

Case No: SN21P00685  
**IN THE FAMILY COURT**

Date: 21 March 2024

**Before :**

**RECORDER REED KC**

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**Between :**

**Mr K (FATHER)**

**Applicant**

**- and -**

**Ms P (MOTHER)**

**Respondent**

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Samuel Davis for the **Applicant**  
Edward Counsell for the **Respondent**

Hearing dates: 18-22 March 2024

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**ANONYMISED JUDGMENT**

**Recorder REED KC :**

1. This is my judgment in respect of a much delayed fact finding exercise concerning allegations made by the Respondent concerning the Applicant. This version of the judgment has been anonymised and certain points of detail redacted or blurred to preserve anonymity.
2. The parties are the parents of Ellie (not her real name), who is now 3 years old. Both parties are represented by counsel at this hearing – the father through Mr Davis by direct access, and the mother by Mr Counsell, instructed through solicitors. I am very grateful for their assistance, which has made a challenging hearing more manageable. Each of them has fully put their client’s case and ensured that I fully understand the basis of it.
3. The allegations date mainly from the period shortly prior to the parties’ separation in June 2021, when Ellie was a baby. As a result of the allegations, and the continuing pending status of them in these proceedings, Ellie has not seen her father since that time. The allegations made have included domestic abuse (in particular through sexually abusive behaviour towards the mother), and allegations of sexually inappropriate or abusive behaviour by the father towards Ellie, then a small baby, the latter said to be evidenced by a series of covertly recorded videos.

## The procedural history

4. Following the conclusion of a police investigation, which resulted in no further action, the father issued an application for contact in December 2021. Within these proceedings the mother relied upon allegations about the father's sexual and other conduct towards her and Ellie. Recorder Bradberry conducted a fact-finding hearing in September 2022, which concluded with her making no findings on the mother's allegations. A process was set in train to commence contact, but before that could happen the mother successfully appealed the decision of Recorder Bradberry, essentially on grounds that PD3AA had not be properly complied with (See judgment of Theis J, *D v R* [2023] EWHC 406 (Fam)). There were two primary errors – firstly that the parties had been able to see one another during their evidence, and secondly that the intimate videos relied upon had been played during the mother's evidence. Either or both of those factors potentially diminished the mother's capacity to give her best evidence, such that the order was set aside and a re-hearing of the fact finding directed. This is – eventually - that re-hearing.
5. In very brief outline the substantial delay is accounted for as follows:
  - i) The mother instructed fresh solicitors to deal with the appeal. The appeal concluded on 24 February 2023 and, in consequence of that appeal, in March 2023, with the assistance of those second solicitors, the mother's schedule of allegations was re-drafted and a fresh round of evidence prepared. The matter was then case managed by HHJ Wright, who ruled that some of the more historic allegations would not be determined by the court, and the time estimate was consequently reduced. That decision was not appealed. The video evidence submitted by the mother along with her evidence in March 2023 was not the same as that considered at the original hearing in September 2022. It appears that this was in part because the mother's second set of solicitors did not have access to the original exhibits because of difficulties transferring the file. I will say more about that later.
  - ii) In July 2023, for reasons that are not entirely clear, but which probably relate to ill health, neither parties' instructed advocate attended the hearing. The hearing was not effective. Consequently, the hearing was adjourned until September 2023 and listed before me for 2 days.
  - iii) Regrettably that hearing was not effective. Anxious on his client's behalf to avoid a further appeal Mr Davis, appearing for the first time, drew the court's attention to the guidance given by Knowles J on intimate images in *M (A Child : Private Law Children Proceedings: Case Management: Intimate Images)* [2022] EWHC 986, which had not been applied in this case. It was at this point that the discrepancies in the various batches of video evidence emerged.
  - iv) Considerable time was wasted ensuring that both advocates had the same videos, trying to reconcile the videos available to the court with those described in the parties various statements, to ensure that all parties had seen all the videos and to identify whether there were any issues with their admission. It took the majority of the first day to assemble what are now three batches of videos, comprising a total of 29 clips, some a few seconds long and some several minutes. The first batch included six exhibits filed with the court by the mother's first solicitors on a CD, which had been securely filed by the court. The second batch of 9 videos were filed and served in March 2023, by droplink, which were held on the court's electronic file. No comparison of those two sets of videos was carried out until September 2023 when I could not make the electronic files I had (now known to be batch 2) correspond to what was referred to in the 2022 statements. When filed, neither the mother's statement nor the mother's solicitors identified that these March 2023 exhibits were a

different set of exhibits as opposed to duplicates of previously filed material (though they were obviously more numerous). The third batch comprised 11 videos filed and served in advance of the September 2023 hearing. Many of the second and third batch videos are duplicates or shortened or modified versions of the original four exhibits, but some are simply new material not produced on the first attempt at a fact-finding hearing. They are all helpfully itemised in a schedule prepared by Mr Davis and the mother's previous counsel.

- v) In addition, the mother's advocate had been provided with a different bundle to the court, the mother's solicitors had felt unable to provide a copy of the bundle to the father's counsel due to a perceived difficulty with passing on police disclosure, and the mother (who was appearing remotely) had no bundle at all. Finally, the bundle omitted the order made by HHJ Wright limiting the allegations to be considered and the parties had different expectations of the scope of the hearing. By the time all of these matters had been identified and dealt with there was simply insufficient time to proceed. I made detailed directions for the matter to be relisted at the earliest opportunity before myself for four days in December, with the dates being agreed at court in the presence of the parties. Given that there were by now live issues about manipulation of videos pursued by the father, I took the pragmatic decision to admit all the videos in order that comparison could take place.
  - vi) An application by the mother to adjourn the December 2023 hearing due to childcare difficulties was refused. In an attempt to avoid further delay I did reluctantly permit the mother to be excused on days 3 and 4 once her evidence had been completed, providing she was regularly available to receive updates by telephone about the evidence and to refresh her instructions. My efforts to keep the case on track were doomed nonetheless, because shortly before the hearing in December the parties were notified of an application by the mother's solicitors to come off record because their relationship with their client had broken down.
  - vii) On day 1 of the December fixture then, the court had little option but to accede to the request to permit the mother's second set of solicitors to come off record, with the inevitable consequence that once again the fact-finding hearing had to be adjourned. Once again, I made clear and detailed case management directions to ensure that the hearing would be effective this week.
  - viii) For reasons which once again are not clear, the directions I made have not all been complied with, but nonetheless the hearing has been able to proceed. I am grateful for the assistance of counsel, which has made that possible.
6. It has therefore taken over two years for the court to decide whether or not the mother's allegations have been proved and to begin to consider whether or not Ellie should resume her relationship with her father or whether, as the mother contends, she should not have such a relationship at all.

### **The factual background**

7. The parties are in their thirties. Ellie is their only child. She was a lockdown baby. Before her birth [redacted]. The parties disagree on whether she was pressurised [redacted]. During the relationship the mother worked and continues to work in the online sex industry, and posted images and videos of herself online, sometimes those videos included videos of her engaged in sexual activity with the father. The father says this was at the mother's instigation, the mother says quite the reverse. The father worked and works full time in IT, at the relevant time this was work from home. Whilst he worked the mother cared for Ellie. The father would regularly care for Ellie when not working. In particular, in the evenings the father

would often care for Ellie and give her a bottle whilst the mother had a bath. It is accepted that the mother struggled in her relationship with the paternal grandmother in particular, and the father says the mother had isolated herself from his family and friendship group more widely than that for some time before Ellie was born.

8. Ellie suffered from reflux and was prescribed Omeprazole. Both parties describe Ellie as a quiet baby, though accept that she would whinge, as babies do.
9. At various points after Ellie's birth the mother sought advice anonymously from online groups, about matters concerned with Ellie, about her relationship and the father's behaviour. On 9 June she sought advice about some genital redness or nappy rash. At least one response queried sexual abuse. The mother also sought guidance about whether some of the father's behaviour was disrespectful in probably February or March 2021 (Ellie is said to be 4 months old). She did not at this stage make any posts suggesting the father was being abusive or asking if his conduct was abusive.
10. Not mentioned by the parties in their evidence but apparent from the father's police interview is the fact that the relationship had by the middle of June been in real difficulty to the extent that the mother had asked the father to leave so she could have some space and he had stayed with his parents for a couple of nights before returning on around 15 June. The mother wasn't asked about this, but it is in line with the posts expressing unhappiness about what she perceived as the father's lack of interest, lack of respect and her disappointment in him.
11. At some point that month the mother purchased one, and then a second, covert camera with which to record the father as he cared for Ellie. The cameras were concealed in the mother's makeup bag which was variously placed at the foot of the sofa or beside the bed. The videos produced date between 9-21 June 2021. Before this she had already begun making covert recordings of the father using her phone, and it is apparent from her online posts that she had developed an anxiety about the father doing 'something' to hurt Ellie or to make her cry.
12. Just before 11pm on 21 Jun 2021 the police were called by a person abroad who had seen the mother's posts description of video footage that she had posted on an online mum's group earlier that day, asking for advice. The caller stated that the mother had posted about having a young baby, asking for advice, saying that  
  
'she has located a video on home cameras that cause her some concern. The father can be seen playing with the child, the father is naked from the waist down with his penis out. The father then places the daughter on his lap over his penis and continues to play with her, consistently placing her over his penis. When he then takes the child away the father has an erection... the rp has also stated that about two/three weeks ago [M] posted videos showing the father behaving aggressively towards the child and has also stated previously that whenever the father tries to change the daughters nappy she will scream 'bloody murder' the female has said on the site that she has shown her family and friends this video (but not the part where the father has an erection) and that they have all told her she is blowing it out of proportion and just to focus on her marriage.'
13. Given the description as relayed there (we do not have the mother's original social media post), it is perhaps unsurprising that someone reading the post called the police. As the post was made via an online group rather than anonymously it was easy for the police to track the family down. The following morning the police attended the home, Mr K was arrested, a s47 investigation commenced and child protection processes initiated. This marked the end of the relationship and the last time Mr K saw his daughter. Ultimately, following a single assessment, once social services were satisfied the mother was acting protectively the case was stepped down.

