



Neutral Citation Number: [2019] EWFC 69

Case No: BH16P00114

IN THE FAMILY COURT

SITTING IN BOURNEMOUTH

Date: 15/11/2019

Before :

THE HONOURABLE MRS JUSTICE ROBERTS

B E T W E E N:

PR **Applicant**

and

JS **First Respondent**

and

TER (by her Children's Guardian) **Second Respondent**

(RE-OPENING OF FACT FINDING: ALLEGATIONS OF SEXUAL ABUSE)

Miss Lucy Hendry (instructed by **Laceys Solicitors**) for the **Applicant father**
Miss Alev Giz (instructed by **Philcox Gray**) for the **First Respondent mother**
Mr Adam Langrish (instructed by **Abels Solicitors**) for the child

Hearing dates: 2nd to 6th September and 9th to 13th September 2019

JUDGMENT

(Sent to Counsel on 7 October 2019)

(Formally handed down on 15 November 2019)

If this Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HONOURABLE MRS JUSTICE ROBERTS DBE

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court. has been emailed to you it is to be treated as 'read-only'. You should send any suggested amendments as a separate Word document.

Mrs Justice Roberts :

Introduction

1. At the centre of this case is an eight year old child, T. She is a truly delightful little girl who has occupied centre stage in a long and difficult fact-finding hearing which has taken place over the last ten days. Whilst T was not present for any part of those two weeks (and indeed had no knowledge of the ongoing court proceedings involving her parents), she was very much a presence throughout as far as I was concerned. I watched a significant number of video and audio recordings taken during periods of contact between T and her father. I watched her spending time with members of the extended paternal family. I observed the recording of a full ABE interview¹ undertaken by police and social workers.
2. I had a wealth of written and oral evidence from her parents and those who interacted with her on a daily basis at school. I saw many pages of the notes and pictures she has written and drawn over the course of the last three years. I learned about the games she likes to play and her likes and dislikes in terms of food. I heard about her friends and the particular dynamics of some of those childhood relationships as they were developing during her early years at school. I heard from those who had observed contact between T and her father at a local contact centre over an extended period of time. I heard at considerable length from each of her parents as they spoke about their daughter in the context of the very detailed accounts which each gave in their written statements. I was struck by the enormous joy she brought to their lives before this family became enmeshed in these proceedings which have since had a devastating effect on their lives.
3. In this judgment, I am going to refer to the applicant and the first respondent as ‘the mother’ and ‘the father’. I do so to preserve the anonymity of these proceedings and the individual protection afforded to parents in proceedings such as these. In adopting these neutral generic labels, I have no intention of diluting the clear and very individual impressions which each left on me over the days I had to watch them sitting in court and giving their evidence over the course of many long hours in the witness box. Leaving aside the over-arching weft and weave of the chronology as it has developed, I was left with the clear impression of two very different human beings, albeit with a wealth of personal attributes and characteristics which make each, in his or her own different ways, complex individuals. They come from very different backgrounds with diverse personal experiences of life, family and career trajectories. They are, nonetheless, empathetic and interesting individuals who no doubt once felt a sufficient connection to embark on both marriage and the journey into parenthood. There is little doubt in my mind that T arrived into this family unit as a much loved and wanted child. It is important to set this out at the very beginning of what I suspect is likely to be a fairly lengthy judgment.
4. I have no doubt that T has continued to grow and flourish in the care of her mother during the intervening months and years. The father accepts that she is doing very well at school. However, the plain fact is that T has lost all direct contact with her father and has not seen him since May 2017, a very significant gap in her young life

¹ i.e. an interview compliant with the statutory guidance ‘*Achieving Best Evidence in Criminal Proceedings*’ (published in March 2011)

to date. What little this father knows about his daughter's life comes to him indirectly through some limited contact he has had with her school. He has been permitted to send to T presents on her birthday and at Christmas but he has no means of communicating with her directly. Since contact was suspended, it appears he has never been provided with a photograph of his daughter. Throughout this time, both parents have been attempting to manage the litigation and the very significant psychological, emotional and financial pressures which it has brought in its wake. Between them, they have spent the best part of £300,000 on legal representation.

5. It is therefore no surprise that, at times during the recent hearing, I observed each of these parents in a state of exhaustion and extreme distress as they relived the events which have brought about the current state of affairs.
6. Before I turn to those events, it is right to record at the outset what I said to the parties and their respective legal teams when the case was opened to me some two weeks ago. The system has let this child down badly. There have been long periods of delay between the various hearings which have only served to exacerbate the tensions between the parties and the distress felt by the father at his enforced estrangement from his only child. I recognise and accept that delay is an inevitable part of a court system which is all too often under-resourced in terms of judges and available court time in ever over-burdened court lists. That said, I would not be discharging my judicial function in this case if I did not observe at the outset that, whatever the cause, the resolution for this child and for these parents has been delayed for far too long.
7. At the heart of this case lie allegations that the father has sexually abused T. As time has gone on, her mother has become convinced that the allegations are true and that various things which T has said over the course which these investigations have taken are manifestations of the experiences which T has had whilst in the care of her father. He continues to deny that he has, or would, cause any harm to his child. He maintains, as he has done throughout, that the mother's allegations are completely untrue and that, in certain respects, she has deliberately fabricated them in order to "frame" him and thereby marginalise him from any effective role as T's father. He, for his part, has been entirely persuaded that the acrimonious breakdown of their short marriage led to a wish on the mother's part to control the extent to which he was able to continue his role as a separated parent to T. He told me that the passage of time has enabled him to think very carefully and deeply about what her underlying motives might be for this stance. His attitude may have softened slightly in some respects but he freely admits that at times "the red mist" of fury has coloured his approach to her conduct in this litigation. She, for her part, perceives her former husband as a highly intelligent and manipulative individual who is very able to "talk the talk" and beguile professionals (including judges, I suspect) into investing in his case as a victim of circumstances.

The essential litigation chronology

8. When difficulties first arose in the aftermath of these parents' separation, they agreed to enter mediation. When that process failed to produce a meeting of minds as to the appropriate arrangements for T, the father issued an application for contact. T was just over 5½ years old at this point. Following allegations that she may have experienced some form of sexual abuse at the hands of her father, a fact-finding hearing was listed. That took place over the course of three days in July 2016. The

judge received final written submissions from counsel and reserved his judgment. Within a matter of days after the close of the evidence, the mother's solicitors wrote to the judge to alert him to the fact that T had made "further significant and detailed disclosures"² to her mother. As a result the mother wished to make an application to reopen the evidence before a final decision was taken in relation to the truth or otherwise of the previous allegations she had relied on.

9. Following a further directions hearing, the judge listed a further two day hearing which took place at the end of December 2016. This was, in effect, the second stage of the first fact-finding hearing. Each parent gave oral evidence. Judgment was again reserved. It was handed down in written form at the end of January 2017. It comprised a full analysis of all the evidence which ran to 132 paragraphs over 31 pages. Although on that occasion, the judge was not provided with transcripts of all the evidence which had been given by various witnesses at the initial hearing in July 2016, he accepted the father's denials and found that the mother had failed to establish her allegations to the requisite standard, i.e. the balance of probabilities.
10. In circumstances to which I shall come, by the beginning of May the following year (2017), T is said to have made further "disclosures" to the individual who was then supervising the contact which the father was having with her at a local contact centre. Referrals were made to the police and to the local authority child protection services and, in mid-May, when she was nearly 6 years old, T was formally interviewed. On advice from the police, contact was suspended whilst further investigations were carried out. This prompted an application by the father to enforce the previous contact order. He was subsequently interviewed by the police under caution. No further action was taken. The matter returned to court in September 2017 when the judge decided to hold a further fact-finding enquiry into the truth or otherwise of these fresh "disclosures" from T. This time, a guardian was appointed to represent the child's separate interests.
11. A further hearing took place over the course of five days towards the end of January 2018. This was the second discrete fact-finding hearing (although in reality the third separate hearing in which the allegations of sexual abuse had been considered). There was insufficient time to complete both the evidence and submissions. Written submissions were filed the following month. No doubt in part as a result of pressure on the lists of other cases requiring the judge's attention, he did not hand down a written judgment until 9 June 2018, some six months after the (third) fact-finding hearing. At the conclusion of that judgment, he reversed his earlier findings. He concluded that there was now sufficient evidence before the court to conclude that T's account was credible and reliable.
12. On receipt of that draft judgment, counsel raised various questions in relation to the judgment. A supplementary judgment was handed down in mid-July 2018 purporting to clarify various aspects of the judge's findings.

² I make it clear that I have referred to 'disclosure' or 'disclosures' in this judgment in quotation marks either because that has been the term used in the original quote or document or because that is how they have been interpreted by the third parties to whom they were made or observed. I do so not to adopt them as such and I am conscious that the use of these terms to describe what a child has said has been deprecated since the Cleveland Report in 2011.

13. By that stage, and as a result of the judgment handed down on 11 July 2018, there were findings in place to the effect that:-
- (i) on at least two occasions on 15 November and 13 December 2015 the father had touched the child in the area of her bottom, something which he knew to be inappropriate;
 - (ii) on one or more unspecified occasion(s), the father had touched T around her genital area, an action which he knew to be inappropriate;
 - (iii) on one or more specified occasion(s), the father had put his finger inside the child's bottom and/or her genital area;
 - (iv) by his actions or words, the father had manipulated T who had received a clear message that she was not to talk about what had happened to her, that the washing/touching had not actually happened and that it must remain a secret.

In each case the judge had found that such touching was likely to have been sexually motivated on the father's part or, if not, it was clearly inappropriate and had caused physical, psychological and emotional harm to T.

14. The father's legal team secured permission to appeal those findings on 13 August 2018. Mrs Justice Gwynneth Knowles listed the substantive appeal for a full day in January 2019. By this stage, a complete year had passed since the second substantive fact-finding hearing in January 2018. In preparation for that hearing, the parties lodged with the court an appeal bundle which comprised no fewer than eight lever arch files together with a quantity of audio-visual evidence. Mr Justice Williams had been supplied with an 'Essential Reading List' which he noted would have occupied him for at least 20 to 30 hours excluding the time required to watch the audio-visual material. The listed appeal was adjourned to a two day hearing on 14 and 15 March 2019. With commendable speed, within two weeks his Lordship produced a 27 page judgment on the appeal which ran to just under 100 paragraphs. It is reported as *PR v JES and TER (Appeal: Sexual Abuse, Fact Finding)* [2019] EWHC 791 (Fam).
15. For reasons which will be clear from a reading of that judgment, Williams J set aside in their entirety all the trial judge's findings and directed a further, complete rehearing of all the evidence. He directed that all matters relating to the allegations of sexual abuse would be at large for the purposes of that remitted rehearing. The time estimate for that hearing was left open as an issue but it was agreed that a window of at least two weeks would be required.
16. Williams J had described this case as being "at the most complex end of the spectrum when it comes to analysis of the evidence as a whole but most particularly in relation to the reliability of the account given by the child". He directed "a comprehensive review of the evidential trail which led from 15 November 2015 through to the ABE interviews in May 2017 in order to illuminate the process by which the child moved from neither making any allegation or demonstrating any trace of unhappiness with the father's behaviour either to her mother, the GP or Becky Bowles, the social worker who saw her in January 2016, through to writing down frank allegations of digital penetration in May 2017". His Lordship pointed out a series of very

significant omissions in the trial judge's analysis (paragraph 79 of the appeal judgment).

17. I dealt with case management hearings in June and July this year (2019). In order to accommodate the case as swiftly as possible, it was listed during vacation in the first two weeks of September. That is the rehearing which I have just completed. Much as I anticipated from the witness template which was sent to me, there was no proper time allowed for judgment preparation or delivery at the conclusion of the hearing. As it transpired, even on the basis of a strictly controlled allocation of time to the many witnesses from whom I heard, we did not complete the evidence until the final day of the ten days allocated to the case.

Delay

18. In delivering his judgment on the appeal, Williams J described the delay which had plagued this case and its final resolution as "staggering". That is a description which I adopt without reservation. It is one of the reasons why I said earlier in this judgment that T was a child who had been let down by the system. Within the extended timetable of this litigation between her parents, she has effectively been allowed to languish in a state of forensic limbo (as have her parents) for more than three years. In the context of the ongoing development of her relationship with her father, should the court find these allegations to be without foundation, I suspect that the delay will have had serious and far-reaching consequences for this child which will require significant expert therapeutic intervention. If those allegations are established now some three years on, a great deal of thought is going to be required in terms of the next steps for T. I recognise that her mother's evidence is that she has worked extremely hard to ensure that T's happiness and well being have not been compromised any more than necessary as a result of her father's absence from her life as she lives it today. I recognise, too, that, if established, the father's abuse of his daughter may well militate against any immediate or longer term resumption of direct contact with his daughter. None of this ameliorates the potential consequences for this child of the loss of her father from her life and I take the view that the delay in the litigation process itself is likely to have delayed or prevented some essential therapeutic work which could otherwise have been put in place at a much earlier stage.
19. I promised these parents a completely fresh start on a (metaphorical) clean sheet of paper in terms of the comprehensive analysis which was directed by Williams J when the case was allocated to me. That analysis has inevitably included a fresh assessment of the credibility of each of T's parents through the evolution of this case. In order to undertake that analysis, this judgment is of necessity longer than I would have wished. However, it is essential for T (and for her parents) that we reach a final conclusion to the fact-finding exercise which is now in hand in order that she and they can move on from a process which has become damaging in itself to all who have been inundated (and I suspect, at times, overwhelmed) by its repeated iterations through the court system.

Essential family background and the development of contact following the parents' separation

20. The father was born in London in 1964 to a family whose heritage and ethnicity was, and is, Indian. He is now approaching his mid-fifties. When he met the mother in 2007 he was working as an established freelance film maker. Much of this work was undertaken in India where he made several commissioned documentaries. Whilst he lived in central London, he describes the pattern of his life as involving up to seven months in each year “on the road”. He has held over many years an established interest in the Buddhist religion and spent some six years training to become an ordained minister, a position he held for some five years before he met T’s mother.
21. She is a gifted and talented artist who now lectures and teaches in a London college for part of the week. She is an articulate and obviously intelligent woman. She is some eleven years younger than her former husband having been born in 1975. They met in 2007 when she was 32 and he 43 years old. Each was by then established in their respective careers. When she met the father, she was living and working in Cardiff where she had her own flat. After about a year, they decided to live together. The mother left her flat in Cardiff and moved in with the father at his flat in East London. They married in April 2010 some two months after the father proposed. It was, as far as I am aware, a first marriage for both. Their marriage was celebrated in a Buddhist ceremony in London despite the mother having no previous leanings towards, or association with, that religion. Nevertheless, she maintains that she then had a broad spectrum of social relationships with many different people of different ethnicities.
22. It is clear that, following the start of their relationship, the mother spent some time with the father in India meeting his friends and socialising with his wider family members. She spoke during the hearing with genuine affection about her former sister-in-law and her child, T’s cousin. She recounts in her written evidence how she came, in time, to question what she describes as “the order” and she accepts that she had expressed a clear view that she did not want T to grow up “in the order” notwithstanding the fact that the child had a naming ceremony at the local London Buddhist centre.
23. It is clear to me that in the early days of the marriage the father continued to immerse himself in his religious environment in parallel with his professional commitments. When the mother became pregnant towards the end of 2010, the father made a conscious decision to change the trajectory of his career. He secured a full-time position as an academic and lecturer in a London university and, for a period of about a year, he was studying for his doctorate. In parallel with the work he continued to do with an international charity, he was able to spend most of his time living at home in London with the mother and T who had been born in June 2011, just over a year after the celebration of her parents’ marriage. It is clear from the mother’s evidence that, in the early years, she had found his need to go on retreats and his travel to India “irritating in the same way that other women moan about their partners endlessly going to the football or to play golf”. She accepted that she would roll her eyes slightly at the prospect of another weekend on her own with a young baby.
24. This evidence was offered by way of a response to the father’s developing case that there were increasing tensions within their marriage as a result of the mother’s wish to distance herself from his culture and ethnicity. He maintains that, in the last two years of their marriage, she would repeatedly express in vociferous terms her dislike of India and Buddhism.

25. Of one thing I am quite clear. When she arrived into this family in 2011, T was a much loved child and her birth was welcomed by each of her parents. I accept the father's evidence that he had very much wanted to become a father and saw T's arrival as an inevitable building block in the stable family life he hoped to create. He took paternity leave for the ten weeks of the summer university break following T's birth.
26. The parties have differing accounts of the extent to which he was involved in T's daily care. I accept that primary responsibility for her basic needs would have fallen to her mother who was not working during this period. Nevertheless, there is nothing in the mother's evidence which causes me to doubt that T's father was "hands on" during the times he spent at home when his working day at the university was over.
27. There is no doubt that by 2012 there were significant tensions within the marriage. The mother describes her experience of the marriage as one which involved increasing elements of what she perceived to be coercive control on the father's part. For his part, the father describes increasingly irrational outbursts on the part of the mother when he became the subject of some vitriolic verbal abuse. I have little doubt that the unhappiness which each felt as their relationship disintegrated rapidly over the course of the next twelve months is now deeply anchored in their subjective perceptions of its collapse at the end of 2013. At the beginning of 2013, and no doubt in part to address these difficulties, the family had left London and moved into a home on the South coast close to the mother's own family. During his working week at the university in London, it is his case that he travelled to London on Tuesdays returning to the South coast two days later on a Thursday. In this way, he was able to spend five nights a week at home with T and all of the university vacation periods.
28. The differing perceptions of these parents find particular resonance in their disagreement about the timing of their final separation. The mother's case is that she had decided to end the marriage by October 2013. That decision was communicated to the father the following month and at about that time she asked him to move out of the bedroom they had shared in the family home.
29. It is common ground that in February 2014 the father made his annual trip to India to see his family and carry out some voluntary work. However, his case is that the marriage was not beyond repair by that point. He maintains that as January 2014 came around, he was still trying to "weather the crisis". It seems reasonably clear from all the evidence I heard that he did not return to the family home following his return to England from India. The catalyst for his acceptance of their final separation on his case was the revelation by the mother that her burgeoning relationship with a work colleague had become sexual in its nature. Following that revelation, and with effect from May 2014, he moved back permanently to London.
30. Over the course of the next year, the parties engaged in a series of meetings with mediators. To their credit, they were able to finalise the financial terms of their divorce. Within the documents in the court bundles is a copy of the consent order which was approved by the court in which their divorce was proceeding. The father had been irritated by the mother's decision to abandon the agreement he believed they had reached that the divorce petition would proceed on the basis of a consensual separation of two years' duration. Instead, it appears that the mother wished to accelerate matters and she instructed her matrimonial solicitors to issue a petition

which alleged the irretrievable breakdown of the marriage had been caused as a result of (and could be evidenced by) the father's unreasonable behaviour. The father told me that his solicitor was able to come up with an anodyne formula which both parties (very sensibly) agreed with the result that decree nisi was pronounced from the foot of an amended petition.

31. The financial consent order to which I have referred contains a recital that the parties had separated in January 2014. The mother has always been adamant that her relationship with her work colleague (which she does not deny) started after the demise of her marriage to the father.
32. As I indicated during the course of the hearing, I have no doubt at all that this was an essentially evolving situation in respect of which each of these parties clung to his or her own legitimately held perception of how each was behaving in the difficult circumstances of a marital breakdown.
33. I accept that the terms of the financial agreement which they reached was one which might be said to reflect a decision on the father's part to move to a swift resolution of what might have presented itself as a further opportunity for conflict and further litigation between these two parents. It was a settlement which more than met this mother's needs. Those needs had undoubtedly changed as a result of T's birth but there is no evidence that the father was a reluctant signatory to the consent order which the court was asked to approve in January 2015. I recognise that, to an extent, this might be said to demonstrate the lack of any *animus* towards the mother and a wish to secure a financially stable future for T in her mother's ongoing primary care. Nonetheless, I suspect that the insertion of January 2014 as the agreed date of separation is probably a reliable reflection of the reality of the timing of the final demise of this marriage whatever the father's aspirations to cling for a little longer to the wreckage of a difficult separation.
34. There is further evidence of the extent to which they were trying to co-operate with one another over the arrangements for T in the immediate aftermath of their separation.
35. I have within the written material placed before the court an email exchange between the parents written shortly before T's third birthday in June 2014. The father had raised with the mother how they might best celebrate that occasion. This was an entirely appropriate and child-focussed communication. It demonstrated a considerable degree of insight on the father's part into T's need to share that occasion with others apart from him. It suggested an entirely non-confrontational approach to the mother characterised by a certain lightness of touch which appears to have infected the response which she sent back later that same evening. It is worth setting out that response in full in this judgment because it provides a window on how they were attempting to resolve their differences in the early days of their separation.

