father's application for child arrangements orders. The Court refused an application for the proceedings to be transferred 'live' to the [European country] where the children are now habitually resident. The parties had agreed in principle that the children should have a relationship with their father, indirect contact was taking place, and both were working with local agencies with the aim of re-establishing the relationship between the children and the father.

If this work ultimately does not prove successful, or the parents continue their dispute, then they must consider at that stage the best means of resolving of dispute. The Court did not consider it appropriate in all the circumstances to send the case to the Courts of the [European country] where there is currently no live dispute as to child arrangements. It is in the children's welfare for these long proceedings to come to an end.