## The live allegations

14. The revised schedule of allegations as approved by HHJ Wright now contains the following allegations:
- i) Sexual abuse when 26 weeks pregnant without consent, involving the Respondent holding down the mother and being aggressive and causing bleeding,
  - ii) Touching and instigating sexual acts and intercourse in the presence of the baby without the mother's consent,
  - iii) Financial abuse
    - a) by making threats to make the mother and child homeless if she did not pay rent
    - b) by cancelling the internet bill (to stop her earning income)
    - c) by being dishonest to the CMS
    - d) by changing bills into her name after she had left the property in an attempt to cause financial hardship
    - e) by calling the police and making false allegations about her removing items from the property when leaving
    - f) by attempting to make the mother solely responsible for all the contact costs
  - iv) sexual allegations concerning the child
    - a) the applicant was sexually aroused by the child and continued placing her on his lap for his own sexual gratification, or in the alternative he continued to physically interact with the child despite knowing that he was sexually aroused
    - b) inappropriately touching on around the child's genitals for his own sexual gratification
  - v) other allegations concerning the child
    - a) squeezed the child's foot causing significant pain
    - b) child was in significant distress when alone with the father
  - vi) emotional abuse and lack of commitment since separation
    - a) contacting mother and family on minimal occasions to obtain any update
    - b) not taking up an opportunity of contact in a contact centre in Dec 22 on the basis of cost
    - c) not accepting an offer in Dec 22 to send a gift and card.
15. All of the allegations are denied, and although some of the allegations are denied on the basis that the act described simply did not take place, other allegations are denied on the basis that the admitted act was not capable of amounting to abuse or was not motivated by an intention

to abuse or to control. There is therefore a significant element of interpretation of the significance of events the occurrence of which is not in fact controversial.

16. Within the papers there are a raft of other allegations that the mother has made at one time or another, which are either not pursued or were struck off the schedule, or which are set out in evidence but which the schedule inadequately captures. In the latter category are the mothers' allegations of emotional harm which are set out in her statement of 27 March 2023 but which are neither particularised nor referenced in the schedule filed on the same date.
17. The father for his part seeks the following findings in light of events in September 2023:
  - i) The Mother tried to change the media evidence the Court would use to determine the facts in these proceedings without permission following her successful appeal, and
  - ii) Cropped and manipulated the new media evidence without permission to try and change the nature of the same, and to increase her chances of obtaining different factual determinations, and
  - iii) Did not put the Father on notice that she was (a) cropping or manipulating the media evidence in the case or (b) that she was changing the media evidence in the case.

## Law

18. The law is well known and applicable to this fact finding exercise as it is to any other.
19. If a fact is to be proved the law operates a binary system. It is open to the Court to find on the balance of probabilities either that an allegation is true or that an allegation is false. As Lord Hoffman observed in *Re B* [2005] UKHL 35:

‘If a legal rule requires the facts to be proved a judge must decide whether or not it happened. There is no room for a finding that it might have happened; the law operates a binary system in which the only values are nought and one’.
20. The burden of proving a fact is on the party asserting that fact.
21. Findings of fact must be based on evidence not speculation. As Munby LJ (as he then was) observed in *Re A (Fact Finding: Disputed findings)* [2011] 1 FLR 1817 “it is an elementary position that findings of fact must be based on evidence, including inferences that can be properly drawn from evidence and not suspicion or speculation”. The court’s task is to make findings based on an overall assessment of all the available evidence. Butler-Sloss P in *Re T* [2004] 2 FLR 838 observed:

‘Evidence cannot be evaluated and assessed separately in separate compartments. A judge in these difficult cases must have regard 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 by the local authority has been made out to the appropriate standard of proof.’
22. That guidance is particularly important in this case where I have to evaluate the significance of short video clips extracted from a much bigger evidential picture, and where there are a series of witness statements made over a number of years, set against contemporaneous professional records which do not always correspond.
23. It is also important given the number of video exhibits I have had to view and analyse. I have considered all the videos separately and as part of a package, and as one piece of a bigger

puzzle. I have had particular regard to the fact that those clips I have are a highly selective subset which may or may not be representative given that the mother has produced those items which she says best support her allegations rather than those which are benign. These clips are presented by the mother as the high point in terms of evidencing her suspicions and allegations.

24. I have set out the evidence and my analysis in this judgment in what seems at the end of my deliberations to be a logical order for the reader, but that does not mean I have considered matters in that order or in a linear way. I have considered how each pocket of evidence on the various issues might interplay with or inform my conclusions on other aspects of the evidence or allegations, before reaching individual and overall conclusions. The sequence in which I tackle the issues is presentational rather than substantive.
25. 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.’
26. In this case, where allegations made by the mother have been effective in entirely stymying a child’s relationship with her father for approaching three years, and where if proved they have potential to continue to have that effect into the future, the stakes are very high for both parents, and so I approach the evidence of both parents with that in mind. They are each heavily invested in ensuring I deliver the ‘right’ decision.
27. The evidence of the parents is of the utmost importance. It is essential that the court forms a clear assessment of their credibility and reliability. They must have the fullest opportunity to take part in the hearing and the court is likely to place considerable weight on the evidence and the impression it forms of them (*Re W and another (Nonaccidental Injury)* [2003] FCR 346). After the difficulties to date I considered it was essential that the court had adequate time to deal with the factual allegations in this case once and for all, and to allow the parents to properly present their best evidence. In those circumstances the case has benefited from a generous time estimate.
28. If I conclude that a party has not told the truth about an issue or event I must consider the reason for that dishonesty before reaching a view about what it tells me about the reliability of their evidence as a whole. There are lots of reasons why witnesses lie, and a dishonest witness is not necessarily dishonest for all purposes. In particular in this case I have had to ask myself why the father might have been reluctant to acknowledge that he had an erection whilst caring for the child, and why the father’s sexual conduct towards her which she has subsequently alleged. In both cases there are multiple potential explanations.
29. Additionally, a witness may give honest but mistaken or inaccurate evidence through the ordinary process of memory failure or story creep. That is obviously a risk given the procedural history of this case. Both parents have given evidence before about these issues and have made many statements over a period of almost three years.
30. I remind myself of the definitions of the various types of domestic abuse described in the Domestic Abuse Act 2021 and replicated in Practice Direction 12J, and of the guidance in *H-N And Others (Children) (Domestic Abuse: Finding of Fact Hearings)* [2021] EWCA Civ 448, [2021] 2 FLR 1116 that

‘...not all directive, assertive, stubborn or selfish behaviour, will be ‘abuse’ in the context of proceedings concerning the welfare of a child; much will turn on the intention of the perpetrator of the alleged abuse and on the harmful impact of the behaviour. We would endorse the approach taken by Peter Jackson LJ in *Re L (Relocation: Second Appeal)* [2017] EWCA Civ 2121 (paragraph 61):

“Few relationships lack instances of bad behaviour on the part of one or both parties at some time and it is a rare family case that does not contain complaints by one party against the other, and often complaints are made by both. Yet not all such behaviour will amount to ‘domestic abuse’, where ‘coercive behaviour’ is defined as behaviour that is ‘used to harm, punish, or frighten the victim...’ and ‘controlling behaviour’ as behaviour ‘designed to make a person subordinate...’ In cases where the alleged behaviour does not have this character it is likely to be unnecessary and disproportionate for detailed findings of fact to be made about the complaints; indeed, in such cases it will not be in the interests of the child or of justice for the court to allow itself to become another battleground for adult conflict.”

31. In this case I have borne particularly in mind that passage from *H-N*, because a number of the allegations made are said by the father not to be properly described as abusive even if they took place as described, and so I have had to consider whether or not that characterisation of the behaviour complained of is appropriate. I have been mindful when considering the individual complaints not to consider them only in isolation, but to consider how they fit into the overall picture and patterns of behaviour and of impact.

### **Intimate images**

32. The admission and management of intimate images requires particular care: *M (A Child : Private Law Children Proceedings: Case Management: Intimate Images)* [2022] EWHC 986. In this case the court permitted the mother to rely upon the video images in batch 1 at the first fact finding hearing.
33. There was no direction explicitly giving permission for the mother to rely upon the other material that was before the court at the September hearing or dealing with how the admitted material should be handled. Not least because of the fact that the appeal judgment made explicit reference to this guidance, the mother’s solicitors at the time ought to have made a formal application before filing and serving the second (and third) batch of video evidence. They did not do so and the material filed in March did not make clear that new intimate material was contained.
34. Those were matters I therefore case managed at the September hearings. Ultimately, in view of the fact that the father sought findings as to the manipulation and sequential production of the various batches of videos it was necessary to admit all of those videos. In December, as the mother’s solicitors were withdrawing. I was told that the mother sought to adduce yet further material. A time limited direction permitting the mother to apply for permission to rely on yet further material once her third set of solicitors were on board was not taken up by her. It was only in the course of her oral evidence this week that it became clear that the mother retains not just clips but the full set of original recordings on an app on her phone.