“Subject: Re: [T's] birthday

You funny of course we will do something together for her birthday. don't worry about this for one moment !

I haven't given it much thought ... poor you stressing about this. please don't worry about things like this of course we will do something.

I'm just not sure what yet ... i haven't seen a single soul other than mum since you went away !! so not sure who we can invite!!

but yes lets organise something nice.

.....

don't worry about anything like this [T] loves you and i want us all to get on for a long time i won't do any underhand move with your access i have promised this already.

lots of non romantic love

silly

xxx"

36. In similar terms, what I do regard as a similarly reliable indicator of the father's approach to the arrangements for T in the immediate aftermath of her parents' separation is the email exchange which occurred between the father and the mother's new partner in August 2014. As I remarked during the course of the hearing, it was an exemplary example of courtesy and restraint on the part of both individuals.

37. On 10 August 2014 the father wrote in these terms to the mother's new partner (who was by then spending time in the former family home where the mother continued to live with T):

"As you can imagine, this is not an easy email to write. However, [J] tells me that you have been encouraging her to understand how central it is for [T] to have proper time in her relationship with me, her Dad.

I do appreciate this, as I am a very committed (not to say devoted) and active Dad and [T] is the central person in my life. The separation has happened whilst [T] is at such a young age. It has been a hugely difficult adjustment not to be able to see as much of her as I want. That may change in future but for now any support to my parenting of [T] is welcome, which includes minimising any confusion to her when you are staying in our house. As a father yourself you will know something of the pain of separation; for it to happen in a way that reduces time with [T] is the hardest part.

I have not told [J] that I am sending this email. Your relationship with [J] is not the reason I am writing. I wish [J] happiness. I am only concerned to protect [T] and her development in this difficult time."

38. That email provoked the following response from the mother's new partner (to whom I will refer as 'G'):

“Thanks for your mail. The last thing I would want to do is cause any confusion for [T], please don’t worry about that. I hope things work out well for you. I’m sure they will in time.”

39. I regard that email from the father as a reliable window into the father’s state of mind at that point in time. The parties had by then been separated for a few months. Contact had been taking place at weekends with the mother travelling with T by train to London. She was only a little more than 2½ years old when the parties separated. In the early days, T stayed with her father at his London flat for two nights and returned to the South coast with her mother at the end of the weekends. Whilst I accept that his home was a familiar environment for her (since it had been her home prior to the move to the South coast in 2013), it is also clear that she was a child who found separation from her mother very difficult. Understandably for a child of her age, she was clinging and anxious as she made the move from one parent to the other at the weekends. In the early days of these contact arrangements the mother would stay for the first night with T at the father’s flat, later staying nearby so as to be on hand to settle the child if she was needed.
40. The father was alive to these issues. He told me that he had purchased a bed which was identical to the bed which T slept in at her home and had arranged her room in London to replicate as far as possible the bedroom in the former family home on the South coast.
41. I suspect that these insights on the father’s part (including his email to G) will be seen by the mother as “constructs” on his part. She has clearly felt highly manipulated by him during their marriage and appears to believe that he is eminently capable of manipulating a narrative to suit his own purposes in these proceedings. Nevertheless, it seems to me that these early stages of the post-separation contact between T and her father were, in the main, happy and enjoyable times for this little girl. Her weekends were fairly full of activities which the father arranged and there were visits from his extended family with whom she was close. I accept without reservation that the travel to and from each home on a biweekly basis was tiring both for her and the mother. T was obviously tired and unsettled by moving to and fro between her parents’ homes. The mother’s evidence was that T was simply not coping with these contact arrangements. She was candid in her admission that it rather suited her to be up in London on alternate weekends because that was where G was living at the time and their personal relationship was then ongoing. The long train journeys were very tiring for T and often took up to three hours at a time when there were delays due to frequent engineering works on the line. It appears that T became apprehensive in advance of these weekends and would often enquire whether she had to go to see her father. I suspect that these issues flowed very much from her anxieties about leaving her mother and the amount of travel she was undertaking rather than from any fundamental unhappiness at the prospect of seeing her father. This much I collect clearly from emails passing between the parents and the mediators whose help they had engaged at an early stage of their separation. A particular passage from one of those emails speaks volumes to me about two issues. The first is the extent to which there were difficulties over effective communication between these parents. The second is the effort which the mother had invested into making T’s visits to London a success.

42. These excerpts come from the record of a mediation session which took place in early October 2014:

“Two key factors emerged from this discussion:

1. Because of your current sensitivity, you each have a tendency to interpret the other’s meaning in a negative way. This emerges as a mismatch between the speaker’s intended meaning and the listener’s understanding of what was meant. Your lack of mutual trust escalates this further to accusations of lying or manipulation. To avoid rows, you also avoid giving full information which you think might upset or inflame the other. Such omissions lead to rows escalating.
2. *[To the father]* your grief cannot be healed by focussing on what you no longer have. To move forward, you need to enjoy what you have in the moment and what you can look forward to in the future.”

43. Of the weekend visits to London and the mother’s input, the mediation record says this:

“[To the mother] You have consistently put a great deal of effort into supporting [T’s] relationship with [her father]. Specifically, you have acted against other external advice, lived through [T’s] tiredness and temper tantrums, thought of ways to reassure her about the changes she would face and soothed her initial reluctance. Your exhaustion at dealing with this and the lack of acknowledgement of your commitment to making things work have left you emotionally depleted in the face of [the father’s] needs for reassurance.”

44. Contact between T and her father evolved during the latter part of 2014. It is clear that the initial proposal to work towards two nights each weekend was not implemented: in practice, T stayed with her father on a single overnight stay on a Saturday. This proved to be a particular point of tension between the parties. Whilst the mother says that T was not coping with two nights away from her, the father interpreted this restriction on his time with T as further evidence of the mother’s resistance to an appropriate sharing of T’s time and as full an involvement in her life as was then possible. In the Autumn of that year the parents agreed a regime whereby contact in London moved to a fortnightly arrangement with the father travelling to the South coast on a day in the intervening week. T had not yet started full-time primary school although she was attending a nursery/pre-school. In order to cut down on travelling, from May 2015 he rented a room in a shared house which was about three miles away from the home which T shared with her mother.

45. During the summer of 2015 these parents were preparing T for the transition from her local pre-school to full-time education at a local primary school close to her home. Both parents describe this period as being the time when they were making the best progress in their efforts to co-parent their daughter. Both agree that they saw it as important for T to see them together and getting on well. At the mother’s invitation, the father would frequently stay for a cup of tea or for supper in the mother’s home when he returned T after an afternoon out. I heard about one difficult handover at a local station when T became very distressed at the point of handover. The father’s

evidence, which I accept, was that she quickly settled down with her father once she was on the train and he was able to reassure the mother shortly thereafter by sending a photograph of T sitting happily on the train.

46. In cross-examination the mother agreed that throughout all the periods of time which T spent with her father between their separation in the early part of 2014 and the end of 2015 when the allegations of sexual abuse surfaced, he was responsible for all aspects of her care. On the whole, it appears that the care he was providing was not provoking in the mother's mind the sort of concern which might have prompted her to withdraw her support for the regime of contact which was by then in place. The issue at the time appeared to be the child's ability to cope with the amount of time she was spending away from her mother. It is true that she raised an issue about the father having fallen asleep in the cinema with T during one episode of contact. There were other aspects of T's behaviour which concerned the mother. For example, I heard that at one stage she was biting children who came to play with her. However, on the whole, it is clear to me that she was doing what she could to support T's relationship with her father. During the period in 2014 / 2015 when the level of parental co-operation appeared to be at its best, she had even suggested (and subsequently arranged) a family outing to the Isle of Wight.
47. T started full-time school the following year in September 2015 when she was not yet five years old. There is an issue between the parents in relation to the fact that, in completing the forms for her entry, the mother failed to alert the school to the fact that she shared parental responsibility for T with the father. The father points to this as further evidence that he was being marginalised from T's life at the mother's behest. She has acknowledged that this was an error on her part and has apologised to the father for her mistake. She explained that T herself had expressed a wish to be known as "TS" and wanted to take her mother's surname following an incident after a holiday abroad. The immigration officer at the airport had queried the fact that T's passport had been issued in a different name from her mother's. This prompted a conversation between mother and daughter. The mother's preferred option was that she should be known by each of her parents' surnames in a double-barrelled form but she accepted that she allowed T to take the lead in relation to how she was known at her school. She told me that T's requests had simply gathered a momentum and that *"to be honest, I just couldn't be bothered. There was so much stuff going on and I was so overwhelmed already"*. Looking at the wide canvas of evidence before me of how matters had evolved since the separation, I am unable to find that the omission of the father's name on the school form which related to parental responsibility was a deliberate act on the mother's part. It is inconsistent with the support which I have found she gave to the evolution of contact between T and her father. It was a mistake which was swiftly corrected. Whilst I accept and acknowledge the distress which it caused the father at the time, I do not regard that mistake as a strategic part of an insidious process or calculated alienation on the mother's part. I regard it as an omission rather than a deliberate commission of an act which was designed to represent that she alone had legal responsibility for this child. The lack of any steer from her in relation to T's adoption of her mother's surname is something which troubles me more and I shall return to this in due course once I have chartered the course which these proceedings took following events in November and December 2015.

48. Within a matter of weeks of starting school, the first of two incidents occurred which have set in train over three years of litigation between these parents. Each involved T returning from contact with her father with a sore bottom. To be more precise, the mother observed that the area around her vagina and labia was very red and swollen and the child was clearly sore. The first of these incidents occurred on 15 November 2015; the second about a month later on 13 December 2015. Whatever the cause of the redness and swelling which the mother observed, it appears to be accepted that these symptoms had disappeared by the following morning. Each parent gives a very different account of the second episode and the father's knowledge about it and I shall need to determine in due course whose account is the more reliable. In relation to the first incident of redness and swelling on 15 November 2015 the father accepts that he washed the child's bottom in the public toilets at the soft play centre where he had taken T to play for the afternoon. His reason for so doing was the fact that she had asked him to clean her after she had had "a poo [which was] a bit smelly/runny". In wiping herself with toilet paper after going to the lavatory, she had smeared some "poo" on the cheek of her bottom. He has explained in his written and oral evidence that he washed T by perching her on the edge of the wash basin and used liquid soap from the dispenser to wash her bottom.
49. Much time was spent during the father's oral evidence in exploring what he maintains was his personal practice of washing himself after defecating. This, he explained, was a predominantly cultural habit which he had adopted many years previously whilst spending considerable time working and film-making in the Indian sub-continent where there was often no access to toilet facilities. There is an issue between the parents as to the extent to which the mother knew that he sometimes washed T in a similar way whilst she was in his care as a young child. I shall need to return to this issue in due course in the context of the mother's allegations.
50. There is no corroborating medical evidence for any form of sexual abuse. T was examined by her general practitioner five days after the second episode of redness and swelling in December 2015. He observed nothing significant in terms of any physical sign of injury or abuse. Whilst there is no other specific allegation of further harm which post-dates 13 December 2015, T was thereafter to make what have been interpreted as "further disclosures" through things she has said to third parties and through her drawing and writing. These culminated in a formal ABE interview which took place in May 2017, some eighteen months after the mother first noticed physical signs of redness and swelling in the area of T's genitals. During that period, contact was restricted to supervised contact at a local family centre and ceased altogether in May 2017.

The essential factual allegations

51. Thus, as identified by Williams J in his judgment flowing from the father's successful appeal, the essential factual allegations which need to be forensically examined for the purposes of this rehearing are these:-
- (i) On 15 November 2015 the father touched the child around the area of her bottom or touched the child around her genital area and/or put his finger or fingers inside her bottom or genital area;

- (ii) On 13 December 2015 the father touched the child around the area of her bottom or touched the child around her genital area and/or put his finger or fingers inside her bottom or genital area;
- (iii) On other unidentifiable dates the father touched the child around the area of her bottom or touched the child around her genital area and/or put his finger or fingers inside her bottom or genital area. (see paragraph 87 of the appeal judgment).
52. As Miss Giz confirmed in her closing submissions, it remains the mother's case that the "touching" / washing, howsoever it occurred, was likely to have been sexually motivated. In other words, it was instigated by the father for his personal sexual gratification. If not directly motivated by his wish to achieve personal sexual gratification, the mother's case is that his actions were clearly inappropriate and have caused T physical, psychological and emotional harm. She further alleges that the father has manipulated T to keep these things secret, to 'zip it'.
53. Within the bundles, I have lengthy schedules of allegations from each of these parents, revised and settled by their respective counsel as the case has progressed. Aside from these essential allegations, several of the other findings sought by the mother relate to aspects of the evidence which is disputed and can more properly be seen as part of the evidential sub-strata of the allegation of sexual abuse. As Williams J remarked, the two specific dates and events which were the genesis of the allegations were "the seed from which all else grew".
54. The fundamental nature of the findings sought by the father are to the effect that the mother has been untruthful in her denial of knowledge that he was in the habit of washing T on occasions after she had opened her bowels; that she has presented the court with deliberately untruthful evidence about the circumstances of events as they emerged on 15 November and 13 December 2015; that she has misled various professionals who have become involved in the case; that in at least one instance she has invented evidence to support her case; and that her stated belief that T has been sexually abused by him is not genuine.
55. These are all matters which I shall need to determine. Before conducting the analysis which will support the structure of those findings and my conclusions as to whether the findings for which each contends are established on the balance of probabilities on the basis of the evidence before the court, I need to say something about the law which I have considered and applied.

The Law

56. I can do no better than to take as my starting point the comprehensive analysis given to us by MacDonald J in *AS v TH & Others* [2016] EWHC 532 (Fam). From paragraphs 23 to 31, his Lordship said this:

"Burden and standard of proof and evidence

23. The burden of proving a fact is on the party asserting that fact. To prove the fact asserted that fact must be established on the balance of probabilities. The inherent probability or improbability of an event remains a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the

event occurred. As has been observed, “Common sense, not law, requires that in deciding this question regard should be had, to whatever extent appropriate, to inherent probabilities” (**Re B [2008] UKHL 35** at [15]).

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

25. If a court concludes that a witness has lied about one matter, it does not follow that he or she has lied about everything. A witness may lie for many reasons, for example, out of shame, humiliation, misplaced loyalty, panic, fear, distress, confusion and emotional pressure (*R v Lucas* [1981] QB 720).

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

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

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

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

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

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

57. In the case of allegations of sexual abuse, any assessment by the court of whether such allegations are established on the balance of probabilities must focus on a holistic survey of *all* the evidence in the case. The evidence of the alleged perpetrator is important as is that of family members and/or friends who may have been in a position to observe the relationship between that parent and the child (see *Re I-A (Allegations of Sexual Abuse)* [2012] 2 FLR 837). In the context of this case, the evidence of each of T's parents is critically important and I shall need to make findings generally in relation to their general characters as well as the credibility and reliability of the allegations and denials about which I have heard a great deal.
58. I remind myself, importantly, that any findings I make must be based on evidence and not on speculation or suspicion: *Re A (A Child)(Fact-finding hearing: Speculation)* [2011] EWCA Civ 12. The fact that a parent fails to prove, on the balance of probabilities, an affirmative case that he has chosen to set up as a defence to allegations does not of itself establish any case in relation to allegations raised by the other parent. It is not for a party against whom allegations are made to prove a negative. In this context, the law does not impose upon a parent who stands accused of having caused harm to a child an obligation to come up with an alternative explanation for any harm observed: see *Lancashire County Council v D and E* [2010] 2 FLR 196 at paras [36] to [37]; *Lancashire County Council v R* [2013] EWHC 3064 (Fam) per Mostyn J at para [8](v); *Re D (a Child)(Fact-finding Hearing)* [2014] EWHC 121 (Fam).
59. The court is enjoined to adopt a two stage process. The first question which must be answered is whether or not there is evidence of sexual abuse. If so, is there evidence as to who is likely to have been the perpetrator(s) of such abuse? (*Re H (Minors); Re K (Minors)(Child Abuse: Evidence)* [1989] 2 FLR 313 and *Re H and R (Child Sexual Abuse: Standard of Proof)* [1995] 1 FLR 643).
60. In this context, I remind myself that considerable care must be taken not to focus to the exclusion of all other evidence, or indeed primarily, on statements made by the child. The initial and subsequent developments in a child's account are, of course, of significant importance but the circumstances in which the initial allegations came to be made and the evolution of a child's account are also important factors. As the court stressed in *Re M (Minors)(Sexual Abuse: Evidence)* [1993] 1 FLR 822, it is highly desirable that interviews with young children, in particular, should be conducted as swiftly as possible after the initial allegations are made. When a child has been interviewed on a number of occasions and by different third parties, the court may in appropriate circumstances attach diminishing weight to what is said in later interviews: *Re D (Child Abuse: Interviews)* [1998] 2 FLR 10. In this context it is important in the overall assessment of reliability for a court to form a view as to whether the responses from a child are forced or led in some way: see *Re X (A Minor)(Child Abuse: Evidence)* [1989] 1 FLR 30.
61. Very helpfully, Miss Hendry has prepared a separate Note on the law I have to apply. It is agreed by Miss Giz and by Mr Langrish on behalf of the Guardian as an accurate summary of the relevant principles. In addition, Ms Giz reminds me in her closing submissions what was said by Dame Elizabeth Butler-Sloss P in *Re U, Re B (Serious Injuries: Standard of Proof)* [2004] EWCA Civ 567 and in *Re T* [2004] 2 FLR 838 at paragraph 33:

“Evidence cannot be evaluated and assessed in separate compartments. A judge in these difficult cases must have regard to the relevance of each piece of evidence to the other evidence and to exercise an overview of the totality of the evidence in order to come to the conclusion of whether the case put forward by the Local Authority has been made out to the appropriate standard of proof.”

62. In this context, my findings in relation to the credibility of T’s parents as witnesses is a single, but important, part of my assessment of this wide evidential canvas.
63. There are also important aspects of non-statutory guidance which have to be borne in mind in any such assessment, and particularly when the evidence comes from professionals who have spoken to a child who is the subject of allegations of abuse. These have been referred to in the judgment of MacDonald J in *AS v TH & Others*: see paragraphs 35 to 52.
64. Finally, I bear well in mind in my approach to the evidence the eight factors, or pointers, which Scott Baker J highlighted in his judgment in *Re E (A Minor)(Child Abuse: Evidence)* [1991] 1 FLR 420. They are these:-
- (i) the number of times a child has been interviewed;
 - (ii) the age of the child at the time;
 - (iii) the need to scrutinise with care the reliability of the reporting adults;
 - (iv) the climate in which the “disclosures” were made;
 - (v) whether whatever the child has reported is likely to be fact or fiction;
 - (vi) the consistency, or lack of consistency, in the child’s account;
 - (vii) the child’s behaviour both before and after the allegations were made;
 - (viii) the absence or presence of corroborating evidence.
65. I have taken all these matters on board in reaching my conclusions. It is the holistic survey of that evidence to which I now return.

THE EVIDENCE: MY ANALYSIS

66. As I have already set out, when the mother’s concerns were first aroused on 15 November 2015 T had emerged from her parents’ separation into a pattern of contact which was, by that point, fairly well-established. It is true that there had been complaints from the father about the absence of what he hoped would be an increasing trajectory of frequency in the time they spent together. However, they appear to have managed the arrangements between them in the new circumstances of T’s full-time attendance at primary school. They were then in the early foothills of that new regime which had been in place for no more than a matter of weeks.
67. In order to give some context to the father’s case as to what happened on that day, I turn first to the evidence in relation to his case that he would frequently wash T after she had used the toilet.