### **Participation directions**

35. As a part of my general duty to the parties pursuant to Art 6 ECHR I must manage the proceedings fairly. Specifically, because the mother is deemed by virtue of the Domestic Abuse Act 2021 to be a vulnerable witness, the court’s duties pursuant to FPR Part 3A and PD3AA are triggered. I conducted a ground rules hearing as required at the September 2023 hearing and monitored and adjusted the participation directions continuously throughout the hearing. The participation directions I made were :

- i) The mother was permitted to attend from home by way of CVP,
  - ii) The court provided screens that prevented the father and mother from being able to see each other during the hearing,
  - iii) The video evidence in this case was viewed by both parties before they started to give their evidence. That took place on day 1. Where an advocate wished to ask the mother questions about an intimate video, this was flagged before the question was asked and the court adjourned to allow the mother to re-watch the specific video in question before the question was put. A similar process was adopted with the father's evidence, modified because he was in person and both parties were content for the videos to be played where necessary whilst the court was sitting, but with the mother's camera turned away temporarily so that she could not see the material.
  - iv) I initially directed that two topics were to be considered 'off limits' for the purposes of cross examination of the mother – [an issue which is not material to this judgment and which is redacted], and the mother's line of work – giving permission for those restrictions to be revisited on day 1. I acceded to the father's request to review the latter restriction in light of the mother's line of work being raised by her in the context of allegations of financial and sexual abuse, and concluded that it was appropriate to allow some questioning on this topic in order to enable the father to fairly deal with the allegations against him.
  - v) I allowed breaks at appropriate points, either due to tiredness or distress.
36. The mother had been given permission to attend with a support worker present if she wished. My order explicitly provided that if the mother declined the option of having a professional support worker with her during the next hearing, she was to confirm in writing in advance of the hearing that she does not want a support worker with her that she believes that this will not limit or adversely effect her evidence. The mother did not do so but at my request specifically confirmed at the outset of the hearing that she did not object to continuing without a support worker present.
37. In order to facilitate the ground rules relating to intimate images the mother had been directed to identify which of the images she asserted were 'intimate' in the schedule. She did not do so. Again, it is unclear why not. The mother asserted that videos where the child and father could not be seen but where the child could be heard crying in another room were 'intimate' because the mother found them distressing to listen to.
38. Material which is subjectively distressing is distinct from intimate material. My directions concerning the practical management of the videos were intended to address the issues arising from intimate material in accordance with *M (A Child: Private Law Children Proceedings: Case Management: Intimate Images)* [2022] EWHC 986, where 'intimate image' is helpfully defined at paragraph 47:

For the sake of clarity, when I use the term "*intimate image*" in the context of private law proceedings, I am describing an image of a person, whether an adult or a child, naked or partially naked. Such an image can include part of a person's body, clothed or unclothed, such as breasts, genitalia or the anus, which are generally regarded as private. Intimate images include those of a person engaged in what is normally regarded as private behaviour such as washing, urinating, masturbating or engaged in other sexual acts either alone or with another being. The images with which I am concerned are both still and moving images. None of the parties sought to define what an intimate image was but it struck me that this might be helpful for courts and practitioners. In offering my suggested definition, I have deliberately not made

reference to definitions contained in the criminal law as those did not seem to me to meet the needs of the family court.’

39. In my view some but not all of the material produced by the mother was ‘intimate’. The few videos which it is said show the father in a state of undress, aroused or engaging in potentially sexually inappropriate behaviour are properly to be treated as intimate and to be handled in a particularly careful way, partly because they were said to be distressing for the mother to watch as she believes them to evidence sexual abuse of her daughter, and partly because they are videos of the father’s naked genitals taken without his knowledge and consent and the playing of them is likely to impact upon him as the subject of them.
40. Those videos which simply record a child crying off screen and which might prompt distress on the part of the mother did not need to be viewed ‘off screen’ in the same way, and nor was it necessary or proportionate to adopt this frankly cumbersome way of proceeding for the non-intimate material. Instead, I directed that, as with any distressing evidence or line of questioning, I would proactively case manage, monitor for distress, and afford or require breaks when necessary and appropriate. I monitored distress levels closely throughout the hearing. In fact the mother remained composed throughout, as did the father.

### **The evidence I heard, read and viewed**

41. I have watched and rewatched all of the videos several times, including with sound on. I have read each of the parties’ statements and schedules / responses, the police disclosure and the social services disclosure.
42. I have intentionally not read the judgment of Recorder Bradberry. I have no transcripts of the evidence given during that fact finding hearing. Given the appeal conclusions it would be dangerous to place reliance upon the evidence given by the mother at that hearing.
43. I have heard each parent give evidence at length.
44. The police and social services disclosure give me a considerable amount of information about what was being said by the mother in the period after the videos were made, and about what she was telling professionals in the immediate aftermath. There is otherwise a limited amount of contemporaneous evidence, apart from the videos.
45. The facts that there has been a previous fact finding hearing, that there have been previous nil findings and that there has been a successful appeal have not influenced my approach to this case in any way (save that I have inevitably taken great care to ensure fair and proper participation in light of vulnerability). I have adopted a clean sheet approach and have thoroughly scrutinised the evidence, appreciating the profound importance for both Ellie and her parents of establishing the facts once and for all.
46. Below I give my impression of the evidence of each parent and then analyse the evidence in order to reach conclusions on it. This judgment is already far too long, so I have deliberately not set out each point of evidence I have heard, but the fact that something is omitted from this judgment does not mean I have not considered it.

### **The mother’s evidence**

47. The detail and extent of the mother’s allegations have evolved over time. Victims of abuse often do not bring forward allegations in one fell swoop straight away for a variety of reasons, but the inconsistencies in the mother’s evidence are of a different order. Even after the mother is able and willing to articulate her allegations of sexually abusive behaviour by the father towards her, the descriptions of what has taken place and the nature of the sexual abuse have

been inconsistent, often incompatible with one another and lacking detail. Rather than adding clarity or explaining those inconsistencies the mother's oral evidence added to them.

48. The mother gave evidence over a number of hours and spread across two days. She was at no point visibly distressed and she tended to speak softly and somewhat slowly and to trail off her sentences such that it was easy to inadvertently interrupt her, thinking she had finished her answer, when in fact she was still formulating the end of a sentence. Although she was able to disagree with the questions posed by counsel for the father she was not a confrontational witness. She was not forceful in getting her point across, in that she let herself be interrupted without asking to finish, and never interrupted counsel - though she was overall able to articulate and repeat her clearly held views and beliefs when space was made for her to do so. She did not ask for breaks but when she appeared tired or less focused or had been answering questions for more than an hour I imposed them.
49. In many respects the mother frankly accepted the limitations of the video evidence, and some videos were abandoned as material relied upon by her, as she accepted they did not evidence the conduct complained of. But in respect of the 'main' video, Exhibit 3, the mother was clear in her assertion that the video showed the father behaving inappropriately and obtaining sexual gratification from Ellie.
50. The mother in my view found it difficult to keep straight what she had said when, and what the various clips showed. To a degree this is understandable given the passage of time, the number of statements filed, the fact that this is a rehearing and the fact that the mother has had now three sets of solicitors. The mother had a tendency to blame her solicitors for muddles in her statement, for example where exhibits did not match their descriptions because they had been applied to the wrong clip. I have formed the view, based on my experience of managing this case to date, that much of the confusion is borne of a combination of insufficient attention to detail by both the mother and her former solicitors. It is regrettable that the confusion has persisted for so long, and it has made my analysis more laborious, but overall I did not form the view that the mother was being deliberately misleading or underhand in the way she selected and presented her evidence. That is not to say that it was necessarily reliable, but I did not think that the swapping in and out of the batches of clips was done in an attempt to obfuscate or mislead.
51. The mother spoke at length about the father's various perceived failings and abusive behaviours. There was a strong sense that there was nothing that the father could do that would be good enough. He was criticised both for contacting the mother too much and for not making enough of an effort. He was criticised for not giving her advance warning of proposals concerning financial matters, but also criticised for threatening her when he tried to discuss matters.
52. My overarching impression of the mother having heard her evidence, having read the materials and considered the detail of her complaints, is that the mother is lacking in self confidence, sensitive to criticism, anxious and avoidant of conflict. I think that she is highly vulnerable to the influence of others and to overinterpreting or misinterpreting events and behaviours, and of evolving a narrative over time which does not reflect reality. This impression is based on a number of factors including:
  - i) The mother's manner of responding in the witness box as described above,
  - ii) The father's account of the mother's tendency to fall out with people and then cut them off (which included the father's family, friends and their partners), which is in part corroborated by communications between the mother and the paternal grandmother and is reflected in the mother's behaviour towards the father post-separation,

- iii) The pattern of seeking advice and not being sure of her own beliefs as evidenced in her own online posts, the records of communication with professionals and her own statements,
  - iv) A comparison of the video evidence and the mother's descriptions of it,
  - v) A comparison between the father's account and the mother's description of the same event,
  - vi) The notable shifts over time in the mother's accounts, which go beyond the ordinary inconsistency one would expect to see due to trauma, repetition or the ordinary fallibility of memory.
53. The mothers' own video evidence and her own descriptions of what they are said to show or prove are powerful evidence that her perception of events is distorted by her own anxieties, certainly where Ellie is concerned.

### **The father's evidence**

54. My impression of the father was that he was a relatively straightforward witness. He was calm and polite, and whilst he was critical of the mother, he made his points in a measured way and without unkindness. He generally answered questions directly without deflecting, although notably it was only in oral evidence that he directly accepted having a 'slightly semi-erect' penis during a part of one of the video clips. That is not something he had acknowledged at all, as far as I can tell, before this week (he may have said it in the first fact finding hearing, but I do not have that judgment or any transcripts). I deal with this more below. Overall, notwithstanding this important omission, I thought the father was a broadly honest witness.
55. The father gave the impression of being somewhat bemused by the mothers' responses at times. He gave a credible response to the complaint that he had not done anything special to celebrate Mother's Day during the pregnancy on the basis that he simply didn't realise people did that before the baby was born. It was clear I thought that he had genuinely not appreciated this was something the mother would be expecting, and that he had not anticipated that she would be upset. When dealing with the related issue of his ungrateful response to the mother's efforts on Father's Day (again before the baby was born) the impression was that the significance of these events for the mother and her upset at his not being bothered by them had not really registered with him – or that perhaps he was simply at a loss as to how to deal with them. The father's police interview and his oral evidence each articulate the strain upon the relationship that had arisen by the time of Ellie's birth as a result of the mother's pattern of falling out with the father's family, friends and their girlfriends, and of how torn he felt trying to support his wife whilst maintaining his relationships with family.
56. Save on the precise way in which the father responded to the allegations he had an erect penis, the father's accounts of events in response to question and challenge on most topics were coherent and consistent with the video evidence and with the father's prior statements.