68. It is clear to me that, to the extent he was available to share in T's day to day care in the very early part of her life, he was a "hands on" father despite the fact that he was then working and studying for his PhD. He was no stranger to changing nappies. He told me how, following T's birth, either alone or with the mother, he had purchased a table from a well-known store which they had set up as a changing table in T's nursery. Although she disputes the extent to which he engaged in the day to day caring routines, the mother acknowledges that he had attended to nappy-changing and cleaning. It features in one of her later allegations to which I shall come and which has caused so much apparent offence to the father.
69. He has described how he would frequently cycle home from his work at the university to the London flat which was then the family home. He maintains that he was often involved in T's bath and bedtime routine. That, he says, would often involve using a wipe to clean her bottom. He was able to give me a clear narrative about his use of wet wipes, Sudocrem and their use for a short period of eco-nappies before they reverted to using disposable nappies. He describes buying equipment for the mother which enabled her to express breast milk for T's feeds in the early days after her birth. He sometimes mixed feeds when she moved on to formula milk. Whilst there are issues between the parents as to precisely how long T was exclusively breast fed, I am satisfied that these were not responsibilities which were delegated solely to the mother; to the extent that he could be given the demands of his employment, and whilst these parents shared a common household, I find that the father was equally involved in caring for T as she grew from a baby into a toddler. Once they separated, he continued to be responsible for these aspects of T's care whilst she was spending time with him throughout the emerging pattern of contact.
70. Before that separation occurred and following the family's decision to relocate to the South coast in 2013, the father renegotiated his contract of employment with the London university where he worked. He agreed a regime of 'compressed hours' which enabled him to fulfil his duties to his employer by attending at the university premises from Tuesday mornings to Thursday afternoons. In this way he was at home for much more of the week (and weekends) than he would have been as a Monday to Friday commuter.
71. The father's evidence was that his practice of washing T after a bowel movement had started when she was being potty-trained at the age of about eighteen months. That would have been around the end of 2012 or the early part of 2013. When he was interviewed by the police nearly a year later on 19 October 2016, he said that this occurred in the main following the family's relocation from central London to their new home on the South coast. That move, we know, occurred in January 2013. I have extracted the following passage from the transcript of his police interview:
- “... So I was involved in all aspects of bringing her up, so obviously I'd be changing her nappies and doing the routine and it was quite normal for me to clean her, that means using a wipe to clean her bottom, and then when she was potty-training, sometimes – well, I remember seeing like her having, um, sort of skid marks on her pants and, um, I'm of Indian origin and since living in India for a period I wash myself in that way. It's like the French use a bidet, and it was completely normal for me to rinse her bottom if she was dirty, particularly during the period where she wasn't quite ready to wipe herself, or just learning to wipe herself properly.

This is something that, it didn't happen that often, but maybe once or twice a week I would be around after she had a poo and she got into the habit of saying things like "Wash me, Daddy", and then it became a little bit of a ritual, so she really enjoyed me doing that because she would lean on my ... so she's on the toilet, she's finished her – I put her child's ring on the toilet, she's finished her – getting her poo, and then she'd lean on my, um, arm (*indicates*) and then in that home the sink was next to the toilet, just a foot or two away, so she would lean on my arm sit her on the edge of the sink (*indicates*), we'd mix the water, and this was all a bit of a – like, my attitude to parenting is to try and make things fun, so sometimes I'd pick her up and go "Whoo" (*demonstrates*) and sit her on the sink and then we'd mix the water, she'd check the temperature of the water, she would be – you know – for her it was like a fun thing."

72. During the course of his oral evidence, the father gave me a demonstration of how he used to lift T from the toilet seat to the edge of the sink. This was specifically in the context of what had happened when he washed her at the soft play centre on 15 November 2015 although he said it was what he habitually did when she needed a wash. With the assistance of a child's toy (a large bear which was produced from the children's centre at court), he showed me how she would lean forward facing him on the lavatory whilst he supported her upper body weight on his left forearm. In that position he would lift her from the lavatory seat, rotate towards the sink and then place her on the edge of the sink so that she was facing him with her back to the taps and her legs bent at the knees at right angles to the floor. In this position, she was sitting perched on her bottom on the rim of the basin.
73. In cross-examination, the father was consistently pressed as to the frequency and manner in which he washed his daughter as she made the transition from potty training to using a child's seat on the adult toilet until she became largely independent in respect of her personal hygiene. He described how she would often open her bowels before her evening bath. In this event, she would simply wash herself in the bath and needed little assistance from him. He told me that she had her own bubble bath, soap and sponge at his home which she used when she stayed for periods of contact. His role in bath times once she was older was usually limited to showering her off in the bath with the hand shower attached to the bath. If she had a bowel movement whilst dressed during the day, she would invariably clean herself with toilet tissue. On occasions when she asked her father to wash her, she would have her pants and tights around her knees and ankles as she sat on the toilet seat. He would then lift her over to the sink in the manner I have described above. She would often 'wiggle' herself further backwards towards the flow of water from the tap once the father had ensured that the temperature was correct. In the bathroom where they had no mixer tap, he would allow the water to run into the basin until it was the correct temperature. If necessary he would use a gentle baby soap to clean the area around her bottom. More often than not, the pressure of the water flow from the tap was sufficient to ensure she was clean. He would then lift her onto the floor, pat her down with a towel if one was available, whereupon she pulled up her pants and tights (or trousers if she was wearing them) and left the bathroom.
74. I did not have the impression that these episodes of 'washing' occupied very much time. The father emphatically denies that he has ever touched or washed T's vaginal area as part of this routine. The mother denies any knowledge of this practice and

thus, on her case, she has no direct knowledge of what happened. The father was criticised in cross-examination for not using a designated towel for these purposes. It was suggested to him that this was a fundamentally unhygienic practice given that T would have used the same sink to brush her teeth. The father explained that there was never an occasion which he could recall when any trace of faeces was left in the sink.

75. Specifically in relation to what had occurred on 15 November 2015, the father described to me events unfolding in this way. To set this day in the overall context of the contact arrangements at the relevant time, the father was looking after T on one night every two weeks in the property he rented close to the mother's home and she was spending one night a month with him in London. They were maintaining regular contact by Facetime usually on an alternate daily basis. In addition, he was sending cards and pictures in the post. I understand from his evidence that these were entirely age appropriate and featured cats and other animals which provided a 'talking point' for their regular Facetime conversations.

15 November 2015: the first incident of redness and swelling

76. T had her lunch at the soft play centre. She told her father that she needed to go to the toilet. He left the bag he took to the play centre in the area where they had eaten lunch and accompanied T to the womens' lavatory. He used the female toilets because he felt they would be cleaner and he did not want to expose T to the possibility of a male entering the men's toilet area where I understand there was an open urinal. On this occasion he had used the corner cubicle. T sat on the toilet and opened her bowels. He was with her throughout and they were chatting together easily. T wiped her own bottom using the paper provided. In the process of wiping herself, she had smeared 'a bit of poo' on her right bottom cheek. Her bowel movement on that occasion was loose, runny and smelt. She asked her father for help. He assisted whilst she was still sitting on the toilet by using further toilet tissue to wipe her back bottom. He said that he wiped in the correct direction in an upward movement and then, in response to her specific request, lifted her onto the edge of the sink to give her a swift wash using the liquid soap in the dispenser to wash the cheek of her bottom which had been smeared. He described how she 'did a little wiggle' after being placed back on the floor, a detail which Miss Giz says was not included in his previous accounts of what happened on that day. There were no towels available and the father accepts that T may well have been damp when she pulled up her pants and tights. On his account she ran back swiftly and happily to the soft play area where they remained for the next two and a half hours or more before she was returned home to her mother.
77. The father accepts that this was, and is, the only time he has ever washed T in a public place away from the privacy of home. He told me that he was not expecting to have to wash her on that occasion and had not anticipated that she would have such a loose bowel movement.
78. Having returned T home at the end of the day, the father was invited in to the mother's home and remained downstairs whilst she took T upstairs for her bath. T told her mother that her bottom was sore. When she checked, she observed what I have described earlier in this judgment as the area around the child's labia and vagina appearing red, hot and swollen. She confirmed that T made no complaint on that occasion about anything which her father had, or might have, done to her. She simply

told her mother that her bottom was really hurting as if she had been ‘stung like a bee’. I interpret that as a complaint that the child was experiencing a stinging sensation in addition to the redness and soreness which was visible on the skin in that area.

79. The parties’ accounts differ in certain material respects in relation to the exchange between them which followed. The father denies that he heard T crying upstairs. He accepts that the mother came down to look for Sudocrem and told him what she had observed. There was a discussion between them when the father went over with the mother what might possibly have happened to cause this soreness. He accepted that he felt distressed at the prospect that some aspect of his care had resulted in the symptoms which the mother had seen. He told her that he had washed T’s bottom at the soft play centre and used the soap provided after she had ‘had a poo’. It is common ground between them that during the course of this conversation he told the mother that whenever he needed to wash T at his home in London, he used ‘child soap’. Neither alleges that T was present when they had this conversation. The mother told me that she was prepared to accept this explanation at the time and did not jump to any conclusions on that occasion. It appears that T was soon settled and thereafter the father remained at the mother’s home where there was what seems to have been a perfectly convivial discussion between them for over an hour about her application for her PhD.
80. She has said in her written evidence that they had an exchange on that occasion about his reasons for washing T as they had discussed ‘toileting’ in the past and she had specifically told him that T was able to clean herself. The father has no recollection of that specific exchange on that occasion. He maintains that, the mother having raised the issue, he happily agreed he would not wash her again. He had no sense that there was a particular problem although he accepts that a few weeks before, they had discussed whether T was old enough to wash herself on her own. The mother’s recollection is that she told the father that she did not want this to happen again and that T was capable of washing her own bottom.
81. The mother confirmed in her oral evidence that it was quite usual for the father to come upstairs to read T a story and settle her for bed after her bath after a non-London day’s contact. Whilst he would sometimes finish his day out by getting involved in bath times at her home, there were often occasions when T would return home tired and wanted her mother’s exclusive attention.
82. A fortnight later on 28 November 2015, T spent her usual weekend contact with her father staying in his London flat. The mother reports nothing untoward after her return on that occasion.

13 December 2015: the second incident of redness and swelling

83. Two weeks later, on a Sunday, the father and T were once again at the local soft play centre close to the mother’s home. This was not a London contact weekend. On the mother’s account, T returned home from a day out with her father and once again she observed redness and swelling in T’s vaginal area. Her evidence is that *“This time I asked both ... what had happened and addressed them both. Neither of them said anything. I told both of them that nobody needs to touch [T’s] bottom except [T]”*. She maintains that the father later suggested that T might have ‘got hot at soft play

because she was wearing too many clothes'. As I shall explain in due course, the father's account of this hand over is very different.

84. As on the last occasion, the mother accepts that T herself made no complaint at all about the father. She has further confirmed that all the symptoms had disappeared completely by the following morning as they had on the last occasion.
85. The father emphatically denies that there was any conversation on 13 December 2015 about a further episode of observing redness or soreness in T's genital area. When asked by Miss Giz about the difference in their accounts, the mother told me that, on 13 December, she had brought T downstairs after her bath and had said words to the effect of, "*Okay – T has a red bottom again. Can someone tell me what is going on ?*". She described the reaction of father and child as being like that of 'cartoon characters': almost 'whistling' and neither being able to look the other in the eye.
86. She maintains that the father did not stay in her home on this occasion following the conversation to which I have referred above. She told me that he had wanted to come in but her own mother was due to come round for the evening and she did not want him there when she arrived. It may or may not be relevant in this context that she had raised with T's grandmother what she had seen after T had returned home the previous month on 15 November 2015. She told me that she had said to her mother (who had been a nurse) that she found it difficult to imagine that the father had done anything 'like that' to cause her harm. She also told me that, having discussed it again with her mother that evening on 13 December 2015, she "shut her down really firmly" when she suggested it could be abuse.
87. The father is quite clear that the mother's account of what happened on this occasion has been fabricated. Whilst he now accepts that she has truthfully described what she saw on 15 November 2015, he maintains that he was completely unaware of a recurrence of these symptoms on 13 December until the mother raised it in passing during a telephone conversation a few days later. It is common ground that he collected T from her mother's home the following morning on Monday, 14 December 2015 as they had previously agreed he should in order to take T to school for the start of her school week. The mother accepts that she did not raise any concerns flowing from the previous evening with the father on that morning. I have seen a video clip taken on the father's mobile telephone of that journey to school. Whilst the mother says this is all part of his 'construct', it is important to note that, as of 14 December that year, the father had no idea when that footage was taken that the mother would subsequently accuse him of sexually abusing their daughter. The video shows T skipping happily to school, holding her father's hand, chatting in an animated fashion and looking entirely happy and relaxed in his presence.
88. As I have said, there is no further evidence beyond those two occasions of any further instance(s) when the mother or anyone else saw symptoms of soreness or redness in the area of T's bottom.
89. What I do know is that four days after the second incident, on 17 December 2015 the mother called her GP, Dr F. On 18 December 2015 she took T to the surgery where the child underwent a physical examination. The doctor has since confirmed in writing (and the medical notes record) that there were no abnormal findings on

external clinical examination and certainly nothing suggestive of digital penetration or any other form of abuse.

90. The mother followed up on that visit by sending a lengthy letter to Dr F. It is dated 20 December 2015.
91. As that letter makes clear, she had by that date involved her own solicitor and had spoken to social services. She had asked Dr F to make a referral to social services when she had called him the previous day. Her letter refers to “the need for ‘evidence’ before clarity can be gained”. It is also clear that she had discussed the issue with the counsellor she was then seeing (“...it was not until my counsellor pulled me up on it that I was prepared to admit even to myself that I must act on this.”) Her letter to the GP continues thus:

“What I have been clearly told implies I must send [T] back to her Dad and wait to see what happens. I am actually horrified by this suggestion and of course do not think this is the best thing or safe to do. I am faced by this horrible dilemma. It strikes me the situation is this:

- 1. I send [T] back to have time with her Dad and remain super vigilant whilst making sure [T] knows she can talk to me, not to keep secrets and also to let her know she is a big girl and doesn’t need help washing etc.*
- 2. I stop contact now and wait for an investigation. Block contact until it goes to court.*

What strikes me is that if I choose the second option I will lose [sic] the good working relationship I have with [T’s] Dad.”

Having set out in her letter to the GP the pattern of contact which had developed and T’s inability to cope with so much contact, the mother said this:

“I have raised serious concerns with my solicitor about his ability to look after a child and take proper care of her. I have felt that I have done all I can to try and make contact with her Dad as bearable for her as possible. I sketch this picture simply because I want to make it clear I am doing all I can to keep things civil for the sake of [T] and enable some kind of positive relationship between them. This includes, for example we all eat together 4 times a month because I noticed [T] felt more comfortable seeing her Dad the more she could see that we had a friendly relationship (believe me this takes at times incredible resolve).

These are extracts from a much longer letter which the mother told me she wrote at 5am on the morning of 20 December 2015 when she was in a state of high anxiety and at a time when she felt in ‘a complete quandry’.

92. In her letter, she makes reference to a planned visit to the ballet in London, arranged by the father for 22 December 2015. That was an occasion when all his immediate

family were travelling to London to join them for the occasion which was to involve a party afterwards to celebrate his birthday which fell on that day. She referred to the fact that, after the ballet, T's Christmas visit to see her father was due to take place at his brother's home in the North of England with aunts and uncles around. She tells the GP that on previous visits, T and her father have shared a bed in that house. She continued, "*It breaks my heart to think I am putting her in any danger **but it seems the system is set up to let this happen**, that I have little control over the situation and that I am damned if I do, damned if I don't [sic]. In this whole case I have not in any way felt that [T] or I are protected by the Law and that everything is weighted in his favour....*". The emphasis in bold is the mother's own.

93. She concluded her letter with a request to Dr F to put her letter on file and send a copy to social services. And then this:

"If however by some miracle this case is reviewed and there is a change of opinion amongst the social services team please contact me immediately on my mobile And I will go and pick her up from wherever she is in London or avoid going. We take the 10.10 train which gets in at 11.40. If there is anything that can be done to suggest I don't drop her please call me before this and we will not meet him."

94. What does this letter tell me about this mother's state of mind at that point in time ?
95. First, I do not believe her fundamental anxiety to be feigned or fabricated. However, to some extent this was quite obviously written with an eye on future litigation over contact. She had plainly been in contact with her solicitor and refers in her letter to the import of the advice she had received. I bear in mind, too, that this letter was written only one week after the second incident of redness and swelling was observed by the mother on 13 December 2015. It appears that she made contact with the out of hours Children's Services following T's medical examination on 18 December 2015 despite the doctor having confirmed that there was no physical evidence of any abuse and in the absence of any indication from T that she had been harmed in any way. Whether or not she had been advised to seek advice by the GP, as she maintains, it does not seem to me that this was a mother who had a broadly open mind about the possibility of an innocent explanation for the symptoms she observed. The whole tenor of her letter to Dr F suggests that her preferred option at that stage would have been for contact to have ceased until a proper investigation had been conducted into the likelihood of T having been abused by her father.
96. The other matter which I collect from that letter is that T was by then (and had been for some time) picking up on the tensions in the relationship between her father and mother. Whilst the mother may have referred to making contact "more bearable" for T in the context of the child's distress over the frequent to-ing and fro-ing to London, her words suggest to me that, in terms of T's own experience of time with her father, the mother saw contact as it had developed by that stage as something which had to be maintained rather than as something which was there to be enjoyed. If this was indeed her mindset or approach, it is not difficult to see how her anxiety after the visits on 15 November and 13 December 2015 might have propelled her into the state of "super vigilance" to which she has referred in her own letter to the GP. It is not without significance, in my judgment, that the mother's letter refers to "secrets" and

to the fact that “she is a big girl who doesn’t need help with washing”. There is no evidence at all to suggest that T herself had by then made any reference to “secrets”.

97. I am also concerned by the fact that, when presenting the time line of events as they unfolded to the GP, the mother makes reference to the following:

“Monday 14 December At breakfast. I say to [T] again. Nobody needs to touch your bottom. She replies nobody except Daddy [sic] ...

*[T] is an extremely bright and confident person. She is doing really well at school, has lots of friends and is generally self assured. She is extremely articulate and chats to me about all sorts of things. However when I have tried to subtly talk to her about this she clams up completely, looks down and won't look me in the eye³ I have tried to talk very generally about her cats/kitty wouldn't like it is [sic] anyone touched her bottom etc. secrets are fun but sometimes if someone asks us to keep a secret it can make us feel sad ... probably not the right or way to ask at all, however when I broach anything around this she completely clams up. She might just be shy but my instinct is it is more than that. My gut feeling is this really needs to be investigated. However I feel scared to confront my ex. He is extremely clever, brilliant with words and believes his own press so will be able to convince himself that whatever he has done is ok and that this is my problem not his. **If I am going to take this further I need absolute support or [T] and I could find ourselves in a much worse position than we are now and I am not prepared to risk that.**”* Again, the emphasis is the mother’s own.

98. What this tells me is that at some point or points in time over the course of the intervening weeks between 15 November and 19 December 2015 and *before* T had been directly exposed to any external professional involvement in the case, there had been more than one attempt by the mother to engage the child in a discussion which involved bottoms, things Daddy may or may not have done in terms of touching, and reference to ‘secrets which can make us feel sad’. If she has accurately described T’s reactions to these discussions as “clamming up completely”, this may well have lent some support to something untoward /abusive having occurred. However, it may equally well have been a manifestation of T’s inability to process and understand the incomplete narrative to which she was being asked to respond by a clearly anxious parent. Given her heightened awareness about the ongoing tensions between her parents and the vigilance which the mother had already observed in T, the child’s potential inability to process that narrative, in the absence of abuse, is a possibility which this mother does not appear to have weighed equally in the balance at that very early stage of these investigations.
99. In the event, the planned trip to the ballet did not go ahead. The mother cancelled the visit at very short notice. She accepts that she told the father that T was unwell. (I know not whether this was actually the case and I did not hear specific evidence on

³ Precisely this narrative is reproduced in para 27 of the witness statement which the mother produced on 21 April 2016 after the commencement of the litigation. Whilst that narrative was set in the context of the evolving chronology in the aftermath of the events of things T had said to, and drawn for, third party professionals (including social workers and the police) from January through to April 2016, it seems reasonably clear from the contents of her letter to Dr F in December the previous year that this was T’s initial response to direct questioning from her mother at some point prior to December 2015 but (presumably) between 15 November and 18 December 2015.

the point save that the mother accepted she had been planning to take T to London until some ‘ten minutes’ before they were due to catch the train.) When the father offered to cancel plans for the ballet and travel down from London to see T at home, the mother declined his suggestion. The father did see T when he travelled from London on 28 December 2015. He took her out for part of the day and there does not appear to be any suggestion that T was reluctant to go or was returned in a distressed state. The mother criticises the father for having arrived on that day with flowers and chocolates. She appears to seize on these gifts and what she describes as his “smarmy” demeanour as evidence of a wish to deflect her from the concerns she had expressed. The father told me that his intention was simply to celebrate Christmas with T and her mother (“This was our Christmas”). At this stage he was, of course, unaware of the steps which the mother had taken to involve social services, her solicitor and the GP.

100. Contact in Sheffield with the father’s extended family took place over the New Year in 2015/2016 as had been planned. The mother’s written evidence suggests that T returned from that contact in a distressed state and wet herself three times. I have been provided with video clips from that visit. These were taken both by the father and by others in the family (the father himself appears in some of the clips). The footage (albeit short) shows a relaxed family celebration of Christmas. There is much fun and play involving both the adults and the children who were present.
101. T’s medical notes reveal that she (or at least a sample of her urine) had been taken to the surgery following that New Year visit with the reasons for the referral being recorded as “complaints of burning and wet herself twice in one week”. The tests (repeated on 11 January 2016) showed nothing untoward and Dr F recorded “no action” on her notes.
102. Over the weekend of 9/10 January 2016, T saw her father on the South coast and spent the afternoon with him. She was returned home without any apparent problems or issues.
103. The following day, on Monday 11 January 2016, the mother sent the father an email. In it, she refers to a conversation they had with T on Saturday, 9 January. It appears this was a conversation which must have taken place either before or after her day out with her father. The topic of the conversation as the mother recalls was “washing herself and bathing”. The father’s recollection is that they did not discuss these issues. On his case that conversation focused on why T had asked him on a previous contact visit, “Daddy, did you try to hurt me when I was a baby?”. Both agree that this question relates to T asking her mother how she acquired a small scar on her face. The mother accepts that she had a conversation with T who was told that when she was much younger she had fallen from a sofa whilst in the care of her father and had hurt herself.
104. In any event, in her email, the mother addressed her concerns flowing from the two incidents on 15 November and 13 December. She said this:

“Before Christmas there were two incidents when [T] came home with a very sore front bottom, i.e. sore labia and inside etc. The first time it happened you said you had been washing her with hand soap in a public toilet. At that point we had a very straight forward conversation where I said [T] washes/wipes herself. I

made it clear I didn't expect to see this again. And there is no need for you to touch her in this area as, even if she needs help with wiping that should be at the back not the front etc. The next time you went to soft play she came back red again. This time all 3 of us discussed the situation I do remember you suggested she had got hot running around but I didn't feel at all clear about what happened. I only raise this because both cases of soreness were severe and not something I have know[n] to have [happened] before.

I actually just want to understand what exactly happened in the public toilet and how you came to be washing her here. I'm sure you have a completely straightforward reason and it is much better that I just ask you straight out rather than having a worry that perhaps I should explain better how to look after a little girl etc.

I am looking forward to having my mind put at rest. I would really appreciate if you could just describe the events so I can understand how the situation arose as I have been worried that you might be lacking a bit of info about this aspect of looking after her."

105. The father responded by email the following morning having tried to reach the mother by telephone the previous day on receipt of her email. This is what he said:

"I'm taken aback by your email but it's important that we address any concerns.

.....

In the interests of clarity here's what happened.

- 1) Mid-November visit [to the soft play centre]

I don't ever wash her labia area – only ever her bottom – when she was dirty. This has only happened once in a public toilet – I didn't want to wash her bottom as she's really old enough to look after her toilet needs but did so as [T] was insistent – she probably repeated this request because her poo was a bit smelly/runny.

I wiped her bottom – the right way – so no poo goes towards her labia.

We used the Ladies as this was cleaner & better.

I did not have child's soap with me at that time so I used a bit of the soap that was in the washroom. I washed her bottom only i.e. not her labia as I never wash this area – but I imagine that when rinsing it off, the water flowed down and some soap got onto her. Let me say very clearly that I did not touch her labia area. (You will recall that even when we had baths together I never washed her there and asked that you washed that area if it was needed as I think that a mother knows much better what to do if needed).

I was concerned by the redness you talked of and that soap triggered this. I remember that she regularly got red [sic] in that area when she was very young and you used to put a cream on to help. Apparently this is not unusual.

At that time (w'end of 14th/15th Nov) we agreed that [T] no longer needed to have her bottom washed and I'm more than happy not to have to do this. And relieved as I'd prefer not to anyway. This may lead to dirtier underpants sometimes as washing is cleaner than wiping but I do not want to wash her bottom and this will help prevent any unfounded allegations.

- 2) You reported redness after another visit to softplay – mid-Dec I think? – again this was news to me. On that occasion I took her to the loo when asked but did not wash her. I encouraged her to wipe herself, which she did. I was surprised when you told me of the redness as there's no washing now. The only thing I could think of was that it may have been because she was wearing woolly tights and running a lot. I said this at the time – that redness of a child's sensitive skin can be caused by lots of things – from the kind of washing powder or reacting to particular fabric etc.
- 3) Nowadays when she asks me to wash her bottom (she only asked once this weekend so this request is reducing) I said that she was a big girl now and that she just needs to wipe on the loo and she can wash herself at bath time with you. When she needs the loo and we are out together, I continue to accompany her to the public toilet and help her on and off an adult toilet seat if needed. To be really clear: she now wipes herself. The one-off washing when she was insistent & dirty stopped two months ago.

Any ideas you'd like to talk through about how to look after [T] are always very welcome.”

106. I have set out that exchange verbatim because it is an early and more or less contemporaneous account from both parents of events that happened nearly four years ago. It seems to me that, given the intense scrutiny of these two incidents and what was said and done in the immediate weeks and months which followed, it is important to go back to the untutored and natural responses which those early exchanges produced.
107. What I do know is that this email exchange was immediately followed by a letter sent to the father's solicitors by the mother's solicitors. It was sent on 14 January 2016. That letter was written in connection with “Matters concerning contact with [T]”. It reflected the mother's instructions that she had some serious concerns about his ability to care for [T] during her shared time with him. It referred to his explanations in relation to the two occasions outlined above as being “unsatisfactory”. Having recorded that the mother was not making direct accusations since she was unclear exactly what had taken place, the letter set out a number of perceived deficiencies in the father's general care during periods of contact. Amongst these were T's apparent distress following her New Year contact with the extended family in Sheffield; the father's inability to provide her with appropriate food when she stayed at his home in London; and inappropriate play activity (e.g. “locking her in a trunk”).
108. The mother had given instructions that it was not her intention that contact should cease as she recognised [T's] right to have a relationship with her father. However, she was in that letter proposing a change to contact arrangements. Whilst T would continue to see her father in London and on the South coast on alternate weekends, his staying contact would be reduced to daily visits on the Saturdays of those alternate

weekends. Tea after school on the intervening Mondays would continue with returns taking place at 5.30pm. This, on the mother's instructions, was to be the pattern of contact both in term times and during the school holidays. In other words, she had by this stage put a line in the sand in relation to any further staying contact.

109. In relation to the allegation of T having been "locked in a trunk", the father's solicitors subsequently provided an explanation that T had hidden in an 'unlocked' trunk during a game of hide and seek, one of her favourite activities. The father had checked that this was a safe place for her to hide before the game began and had checked that there were no catches or locks on the trunk. That play session was videoed by the father contemporaneously (and long before he knew that there might be a complaint by the mother). I have seen a copy of that video clip which shows T hiding in the trunk and re-emerging without any apparent concerns or unhappiness. The father's offer to engage in mediation to improve communication between them was rejected.
110. The day after her solicitors wrote to record her instructions that overnight contact was to cease, the mother sent an email directly to the father. It was dated 15 January 2016. It appears to have been prompted by a difficult Facetime call between T and her father that morning. It accused him of emotional manipulation in making T cry and accusing her of having been "mean to Daddy". In that email she said that she had every right to stop his contact with T but wanted to give him a chance. It continued,

"If you persist with emotionally manipulating [T], blaming me or continuing to behave selfishly I will have no choice but to take this further. [T] does not need to be dealing with our relationship or adult complexity. When you see her it is time for you and her. Not time to point score with me through your daughter. I know you do it because you openly said it at dinner on Saturday night when [T] asked why doesn't Daddy live here you said well that's mummy's choice. Saying things like this only hurts [T]. It just makes me think what an idiot you are.

You are a very silly narcissistic man. You have brought this all upon yourself through your actions. You need to take responsibility for the breakdown of the marriage and now what is happening with [T]. It is nobody fault but your own. I am giving you a chance to salvidge [*sic*] things and continue to build a relationship with her. Throughout all of this I have been utterly consistent. But I am not going to tolerate you emotionally abusing her or otherwise as I know only too well how damaging it is and I'm not going to let you hurt her."

111. The email concluded with a statement of the mother's intention to bring T to London for contact the following Saturday on the basis of a day's visit which would end 6pm.
112. Just pausing there, I ask myself what I can collect from those exchanges. It seems clear to me that these were two parents who were each in the very early foothills of dealing with the emotions generated by the breakdown in their marriage. The mother was obviously in an extremely anxious state and was, on her own admission, hyper-vigilant to any signs of anxiety or distress on the part of T. Given the child with whom this court is dealing, I find it difficult to imagine circumstances in which that anxiety and mistrust of the father would not have been communicated to T, even in a subliminal way. The mother plainly perceived an inequality in the post-separation dynamic of her parenting relationship with the father. It is clear to me from things she

had said and written to third parties that she had felt psychologically manipulated during the marriage and she may well have struggled in those early days to establish some balance in the way they dealt with the contact arrangements. The father for his part clearly felt there was a deliberate strategy on her part to marginalise him in T's life. As he put it to me in the course of his oral evidence, *"At that stage, I think she was on this 'minimising' track. She found it difficult to share information about [T]"*.

113. My impressions of the mother's state of mind at this juncture are borne out in part by the contemporaneous observations of the police officer who created the police log which is dated 20 January 2016 at about the same time as social services began their formal Family Assessment. That log refers to her as "a genuinely caring mother" who was "upset and crying" throughout her meeting with the police. The log records that "[she] comes across as down trodden, as if he still has some control over her even though they are not together".
114. The mother sent her email on 15 January 2016 at 09:49. We know that the Facetime calls took place at breakfast time. It appears to have been a fairly rapid response on the mother's part to what she perceived to have been an inappropriate conversation, albeit one which did not lead her to conclude that there was any need to suspend all contact between father and daughter. The father's case is that nothing inappropriate had been said to T which might have caused her to be resentful towards her mother as a result of his departure from the family home. He acknowledges that T could very well have picked up on the distress which he was feeling at that point in time about the loss of his family life as he had known it.
115. On that same day, 15 January 2016, there was, or appears to have been, an intervention on the part of a social worker. On the mother's case, she received a telephone call from social services informing her that she must stop all contact and make an emergency call to the police on a '999' number. The reason for this development was that a male who refused to give his name had been in contact with children's services "trying to get [T]'s records". The mother maintains that this intervention came as a "real shock" to her. There is no evidence that this individual was the father. However, what we do know is that the father made contact with her GP, Dr F, on 20 January 2016. The GP's notes record that the reason for his call was to find out whether there was some medical reason for T's recent episodes of bed-wetting. The father reported to Dr F that she had one episode of bed-wetting whilst she stayed with him over the New Year but that there had been none since. The GP was apparently able to reassure the father (as is recorded in the notes) that he had seen nothing which had concerned him when T was physically examined in December 2015 and there had been no pathological indication from the urine samples tested that there was an underlying infection. It seems that the father was at that stage keen to see T's medical records. Dr F records that he suggested during that conversation on 20 January 2016 that the father should send a formal written request for such access in a letter together with evidence of parental responsibility.
116. In the context of my analysis of the evidence at this point in time, I have asked myself what the father's motives were likely to have been in instigating this call to the GP. I have considered whether his request for sight of T's medical records might have been some form of defensive strategy in relation to potential allegations of abuse which must, by now, have been forming as a possibility in this father's mind. He had been quizzed by the mother on more than one occasion about T's sore bottom and the issue

had been engaged in the solicitors' correspondence. Whilst the mother's concerns at this juncture had not crystallised into direct allegations of abuse, he must by now have been aware that this was the general trajectory of travel. If he was concerned to find out what had been said by the mother to the GP, this is not of itself direct evidence of any abuse and, at this stage, the physical examination which Dr F had undertaken had not revealed anything at all of concern. The alternative, of course, is that the father was merely acting as a concerned and involved parent who found himself in the middle of a seemingly bitter dispute in relation to the contact arrangements for their only child.

117. As a result of a telephone call to the mother some five days earlier, social services became formally involved with the family. On 19 January 2016, the mother had discussed the two episodes of vaginal redness and soreness with her DV Outreach worker who, in turn, made a referral to Children's Services. On that same day, a decision was made to commence a formal Child and Family Assessment. That decision was taken notwithstanding the fact that an earlier decision had been taken at Christmas 2015 following the initial referral by Dr F that no further action would be taken. The formal assessment took place over the next twelve weeks or so and involved several sessions when T was seen and questioned by various individual professionals. The social worker assigned to the case was Rebecca (Becky) Bowles.⁴

The Family Assessment undertaken by Children's Services between January and March 2016

The first home visit: Friday 22 January 2016

118. The first visit to speak to T took place on 22 January 2016. Prior to seeing T on her own, Ms Bowles had an initial conversation with the mother in order to elicit some background information about the two incidents which had provoked so much concern in the mother's mind. Ms Bowles has recorded in her notes that there were no further incidents since which were suggestive of abuse and T had said nothing to anyone to suggest she had been harmed by her father.
119. Of the mother's feelings about the father, Ms Bowles' notes record the following:
- “[M] has stated that she generally feels that [F] is a dangerous character and that he was controlling and emotionally abusive during their relationship. She is of the view that he is very coercive and can present well to professionals in order to hide the concerns that she has. [She] has sought support from a domestic abuse outreach worker following the end of their relationship and is also attending a group for women who have experienced these issues.”
120. In the context of her mother's concerns, Ms Bowles' evidence to the judge in July 2016 was that she was quite sure that, by this time, T was likely to have picked up on the fact that something was going on in terms of the adults' responses around her. I regard this as potentially significant evidence from an experienced professional social worker: that evidence was before the court at a relatively early stage of these

⁴ I have not sought to anonymise the names of the professionals involved since the (open) judgment produced by Williams J when he allowed the father's appeal names the various individuals who played a part in the ongoing investigation.

investigations and only a matter of some weeks after the two incidents involving the mother's observing redness to T's bottom.

121. When T was introduced to Ms Bowles, she was, according to the social worker's notes, "naturally and appropriately wary of me as a stranger". The explanation given to T for the presence of Ms Bowles in the home was that she was there for a chat. After an initial period of play and colouring and some general conversation about school and the pet cats, Ms Bowles asked T about her father. T volunteered that they had spent part of the New Year together and had stayed in a hotel in 'one big bed'. Ms Bowles asked whether they had slept in the same bed and T confirmed that they had⁵. Significantly, she was then asked if anything had happened which she did not like or that had made her feel uncomfortable. She said 'No'. She was then asked about what happened when she goes to the toilet. T told Ms Bowles that she went by herself. She was asked if anyone ever needed to wash her after the toilet and she said 'Daddy does sometimes'. She confirmed that her mother did not wash her.
122. Ms Bowles' note of that occasion concludes,
- "[T] was understandably wondering why I was asking her quite sensitive questions and I explained that I would come and see her at school next week."
123. Of significance in my judgment is the fact that, of all the issues which the mother had raised with her in advance of that meeting with T, Ms Bowles had not been informed prior to speaking to the child that it was the father's case that he had regularly washed T's bottom after she had been to the lavatory. In her earlier evidence in the first hearing in July 2016, it is clear that she had been under the impression that this sort of washing was more usually left to the mother⁶. Ms Bowles confirmed to me during the course of her oral evidence during this hearing that a complaint based upon a parent washing a child's bottom after a trip to the lavatory would not necessarily lead to a formal referral as a child protection issue. She also confirmed that when T answered her questions about washing and her father's having done this "sometimes", she was not presenting in any way which suggested this was a matter of concern for her. She said that T's response was open and spontaneous and had been volunteered by the child without exhibiting any signs of emotion or concern. There was nothing to suggest on that occasion that this had made her unhappy.
124. It is also important to note that, on this occasion, when T was initially introduced to the first of many professionals whom she would encounter in the context of these allegations, she was asked a leading question about uncomfortable experiences. Having responded quite clearly that there had been none, she was immediately asked a question about going to the toilet and washing. Whilst the question about the identity of the person who might need to wash her was open, as Ms Bowles confirmed, T was able to respond quite spontaneously and without apparently evidencing any feelings of distress that her father sometimes washed her but her mother did not. That reality for T appears to be borne out by the evidence of her two parents.

⁵ In fact, as the notes of this meeting make clear, T told Ms Bowles that the bed they had shared was in a hotel. In fact, it was in a room of the father's extended family's home in Sheffield.

⁶ [T:77]

125. What is abundantly clear from the mother's evidence is that she took what T had said about the fact that her father sometimes washed her after she had been to the toilet as "a clear disclosure by [T]". She describes in her statement how she felt "terribly let down" by Children's Services who maintained that there was no evidence of abuse and no cause for concern.

The second visit to school on Thursday, 28 January 2016

126. This was the second occasion when T met with Ms Bowles. She saw her before lessons for about forty minutes from 08.15am to 09.10am. She explained to T that her role was to make sure that children are safe and happy. In the event that she was worried about anything, Ms Bowles was there to talk about it and to help. This session took the form of T drawing on various worksheets and producing responses to things which she did and did not like. In relation to the latter, T had said she did not like eating spaghetti and beans with her Daddy; did not like going to cold places; and did not like school. In response to what she loved to do, T said that she loved eating chocolate with her Daddy. She also referred to her love of swimming with her Mummy. When she was asked to draw her "caring circle", Ms Bowles records that they went through the adults in T's life who look after her and keep her safe. In answer to a question put to her by Miss Giz during her evidence at this hearing, she agreed that these might be complex issues for a child as young as T to understand. She had included her mother and some of her extended paternal family members and family friends. When she failed to include her father, Ms Bowles asked if there were any adults in her life who did not look after her well or keep her safe. T said "No".
127. Despite being prompted by the social worker as to her memory of having "sore bits" and going to the doctor, T appeared to have no apparent independent recollection about these events. She told Ms Bowles she could not remember them happening.
128. There was then some further discussion about "worries" and an offer to return to have another visit if T needed to speak to her. Ms Bowles completes her record of that discussion in this way:

"I also completed some brief keep safe work with [T], talking about private places on our body that [are] private to us. [T] raised no concerns."

129. When Ms Bowles spoke to T on this occasion, she was aware that the child was about to embark on some ELSA sessions with one of the teachers at her school. I shall explain how that process came about shortly. Before she left T on 28 January 2016, she said to her that she could speak to her ELSA teacher about any concerns or worries she might have. She accepted as part of her oral evidence in 2016 that, with a child as young as T, there was a risk that she might have interpreted their conversation on that occasion as suggesting that there was something which she needed to say about worries or concerns.

The ELSA sessions : 29 January 2016 to 20 April 2016

130. Mrs Butchers is one of the teachers at T's primary school and is also a designated Emotional Literacy Support Assistant (ELSA). Whilst the school does not appear to have generated this referral because of anything said or done by T whilst at school, it was felt nevertheless that, because of the mother's concerns, T would benefit from

this additional level of support. Mrs Butchers told me that in January 2016, T’s class teacher had approached her seeking help for T whose mother had reported “outbursts at home”. When the referral was made, Mrs Butchers was aware that an aspect of the mother’s concerns was the possibility T may have been sexually abused by her father. She did not meet with the mother before her first session with T. Their only direct face to face contact occurred on 7 March 2016 [2.C:144] (and I shall return to that shortly). She described her role in her oral evidence as being there to help T to talk about her feelings and worries. She was there to look out for any substance to the concerns which the mother had expressed and to be “a listening ear”. She accepted that it was no part of her role to “gather evidence” or to “seek disclosures” and she told me that, despite the fact that she was aware of the mother’s suspicions, she came to her role with T on the basis of a “completely open mind”. She saw herself as a trusted adult who could be the “listening ear” for T.