### **Analysis**

57. It is necessary to set the covert video footage in its chronological position. Having reviewed all the footage, it is not necessary to mention each and every video or clip produced, but it is necessary to consider some of those abandoned on the morning of trial, because they give some insight into the mother's perception.

58. Prior to the purchase of the covert cameras (although the precise dates are not provided) the mother made a series of covert recordings of the father with Ellie in the home, using her mobile phone. There are 3 short videos before the court. Each begins on the stairs in the home and Ellie and her father can be heard in the background, as the mother hovers on the stairs. In one of the three videos the father can be briefly seen at the end of the clip as the mother climbs the stairs and encounters him moving from one room to another. Ellie is not seen in any of the clips. The mother says these clips support the contention that Ellie was significantly distressed in the father's care and that he was doing something to make her significantly distressed. I have listened to these clips. Ellie is not significantly distressed. All I can hear is entirely normal baby noises and parental baby talk responses, probably as the father is changing Ellie's nappy.
59. The mother confirmed in her evidence that she still retained the full recordings made on the covert cameras, and they were accessible to her on the app on her phone. This much was apparent from the repeated production of new material at different points. It is important to recall that the clips the court has available to it are those which represent, from the mother's perspective, the best evidence she has of the father doing inappropriate things to Ellie. It is clear from the mother's evidence that she was regularly recording the father with Ellie in the bedroom and on the sofa from about 9 June until 21 June. What has been produced is a few seconds or a couple of minutes here and there, sometimes zoomed right in, where the mother considers the evidence is probative of her beliefs. The timestamps make clear that the recording device was running continuously for longer periods than the mother has produced clips for. There is a substantial amount of further video footage that presumably shows nothing of concern but which the court does not have available to it.
60. The first videos using the concealed cameras date from 9 June and have been said to show non-sexual inappropriate conduct, including squeezing Ellie's foot to make her cry out, and spitting on a toy before lunging at her.
61. Exhibit 1 is the only one of the videos from this period which was produced at the point of the original fact finding. This video was exhibited to the mother's first statement and asserted to show the father spitting on a toy and 'lunging' at Ellie. The mother began her evidence by confirming she no longer relied upon this video, accepting that the assertion about lunging was not shown. The mother's explanation was that her former solicitors had muddled up what was shown in one video with what was shown in another. The mother did maintain however that 'it did look like his beard went towards the toy and there seemed to be a small trail or something, I appreciate not everybody can see it its open to interpretation'. The father's face is not visible within the frame. It does not show the father lunging – he is reclining on the sofa throughout. It may be that the mother has seen and is recalling the contents of a longer clip that she has not produced, but the evidence produced simply does not evidence her assertion. There is no beard, no trail of spit and no lunging.
62. There are however three clips of note from 11 June, all of which have been produced in 2023.
- i) Clip 21 (from the Sept 23 batch) is a clip of just over a minute long screen grabbed by the mother from original footage which shows only a cropped close up of Ellie's feet on the sofa at 3.34pm. The father can be seen gently holding Ellie's right foot for the first half of the clip, and his thumb can be seen stroking her foot. Ellie cannot be heard to be in distress or trying or seen to move her foot away from him, in fact she is making contented noises.
  - ii) Clip 13 (batch 2 produced in Mar 23) shows the father and Ellie in the same position on the sofa at 4.08pm. There is a brief moment when Ellie does look as if she may not like having her foot held or played with because she pulls a face and whinges. She does not cry.

- iii) Clip 25 – produced only in Sept 23 is filmed at 4.20pm and features the same toy and does show the father at one point leaning forwards towards Ellie (not ‘lunging’). Ellie is not distressed. The mother was cross examined about this clip and her assertion that it showed the child in pain. She said ‘I know my child at that age, and she is screwing up her face. It may not be clear but is just an interpretation’. It was put to her that the clip doesn’t show the father clenching or closing his hand over the foot with force, the mother accepted that ‘it is hard to tell’ but that it was ‘open to interpretation’. She said that the child looked ‘not happy in the moment’ and had an expression on her face. It was put to the mother that the child makes a face momentarily and then carries on playing with a ball.
63. In both the latter clips the father is attempting to entertain and distract a mildly whingy child by making cooing noises, by wiggling / her toes and feet and by showing various toys that are placed around her on the sofa. Ellie seems to be distracted at points by the tv which can be heard in the background. Taken together it seems highly likely that the father was caring for and entertaining Ellie on the sofa between about 3.30 and 4.20pm continuously. It is striking that these were clips the mother selected from what must be a longer continuous recording in support of her claim of inappropriate behaviour when they show a sustained period of low-key care during which the child is in my view behaving entirely normally. Rather than supporting a concern about inappropriate behaviour they show the father being loving and responsive.
64. These videos are said to support allegations that the father
- a) squeezed the child’s foot causing significant pain
  - b) the child was in significant distress when alone with the father.
65. They do not support either proposition. They do not show significant pain. They do not show significant distress. There is no other evidence to support the mother’s contention or belief. If there was clear evidence in the remainder of the video footage of these things the mother could and would have produced it.
66. It was suggested to me on behalf of the mother that in respect of these videos alleged to show physical harm or pain and distress, I could effectively add what I could see on the video to the mother’s belief about what was happening unseen, and the father’s lack of credibility in order to draw an inference of the behaviour contended for. I do not accept that would be a proper approach to the evidence. It would come perilously close to a reversal of the burden of proof. The father does not have to prove his behaviour was innocent.
67. The videos do not show squeezing or pain. The mother’s belief does not alter that. I do not think that the father is a generally unreliable witness. The father’s account is entirely consistent with what can be seen in the videos. It is not consistent with the mother’s description. The evidence is nowhere near sufficient to establish on balance of probabilities that the mother’s allegations are correct.
68. On Saturday 19 Jun 2021 at 8.16pm the covert cameras captured footage of the father downstairs after his evening shower, with Ellie. He is wearing a dressing gown, and it can be seen he has no underwear beneath. This is exhibit 3. The mother contends that this approximately 5-minute video clip shows the father with an erect or semi erect penis, that he is sexually aroused and obtaining sexual gratification from placing Ellie on his penis and that this gratification can be seen by his facial expression. The father accepts having a semi-erect penis, but denies he was aroused, that he had any sexual motivation or that he got sexual gratification.

69. I will deal in some detail with what is and is not evidenced on this video clip. It begins with Ellie in the corner of the sofa. She is a little whingy and the father is trying to distract her with toys. She looks and sounds tired. It is 8.17pm. This behaviour is in keeping with her being whingy before her 8.30pm feed. The father's left leg and most of his torso can be seen but his head is not visible. The camera is at the foot of the return on the sofa at roughly bottom or knee height, pointing in the general direction of the father's crotch. Because of the angle and the placement of the father's thigh it is difficult at times to distinguish between Ellie being placed on his thighs/ the top of his legs, and in his lap over his groin area. The father is wearing a grey gown. About a minute in the father picks her up and places her with her bottom on his thighs and feet in towards his waist/ groin area. He jiggles her by jiggling his knees up and down and she is seen to bounce. After a few seconds raises her up to stand on his legs, and raises her up, making entertaining noises and kissing her. She is placed back on his legs, and he is holding her arms and singing row row row your boat. She seems possibly to be on her knees, but in any event is lifted again after a few seconds. The father then rotates her and hold her with his hand under her bottom to enable him to lift his own bottom up in order to pull his gown over his groin. As he does so, because of the low camera angle, his penis is exposed to the camera, though it is covered from above with the gown. Ellie is then on his left thigh with the father's hand cradling under her. She is then moved continuously every few seconds as the father tries to occupy her from sitting to standing to bouncing or flying, being kissed, back on left leg, rolling over, reaching for something out of shot with the father ticking her side, stood up in the father's groin, led on her back along the length of his thighs, with the father vocalising continuously. There are brief moments where the camera can see a glimpse of the father's penis from under the gown but at these points her bottom seems mainly to be on the flat of his thighs. In any event she does not remain in one position for more than a couple of seconds. At five minutes the father leans over to the side to place Ellie back in the corner of the sofa where she had been at the start of the clip. As he does so his penis is revealed. It appears to be semi erect and is laying along the crease of the right thigh (the opposite side to where Ellie has mainly been placed). For just over a second as the father does this his face can be seen in profile before going out of shot again. As the father moves to get off the sofa his penis flops downwards as it is no longer supported in the crease of the thigh, which indicates that it remained semi-erect. The mother told me that the father's facial expression in this clip was one of arousal (her statement said that it was exhibit 4 which showed this expression, but in evidence today that was attributed to solicitor error and corrected). However, I cannot identify any facial expression of note on this clip either.
70. I do not think that I can go beyond the general description of semi-erect (which the father accepts) as I have no medical evidence. Fortunately, nor do I need to do so. There is no dispute the father is semi erect. The issue centres around whether he was aroused, whether he was aroused by the child and whether in placing Ellie on his leg or lap area he obtained any sexual gratification. I have listened carefully to the accounts given in police interview and in cross examination and scrutinised the video in real detail. I am entirely satisfied that this covert recording happens to show a random partial erection, which is the result of increased blood flow or posture, and in and of itself is not an indication of sexual arousal or motivation. When the full clip is considered the father's account of why he responded as he did in real time when he realised he had an involuntary semi-erection are plausible and I accept them. In essence, he ensured he was covered, took care where he placed Ellie whilst he waited to see if it would subside, and after a short period of time placed her back on the sofa to get up and sort her bottle. I accept he had no sexual motivation, had no particular reason to feel awkward because nobody else was present and Ellie was oblivious and unharmed. Had he been obtaining sexual gratification, it might have been expected he would continue his activity, given that he had no idea he could be seen. The father's later decision to wear pants beneath his gown was sensible but that change of practice does not make the events on exhibit 3 abusive or inappropriate.

71. I interrupt the chronological review of the video evidence to consider the father's evidence on the state of his penis in this clip. As noted, there was no prior express admission that I can see of the father having a semi-erect penis in this clip. However, nor is there a denial and some of his responses probably imply that he accepted that was the case, but focused his response on the words pleaded against him which were about arousal, which he has always denied and continues to deny.
72. The father's statements also do not refer to a 'semi-erection' or a random erection, but in large part this is likely to be a result of the drafting of the allegation he is responding to which is couched in terms of arousal and sexual motivation or gratification (all of which the father continues to deny). The term erection is found only in the mothers' statement in support of the schedule, which for reasons lost in the mists of time but probably due to a lack of continuity of representation, was never the subject of a specific statement in response by the father (instead the father responded to a supplemental statement).
73. The father told me he thought he had mentioned the semi erection in police interview (he also told me that he hadn't fully recalled the erection at the time of the police interview, which is inconsistent and improbable given it was only 3 days after the incident and the parties had discussed it 2 days prior). However, there is no transcript of this interview and counsel were unable to confirm whether the father did refer to a semi-erection. Consequently, I have reviewed the video myself. There is no reference to semi-erections and the father is clearly describing the events of 19 June from memory. The interview took place almost 3 years ago and the parties have been asked to revisit events many times since. In addition, the interview took place without the benefit of legal advice, without disclosure of the existence of the video or any description of the matter for which he had been arrested save for 'sexual activity with a child'. In that context the father had volunteered that he had a recent conversation with the mother about her belief he had been holding Ellie whilst 'aroused', but whilst he described difficulties keeping his dressing gown properly closed (and accurately explained he had since started wearing pants beneath his gown) he denied that he had been 'aroused'. The only description of the allegation or any suggestion of an erection by the interviewing officer was held back until the very last moments of the interview. The father denied having an erection. He still denies having an erection, drawing the distinction between a full erection and a semi erection which can be spontaneous and can occur independently of sexual arousal (as he says it did in this instance).
74. I think on reflection the father's confusion or lack of clarity about what he did or did not say in interview is largely explained by the passage of time and subsequent events. The reasons why the father might have omitted mention in that interview of a semi-erection and later denied having an erection are manifest from my description of it. I do not think that this discrepancy, when properly considered, actually assists me in interpreting the video footage and the allegation, or that it is a helpful indicator as to general credibility, particularly where the father, working in the dark somewhat, was otherwise notably candid with the police.
75. I return to the chronology. Later on the evening of 19 June 2021 at 9.11pm a clip of 38 seconds duration (6) shows the father in the bed with Ellie. The mother says that it shows him 'looking as if he is about to masturbate'. I remind myself that the mother knew she was recording, whilst the father was oblivious. She chose which 38 seconds to produce. She did not produce the following minutes, which she surely would have done had the father in fact gone on to masturbate. Plainly, evidence that shows someone looking as if they might do something cannot support a finding that they did without more.
76. In my view this clip shows the father relaxing on the bed in his dressing gown with his daughter next to him. He is briefly shown to 'rearrange' himself, in a way that he might not have done in company, but which is entirely unremarkable when he was unaware he was being watched.

77. On Sunday 20 June 2021 the mother spoke to the father about what she had seen or what she had thought she had seen in clip exhibit 3. He denied having an erection, but she says accepted that having his gown open without any underwear was inappropriate.
78. On the evening of Monday 21 June 2021 there is a further clip of the father and Ellie on the sofa. The father remains unaware of the presence of recording devices. On this occasion the father is wearing red pants beneath his dressing gown. This is clip 4. At the outset of the mother's evidence it was said that this clip was no longer relied upon. The reason for the late change was unclear. The mother told me that 'I just don't think it's really much shown - I don't think it assists with my allegations' before going on to explain that the assertion that this clip showed a look of sexual gratification had been wrongly applied to this video by her solicitors. This clip does show a bulge in the father's red pants when he stands up. For the sake of completeness and in light of the changeable position of the mother I will describe this video. This clip has the camera pointing right towards the father's middle area, though for much of the clip his feet are in the foreground obscuring the view. He is sat on the sofa with legs extended towards the camera and it appears his feet are on a footstool or piece of furniture at the same level as the camera. He is holding Ellie absent mindedly to one side of his lap to the right of the frame and checking his phone. She does wriggle around and lay across him at one point and is straightened up so she seems to be sat on his lower tummy briefly before the father stands up. As he does so the shape of his penis can be seen in outline under his pants. It is lying at a 45 degree angle pointing up and left (on the opposite side to where Ellie was perched). The father's face can be seen for portions of this clip, but he is mostly seen looking, apparently absent mindedly at his phone or the tv.
79. Nine minutes later the father can be seen upstairs feeding Ellie a bottle on the bed, which it appears he has got up from the sofa to make. This is exhibit 5. The mother suggests that the father is obtaining sexual gratification from Ellie during this clip by something he is doing with his hand beneath her Babygro, and that the flash of white in the clip is the father 'flinging' open the Babygro and a sound shortly after is him 'ripping' the nappy open. The father says he was adjusting the wonky poppers on the legs of Ellie's Babygro and then rubbing Ellie's tummy in a circular motion to help with her reflux as she fed, as advised to do by the midwife. The mother says this advice was never given.
80. This clip is in black and white due to low light. Ellie is in the frame lying across the frame on her back, but largely obscured by the duvet in the foreground. Her face and top of her head and he the bottle can be seen but not her torso or legs. Later on in the clip, her head slips down and only the bottle can be seen, supported by the father's hand. It is clear from watching the clip carefully that the flash of white that the mother described at a particular time point is the father moving the muslin cloth that he has placed across Ellie earlier on in the clip. It does appear that the father undoes and later does up some of the poppers of the Babygro but this is entirely consistent with his account of sorting out the legs on her Babygro and rubbing Ellie's tummy whilst she fed, which is both a common behaviour and something which parents are often advised to do by midwives or health visitors to aid digestion. The father is watching the television across the room as he feeds Ellie, periodically looking over to her face to check her as she feeds. I have listened several times for the sound of a nappy tab being ripped. There is a lot of background noise which is equally consistent with the television programme playing, the rustle of bedding as the father or Ellie move, or the adjustment of a nappy tab. There is nothing on this video which is probative of the father opening the nappy let alone of him placing his hand in her genital area or doing so for sexual gratification.
81. These videos are said to support the allegations that
- a) the applicant was sexually aroused by the child and continued placing her on his lap for his own sexual gratification, or in the alternative he continued to

physically interact with the child despite knowing that he was sexually aroused

- b) inappropriately touching on around the child's genitals for his own sexual gratification

82. These videos do not support either proposition. They do show the father 'physically interacting' with his daughter, in an entirely appropriate way. There is no other evidence to support the mother's contentions or belief. If there was clear evidence in the remainder of the video footage of these things the mother could and would have produced it. The mother has had ample opportunity to present probative video evidence if such existed. That it has not been produced must be because none exists.
83. Considering the video evidence overall there is a gross mismatch between the mother's beliefs and descriptions and what is actually evidenced. On a number of occasions the mother suggested that the footage was 'open to interpretation'. In my view much of what the mother said was open to interpretation simply could not be interpreted in the way she contended for. Her descriptions were sometimes frankly inaccurate (including but not limited to misattributing a description to the wrong video), but even allowing for those errors in matching up the right clip with the right description were a gross distortion of what was actually shown and were often inconsistent with the actual footage when properly considered. Seen as a whole the videos are powerful evidence of the mother's mindset. She was highly suspicious and I think has probably formed a genuine but wrong view that the father was engaged in physically or sexually abusive behaviour towards Ellie whilst in his sole care.

#### **Allegations of sexual abuse of the mother**

84. The allegations of sexual abuse of Ms P have changed repeatedly, even in the course of this hearing.
85. The mother first complained about the father's sexual behaviour towards her by complaint to the police on 25 September 2021. Here she reported being pressured to feel like she had to have sex 'on a few occasions' (elsewhere this is said to be two unspecified occasions). At this point the mother expressly stated 'he had never forced himself onto her'. She also complained at this point about a suspicion the father was putting laxatives in her coffee in the mornings. Her answers to a DASH questionnaire are clear that the father's 'anger' only began after Ellie was born, which is inconsistent with her later allegation of forced rape whilst pregnant. The prompt for that call to the police seems to have been the father emailing the mother to ask about arrangements for seeing Ellie against a backdrop of the police discussing the potential the father would not be charged depending with the mother on 21 September. The mother is recorded as expressing concern in that call that if the father was not convicted in respect of him 'using Ellie to 'get himself off'', the family court might permit contact.
86. I pause to note that the ostensible reason for the call was that the mother told the police that it had been 'too painful' to be in email contact with the father and the father's emails had 'got heated', and it was in the context of that call that the complaints of sexual assaults were made. An exchange of emails directly between the parents at C111 on 24 September 2021 (the day before the call to the police) contains no threats, and the father is categorical in saying that he is not saying he will kick the mother out, just that they need to talk through the financial issues. These emails flatly undermine the legitimacy of the report to the police.
87. On 30 September 2021 a police log records that 'she always consented to having sex with [F] but at times she did not want to but she did it as he would pester her for it.' The mother stated that the reason she thought he was putting laxatives in her coffee was that after she drank her

morning coffee 'she would always go for a poo' E41. Unsurprisingly the complaint was closed shortly thereafter.