131. The referral form within the material before the court identifies the target of these sessions as being to enable T “to recognise how she is feeling” and “to understand why she is feeling a certain way”.
132. T had her first session with Mrs Butchers on 29 January 2016, the day after her second meeting with Ms Bowles, the social worker. Mrs Butchers accepted that she had no previous experience of working with children who had been sexually abused although she did have experience of helping children whose parents had separated. I have the handwritten notes which Mrs Butchers made after each of her sessions with T. It appears that the first session concentrated very much on her ability to distinguish between sad and happy faces appearing on a worksheet and learning about who lived with her within her family circle.
133. It is common ground that the first ELSA session did not give rise to any particular concerns. Mrs Butchers describes T in her written notes as “a delightful little girl”.
134. Less than two weeks after that first ELSA session, on 10 February 2016, two things happened.
135. The father had a conversation with the social worker, Ms Bowles on 10 February 2016. This call appears to be a response to a call she instigated the previous day on 9 February 2016.
136. On the same date, 10 February 2016, the mother’s solicitors sent to the father’s solicitors a further letter which, on her instruction, purported to curtail contact further. That position was predicated upon her having rejected his explanations for “incidents with [T]”. She no longer wanted him in her family home for purposes associated with contact and was no longer prepared to allow him to use her car to transport T for outings. She alleged that he continued to behave in a manipulative manner whilst in her home and accused him of having removed document from her car when last he had borrowed it. **In order to provide a safe environment for T, she had made the “considered decision to allow contact only at a contact centre” on a fortnightly basis.** Facetime was to be reduced to one weekly call on Thursday mornings at 8.00am. That letter concluded with an agreement to accept service of any proceedings commenced by the father.

137. Thus, we have by now reached a stage where T's contact with her father had – over the course of a very few months from the late Autumn 2015 – moved from staying contact in London and on the South coast twice a month, through to the cessation of overnight stays (mid-January 2016) and, less than a month later, to supervised contact in a local contact centre.
138. The following day on 11 February 2016, the mother completed the referral form required by the contact centre. In terms of the level of supervision required, she ticked the box which stated “Supported contact (low vigilance, conversations not monitored)”. Each fortnightly session was to be of three hours' duration in the mornings. That the mother's concerns about sexual abuse had become more entrenched over the intervening weeks is borne out by the narrative detail she gave in that form. It has been completed by her in manuscript and thus what I see recorded in that form reflects her state of mind at the time unless she has deliberately exaggerated or over-stated the case to justify supervision.
139. This is what she wrote in the referral form:

“There have been 2 serious incidents before Xmas. I also have concerns around [the father] photographing [T] and other children. (I have seen pictures he has taken at Play Centres).

There are no risks at home. [T's] father is not Resident. However there has been a problem before Xmas **where [T] has been returned showing evidence of sexual abuse.**” [my emphasis]

(In response to a question about the evidence base for this assertion): “What I have seen and also email from [the father] agreeing that this happened in his care. [T] has been returned to my care twice with an extremely Red, Hot labia and vagina. This has not happened before or since and the reasons [the father] has given do not satisfy me enough to restore my trust or believe that this is symptom of serious abuse [*sic*]. These incidents have happened against a backdrop of other difficulties which mean I am unable to trust [him]”.

“[T] must not be taken to the toilet by him or left alone. I would ask you to be aware of him taking photographs.

Social services are involved.

I am deeply concerned about the situation and how safe [T] is in the care of her Dad. I believe that he has abused his daughter at least twice. I also believe there to be a level of emotional manipulation at play – [T] not keeping Daddies secrets – as she shuts down and will not talk about what happens when she is with him.

[The father] is also excessively photographing [T] which I find very strange. I need to raise the fact that he has come home from soft play sessions with [T] and shown me photographs from the trip which include pictures of other random children [T] has played with. So while I am acutely concerned for [T's] safety I also want to raise this if he is in contact with other children.”

140. Although this form had been signed by the father as a condition of setting up contact at the centre, it is common ground that he had not seen the narrative which the mother was subsequently to insert as I have set it out above. The following day, on 12 February 2016 (when T was 4 years and 4 months old), he issued the section 8 application which had been advertised beforehand in the correspondence between the solicitors. It is clear from his application that what had prompted the application was the mother's unilateral decision to reduce contact to the point where he was only able to see T fortnightly at a contact centre.
141. As I shall explain, contact at the centre began in March 2016. It was supervised by Julie Taylor. She held qualifications in child care (Level 3) and special educational needs (Level 4). She had also undergone some 'safe guarding training' but she confirmed in cross-examination that she was unfamiliar with the recommendations of the Cleveland report or Best Practice ABE Guidelines. She had no previous experience at all of working with a child who was said to have been sexually abused. When asked how she perceived her role, she told me, "I believe the child; it is not my role to decide if what I am being told is true".
142. T's ELSA sessions with Mrs Butchers continued at school on a more or less fortnightly basis throughout February and March 2016⁷. On 12 February 2016, Mrs Butchers raised with T that her mummy had told her that she and her Daddy no longer lived together [2/C:154]. T was then completing some "Bear cards", each of whom had different facial expressions. She was asked to show Mrs Butchers which Bear showed how this makes her feel. She chose the 'happy' Bear ("no more shouting") (the words in parenthesis having been added as part of Mrs Butchers' manuscript record of the meeting). T was asked how she felt about seeing her Daddy. She chose a 'worried' Bear face "because she misses her cats".
143. At the next session on 26 February 2016, T had indicated to Mrs Butchers that she was happy that Mummy and Daddy did not live together any more because "Daddy doesn't wake me anymore". In the following session on 29 February 2016, Mrs Butchers had pursued this remark with her and T had told her that "he always wakes me early for breakfast". During this session they had been focussing on how families changed over the course of time. As part of the session, T had been completing faces in blank circles to describe how she felt (i) when she saw Daddy and (ii) when she did not. She drew a happy smiling face over which Mrs Butchers has written "to see Daddy". A very sad face with an 'inverted U' mouth was her representation of how she felt "when she doesn't see him". Mrs Butchers noted that "[T] drew pictures of her now and when she was younger. She talked about a sleepover she'd had at Daddy's sister's house, with him (... this was possibly Christmas 2015). [T] happily spouted off all the names of her family members who were there too. The last person [T] mentioned was 'Mr Sausage'. She didn't elaborate anymore but left it there". This appears to have given Mrs Butchers some cause for concern. She has written a note to remind herself to 'speak to safeguarding for advice'.
144. Thus, by the end of February 2016 and at a time when T has already been questioned about worries, sore bottoms and washing by at least two professionals outside the family, she is nevertheless expressing clearly to Mrs Butchers that her experience of time spent with her father is both positive and enjoyable. His absence from her daily

⁷ It is common ground that the ELSA sessions did not come to an end until about June 2016.

life appears to have been a cause of sadness at that time and she was perfectly able to reflect those feelings creatively in the small drawings she did for Mrs Butchers.

145. The following day, on 1 March 2016, the mother initiated further contact with the police. As to why she sought to escalate their involvement at this point, there is nothing in her evidence to suggest that there had been any new information provided by T. What is clear is that her feelings of having been “terribly let down” by Children’s Services had not abated in any way. This information was imparted to the police by the mother on the same day (1 March 2016) on which T first saw her father at the local Family Centre.

146. The police log of that conversation is in the bundle:

“[The mother] had no new information but obviously her concern about her ex-partner ... continues to trouble her. CSD are completing an assessment and she and [the father] are going to court over custody and contact.

[She] did say that she had concerns about [his] interest in photographing children. He is a documentary film maker and also lectures on the subject. He is sponsored by a charity to take pictures of children and recently did so when he went to India in January. [She] was also concerned when he took pictures of their daughter and another unknown child at a local indoor play zone. [She] said that [the father] did have an interest in pornography when they were together. She has never seen any indecent images of children but is putting [his] two interests together and summising [*sic*] that he is either abusing or taking indecent images of children.

I told [her] that I would record this further information and also speak to Becky Bowles who is completing the assessment.”

147. What this evidence tells me quite clearly is that this very anxious mother had by this stage embarked on a comprehensive survey in her own mind of the circumstances of events in the father’s past life and experiences which might support the suspicions which were starting to crystallise in her own mind. She told me in evidence that she had been asked to relay details of anything which might be of relevance to the professionals who had by now become engaged with the family. Nevertheless, her report to the police on this occasion suggests to me that she was becoming increasingly fixed in her own mind that T was a victim of abuse and that her role as T’s mother required her to justify that view to the professionals in order to keep T safe.

148. I am reinforced in that conclusion by the events which unfolded shortly thereafter. A week later, on 7 March 2016, the mother attended a pre-arranged appointment with Mrs Butchers. T was not present on this occasion. She gave Mrs Butchers a full and lengthy account on that occasion of “what has been happening in the last 2 – 3 years”. Mrs Butchers accepted in cross-examination by Miss Hendry that the mother’s concerns had become “quite vivid” in her (Mrs Butchers’) mind after their face to face meeting on 7 March 2016. The following day, on 8 March 2016, Mrs Butchers spoke to an educational psychologist who was overseeing at one remove the ELSA sessions she was conducting with T. She was seeking advice on how she should move forward “in the correct way” in her sessions with T. The psychologist advised her to stay on track with ‘emotional literacy’ but that there was no need to speak to T about issues

concerning her parents' separation. It is clear that the following day, Mrs Butchers spoke to the headmaster of T's primary school about her concerns.

149. The ELSA sessions continued into March 2016. Mrs Butchers accepted that her notes, where they were available, were a good reflection of what had transpired during those sessions. She further confirmed that had there been a "disclosure" during those sessions, that would have been recorded.
150. On 18 March 2016, the formal Family Assessment was completed by the local authority's Children's Services Department. That assessment recorded that amongst the mother's stated concerns were the following:
- T was being coerced by her father into saying that she wants contact. Although when the mother had initially reduced staying contact from two nights to one, T had said she wanted to stay for two nights before reportedly bursting into tears and saying that she did not want to stay at all but that he had made her say this;
 - the father was "a dangerous character" who was controlling and emotionally abusive during their relationship. He can present very well to professionals in order to hide the concerns she had;
 - the father had been in a same sex relationship before their marriage and she assumed that this was the reason for the distance which his family put between them. She now wonders if there was a more sinister reason for this. He regards sexuality as a fluid concept and she has concerns about his ability to observe appropriate sexual boundaries for adults and children;
 - he was photographing children abroad as part of his work for a charity organisation. The mother was concerned that this might be something of a "cover story" for gaining access to vulnerable children. She had seen no evidence to support her concerns but she is concerned at the picture which is emerging;
 - the father was part of a well know Buddhist community which had been the subject of an investigation by a national newspaper in 1997 over concerns over misogyny and sexual exploitation. She was worried that his close association with this community might have impacted on his sexual boundaries;
 - a preschool worker at T's previous pre-school had raised concerns that the father had taken a photograph of a child at the school without permission and had then become verbally abusive when questioned about this. The pre-school worker involved had since sent a letter to Children's Services and has explained that the photographs which the father took was of T alone. He had taken photographs on his mobile when he came to collect her from school. The pre-school worker had mentioned this to the mother subsequently. The father had become annoyed that she had involved the mother in this and asked the nursery assistant to raise any concerns she had directly with him. The assessment concluded that, whilst he may have become more frustrated with the preschool worker than was helpful, there was no evidence that he was taking inappropriate photographs.

151. The assessment further records that these concerns had been reported by the mother to the police who had decided that there was no basis for them to become involved or to initiate an investigation. There had been liaison between Children's Services and the police when all of the mother's concerns had been fully ventilated but the police continued to maintain that there was no evidence of any crime and no role for them in the ongoing enquiry.
152. Thus, a very clear picture begins to emerge by the time we reach the stage of the conclusion of the first professional investigation into these allegations. In terms of the mother's state of mind at this point in time, the evidence allows me to draw the following conclusions. Without doubt she was extremely concerned about the father's relationship with T and was preoccupied (if not consumed) by thoughts that he might have harmed her through some form of sexual abuse. By this stage, it is clear that she was searching for any 'signposts' which might help her make some sense of her feelings. In conducting what appears to have been a retrospective trawl through what she clearly perceived to have been an unhappy marriage, she has seized upon every memory or piece of information which might have some bearing on what she observed to be an emerging picture. As the mother told me, she was asked to conduct this exercise and to provide to the authorities any and all information which might be relevant to their ongoing enquiries. To the extent that this was what she was doing, I do not criticise her. What I am concerned to understand from all the evidence before me is the extent to which this highly anxious mother's concerns were being projected onto T's understanding of what had happened in terms of her own relationship with her father.
153. By this point in time (March 2016) T had not raised any concerns independently of those expressed by the mother which concerned any of the agencies involved. The conclusion of the formal assessment undertaken by Children's Services was as follows:

"Assessment has not evidenced that [T] is at risk of sexual harm, or has experienced sexual harm from her father. At this time, there is no physical evidence of this and no disclosure has been made by [T]. Indeed she has raised no concerns at all. Whilst again it is appreciated that she is only five years old and may not feel able to articulate any issues at this time, it remains the case that there is no evidence at this time that she is at risk of sexual harm from her father."
154. T's ELSA sessions with Mrs Butchers continued throughout the second half of March 2016 without any further concerns being raised. They are described by Mrs Butchers in her notes as "lovely sessions". The only 'sad face' to emerge from two further sessions was one drawn by T to describe her feelings when her friends were "unkind to her". I have the notes from two sessions of supported contact at the local Family Centre which took place over this period. These notes describe two perfectly appropriate sessions between father and child; they record laughter whilst playing games and a perfectly normal interaction between parent and child notwithstanding the new circumstances in which contact was taking place.
155. In the meantime, the parallel litigation in the Family Court continued. On 24 March 2016 the court ordered that contact should continue at the Family Centre on alternate weeks with Facetime contact three times each week before school in the mornings.

156. The contact between T and her father at the end of March 2016 is described in the contact notes as a happy and relaxed session with much laughter, blowing soap bubbles and appropriate physical interaction (T climbing onto her father).

The “disclosures” on 2 and 8 April 2016

157. Against that background, and but a matter of days later, on 2 April 2016, the mother alleges that T made what she believed to have been a “disclosure” about the manner in which the father had washed her. She records that conversation in her written evidence in this way:

“On 2nd April 2016, I was washing [T] in the bathroom with a flannel. She was having a big strop because she didn’t want a bath so I gave in and said you can choose to have a bath or a wash. She asked me to wash her. I said but you wash yourself now, she persisted so I washed her with a flannel. As I finished she said, ‘that was quick, when Daddy washes me it takes ages’. I asked [T] ‘does daddy wash you with a flannel as well?’. She said, ‘no he uses his hand’. This came out very naturally, presumably because I was giving her a wash. I tried to then follow up this question and she put her hands over her ears and wouldn’t say anything else.

158. I can see from the contemporaneous evidence which is available in the police disclosure what impression this conversation made on the mother and the report which she made of it to the police on 7 April 2016, some five days later. The log records that ‘[the mother] essential[ly] stated that [T] had disclosed that her father was sexually touching her in the bath’. The report from the mother which is recorded in the log is that T “made some disclosures on Saturday regarding her father touching her in the bath and having washed her there for ‘a long time’. When [the mother] asked her if this was with a flannel she replied ‘It was with his hand’”.

159. Following that call to the police, the officer who took the call spoke to Ms Northover, one of the local authority’s employees in the Child Safeguarding team. There was an agreement that T would be seen at school the following Tuesday when she returned to school after the Easter holidays. The log records that the police and Ms Northover felt that it was important that the joint visit was undertaken ‘without the influence of her mother being present’. Becky Bowles was to be included because she was the allocated social worker who had an established rapport with T. The log concludes with these words:

“The ELSA worker at school – Ms BUTCHER, has a good rapport with [T]. This is according to [the mother]. Therefore [the mother] thinks the best chance of a disclosure would be with Ms BUTCHER present. If we get a disclosure then we can go to ABE, arrest and then bail conditions will be able to be applied.”

160. Thus, by this stage, there is no room for doubt in my judgment that the mother was resolutely convinced that abuse had occurred. She was clearly anxious to ensure that T should be given the optimum opportunity to confirm her experience of abuse in the context of yet another interview. I know not whether she used the words “best chance of a disclosure” but that is certainly the impression she conveyed to the police officer who made the note.

161. The following day, on 8 April 2016, the mother herself re-engaged T in a discussion about what the child had said the previous Saturday whilst being washed. Despite T's obvious unwillingness to say any more on that occasion and the fact that she had put her hands over her ears, the mother persisted with her questions. She describes in her written evidence how T 'kept screaming with her hands over her ears'. In this obviously febrile and anxious exchange, the mother describes how this conversation developed:

"I said, 'I need you to be a really brave strong girl and talk to Mrs Butchers about what Daddy has been doing to you'. She was screaming and crying and she said, 'I can't tell her I can't tell anyone'. And I kept saying 'yes you can, I'm here to look after you, nobody can hurt you'. Then she said 'I can't say it but I will write it down'. I got [T] some pens and paper and left her to draw and write while I made the tea.'

162. I have a coloured copy of that picture in the material which has been put before me. Whilst she has crossed out a couple of words and rewritten them more neatly underneath, the words I can discern on that drawing are these:

"wash my botm"

"[T] sad bcuz"

[in a different colour] *"dusnt Mum ... lic it"*

"iscrem" [next to what appears to be a small ice cream cone]

"Dad is men"; "dad is happy".

163. The picture is decorated throughout with coloured representations of what have been interpreted as butterflies or bows. I suspect they might be bows because T has written what appears to be the word "*bows*" twice underneath two of them⁸. Also appearing on the picture are two separate faces. One is orange and one is brown. The orange face is clearly female and has a mass of curly hair. The brown face is more likely to be male: it appears above the words "*Dad is happy*". In her written evidence, the mother said that T had described the picture to her. She said that the orange person with the sad face was T and the smiling male was the father.
164. It is plain to me that the mother never contemplated the possibility that T might be saying that she could not tell Mrs Butchers or anyone else about 'what Daddy ha[d] been doing to her' because she had no understanding of the underlying narrative which she was being asked to confirm. Despite the child's recorded distress, she was pressed by the mother to provide an explanation. The clear message which T might have collected from that conversation is that her mother was there to keep her safe because she was not safe with her father. I cannot know what was going on in this young child's mind at the time but I am wholly persuaded that, by this stage, she was

⁸ The mother told PC Dalley on 8 April 2016 that she had interpreted the word not as "*bows*" but as "*6aws*" which she has interpreted to mean "6 hours". She also said that she did not know what "*Licit*" meant. I know not whether this is a reference to "licking" the ice cream which has been drawn beneath those words or "like it" in the context of "doesn't Mum ... like it" [E:94] T was subsequently to confirm during her first meeting at school with the police on 12 April 2016 that these were indeed "lots of different coloured bows".

aware of an expectation that there was something she was expected to say in order to align herself with her mother's expressed concerns and that, whatever those concerns were, they found their anchor in all the discussions there had been about bottoms and washing.

165. That same evening the mother called the police. The police log records her as being "very distressed". It further records her having told the police that "[T] has drawn a picture that shows Dad touching her. Mother has asked to see someone tonight as she is worried for her daughter and needs guidance and help". I have no way of knowing if those words were recorded verbatim by the police officer at the time. Of course, the picture which T drew does not show 'Dad touching her' although I can well understand that what she *did* draw and write on her picture was interpreted by the mother (and described as such to the police on the telephone) as confirmation that Dad had touched her bottom.
166. PC Dalley was asked to visit the mother which she did that same evening (8 April 2016) at 7.30pm. I have no way of knowing whether T was aware of the presence of the police officer in her home that evening and I do not speculate about that. She may well have been in bed when the officer arrived. That is certainly what was suggested to her by Miss Hendry when she was cross-examined. However what I do know is that (i) the mother was observed by PC Dalley to be "extremely emotional about the situation", and (ii) T was aware that the police were going to speak to her the following Tuesday. This must have been as a result of conversation on that day between mother and daughter after the initial telephone call had been made to the police once T had drawn her picture. I say that because PC Dalley's note of her visit that evening records the fact that T had told her mother that she might "just draw pictures" when she was spoken to.
167. The mother's own account of the conversation she had with T on 8 April 2016 includes an admission by her that she asked leading questions of her daughter in her attempts to make sense of what T had told her whilst being washed on 2 April 2016. Further detail is provided in PC Dalley's note of her conversation with the mother on the evening of 8 April.
168. This is the contemporaneous note which the officer made after her meeting with the mother on 8 April 2016:

"On Friday 8th April 2016 [the mother] said that they had friends staying for a few days and then she took them back to the train station. When they were at home [T] was playing up and both of them became emotional and [the mother] told [T] off. Both of them ended up in tears and [T] went and sat under the table.