88. On 23 February 2022 Ms P told Cafcass that the father had pressurised her into sex on 'two occasions' and that he would 'try and initiate sex in front of Ellie'. She also told Cafcass that the father 'would masturbate in front of Ellie'. The mother does not in fact assert she saw him do so and accepts that there is no evidence of him doing so. Somewhat contradictorily she also asserts that on one occasion the father asked her to take Ellie away so that he could masturbate without her in the room.
89. In her first statement to this court in May 2022 the mother complained that in 2018 she was 'concerned that I may have been sexually assaulted by the applicant', believing she had been spiked by someone on Valentines day. This allegation is not pursued and was not mentioned to police or Cafcass. Here the mother says the father guilt tripped her for sex 'throughout the pregnancy'. She complained that on occasion he was so persistent she relented 'against her will'. She complains specifically that when 26 weeks pregnant the father pressured her to have sex until she gave up, whereupon he pushed her down and had sex with her against her will, following which she had a bleed. She complains that after Ellie was born the father tried to instigate sex on 'several occasions' when Ellie was present. The statement is clear that 'I refused on each occasion I thought it was very strange'. The mother complains that the father tried to instigate sex and when rebuffed made the mother and Ellie leave the room so he could masturbate. This last is a matter the mother complained about at the time online, describing the behaviour as 'disrespectful' rather than abusive. Having given several examples of attempts to initiate sex in the presence of Ellie the mother asserts one incident where the father is said to have 'told me that he thought we should have sex in front of Ellie'. The mother says she refused.
90. On 3 March 2023 the mother says that the applicant would try to initiate sex 'on many occasions' but that the mother 'always said no'. She was 'defenceless and had sex with him against my will'. The incident at 26 weeks is described in markedly different terms – the father is 'even more aggressive', forceful and out of fear the mother 'gave in'. This is described in terms as a 'rape'. Further detail is added to the alleged remarks expressing a wish to have sex in front of Ellie.
91. On 27 March 2023 the mother filed a schedule of allegations and further statement. The statement suggested for the first time that the father's involvement in the mother's online sex work was sexually and financially abusive. Having raised the issue she said that the line of work was not relevant to the question of consent. The mother explains that she did not disclose 'the rapes' to the police because she did not feel comfortable doing so. She goes on to explain that she did not realise that she was a victim of abuse until she completed a counselling course in February 2022. I do not understand this. The mother complained that she was a victim of abuse including by telling the police that she had been pressured to have sex by the father on multiple occasions in September 2021. The mother was aware that the behaviour complained about potentially amounted to sexual abuse because she reported it to the police. Whilst victims of sexual abuse often develop a more sophisticated understanding of consent over time, it is the accounts of sex with force and in the clear absence of consent which are missing from the mother's complaints to the police. I have to ask myself why that might be. It cannot be because the mother did not understand the behaviour to be rape. She already had an understanding of consent in September 2021. It cannot be because she felt unable to talk about experiences of sexual abuse in September 2021 because she did exactly that. The simple reality is that the more serious complaint of frank rape with force has emerged much later. Given that the level of concern the mother was expressing about the father's sexual conduct and risk to Ellie and her willingness and ability to discuss other sexually abusive behaviour by him, this is difficult to understand without concluding that the mother has not been truthful.

92. The schedule of allegations filed on the very same day states that the sex at 26 weeks was 'without consent' and that the father had been 'aggressive...and held her down'. There is an entirely unevicenced assertion that the father's actions caused bleeding and pain.
93. In oral evidence there was no mention of being held down or pushed down. Instead, the mother asserted that the father was aggressive 'in that moment' and that she 'froze'. Overall, her account in oral evidence was more consistent with being pressured into agreeing or acquiescing to sex than being raped with force as alleged in the schedule. That shift in position was reflected in the fact that cross examination of the father was on the basis that he had pressurised the mother, not that he had held her down.
94. The father's evidence on these allegations was straightforward. He gave a rounded, coherent account of his actions as a sexual partner, accepting that he would sometimes attempt to initiate sexual intimacy outside of the bed at night because the mother had expressed the view their sex life had become boring. He was clear that if the mother ever said no he would desist, and that on occasions the mother initiated sex. The father told me that he and the mother had had (consensual) sex in Ellie's presence but only when she was asleep. He told me that he had suggested that Ellie should be placed in the nursery so they could have sex away from her but the mother did not want her out of the bedroom. He was adamant that they would only have sex when she was sleeping. Asked about an occasion on the bed when he was said to have initiated sexual touching with Ellie awake on the bed, the father told me that he had simply made a suggestion and put his arm around the mother rather than touching her vagina as the mother had asserted for the first time in evidence. The suggestion that he went on to ask her to leave the room so he could masturbate was not put to him.
95. I have concluded that the father's account of his feelings about having sex in front of Ellie was credible and genuine.
96. Regarding the broader allegations of repeatedly pressuring the mother for sex, the father told me that he was used to periods without sex as the mother had previously had a number of health issues which had meant they had previously gone several months without, and that the couple had anticipated there would be a reduction in their sex life when Ellie was born, and had discussed it.
97. There is no dispute that the parties had sex at 26 weeks pregnant and that shortly thereafter the mother suffered a bleed. There is no evidence on causation, and nor is the fact of a bleed evidence that the sex was particularly rough. It does not tell me whether the sex was consensual. Mr K told me that because the mother had had various health issues during the pregnancy he had taken great care to ensure she wanted to have sex when she initiated it on this occasion, and had been gentle and checked in with her to ensure she was not in any pain. It was not put to him that he held her down or that the sex itself was particularly forceful.
98. Taking the evidence of the mother and the father on these issues together, bearing in mind the consistency and cogency of the father's accounts, the inconsistency and contradictions in the mother's accounts and the continuing lack of clarity over what is actually said to have taken place - and bearing in mind the inescapable evidence that on other issues the mother's evidence is irreconcilable with the objective evidence she has herself brought into evidence (the videos) - the mother has not satisfied me to the requisite standard that the matters she pleaded in her schedule are proved. I go further and conclude that I should accept the father's account of a consensual sexual relationship, and reject complaints of the mother being pressurised into sex or raped with force. The simple reality is that in my view the mother has reworked her account and possibly her actual memory of her experiences during the relationship following separation as part of her overall need to cut off the father from her life and Ellie's. It is quite possible the mother has persuaded herself that she has been the victim

of abusive sexual behaviour because that is emotionally easier for her. I do not think that is what happened.

### **The mothers evolving beliefs about sexual harm to Ellie**

99. That the mother holds distorted beliefs about what can be seen in the videos is in my view clear. What is less clear is when these beliefs emerged.
100. Although the impression given in the mother's statements is that the cameras were purchased in order to evidence a pre-existing suspicion of sexual misbehaviour, I am not sure that is borne out by the social services records, which suggest (e.g. at C50) that the mother's concern was about Ellie crying because of the father being perhaps physically inappropriate. Certainly, the mother's account to social services is that she had been shocked and surprised by what she saw on the 19 June video, and indeed she repeated that sentiment to me in oral evidence. It is also clear from the police and social services disclosure that the mother's initial response to the allegedly sexual videos was to doubt that the father was indeed getting sexual gratification.
101. It seems likely that the mother was more generally anxious and suspicious of the father when she began making recordings, and that at some stage in June those concerns evolved into more specifically sexual concerns, perhaps not crystallising until the videos on 19 June. The evidence shows the mother regularly seeking advice as to how to interpret the father's behaviour towards her and Ellie and of her doubts about the relationship. The father's evidence about her inability to sustain relationships with friends and family without falling out with people and cutting them off suggests this advice seeking behaviour was because she was isolated (no doubt compounded by lockdown). Some of the advice received in responses to queries she made about nappy rash suggested a sexual motivation. The mother was still in a process of seeking advice online and from family when events overtook her and the police were called. What followed was a process whereby the mother's beliefs crystallised into certainty that the father had behaved inappropriately against a backdrop of social work involvement where it is clear that the strong signal to the mother was that she needed to be protective, because of the initial ambivalence expressed by the mother.
102. In my judgment the mother lacked confidence in her own interpretation and was vulnerable to being persuaded by others to how to view the father's conduct, whether that was the view offered by those online or latterly professionals. The mother's evidence also makes clear that she did not view the father's conduct towards her as abusive until after she had undertaken a course on domestic abuse. An evolving appreciation of abuse as such is of course not uncommon, but here it comes against a particular backdrop of previous outright denials of abuse in the form of Dash risk assessments and where it is possible to track the evolution of the mother's posts asking whether the father's behaviour was disrespectful to the same behaviour being recast as abusive in the context of these proceedings.
103. An example of this is the social media post made by the mother when Ellie was about 4 months old where she asks whether the father asking the mother to take the baby downstairs so he could 'sort himself out' (masturbate) was disrespectful. The mother there described the father's behaviour as follows
- 'we've not had sex for a week because I've been on my period, he's not exactly tried it on but tried hinting and touching me when our daughter was in bed this morning [quote redacted] I don't feel comfortable with that. [quote redacted] is all about him and his needs'.
104. Here the mother is not describing the father as abusive or pressurising. She is describing him as disrespectful and selfish, arguably with some justification. But that incident has evolved in

evidence in 2023 to an account of the father attempting to touch the mother's vagina and that he was very angry when rebuffed. When it was put to the mother that this might be selfish behaviour but was not abusive the mother told me 'I'm not saying it was abusive, I'm saying it was inappropriate'. The fact of the matter is however that the mother has signed numerous statements and schedules prepared by her first and second solicitors on her instructions each of which alleges sexually abusive behaviour, which are said to include attempts to instigate sex in Ellie's presence.