[The mother] went over to her and said sorry and asked for a cuddle. [She] said to [T] "**I know there's something you want to tell me, you can trust me, you're safe now you only have to see daddy at the play centre**". [*The emphasis is the officer's own.*] [T] then put her hands over her ears again and said "**I can't talk, I can't say anything. I won't speak**". She was crying and really upset but then said "**I could draw something, when I get upset I like to draw things and write**". Both of them calmed down and [T] went into the lounge and

sat at a small desk and started drawing and [mother] went into the kitchen and cooked the dinner.”

169. When PC Dalley was cross-examined about that meeting, she told me that it had occurred a long time ago. She had, as part of my case management directions, been afforded an opportunity to read the verbatim transcript of the evidence she had given to the court in July 2016, some three months after that meeting. At that earlier hearing, she confirmed her own impression that the mother’s questions to T might well have amounted to implanting in the child’s mind a sense that ‘Daddy had done something to her’ and that she was safe with her mother and needed to tell someone. She had specifically advised the mother on that occasion that she should listen to T if she wanted to tell her something but should be very careful not to ask the questions or to lead the child with questions. Despite the mother’s very obvious distress, the officer confirmed that she impressed upon the mother the need to allow anything from T to come spontaneously. She agreed with Miss Hendry at this hearing that it made it very difficult to regard anything which T said thereafter as being anything other than compromised. She told me during her oral evidence that, whilst the mother might not have been deliberately putting pressure on T, she was clearly very stressed and worried and that distress would obviously have come across to T. The mother herself had told PC Dalley that she had become upset in front of T. The child, in her view, was clearly aware that her mother was upset about something. Equally, PC Dalley was persuaded that, in her own mind, the mother felt that something had happened to harm her daughter. She presented as “an extremely worried Mum”.

12 April 2016: T’s first “meeting” with the police at school with her social worker, Becky Bowles, and Mrs Butchers, her ELSA support teacher

170. On 12 April 2016 the police went to T’s school and recorded their interview with her. I listened to a complete audio tape of that interview and I have a transcript of it in the written material within the bundles. It is common ground that T said nothing during the course of that interview which gave rise to concern or which could amount to evidence of abuse or inappropriate touching by her father. T was asked questions about the picture which she had drawn on 8 April. She told the police officer that she was licking the vanilla ice cream which she had drawn. She identified her father as the male face in the drawing but could not remember whose the other face was. The police were at that stage unaware that it was the father’s case that he had been in the habit of washing T’s bottom after she had been to the lavatory when she was younger. This is important because of the questions which they subsequently asked her about ‘touching’.

“Police officer: So, if I told you that good touching would be if Mummy gave you a kiss and a cuddle before you went to bed at night.

T: I do not like kisses I like cuddles..... [kisses] are too sloppy.

PO: Okay, but you like cuddles. Okay, so that’s good touching. Kisses and cuddles, okay, to say goodnight and bad touching would be if somebody touched your private area, so around here, that bit (ouch, or banging your elbow). Has anybody done any bad touching with you, [T] ?

T: Um, I can’t really remember.

PO: If someone did do some bad touching who would you tell ?

T: Mummy.

PO: Mummy. What about anybody else ?

T: Er, I don't know.

PO: What about Mrs Butcher ? Coz you've got people at school you can tell, can't you, yeah ? Is there anything else making you sad in your life ?

T: Umm, no.

.....

PO: So if something made you sad, would you write it down and give it to Mrs Butchers ?

T: Uh huh.

PO: Yeah. Coz she can then read it. So if you think of something when we've all gone, you could write it down and Mrs Butchers can tell us and then Steve will have to come back and read it and have to do some drawings. Would that be good ?”

171. PC Dalley's updated police log records that she left a message for the mother on her mobile telephone confirming that T "had not disclosed". When she did speak to the mother later on 12 April, she made the following entry in the log:

“[M] updated not happy with outcome [the emphasis is that of the police officer]

I have spoken to [M] and told her that [T] did not disclose any offences against her father. [M] is not happy and very upset because she thinks it was because there were four strangers in the room. [T] was in fact very chatty and answered all the questions including questions about her father. We showed her a picture she had drawn and given to her mother and she has given a different explanation to the pictures. A very innocent explanation !

At this time [T] has not disclosed any offences but xxxxxx(Elsa) is going to continue working with [T] in case she does. [T] has been told that if she wants to tell xxxxxx anything at all, (we haven't specified only to do with her dad/mum) she can do this by drawing or writing.

[M] is very upset and emotional as she is concerned about [T] going to stay with her dad for sleepovers! I have told her unless [T] tells us something that is evidential that we can put to her father in an interview this matter will not be progressed by the police.”

172. That this mother continued to raise these issues directly with T in the immediate aftermath of that meeting, in at least one instance in a highly charged emotional atmosphere, is clear from two emails which she sent to the police on 13 and 18 April 2016.

173. On 13 April, the day after the police visited T at school and at a time when it is clear from her telephone call the previous evening to PC Dalley that the mother was distressed at the absence of any “disclosures”, the mother sent this email:

“I have just spoken to [T] over Breakfast. I said did you see [*name of police officer*] yesterday ? [T] said yes, she said she has met kitty. I said did you talk about your drawing ? [T] said I didn’t want to talk to them. I don’t like that room anymore. Then she said, [*name of social worker*] was there and she had changed her job. She is now Face timing her dad. I said will you tell Dad about your meeting yesterday ? She said, No he would be so angry.

I just wanted to tell you this. I would like this to be recorded somehow, sent on to [*the social worker*].”

On 18 April 2016, she sent this email to PC Dalley:

“I am just following up.

[T] has just told me a ‘fib’ something silly about nana. After we talked about it. I said it is really important to try to tell the truth, [T], especially as you are meeting people like Becky and the police. She didn’t answer. I said, because you told the police I made you draw that picture didn’t you ? She said yes. I said do you think I did make you draw that picture. She said no. I said, if you meet people it is important to try and tell the truth because people need to know what has really happened. She put her hands over her ears and started shouting at me ... I don’t want to talk about it. (Which is fair enough most children have a casual relationship to the truth it is most unfortunate that 4 year old should have to deal with these sorts of consequences). I will send a copy of this also to Becky [*the social worker*].

174. The father had been kept informed by Miss Bowles about the visit to T at the school on 12 April. On 13 April 2016, she wrote a letter (a copy of which is in the bundle) recounting the mother’s concerns about washing with a hand rather than a flannel and T’s comment that he took much longer to wash her than her mother. He was told what had happened during the interview and who was present during that interview. The letter concluded, “The matter remains within the family courts, which is the correct arena for further discussions regarding ongoing contact arrangements”.
175. On that same day (13 April), the father had a Facetime call with T. During that conversation, he mentioned Mrs Butchers [*Facetime Clip 8*]. I do not know whether he had by breakfast time that morning received Miss Bowles’ letter written on the same day. It is possible, I suppose, that it was written early in the morning and emailed to him. There is overt criticism of the father for having said to T during that conversation that he knew and liked Mrs Butchers. In the context of what was happening at this point in time, it is said that this could be construed as an attempt to exert pressure on T and send to her a clear signal that he was aware of her sessions with this teacher and should not speak. I accept that this is one possible interpretation and I bear it well in mind in the context of the overall canvas of the evidence. It falls to be considered alongside the later allegation that he sent T some inappropriate books at Christmas intending to send the same signal that there were matters she should not disclose to those around her.

176. Some three days after the police had been to see her at school, T had a session on Friday, 15 April 2016 with Mrs Butchers. It was a scheduled ELSA session during her school day. It was the eighth such session with Mrs Butchers and is the first time that T has said anything about not wanting to see her father. This was two days after her conversation with her mother.
177. Mrs Butchers told me that at the beginning of their session that T had said she wanted to write something for her. I have a copy of what she wrote:

“don’t wont too god to Dads hows

Dad woshis mi .. me ... botm”

178. Mrs Butchers told me that she wanted to write this down relatively quickly when the session began. She read back T’s first set of words to make sure she had understood them and asked why she did not want to go to Dad’s house. This provoked the second line which Mrs Butchers has reduced to her own manuscript note as “Dad washes me”. In a series of leading questions, she then asked T ‘How does he wash you?’ She replied “with his hand”. She then drew a picture and wrote “on my bottom”. Mrs Butchers asked how many times had Daddy washed you like this and T replied “twice”. When asked how this made her feel, she replied “sad”. She presented during this session as upset and trying hard not to cry. Mrs Butchers told her she was ‘a really good girl’ and explained that she would have to tell another adult because what T had told her had made her “feel worried in my tummy”. T had nodded that she understood.
179. Becky Bowles, the social worker, subsequently spoke to T about what she had been told by Mrs Butchers about this session. On 25 April 2016, she visited T at school. Initially T was unable to remember having met the social worker who explained that her job was to visit lots of children to make sure they were safe and happy. She did remember telling Mrs Butchers she felt sad. Ms Bowles then showed T a copy of what she had written/drawn and asked her to explain what it was all about. T said, “*I don’t know the answer*”. When prompted that she had told Mrs Butchers that she did not want to go to Daddy’s house, T said, “*Because of the food – pasta and beans – yuk!*” Miss Bowles then read out the reference to washing bottoms and the exchange continued in this manner:

BB: Can I read you this bit ? [read to T]

T: No

BB: Why not ?

T: I can’t remember

BB: If you have a bath with Daddy, how do you get clean ?

T: by washing myself with soap and a flannel

BB: Does anyone else wash you ?

T: I can’t remember

BB: does mummy wash you ?

T: No

BB: does daddy wash you ?

T: Yes

BB: Where does Daddy wash you ?

T: I can't remember

BB: does Daddy use a flannel ?

T: No

BB: How does that make you feel ?

T: Sad.

BB: Does daddy say anything to you when he washes you ?

T: No. he just talks about making food.

180. During the course of giving her evidence during the hearing in July 2016, Ms Bowles accepted when it was put to her that there was a risk that one explanation for T's feelings of 'sadness' might be a feeling of being caught up in what she might perceive to be the adult conflict going on around her.
181. On 19 April 2016, some four days after T had seen Mrs Butchers on 15 April, T had a session of supervised contact with her father. Following that session, Julie Taylor, the supervisor, contacted the Children's Services Department to report some concerns which arose out of a 'gut feeling' she had formed. This arose out of an exchange between T and her father. T had brought a skipping rope to the session and her father had asked her to teach him to skip. This she said she would do if 'Dad was good'. When asked what he needed to do to 'be good', T had replied 'not breaking a promise'. There were other exchanges during that session which Ms Taylor had found odd. She accepted when asked that she could not be sure that she would have found these exchanges worthy of comment had she not been aware of the mother's views and concerns.
182. There were two further ELSA sessions with Mrs Butchers both before and four days after this meeting between T and Ms Bowles. On 22 April 2016, T had been working on a "worry doll". She was very creative and knew exactly how she wanted it to look. The session was described as "a lovely calm session" by Mrs Butchers; T had told her 'all was good'. The session a week later on 29 April 2016 appears to have gone well with more work on T's "Sparkle book".
183. The mother's first written statement was filed on 21 April 2016. At that stage she explained her state of mind in these terms:

“31. I believe that the report by Children’s Services shows this manipulation [by the father] exists because what [T] has told Becky [Bowles, the social worker] in no way resembles what the truth is. For example, [T] has told Children’s Services that she cannot remember going to the doctor. I believe [T] has tried to fool Children’s Services because she has been twisted by the Respondent. For example, the Respondent has made a big thing of saying [T] told his sister in law she ‘hates [the town where she lives with her mother]’. I think she would say this because she knows how to perform for the Respondent. She knows what he wants her to say.”

The next report from the mother: 30 April 2016

184. The mother deals with this in her second statement filed on 1 July 2016. This statement is written very much in the form of a diary ‘log’.
185. She has explained that, on Saturday, 30 April 2016, whilst being put to bed, T took from the drawer of her bedside table a little heart-shaped book in which she said she had been writing down her worries. This little book appears to have been something connected with the ‘worry doll’ she had been encouraged to make as a result of her sessions with Mrs Butchers. The mother has photographed the three consecutive pages in the heart-shaped notebook on which T has written in a blue pen:
- (page 1 – left hand side): *“Dabee woshis my botm I dodnt won to see Dad*
- (page 2 – right hand side) *“Dadey wosh ismy botm I don’t (top of the page) lik it*
- (page 3 – left hand side) *“he kep it a secret I don’t lik it ang”*
- (page 4 – left hand side) *“the anmls ar wored beckuz*
- (page 5 – right had side) *“and the anmls are fritnd*
- (page 6 – right hand side) *“They don’t lik et”*
- (page 7 – left hand side) *“it is scsaty”*.
186. The mother accepts that, on seeing these notes, she engaged T directly in a series of questions which were undoubtedly leading (as the professionals involved have acknowledged). The mother’s contemporaneous account of what she said to T, and her daughter’s responses, are recorded in an email which the mother sent to PC Dalley on the same day.

“I asked her does it hurt when Daddy touches you ? she nodded and then put her hands in front of her mouth and said I can’t speak. I said why can’t you speak. She said I just shut down like when the computer goes off. I asked: How can I plug you in ? She said I don’t know. It makes me feel funny when I talk about it. I asked funny how ? She said I am scared because dad will be so angry.”

In her email, the mother pleaded with the policewoman to take these concerns seriously. She said, “ ... all of this is just so awful. I swing between disbelief as I just can’t believe he could do this to her it is so awful. Please take this seriously. He has been doing this to her. I know she has been very clever at covering and avoiding

talking about it but I think she has been scared and as I have said all along his capacity to manipulate is terrifying.”

187. The mother’s second statement (dated 1 July 2016) contains further detail about this conversation which is not recorded in her email to PC Dalley. In paragraph 4 of her second statement, she says this:

“She told me it hurt when Daddy touched or washed her. I can’t remember exact wording. I asked ‘where did it hurt?’ She said ‘on my bottom’. I said ‘was that your front bottom or back bottom?’ She first said ‘back’, then looked uncertain, then she pointed to the front. I said ‘did he put his fingers inside your bottom?’ She nodded. At this point I said, ‘Daddy has done something very wrong. No daddy should touch you like that. Daddy should never ask you to keep a secret that makes you feel sad.’

The mother has placed on record that she did not report the second part of this conversation because she realised that she had asked T a series of leading questions. She maintains that it was only after she had spoken to her solicitor that she was advised to put all of this information before the police and Becky Bowles.

188. The mother’s (then) solicitor telephoned the police on 3 May 2016 seeking an update on the progress of the police investigation. She was told that, since T had not disclosed any information which constituted an offence, there was to be no further action against the father. The solicitor was then in the process of putting together the mother’s case for the family court proceedings as she confirmed to the police.
189. On 4 May 2016, the following day, the mother sent an email to PC Dalley in which she set out the balance of the conversation which she had with T on 30 April 2016. (“*I did not tell you this on Sunday because I wanted to talk to my solicitor first.*”) She confirmed in that email that she had asked T directly, “Did he put his fingers inside your bottom?”. She then told the child that “Daddy has done something very wrong”. She also said, “Daddy should never ask you to keep a secret that makes you feel sad.” The significance, of course, aside from the fact that these were leading questions, is that this is the first time there had been any suggestion of the alleged abuse taking the form of digital penetration.
190. Several important considerations flow from what happened on 30 April 2016. First, T’s notes in her heart-shaped book reveal that she is aware of ‘secrets’. Secondly, there is no reference at all to her being ‘hurt’ or feeling physical sensations of ‘hurt’ until that is suggested to her by her mother. Thus, the mother’s evidence that “[T] told me it hurt when Daddy touched or washed her” has to be seen in the context that this was not information which was volunteered by T. Thirdly, the suggestion of digital penetration is entirely new and emanates from a series of leading questions put by the mother, as she herself accepts. Nothing which T had said or done up to this point suggested that she had experienced digital penetration even if she then had the capacity to understand what the mother was asking her. What she *would* clearly have understood from this exchange was that her mother was extremely distressed with her father, that he had done something to her which was very wrong, and that she had been asked to keep this thing secret.

191. As the mother's email of 4 May 2016 made clear in its concluding paragraphs, she had by that stage decided to cancel T's contact with her father "*as I feel whilst she is gaining trust to speak it would be unfair to make her spend 2 hours with him. Also because I know how he manipulates I know threats could be implicit and maybe coded. I am also concerned as she has a school play on Friday which he may turn up to.*"

192. Following receipt of this email, there was a discussion between the police and Children's Services led by Becky Bowles. The mother was informed that, as the comments from T followed direct questions, it was not felt appropriate to interview T further. The father had spent time with Becky Bowles on 4 May 2016 in order to go through all the new concerns which she had been raising. The view of both the police and Children's Services was that this was a matter for the family courts and not for the police.

The (DS) police review: 1 May 2016

193. This review took place against the background of the police having formally reviewed all the evidence and produced a report. That report is dated 1 May 2016. It is a fairly lengthy review. Its conclusion reads thus:

"[T] has not provided a credible disclosure that she has been a victim of any abuse. In fact she has given a negative disclosure to professionals. Her mother has convinced herself or wants others to believe that her daughter has been abused. The above chain of events indicates to me that [she] has been influencing her daughter applying pressure and potentially encouraging her to make disclosures. Whilst the disclosure to the ELSA [i.e. Mrs Butchers] was the first indication to anyone other than her mother, that disclosure has to be viewed with caution given the preceding events. Conclusions and actions;

- *There has not been a creditable evidential disclosure*
- *Given the above sequence of events it would not be proportionate, necessary [or] in the interests of [T] to attempt to secure an evidential account from the child. The reasons being her age, the likely detail of the account and the fact that it would have been undermined by the actions of [her mother]*
- *CSD should be informed that the police will not be continuing a criminal investigation*
- *CSD and Police will visit [the mother] and explain why the police investigation is not continuing and that she should not continue to pressure and quiz her daughter as that in it[self] could be construed as abuse."*

194. Certainly in 2016, PC Dalley had aligned herself with the view that the mother was completely convinced that T had been sexually abused by her father and that, in her desire to expose that abuse, she had been applying inappropriate pressure in order to encourage the child to make "disclosures" which she could take to those who were then investigating matters. When she was cross-examined by Miss Giz at this

rehearing, she told me that if the mother was not putting pressure on T, she was certainly presenting as a very stressed and worried mother and that had obviously come across to T who was only too well aware that her mother was upset about something. She confirmed that T did not have a bad word to say about anyone and nothing which the child had said suggested to her (PC Dalley) that T had been “coached” to repeat negative things about her father at her mother’s behest. There was no doubt, however, in the officer’s mind that the mother’s mindset was that something had indeed happened. As I have already recorded, she agreed with Miss Hendry when it was put to her that the clear impression which the mother had communicated to T was that her father had done something wrong but that she was safe in her mother’s care had contaminated the enquiries to the extent that it made it difficult to place confidence in anything which T might say in future. In particular, it was her view that, having been told that her father had touched her in a bad way, she may well have been confused and that confusion could very possibly have infected the reliability of her account. When it was put to her directly, she confirmed that she had indeed shared the view of her superior at the time that there had been inappropriate pressure placed on the child by her mother.

The LA’s Revised assessment: 4 May 2016

195. A few days after the police review, Becky Bowles produced an updated written assessment on behalf of the Children’s Services Department for the local authority. Her report made it plain that T had not raised any concerns during her ELSA sessions or made any disclosures suggestive of sexual or any other abuse at the hands of her father. Within the body of a lengthy review of all that had transpired since November/December 2015, Ms Bowles recorded all the milestones of the ongoing investigation and the reports from the mother and others which had prompted intervention by both the police and the local authority.
196. Under the section headed ‘Assessor’s analysis of risk and protective factors’, Miss Bowles has concluded that,

“Assessment has not evidenced that [T] is at risk of sexual harm, or has experienced sexual harm from her father. At this time, there is no physical evidence of this and no disclosure has been made by [T]. Indeed, she has raised no concerns at all. Whilst again it is appreciated that she is only five years old and may not feel able to articulate any issues at this time, it remains the case that there is no evidence at this time that she is at risk of sexual harm from her father.”
197. Fairly, in my judgment, Miss Bowles makes the valid point in her assessment that the mother has interpreted what T had said about her father washing her bottom as being some form of sexual abuse without establishing that washing to be sexual touching such as to amount to sexual abuse. She emphasised in the clearest terms the need to avoid any further direct or leading questions.