105. The father denied attempting to touch the mother's vagina. He did accept that he had touched her arm and suggested they might have sex when Ellie was asleep. I considered the father's account of how the couple had on occasion had sex with Ellie in the room but only whilst she was asleep and how he had suggested to the mother that they could put Ellie in her nursery whilst they had sex but that the mother did not want to do that, credible. I accept that on this and possibly other occasions the father may have broached the possibility of having sex when Ellie was asleep with the mother, but I do not accept that things went further. There is evidence from both parties that the parties were having sex relatively regularly after Ellie's birth. I accept that on occasion this was with Ellie in the room, whilst asleep.
106. I do not think that an attempt to initiate sexual activity whilst the baby was in the room is sexually abusive behaviour. The event as described by the mother in her near contemporaneous post is not an abusive act – though the comment about masturbation may well have been disrespectful had it taken place. Since the comment about masturbation was not put to the father and since it would not in my view amount to a relevant finding of abuse in any event I decline to make any finding on it.
107. In the course of deliberations I have considered whether the mother's distorted perceptions about sexual harm to Ellie might be a product of prior experiences of the alleged sexual abuse and rape of her by the father. However, since I have concluded that the father was not sexually abusive to the mother this potential explanation falls away.

### **Financial abuse**

108. The mother has produced very limited primary evidence on these allegations which all relate to the period since separation.
109. The mother says the father made threats to make her and Ellie homeless if she did not pay the rent. The mother produced no primary evidence of these threats. Eventually it was established that this allegation is based upon an email sent by the father to the mother's parents (at a time when she had asked him to stop emailing directly – C94) and which were seeking to resolve financial issues in circumstances where the father had been continuing to meet substantial liabilities in respect of the home which the mother and Ellie remained living in, as well as paying child maintenance and when he was raising via her parents that he would be unable to continue to maintain these bills without a contribution from the mother and might have to cancel some bills. The emails I have seen (produced by the mother) explicitly offer reassurance that the father would not cancel anything that was needed for Ellie and that he is trying to find alternative ways of dealing with matters.
110. The mother told me that the email at C94 'felt like he was putting a seed of doubt in my mind if I didn't pay the house would get repossessed and we would have nowhere to go'. It is true that the email does include the word repossession, as the father is trying to articulate his financial predicament and what he is trying to avoid happening. What the mother is describing is her own anxiety about the future. Read on any sensible basis the email does not contain threats. Its contents are clearly intended to reassure her about his priority being their daughter. This is not financial abuse. It is however further evidence of the mother's willingness or tendency to interpret everything as evidence of the father's abusive behaviour.

111. The father accepts he cut off the internet. I accept the father would have known that cutting off the internet would disrupt the mother's income. However, he did so after having warned the mother that he might have to cut off bills and after she had (albeit she says inadvertently) missed a payment towards the household bills. This was not the father maliciously attempting to threaten or place the mother under financial pressure, it was simply the father finding himself unable to continue meeting all outgoings in the absence of the mother's continued contribution and a lack of communication from her. I accept that the father had to make difficult choices about what to prioritise and reasonably chose to prioritise mortgage, rent and utilities to ensure there was a roof over Ellie's head.
112. The mother states that the father was dishonest with the CMS in telling them that he was paying for the mortgage on the house the child was living in when the child had moved out. The evidence in support of this is incomplete correspondence from the CMS dated December 2022 which post dates the mother and Ellie moving out by about six months. What is not evidenced is when the father told the CMS that he was paying the mortgage on the property the child was living in (save that he must have done so at some point before December 2022). It is possible that the father had simply failed to update the CMS about the change in circumstance or that a notification of change had not yet been processed. It seems likely that an update should have been provided, but I have no specific evidence. This is not evidence sufficient to support a finding of financial abuse.
113. The mother alleges that the father changed bills into her name after she had left the property in an attempt to cause financial hardship. The father accepts he did change some bills run up by the mother into her name as they were not his liabilities. I have no primary evidence regarding these matters, I do not even know what bills were for or the amounts in question. I cannot make any finding.
114. The father clearly did call the police and making allegations about the mother removing items from the property when leaving. The mother did remove many items from the property when she left, and did so without prior warning to the father. It is clear from the video evidence that this is the case. I do not need to scrutinise exactly what was left and taken to deal with this issue. It was arguably unhelpful of the father to report the mother to the police for this, but it was probably unhelpful of the mother not to communicate in advance that she intended to take large half of the items in the house and to select unilaterally which she wished to take. Neither of their actions was especially constructive or mature. But they were not abusive. The inaccuracy in the mother's subsequent complaint to the police is far more concerning.
115. The allegation that the father was behaving in a financially abusive way by attempting to make the mother solely responsible for all the contact costs is misconceived. The records make clear that at a hearing in January 2023, at a time when the mother's allegations had been proved to be untrue, but in the shadow of a pending appeal, the court was proceeding to make arrangements for contact in a contact centre, which the mother wished to be supervised. On the basis of the court's findings at that time there was no basis for supervision. However, in light of the pending appeal the court acceded to the request for supervision. In that context the father, having agreed to pay the initial referral fee, requested through his position statement and in submissions that the mother should pay for the costs of the notes of sessions. The court disagreed. In the event the contact didn't take place because the appeal was allowed. The father says, and I accept, that he would have paid those fees in order to see his daughter, had the opportunity remained open to him. Whilst the judge was entitled in view of the prevailing situation and the parties finances to rule that the father should pay the costs of the contact, the fact that the father asked the court to consider the issue is simply not financially abusive, particularly when one considers the fact that the father was privately paying for legal representation throughout 2022 and was now being asked to meet the costs of supervision in circumstances where the court had just found that he was not responsible for any risk or harm to his daughter.

116. As a general point, efforts to resolve financial matters post separation and disagreements about how to do that fairly are not in and of themselves financial abuse. Separation often causes financial disruption and hardship to one or both parties. There is nothing in the overall pattern of conduct on financial matters which seems to me to come close to financial abuse.

### **Emotional abuse and lack of commitment**

117. The final category of abuse alleged is emotional abuse and lack of commitment since separation. In fact, this subdivides into three allegations of a lack of commitment and separate allegations of emotional abuse, which appear in the mother's statements but not her schedule.

### **Lack of commitment**

118. The mother complains that the father made minimal contact with her or her family to obtain any update. It became apparent in evidence that the thrust of the mother's complaint was that the social worker had told her in 2021 that the father had not asked after Ellie through her whilst he was on bail for 4 months. I can fully understand why the father may not have done so. Once the bail was lifted the father contacted the mother, and latterly her parents (when asked to redirect his communication) and then latterly he was told to stop communication and reported to the police for harassment. It is difficult to know how the father could have avoided criticism. He is simultaneously criticised for too much contact and yet not enough.
119. The father is criticised for not taking up an opportunity of contact in a contact centre in December 2022 on the basis of cost. That assertion is simply factually inaccurate from the face of the records.
120. The father accepts that he did not take up an offer in December 2022 to send a gift and a card. I accept his evidence that items previously sent had been seen on Facebook marketplace for sale and that he therefore had some doubt as to whether Ellie would see the gifts. I accept that at the time in December 2022 it was expected that Ellie would be seeing her dad very soon and that therefore there would be an opportunity for the gift to be given directly in the coming months. I note that the mother appeared to imply that the father may not be telling the truth when he said he had put money in an account and kept Ellie's gift for her, but I see no reason to doubt that. Criticism of him for buying and retaining gifts in December 2022 which are now age inappropriate seemed somewhat unfair when he had no expectation at that time that the findings would be reopened and still unresolved some 15 months later.
121. I accept that where there has been a pattern of abusive behaviour during a relationship the mode of abuse can shift to different mechanisms of abuse and control, sometimes through the application of financial pressure. However, considered on any sensible basis the father's conduct on financial matters is largely unobjectionable. Whatever the mother's subjective perception of the father's motivation, I cannot accept that they were done with the intention of exerting control over her or to cause her fear or upset. These findings are not made out.

### **Emotional abuse**

122. The allegations of emotional abuse are somewhat more diffuse and do require some consideration, notwithstanding the fact that they are not particularised in the schedule. They are set out in the statement of 27 March 2023, and the father responds on 30 March, so these are not new allegations. To adopt an approach whereby I effectively ignored these allegations because they appear in the statements but not the schedule would not do justice to this case because allegations of this sort of small subtle patterns of behaviour demand proper scrutiny to ensure I have the full context. They can provide the context against which otherwise objectively benign behaviour can be seen to be abusive.

123. I note for completeness the heading in the 27 March statement is ‘emotional abuse and controlling behaviour’. Although ‘controlling behaviour’ does not feature in the mother’s schedule as revised by HHJ Wright, I have taken it as implicit in the mother’s case that the various types of behaviour she has complained of and which are pleaded, are said to amount, if proved, to a pattern of controlling behaviour.
124. Firstly, the mother complains that the father did not wish her happy Mother’s day when she was pregnant, and when queried told her he did not see her as a mother. I accept the father’s account on this. He did not see it as a big deal. In my view the father’s surprise at the mother’s expectation and his failure to treat this as a major issue is entirely understandable – I think that the celebration of Mother’s day in this way during the very early stages of pregnancy is somewhat idiosyncratic. Some partners might have twigged that this was important for the mother and made efforts to make amends in some way, but the fact that the father was simply a bit non-plussed by it falls far short of abusive behaviour. The same goes for his response on Father’s day.
125. Given the general unreliability of the mother’s evidence I do not accept the suggestion that the father putting up shelves the mother had bought was in any way intended to make the mother feel worthless or incapable as she suggests it did, or that it was abusive. The mother was pregnant. The father offered to put up the shelves. There is nothing more to it.
126. The mother complains about the father’s response to an incident where, when heavily pregnant a roll of wallpaper fell and landed awkwardly on her baby bump, whilst in B&M. That the wallpaper fell and that the father drove the mother to get medical attention are not matters in dispute.
127. In oral evidence the mother insinuated that the wallpaper roll falling off the shelf and onto her might not have been accidental. I consider this to be a further indicator of the highly suspicious negative mindset that has pervaded her entire approach to this case. There is no evidence of it.
128. I reject the suggestion that the father did not display concern and did not ask if she was ok. I reject the further assertion in oral evidence that the father repeatedly walked off around the store whilst the mother kept telling him how much pain she was in. The father’s account of his concerned response and the mother’s assurance she was ok although it hurt, but that later the couple went for a check was clear and credible. I accept it.
129. There are various other allegations under this heading which were a combination of extremely trivial and unparticularised, and which sensibly were not tested with the father. I put them to one side.
130. The statements setting out the mother’s broader allegations of controlling behaviour, including those elements struck through by HHJ Wright remain in the bundle. They contain familiar complaints of belittling comments that undermined confidence. I don’t doubt that the mother is susceptible to being hurt or upset and that on occasion the father’s actions may have caused such hurt or upset. However, for the avoidance of doubt none of the evidence I have heard has caused me to be concerned that the father has behaved in a way that could properly be characterised as coercive or controlling. The father has been accused of the most grave behaviour and shut out of his daughter’s life as a result for 3 years. Many parents in his position would be angry and highly critical of their accuser, and would be drawn at some stage in the litigation or in evidence into using demeaning or highly critical language in response to questions. The father did not. In my experience of him throughout a number of hearings he has been courteous to a fault, and has expressed his obvious frustration with the process calmly. He chose his words to describe the mother’s patterns of behaviour with care

and I note when giving an account to the police of the mother's difficulties in sustaining relationships with others his loyalty to her and concern for her is palpable.