“This is a difficult and emotive situation, with a variety of new issues being raised at frequent intervals. It may be the case that [T] has experienced sexual harm and requires protection from this. However, it may also be the case that [T] is feeling that she needs to make certain comments to adults as she is aware that various professionals have become involved and she has been visited several times and asked questions about being washed by her father. [T] is also a bright

young girl who is likely to have some awareness of the current parental acrimony and feel that she needs to make certain comments to please her mother. It is crucial that [T] is protected from this.”

198. The comments of Ms Bowles’ team manager appear at the conclusion of the report;

“Two thorough assessments have been completed following concerns from mother regarding father’s contact with [T] (5). At this stage, there is no evidence that [T] has suffered sexual harm. Unfortunately [T] has been asked leading questions which is a clear concern as [it] could effectively undermine any possible future disclosure and raises concerns regarding an impact of the recent situation on her emotional welfare. [T] is aware of her mother’s distrust of father and has had attention from her comments and therefore there is a risk that she uses this for attention in the future. As social worker summary, [T] needs to continue to be provided with opportunities to share any concerns she may have, and will only achieve this if provided with safe and stable conditions to do so. It is clear that she has concerns regarding her contact with father now and therefore this would need to be managed with sensitivity and care.”

199. Following this second assessment, T’s ELSA sessions with Mrs Butchers continued. There were no further concerns and T appeared relaxed and playful. She was working on her Sparkle book and told Mrs Butchers that she had written things for her worry doll in her heart shaped notebook. She was reassured by Mrs Butchers that she was always there for T.

8, 9 and 10 May 2016

200. On Sunday, 8 May 2016, after what the mother reports to have been a fun day on the beach with friends, she was having a bath with T. She said that T stood up, opened her labia and pointed to her private parts saying “that’s where Daddy washes me”. The mother thanked T for telling her that.
201. The following day, on 9 May, she reports T as having asked whether or not she has to go for sleepovers with her father. The mother told her “not for a while”. T then volunteered, ‘maybe I can go when I am 10 because then I can tell him, don’t wash my bottom’.
202. On Tuesday, 10 May, following a further session of contact with the father, T told her mother that she was going to use her ‘code word’ tomorrow because she wanted to see Mrs Butchers to finish her sparkle book. (The ‘code word’ was explained by the mother as the means by which T let her teachers know she wished to see or speak to Mrs Butchers.) She said, ‘Then I might tell her the secret’. She asked her mother if she knew what secret she was talking about and confirmed that it was the one she raised the week before. She told her mother she had already told Mrs Butchers and she had asked whether it was a good or a bad secret. She demonstrated to her mother how she had ‘put her thumb in the middle to indicate neutral’.

The ELSA session with Mrs Butchers on 15 June 2016: “secrets”

203. Mrs Butchers’ written report of this session records that T was happy to come to her session. “She sat down and immediately wrote ‘Daddy keeps secrets’”. Halfway

through the session, she coloured over those words so they could no longer be read and told Mrs Butchers she did not want that on her picture. In exploring this with T, Mrs Butchers had asked for help to understand T's comments about 'good and bad secrets'. T said she could not remember what the secrets were because she had not been to London for 600 years. She was asked how those secrets made her feel and she replied, 'Sad'. She was asked whether anyone told her she should keep a secret and she replied 'Daddy'. When asked if she would like to draw her secret, she said she could not really remember what it was. Mrs Butchers said, "I am wondering if the secret is a bit like the "washing secret"?" T said that it was. She said she had told her worry doll but "they go to sleep to[o] quickly". Whilst T was drawing, Mrs Butchers accepts that she pressed on with questions about the secret. T confirmed she had told Mummy but could not remember what the secret was. In response to Mrs Butchers' question, "Do you think one day you can tell me your worries ?", T had said 'yes'.

204. In my judgment this was an inappropriate line of questioning for Mrs Butchers to pursue and certainly so soon after the recent revised assessment produced on 4 May 2016. I know not whether Mrs Butchers had seen the clear recommendations in that report which stressed the need to avoid leading or closed questions. I understand that Mrs Butchers was in a difficult position to a certain extent. She had a small child in her care during those ELSA sessions who was clearly anxious and, to an extent, conflicted. She was aware of the repeated concerns which had been expressed by the mother and she had spent some considerable time in her sessions with T building up a relationship of trust and creating a safe space for her to express any concerns. That said, her questions were clearly leading and designed to encourage the child to provide a narrative in relation to the "secrets". That process had the potential to contaminate whatever was said in response to those questions, albeit that nothing of substance emerged on that occasion to explain T's understanding of what those secrets were.
205. The following day, on 16 June 2016, Becky Bowles visited T at school. After some general discussion about T's recent birthday celebrations, there was a discussion about seeing her father at the contact centre. T confirmed that she had enjoyed seeing her father but she did not want to see him in London because she missed her mother and did not want to leave her. She also told Ms Bowles that she did not want to see her father locally (i.e. in the town where she lived with her mother) but she could not remember why.
206. Thus, even in the context of "the secrets", there was no suggestion in this exchange that T herself had any specific reservations about spending time with her father. She clearly considered the time she spent with him on the last occasion of contact at the centre to have been an enjoyable experience. Even if I am over-interpreting her reference ("*it was good to see dad*") as 'enjoyable', she certainly did not express any specific reservations or concerns about contact at the centre which was plainly an environment in which she felt relaxed and comfortable. In terms of the separation anxiety she recalls in the context of leaving her mother, I have no doubt that she was recounting real feelings and giving Ms Bowles a broadly accurate account of how she felt at times when she was taken for contact with her father in London. I am equally sure that the father was able to manage that anxiety and responded appropriately to T's needs when, for example, he asked the mother to help him to settle her in the early

days of their separation. None of this surprises me from a child of this age who is clearly deeply attached to her primary carer.

207. There were two further sessions of contact which, pursuant to the court's order made on 10 May 2016, had been increased to once a week at the centre. Each of these sessions took place for two hours after school. Nothing of any concern emerged from either of these sessions. The father appears to have organised their time together appropriately and productively. There was plenty of observed interaction, discussion and play. There was singing and acting out scenes from "Frozen". T came to the sessions perfectly happily and separated from her father at the end of each session without distress and with appropriate 'goodbyes'.
208. On 7 July 2016, with the Family Court hearing approaching, Becky Bowles returned to see T again at school. There had been no further or new concerns raised at that stage.
209. The first hearing before the original trial judge began on 19 July 2016 and ran for three days. In order to understand the mother's frame of mind by that point in time, I look to the statement which she had prepared for the specific purposes of that hearing. In paragraph 26 of her second statement dated 17 June 2016, she said this:

"Throughout our relationship, I have observed that the [father] would tell lies and then absolutely believe the lie and start to live the lie. I am convinced that [he] would have convinced himself that he has not done anything wrong to [T], that despite having done so that he has not sexually abused her but merely washed her, because he would not want to believe that of himself. [He] could come across very convincing once he believed his lies and I am very concerned that he will have managed to convince all the professionals, and this Court, of his lack of sexual motivation for the incidents."

As I have already observed, I believe that still to be this mother's mindset and heard very clearly the warning she has given to me about the need to guard against being beguiled (my word, not hers) by the father's presentation in this rehearing.

Events following the first hearing in July 2016

210. Less than two weeks after the conclusion of the court hearing set up as a fact find into the mother's allegations of abuse and within 48 hours of counsel having filed their written submissions, the mother reported further "disclosures" from T which had emerged on 31 July 2016.
211. The mother reports that T had been "on edge and out of character", having tantrums for several days. It appears that she was feeling 'sad' because she and her best friend at school were not going to be in the same class in the next school term. There was some form of discussion between mother and daughter to the effect that it was always much better to try and talk about why you feel sad. Before she went to bed that night, the mother reports that T said,

"When Dad washed me it really hurt. He was really rough and his fingernails hurt inside my bottom. He told me not to tell you he washed my bottom and that it was a secret. It felt like a trap."

“I just used to try and switch off or go to sleep until it was over.”

“Daddy could show you a film of it, then you would know it happened.”

When T was asked, ‘Did Daddy film it ?’, T said that he did.

The mother asked, “Did Daddy film you being washed ?”, T said, “No, just with my leg in the air”. When asked if she had clothes on, she said both ‘yes’ and ‘no’ and, when pressed by her mother, she said, “I can’t tell you. I don’t know. I’m not sure.”

There was then a heated outburst from T who told her mother to leave the room. She said, ‘You never listened to me. I was always crying when we went to London and you always left me.... I didn’t want you to leave me but you did leave me.’

212. This is the mother’s account of these exchanges which is set out in her fifth statement dated 3 November 2016. She wrote down everything she could remember as soon as T had gone to sleep and she wrote an email to Becky Bowles. (When she subsequently discovered that her social worker was on three weeks holiday, she sent an email to PC Dalley on 1 August 2016.)
213. In terms of context, the mother explained in her email that T had been very upset and stressed over a number of things in the days before this conversation. Following that week’s contact session, she had been anxious to know if she would be going to stay with her father in London; she was very worried about the transition to her new class and these worries were being reinforced by a graduation ceremony in which she was due to take part before the start of the school summer holidays.
214. PC Dalley went to see T at her home with another police colleague and Becky Bowles on 17 August 2016. The mother was present but remained in the garden throughout their conversation with T. They were with her for approximately 40 minutes. Initially, T was “very chatty” and, in particular, about a forthcoming holiday to Wales. At a fairly early point in the conversation, T was asked directly ‘what she did in the bathroom’ and responded directly that she cleaned herself and in the bath. She was then asked ‘who washes you ?’ and she said she sometimes washed herself. She was asked who else washed her and she did not respond. After a pause she said, “Daddy ...sometimes he used a flannel and sometimes he used his hands”. She demonstrated how she was washed using a toy bear with a tail. She wiped the bear’s face, ears, feet, tummy, under neck, back, head and tail but did not go anywhere near “the groin area”. PC Dalley asked her, “Who washes the bits you go to the toilet with ?”. She said that she did it herself. To the next question : “what about when you are with daddy ?”, she did not respond. “What about when you are with mummy ?” produced the response, “me”.
215. The notes of that visit record T as being extremely “chatty” and animated when she was talking about her forthcoming holiday; she remained silent whenever she was asked anything about her father. After pacing around her room and scratching her neck, she told the police she was tired and had to go to sleep. She climbed into bed and pretended to be snoring. Whilst Becky Bowles stayed with T for a short while after the police officers left (at T’s specific request that they should do so), T did not

say anything to indicate that she had been hurt by her father. It is very easy to observe at this juncture that she plainly felt conflicted and unhappy to be asked again about these matters. The reason for that reticence is a different issue.

216. After the police officers had left, Becky Bowles recorded her conversation with T in these terms:
- “I explained to [T] again that my job was to help and that if there was anything that she was worried about, she could tell me and I will try to help. [T] sighed and said ‘ok then’ and went to get some paper and pens from my bag in order to write something down. [T] hunched over so that I couldn’t see what she wrote, it looked like she wrote the wor[d] “bottom” but then hastily scribbled this out before I could read it ... I asked her if she could write this down again and this time [T] just drew a series of lines. When I asked her what this meant, [she] said “blah blah blah”. Therefore I returned to neutral topics and [T] showed me the vegetables that she and her mum are growing.”
217. Before she left, she specifically advised the mother not to ask any questions about the visit but to inform the police should T say anything which concerned her.
218. T had seen her father at the contact centre on 2 August 2016. The contemporaneous notes which were recorded by the supervisor on that occasion give a clear impression that she appeared to be perfectly comfortable with him. There was a discussion about a recent trip she had to the beach. She showed her father shells which she had collected. Together they spent time colouring and playing various games. There was an apparently happy game of hide and seek before T sat down with him for a sandwich tea which he had prepared. There was more play with a balloon race activity game before it was time for T to return home.
219. I provide some of that detail from the contact record sheet not to suggest that these innocuous activities are contra-indicators of abuse but in order to gain some small insight into how T instinctively reacted and behaved when in the presence of her father. I bear well in mind that the father will have been well aware of the scrutiny to which he was subject at the contact centre and that his own interaction with T was being recorded in a written record for possible use in the context of the ongoing Family Court proceedings. On the day of that contact visit, 2 August 2016, the mother’s solicitors had written to the judge (who had reserved his judgment) to inform him of the further “disclosures” made by T on 31 July 2016. Whilst that letter refers to the fact that the father’s solicitors had been made aware of the mother’s intention to apply to reopen the evidence prior to delivery of judgment, I have no information one way or the other as to whether that information had reached the father by the time he saw T on 2 August.
220. The mother gave a statement to the police on 7 September 2016.
221. According to the mother’s written evidence, T continued to make negative remarks about her father from time to time throughout September 2016. She referred to “someone needing to train him, like you train a dog, so he will be a nice Daddy”. She continued to express anxiety about the prospect of returning to sleepovers. She made a reference to her father having done something “bad” to her whilst she was watching a programme on her iPad with her mother.

222. The mother's concerns were further fuelled when she observed T and a friend sitting naked in T's bedroom on a play date after school. T was sitting cross-legged on the floor with her fingers in her vagina. The mother overheard her say to the friend, "Don't tell mummy this is a secret thing". When the friend left, the mother had a conversation with T during which she was told it was "fine to be naked but we keep our pants on and do not touch each other, and that we keep the door open and have no secrets".
223. Although contact at the centre appears to have continued without particular incident or concern, the mother reports that T was becomingly increasingly reluctant to engage in the breakfast Facetime sessions.
224. On 20 September 2016, Becky Bowles visited T again at school. This was described as a "further assessment/monitoring visit ... to continue to gain her views". T was initially happy and excited, and talking in an animated way about her recent holiday to Wales. She was asked to complete a work sheet entitled "Letting go of Worries". It included a large tree with several branches. The caption under the title encouraged the writer to write about any worries and hang them on the branches. Miss Bowles encouraged her to draw or write any of her worries on the branches of the tree. T chose to draw on the end of the branches because she said that she did not have any worries. She was specifically asked when she last saw her Daddy and she replied that she has seen him the previous evening at the "play zoo". She said she taught him to skip, that they had chocolate cake and made a collage. She explained that she liked to play hide and seek with her father. She said she would like to continue to see her father at the play zoo.
225. Miss Bowles' report of that visit concludes with these words:
- "No new concerns raised. [T] presented as happy and settled, her body language was open and did not change when talking about her Dad, unlike on the previous visit with the police."

The father's police interview: 19 October 2016

226. On 19 October 2016 the father voluntarily attended an interview with the police. PC Dalley was one of the two interviewing officers. During the course of that interview, he denied ever causing harm to T or abusing her in the way alleged or at all. He explained what happened on the two occasions when he returned T from the soft play centre on 15 November and 13 December 2015. He was adamant that there was no discussion between them on the second occasion about T being sore; he maintained that the mother had made it plain he was not welcome to stay and had more or less "kicked him out". He said he had expected to read T her bedtime story as was his practice but T's mother had agreed that he would be doing the school run the following morning.
227. He also provided an account during interview of the fact that the mother had always been aware of his washing T's bottom since this was very much a cultural practice and "it was a bit like using a bidet". If this was indeed an explanation of some sort of hygiene routine, PC Dalley told me in cross-examination by Miss Giz that she could not say whether or not she had been made aware of it before all her conversations with T and the mother.

228. As a result of that interview and on the basis of the evidence that was then available from the mother, T and Children’s Services, the police sent the father a letter indicating that they intended to take no further action in relation to the allegations.
229. On 11 November 2016 there was a directions hearing in the family proceedings. This was in preparation for the further hearing which had been listed in order to allow the judge to hear the fresh evidence which the mother wished to put before the court prior to a final judgment being handed down. Contact between the father and T continued at the contact centre on a weekly basis throughout this period. The court reconvened for a two day hearing on 29 and 30 December 2016. Oral evidence on that occasion was restricted to that of the parents. Judgment was reserved.
230. On 31 January 2017, judgment was handed down. The court found that the mother had not discharged the burden of proof in relation to allegations that T had been sexually abused by her father. Before the court on that occasion was a report from the contact centre which had been produced at the behest of the mother. There was no court direction for this report. It had been prepared by Donna Blanche who ran the contact centre. She had reviewed the contact notes although does not appear to have been present for any of the actual contact sessions between T and her father. There had, by then, been 34 weekly two hour supervised contact sessions since they started on 1 March 2016. The report confirms that the father had been consistent in his attendance and had complied with all requirements made of him. He had brought appropriate toys and snacks for T and maintained appropriate conversations with her asking about school and activities. It records the support given by the mother to these sessions although she was not present whilst they took place. T is described in the report as a bright intelligent child who is always talkative and who “engages well in contact”. She always appeared happy to have contact with the father but is “wary of having close affectionate contact with him”. There appeared to be an absence of “cuddling and kissing”. Mrs Blanche concluded that there was an apparent lack of physical or emotional warmth between father and child. That, and the fact that contact had been ongoing in the centre for a year, led Mrs Blanche to recommend that contact sessions should remain in the centre on a supervised basis at least for the foreseeable future.
231. I know not whether Mrs Blanche was aware when she wrote this of T’s particular dislike for ‘kissing’ which she regarded as ‘sloppy’ and which was clearly not her preferred means of showing physical affection. In any event, it was a recommendation which was reflected in the order for contact which the court made in February 2017. Thereafter contact continued on a weekly basis with three Facetime contacts each week.
232. I have read the session notes for the next visit on 6 February 2017. It appears to have been a happy session for T. Her father made up her face with face paints. T looked in the mirror and said, “It looks amazing !”. She taught her father a skipping and gymnastics routine. They did drawing together and played with a craft kit. They were planning a ‘show’ in which T’s best friend, F, was to be asked to perform. There was a conversation about the cards which he had been sending to her and whether she was receiving them. T said they came with the postman whilst she was at school and she kept them “somewhere special”. T was happily singing songs and rhymes with her father as they ate pudding at teatime. T pretended to have several mouthfuls of her father’s pudding and then pretended to eat his fingers “so she could

get to the trifle”. She was laughing happily as she did this. They said good bye affectionately when it was time to go.

233. This was a very difficult time for the mother and her family. Her own mother, T’s maternal grandmother, was very ill. She passed away on 7 February 2017. Her funeral took place the following week and there was a memorial service on 20 February 2017. There was some justified criticism of the father at that time (which he accepts) because of his initial insistence that he had contact with T on that date as had been scheduled. It provoked much distress at a time when the mother was ill equipped to handle confrontation over the arrangements for T. The father has since apologised but it was insensitive at best and aggressively inconsiderate at worst. Clearly the mother regarded it as history repeating itself insofar as it mirrored what she had experienced as controlling behaviour on his part during their marriage. That apology was proffered very late in the day and only in circumstances where he had little alternative but to accept that he had been notified in advance of the date. I reject any suggestion that the mother had in any way misrepresented the date of the funeral.
234. As to the mother’s state of mind about the outcome of the first fact-finding hearing, I look to what was happening in the early part of 2017 as she struggled to come to terms with the loss of her mother. She continued to maintain a written log (or electronic diary) of things said and done by T. One of her logs, written on 17 February 2017, records the following:-

“[T] and I stayed for a night in London at my friend, [S’s], house. I used to always stay at [S’s] house when I took [T] to stay with her Dad. As I was putting [T] to bed she said to me. Do you remember when I was at Dad’s and you came and put me to bed ? ([T] had been in such a state and upset - [the father] eventually phoned me and asked me to go over and see her. This was one of the last times she stayed with him in London.) I said, yes I was here at [S’s house] that night. I said, you were in such a state that night I was really worried about you. She said Dad used to fib all the time. He used to wash me and then he would say I didn’t wash you. Don’t tell Mum. Dad is such a liar. I said, is that when dad washed you with his hand ? She said no, it wasn’t his hand ... it was his fingers. I said, Oh. She said, he put his fingers in here. She pointed to her vagina. I said, I am so sorry Dad did that, [T]. I said, Nobody should touch you there. It is private. I said, so tell me again what Dad would say (I was confused). She said, after he had done it he would say he hadn’t done it. I said Oh ok, that’s a bit strange.”