131. The mother produced in evidence screenshots of the father's private messages with friends. No explanation has been offered for how she obtained them, though the father says she must have hacked his account. Even in those private messages where the father is not addressing his remarks to the mother and has no reason to think she will become aware of them he responds to a friends' suggestion that the mother may have mental problems with sadness rather than jumping in : 'I think so, unfortunately'.
132. I have reminded myself that whilst the mother complains of controlling behaviour it was she who was ruminating, discussing the parties sex life and posting critical comments about the father online, and who was covertly recording him over a sustained period of time. It is the mother who has controlled the production and curation of the digital material and who has presented the father's private materials as well as footage of his genitals.

### **My findings**

133. I have effectively dealt with my findings as I have worked through the evidence above. For the avoidance of doubt my findings are:
- i) Sexual abuse of the mother – not proved
  - ii) Financial abuse – not proved
  - iii) Sexual and physical abuse of child – not proved
  - iv) Emotional abuse of mother and child – not proved
  - v) Lack of commitment of the child – not proved
134. Mr Davis invited me to consider whether the mother may have engineered the social media posts in such a way as to lead to her being identified and a third party reporting the matter to the police. I regard this as unevicenced and unlikely. I think that the reality is that the mother was highly anxious, suspicious, paranoid, seeking guidance as to what to make of her emergent beliefs, and that at the point when the matter was then taken out of her hands she was still in a state of ambivalence. That is clear from the social services disclosure, as is the subsequent hardening of her position.
135. Overall, I have been forced to conclude that the mother has comprehensively reinterpreted every aspect of her relationship since concluding it was over and that she did not want to continue contact with herself or Ellie. Whether that was a conscious process or not is less clear. I do think mother has now probably convinced herself that the relationship was abusive and that the father's behaviour towards Ellie was inappropriate and sexually motivated, which means that this judgment is likely to come as a blow to her and will require some processing.
136. As regards the findings the father seeks about the manner of production of the videos.
- i) I accept that the Mother tried to change the media evidence the Court would use to determine the facts in these proceedings without permission following her successful appeal. That is self-evident. However, I am satisfied, given the profound difficulties this court had extracting any clarity from the mother's second solicitors and the general confusion following the appeal, that the mother did not appreciate that she required or did not have permission to do so. Had the father been represented by

solicitors no doubt these issues would have been flushed out sooner, but he was not and the discrepancies in video clips went unnoticed.

- ii) The mother did crop the new media evidence without permission to try and change the nature of the same, and to increase her chances of obtaining different factual determinations, but I do not think this necessarily assists me in determining the truth of the allegations. I have reached the conclusion that the mother believes the father to be a risk, and seen in that light it is unsurprising that the mother would seek (As does any litigant) to present the best possible evidence to show what she believed to be true. It is not suggested that the mother actually doctored the footage itself, only that she presented highly selective material.
- iii) The mother did not put the Father explicitly on notice that she was (a) cropping or manipulating the media evidence in the case or (b) that she was changing the media evidence in the case. That is factually accurate, but the father was provided with the link and could and should have cross checked. This is a collective failure.

### Next steps

- 137. It is highly regrettable that it has taken so long to reach the conclusion that the evidence to sustain these allegations was simply not there.
- 138. I cannot speculate as to the reasons for the mother parting company with two previous sets of lawyers, but I am bound to say that a proper analysis of the allegations, the primary evidence and the law ought to have led to a full scale review of these allegations on the mother's part earlier. I do not know whether that happened because the mother's discussions with her lawyers are privileged. I can say that there has been a distinct lack of ownership on the part of the mother of the materials she has filed and has signed her name to. Going forwards, she must begin to accept responsibility for her decisions on behalf of Ellie, who is entitled to get to know her father again, even if that is hard for her mother to accept.
- 139. The important point now however is that there are clear findings, and those findings do not support there being any risk from the father which justifies a continued bar on contact, or any need for supervision. Ellie must be supported by her mother and the court to resume contact.
- 140. In light of my findings, I am extremely concerned about the mother's ability to reflect upon, accept and act upon my findings. I urge her to think hard about how she has found herself in the situation where her daughter has been deprived of a relationship with her dad for 3 years based upon evidence which simply does not show any acts of abuse. The mother now has an opportunity to move forward and to make sensible proposals for contact to begin, recognising that Ellie will no longer remember her father and will need to be reintroduced, and that there are some physical barriers to contact that will need to be worked through.
- 141. Recognising that there is a risk that the mother will continue to reject the court's findings that her complaints are not proved and that contact should progress, and taking particular note of the mother's various steps to shut the father out, to move away and at one point the suggestion of emigration, I am minded to make a prohibited steps order of my own motion pending further order, providing that the mother must not remove Ellie from the jurisdiction of England and Wales without the permission of the court or written consent of the father, and must not change her residential address without notifying the court by way of C8. I do not think that is a material interference with the mother's article 8 rights. If she wishes to go on holiday with Ellie she will need to canvas that with the father in the first instance and provide details of the proposed trip and travel plans.

142. I do not think there can be any basis for continuing to withhold details of Ellie's school or GP from the father. I do not think that the father needs to know himself what the specific home address is at the moment, but I will direct the mother to confirm her current address with the court in a fresh C8 form through her solicitors by 4pm on Friday. I cannot see any reason why the father should not be told now which town the mother lives in with Ellie so that he can think through the logistics of contact and formulate proposals.
143. Contact must start as soon as possible. However, I am not going to make an order for contact today. I think that Mr K will appreciate the need to get this right.
144. I will direct that the parties should file position statements setting out their response to the findings and their proposals for contact within 14 days.
145. Ordinarily I would reserve this matter to myself for next steps but I will be unavailable to hear the case before May. Therefore, in order to reduce delay I am going to list this matter before another judge in 3 weeks time so that contact can be commenced at the earliest opportunity.
146. Should the parties be able to agree a resumption of contact between now and the next hearing they may put those arrangements in place. I positively encourage them to do so. I suggest that for now communication takes place in writing and either through a parenting app or via the mother's solicitors.
147. I have given serious thought to whether or not I should appoint a rule 16.4 guardian in this case, but I do not want to build in further delay and ultimately in light of my findings contact should now be straightforward. Should that prove not to be the case the court is likely to very swiftly revisit that decision, potentially at the next hearing.
148. The court should have before it on the next occasion the letter from the paediatrician, so that consideration can be given to whether any particular professional support is likely to be necessary in order to facilitate reintroduction. That I am making that direction should not be seen as any indication that I hold the view that contact should not start without such professional facilitation. I am simply covering all bases.
149. The position statements should also set out the parties' position as to whether the matter should be transferred to the child's home court (which would be the usual course of action but which probably has both pros and cons in the circumstances of this case).
150. I would like to think that the parties will give some consideration before the next hearing as to appropriate means of communication. Their position statements should confirm whether they are willing to use a parenting app such as Our Family Wizard, which would offer both parents protection and a record of their communications for better or for worse.
151. This is a case management decision. The time limit for seeking permission to appeal is 7 days. By the time my directions come into play that time limit will have elapsed.

### **Publication**

152. I have considered whether I should publish my judgment. For pragmatic reasons I have decided not to do so at present. I have insufficient judicial time at present to be able to robustly anonymise and redact my judgment and I do not think that the parties need to have any ancillary issues to focus on that might distract them from the core work of getting Ellie's relationship with her father back on track. The question of publication can be considered in due course. [see post script below]

### **Costs**

153. I am aware that there is likely to be a costs application. That is not a matter that I am in a position to deal with today. If a costs application is pursued it will need to be listed separately and the appropriate materials filed and served in advance. The court will need assistance as to the law relating to costs in children proceedings including where a party is in receipt of legal aid and potentially impecunious. I am not listing a costs application until the parties have had an opportunity to reflect on the contents of this judgment.
154. That is my judgment.

#### **Post Script**

155. At the point of handing down this judgment I canvassed the parties views on potential future publication as and when time permitted. Both parties indicated that, subject to anonymisation, they did not object.
156. I have anonymised this judgment, by replacing the parties names with initials, which are not their real initials. I have omitted or blurred some details to avoid jigsaw identification. I have considered whether to remove some of the detail in the descriptions of the video footage, but in light of my conclusions that none of the behaviour shown or described is of a sexual or abusive nature, I have ultimately concluded that this is not necessary, and to do so would make it difficult for the reader to appreciate why I have made the decisions I have made, thereby robbing the publication of the judgment of much of its purpose.

**Recorder Reed KC**

**21 March 2024**

**Anonymised for publication August 2024**