The Cedar Project sessions

235. The Family Centre which ran the contact sessions ran a number of different family projects. One of them was known as the CEDAR Project (the acronym for ‘Children Emerging from Domestic Abusive Relationships’). I have a copy of the information leaflet produced by the Project leaders and a printout from its website. Its objective is ‘to support children to build resilience when impacted by domestic abuse’. The website records that the project “is a unique way of working with children, young people and their mothers who have experienced domestic abuse. [It] takes place over 12 weeks with groups for children, young people and their mothers running in parallel. The groups provide an opportunity to explore the experiences, understanding and feelings with an emphasis upon providing fun and creative activities that keep

children engaged and interacting with each other. It is about creating a safe place for children and their mothers to help each other to find the best strategies to deal with their experiences and rebuild their lives. A key aim of the programme is to help mothers to support their children in their recovery.”

236. On 7 March 2017 the mother had picked up a leaflet at the contact centre and asked if T would be eligible for the programme as “she seemed to fit the bill”. She wanted to ensure that there was a ‘regular external adult who she trusts so that if contact does resume she has another person to talk to about how she feels’.
237. Amongst the documents in the court bundles is a copy of the referral form which the mother completed on that date. In that form the mother records her concern that T had begun to lack confidence. She recorded the number of occasions in the last year when she had been interviewed by police and social workers and said she, T, had been stressed and upset by that process. She worried and was over-anxious but unable to articulate what her worries were. The mother mentioned boundary issues with friends citing her tendency to play naked with her friends on occasions. She wanted to build resilience in T “so that she can handle any challenges she faces in the future and to articulate any concerns that she has ...”.
238. Some three weeks later, on 27 March 2017, the mother had a discussion at the centre with Donna Blanche about the need to make progress with contact outside of the supervised setting in which it had been taking place for the last year. This appears to have been prompted by a letter sent to Ms Blanche by the father’s solicitors in relation to progressing contact outside the centre given the absence of any findings by the judge.
239. The mother’s log for that day records her feelings of “despair” and “not knowing what to do”. She clearly remained very concerned but agreed to a short outing to a local park outside the centre if that was something which T would want to do.
240. Thus, as the CEDAR sessions began in the Spring of 2017, it seems that the mother had not become reconciled to the possibility that what T had been telling her over the course of the last 12 months might not be an account of having been sexually abused by her father. I appreciate that the recent court judgment had not exonerated the father; it had merely established that the mother had not made out her case to the required standard of proof (i.e. on the balance of probabilities). That said, there is little doubt in my mind that she was anxious and distressed at the prospect that what she had regarded as ‘safe guarding’ measures for T in terms of her future contact with her father might well be dismantled in the foreseeable future. I am quite sure that she remained extremely vigilant throughout this period and that her anxiety and vigilance are likely to have been communicated to T even if through non-verbal means.
241. Julie Taylor was assigned as the allocated CEDAR project worker for T. She told me during the course of her oral evidence that she regarded her role as one of support for T rather than evidence-gathering. She had six sessions in all with T over the course of just over two months. These sessions were ongoing in parallel with the weekly contact and Facetime which T continued to have with her father.
242. Miss Taylor told me that when she started to work with T, she had no specific knowledge about the dynamics of her parents’ relationship or the circumstances of

their separation. As I have said earlier, she did not have previous experience of working with a child in respect of whom sexual abuse had been established. She said that the whole focus of her work had been on T and how she would “cope” with progressing contact. She accepted that she had no discussion whatsoever either before or during the sessions with the father and had not spoken to him about the allegations or his response to them. Her only point of contact was with the mother who had instigated the sessions and who was bringing T to them and collecting her at their conclusion.

243. As a general observation, if the session records are an accurate report of each meeting with T (and I proceed on the basis that they are), it is clear that a number of topics which were addressed with T were introduced on the basis of a leading question or series of questions. Miss Taylor has in certain respects been swift to reach conclusions about a particular issue on the basis of the answers she received from T. Having now analysed a very significant quantity of evidence which includes many sessions which third party professionals and others have had with this child, I know that she has in the past frequently responded with hesitation and equivocation (for example, “I don’t know” or “I can’t remember”) when she is asked about things which are difficult for her or in respect of which she feels conflicted in some way. Thus, in the first session, there was a discussion about families. T appeared to chat happily about her maternal side of the family. When she was asked about her father and his family, T responded to all Miss Taylor’s questions with “I don’t know”. Those responses led Miss Taylor to conclude in the summary which she submitted to Mrs Blanche that “[T] seemed reluctant to talk about her father or her paternal relatives”. Whilst that might have been a valid observation, it did not factor in any external influences which might have shaped T’s responses, such as an acute anxiety about being separated from her mother. That appears to have been an ever-present worry for T at this time. She needed constant reassurance from her mother whenever she raised the issue of ‘staying overnight with Daddy’.
244. The second CEDAR session on 6 April 2017 saw T arrive at her session with a book called “The Bag of Worries”. This was a story which the mother had been reading to T the night before this session following a further discussion with Mrs Blanche about moving contact outside the centre. T told Miss Taylor she had six worries: “one of them is my biggest worry and one is not so big a worry”. This resulted in the production by Miss Taylor of the ‘worry jar’. She suggested T might write down her worries and she would look after them for her. I have a copy of the notes and pictures which found their way into the worry jar on that occasion. Amongst them were, “*Dad washs my botm*” and “*mummy is to far away frome me*”. Her other worries were slightly more prosaic (not liking spiders, worry over not doing homework, worry over the witch eating me, not liking meat).
245. By the time of the third CEDAR session on 18 April 2016, T and Miss Taylor were working on the NSPCC underwear rule worksheets. They were apparently discussed in great detail in the context of a conversation about ‘keeping safe’ although I do not have chapter and verse of what was said. T wrote some “worry” words on a note which went into the worry jar. They were “sad, upset, nasty, bully, lonely” with a sad face at the bottom. Using cushions with various “emotion faces”, T was asked a number of different questions and asked to sit or stand on the appropriate cushion to show how she felt. The prospect of macaroni for dinner prompted her to stand on the

sad cushion whereas going swimming today led her to the happy cushion. Miss Taylor then asked how she would feel if she were to visit her father at his home this weekend. T said, “That’s a difficult one”. Miss Taylor immediately suggested she might write down her answer and put it in the worry jar. T agreed to do this but said she would read it out before it went in the worry jar although Miss Taylor was not allowed to ask any questions about what she wrote:

“Dad washs my botm

I don’t like it

I don’t like it when I am far from mummy

Dad gives me lots of swits”

246. T has a way of expressing herself which her mother demonstrated for me. She will often do a “thumbs up” sign when she likes something and a “thumbs down” sign when she does not. A “thumb in the middle” means she is uncertain how she feels or that she has mixed feelings about a particular person or issue. She engaged in these responses with Miss Taylor during her third session in the context of questions which were put to her regarding how she felt about ‘Dad’. She said she felt in the middle and that the “mean thing” was “when Dad washes me” and the happy thing was “sweets” (but not too many). Miss Taylor then engaged her in role modelling in order that T could explain how she felt about Dad. T asked her to be Dad. Miss Taylor said, “time for bath then bed, [T]”. She records that T put her hand up and said, “stop, I can do it myself” and then pretended to get into the bath. Miss Taylor’s conclusions at the end of that session included a concern that T seemed ill prepared for contact with her father outside the contact centre notwithstanding that those changes to contact appeared imminent.
247. The worry cushions came out once more for the fourth CEDAR session on 26 April 2016. This was in the context of a discussion about how T might feel if she and her father spent some time together away from the contact centre. T placed her self on the ‘worried’ cushion. T offered to write down her thoughts on post it notes for the worry jar but Miss Taylor was not allowed to ask her any questions. She once again wrote that she was not happy when Dad washed her, when mum was too far away, or when Dad gave her too many sweets. Miss Talyor then embarked upon a series of questions which were designed to explore what T had meant about ‘not liking washing’. T offered no explanation but said “I’m not sure”. Miss Taylor asked her to demonstrate using a doll. T then washed the doll’s bottom using the flat of her hand. Miss Taylor asked her what it was that she did not like about this. T said she would write it down. She wrote: *‘scratchy, hurt, sore’* and drew a sad face. She told Miss Taylor in answer to the question ‘How did Dad wash other parts of her body?’ that she washed herself when she was in the bath. She told Miss Taylor, again, that she liked Dad ‘in the middle’ but would like him more if he did not do these things. She asked to take the notes home with her so that she could show them to her father on Facetime in order that he would know how she felt. Miss Taylor told her that the notes had to stay in the worry jar but she would give her some more paper to write new notes.

248. When T was collected by her mother at the end of this session, Miss Taylor told her that T had agreed to see her father for the next contact session outside the centre at a coffee shop. Very shortly after she was collected from that CEDAR session (and, it seems, within 30 minutes), T had called Miss Taylor on her mother's mobile telephone. Miss Taylor records that she was very upset and crying and was saying that she did not want to go out of the centre with her father. There is no suggestion that she had spoken to anyone other than her mother during the time which had passed between her leaving the contact centre and making that telephone call.
249. Miss Taylor discussed with her line manager, Mrs Blanche, the information which T had supplied during this session. Both agreed that there was nothing new in what the child had said and this was mere repetition of information which had previously been put before the Family Court.
250. T's next CEDAR session (her fifth) was scheduled for 2 May 2017. I understand that this session was due to take place at the contact centre following on from a session of contact with her father.
251. According to the mother's electronic diary log, T asked on 1 May 2017 whilst she was being put to bed whether she could go to her session early in order to speak to Julie Taylor. She told her mother that she only wanted to go there if her father was not going to be at the contact centre. According to the mother's account, she said that her mother must be in a room with the doors locked so that "Dad can't get you". She continued to express concern that they could not be there at the same time as her father "so that Dad can't get you". The mother says that she reassured T that nothing bad would happen and that she was not scared of anyone.

The 5th CEDAR session on 2 May 2017: further "disclosures"

252. This was the background to the fifth CEDAR session on 2 May 2017. T arrived and showed Julie Taylor two pieces of paper which she had shown to her father over a Facetime call. I have those notes in the bundle. She has numbered the notes 'no 1' and 'no 2'. The first note read, *'I toos not to see Dad'*. There is a large heart with several smaller hearts contained within. The second note read, *'This is what happnde ... Dad put 1 fingr in my bottm at a time. It was sor. I am to far away from mummy. Dad ceeps secrts.'* 'Sad face' emojis appeared by the side of those words. T then drew a line and wrote underneath, *'I like it when dad givs me good presents'*. A 'Smiley' face emoji was drawn next to those words.
253. T told Miss Taylor that she wanted to see her father on Facetime and at the play centre but not outside. When reminded that she had agreed to visit the coffee shop with him at the end of the last session, T said she did not want to do that, even if Miss Taylor came with them. She was asked why. T then wrote a third note which she entitled "(no 3)". It read, *'Because he does nasty stuf'*. Miss Taylor then asked T if she could explain what each of the points on her second note meant. T suggested she could do this through role play. She rejected Miss Taylor's suggestion of using a doll. She said she wanted her to be Dad. Miss Taylor pretended to read the newspaper whilst T danced. She stood up and said that it was time for her bath. She asked T what she was to do next and was told *'wash me all over'*. She pretended to wash T's hair, feet and under her arms without actually touching her. Miss Taylor then said, "Now what happens?". She then records in her note of the session, "[T] then

demonstrated by holding up one finger at a time one after each other”. She was asked, “where is the finger put front or back bottom” ? T said “both”. She was then asked to explain how it had made her sore. She said *‘it hurt when he did it’*. She was asked whether she had told her father of her discomfort or had become upset and said *‘no’*. She was then asked what she meant by ‘bad secrets’. T replied, *‘dad told me, don’t tell anyone or you will get into trouble and mummy will too and then you won’t be able to be with mummy’*. T said she had told all this to her mother and to her friends. She also said she had told the police but did not want to tell them again as *‘they’re big and scary and I’m the only small one’*. Miss Taylor thanked her for being brave and told her that nothing bad was going to happen.

254. At the conclusion of that session, and within less than an hour, T had what appears to have been an uneventful session of contact with her father at the same contact centre. There is no record of her having been reluctant to see him in the aftermath of what Julie Taylor clearly regarded as “a serious safeguarding concern”.
255. As a result of that session, T’s “disclosures” were referred to Children’s Services as “this appeared to be new information to what was previously heard in the Family Court” (per Julie Taylor). Miss Taylor told me that she had no reason to doubt the truth of what T was telling her and that she believed that the narrative she was hearing was an account of sexual abuse. Further, she said that she believed that T herself believed she had been sexually abused. She told me during cross-examination by Miss Hendry that she believed T’s narrative rather than that of the father despite the fact that she had before this point had no discussions with the father at all about his response to the allegations made by the mother.
256. Mrs Blanche, her supervisor, explained to me during the course of her oral evidence that, apart from one further CEDAR session to help prepare T for a formal interview with the police, she took the view that the work undertaken within these sessions had probably come to a natural conclusion by this point. Despite the fact that the police had confirmed to Julie Taylor that there was no difficulty in the sessions continuing and the note of that call appears to suggest that it was Miss Taylor’s intentions then to continue the weekly sessions⁹, it was nonetheless Mrs Blanche’s considered view as the safeguarding officer that their work had come to a natural conclusion by this point.
257. On 12 May 2017 PSI Tarry met with T and Julie Taylor for an introductory, or ‘rapport’ visit prior to the formal ABE interview which had been scheduled later that week. Her mother was present during the initial part of this meeting but absented herself to wait in the car whilst PSI Tarry spoke to T in a separate room. The meeting was conducted in the presence of Miss Taylor. T was asked if she knew why she was there and said she did not. Miss Taylor prompted her by reminding that it might be something to do with what she had written and put in the worry jar. T remained quiet. Miss Taylor then suggested that it might be easier for T to write on post it notes as she had done before. She wrote:

‘he do’s it at 3 [inverted] aclok evry day’ [worried face]

‘Dad washs me’ [sad face]

⁹ [4/E:330]

'Dad gav me much swits'

'Pippa is mein to me'

'My nanna has diyd'

'I am woryd because he nit do it evry time it is saw. It herts.' [sad face]

'he washs me on my botm' [sad face]

'Explan that a bit mor ? it is saw because he puts his nals on it'

'Wher dos he put it ? my botm. Frunt & bak.' [sad face].

258. The following day, on 13 May 2017, T had a friend to stay for a sleepover. There is a reference to this in the mother's electronic log. He asked why she was not at school the previous day. The log records that T looked at her mother and then said, 'I went to meet the police. My Dad is a bad man. He washes my bottom and he hurts me. He made me keep it a secret'. There was then a discussion between the two children about the PANTS rules.

The ABE interview: 16 May 2017

259. In the context of the unfolding evidential canvas which I have set out, it is important to bear in mind, as I do, that this interview took place some 18 months after the two occasions on which M observed the original physical signs which she interpreted to be possible evidence of sexual abuse. I have a transcript of the interview which was conducted with T on 16 May 2017. I have also watched a recording of the interview three times. PSI Tarry conducted the interview in an interview suite together with DC Hawkins (who was monitoring) and Anna Rhodes, an intermediary whose summary report I have within the material in the bundle.
260. The interview is lengthy and I do not intend to reproduce it here.
261. After some initial formalities, T indicated that she wanted to deal with the questions and her answers by writing everything down on post-it notes in different colours. She was asked to hold those notes up to the camera in order that they could be recorded on the videotape. Whilst she was happy to do this, it subsequently transpired that the words on the notes were not visible albeit that the notes themselves have been preserved and recorded in written form.
262. Miss Rhodes' intermediary assessment refers to the fact that, whilst her listening and attention were adequate for the assessment, T needed reminders to listen. She was able to respond to abstract questions which required her to use her own knowledge but had some difficulty with sequencing and being able to identify 'before' and 'after'. Her concept of time was limited and she found it difficult to estimate how long something took to happen. Miss Rhodes has specifically noted that, '[T] is highly suggestible when presented with tag and/or leading questions, or the adult's tone of voice suggests the answer'. She further noted that, '*Although she was able to explain and describe the content of a picture, [T] found it more difficult to give full and clear instructions to another person. She struggled to verbalise her thoughts and ideas, with errors in the word order resulting in disorganised sentences. This could explain*

why she preferred to provide her responses in writing, as it gave her time to think and organise her response’ [the emphasis is that of Ms Rhodes and not my own]. Her vocabulary was assessed to be *‘strong for her age, although she was noted to ‘make words up’ when she could not remember’* and *‘age appropriate’* in terms of her ability to describe an emotional state or feeling.

263. As to T’s demeanour, as PSI Tarry confirmed in her oral evidence, she appeared “pretty chatty” and was not exhibiting any visible signs of distress. As I observed myself, she was very inquisitive about the set-up in the room and appeared to explore her surroundings with an appropriate confidence for a child of her age (she was then a month from her 6th birthday).
264. PSI Tarry’s involvement in this case was confined to these two discrete meetings with T on 12 and 16 May 2017. She had some considerable experience of conducting these sorts of interviews with children and was ABE trained. She told me during the course of her oral evidence that there was nothing in T’s demeanour during the interview which enabled her to discern whether or not T had actually had the experience of any form of digital penetration since there was nothing in her body language to indicate one way or the other. She agreed that she had appeared perfectly happy to answer some initial questions about her father. However, she accepted that these observations could not point conclusively in one direction or the other given that the account which T gave during the interview could be a credible account of abuse and it was consistent with what she had been saying before.
265. In relation to the issue of digital penetration, PSI Tarry confirmed to the original trial judge in the second fact finding hearing in January 2018 (as she confirmed to me during her evidence at this hearing) that when she interviewed T in May 2017 she had been unaware that the child had been asked by her mother the specific leading questions, *‘Does it hurt when Daddy touches you ?’* and *‘Did he put his fingers inside your bottom ?’*. Those questions had been asked over a year before the ABE interview and T had since the end of April 2016 had a series of meetings with Mrs Butchers (her ELSA teacher at school) and with Miss Taylor (the CEDAR sessions at the contact centre). These had all been initiated with a view to helping T with her “worries”, to understand what might have been troubling her, and to build her resilience and coping skills. PSI Tarry told me that, whilst she had been aware of Miss Taylor’s involvement, she had no knowledge of the ELSA sessions or Mrs Butcher’s earlier involvement since the “disclosure” which T made in May 2016 after her conversation with her mother. Further, as is clear from the witness statement which PSI Tarry made in the context of possible criminal proceedings (dated 28 May 2017), she did not see the written reports of the CEDAR sessions and/or Miss Taylor’s notes until after the conclusion of her interview with T.
266. PSI Tarry has accepted in her oral evidence over the course of this case that, had she been aware of those exchanges, she would obviously have been concerned that the idea might have been put into T’s head and that she might simply be recounting something which she had been told has happened. She agreed that the word ‘hurt’ and the reference to “in her bottom” might well have raised these concerns. In answer to a specific question put to her by Miss Hendry, she told me that “Yes, she may have been recounting something which she had been told had, or may have, happened”.

267. The subject in hand was broached at the ABE interview by reading to T the post-it notes she had previously written for Julie Taylor during her CEDAR session on 12 May 2017. I reproduce below the gist/substance of the 15 separate post-it notes which T produced during her ABE interview (each numbered sequentially as I have set them out below) and, where appropriate, the context for their production. The latter I have extracted from the transcript of the interview.

- (1) T was asked what she had come here to talk about; she wrote, *'To talk about my [three crossed out letters/words which are illegible] ...evy think(g?)'*.
- (2) When asked what she meant about 'everything' she wrote, *'my dad, Pippa, nanna, maths titch'*.
- (3) 'Tell me about Dad' produced this response: *'He washes me. I am to far away from mummy. He givs me to much swits.'*
- (4) 'Tell me about when Daddy washes you': *'At 3o'clock evry Day'*.

There is then an exchange between PSI Tarry and Miss Rhodes about 'grabbing a drink'. T says she is thirsty. She goes to the window sill to get her drink. She then returns to her writing and reproduces the question which PSI Tarry has just asked her ('So, what happens when Daddy washes you?'). She says (inaudibly, in part) that she has written the number in and then says *'What a naughty [T]'*. This appears to relate to the fact that she wrote tis in the wrong colour.

- (5) 'What happens when Dad washes you?': *'He sez he hasn't don it.'*

She is asked, 'What hasn't Daddy done?' She then returned to her 3rd note and drew a circle around the word *'washes'*. She is asked if Daddy has washed her and she says 'yes'. When PSI Tarry repeats the question and asks 'And what happens when Daddy washes you, T said she does not understand the question. It is asked again.

- (6) T answers the question thus: *'By putting I finger in my bum at a time'*.
- (7) She is asked, 'Where are you when this happens?' She writes down, *'In ... [word scratched out and illegible] ... London'*.

T continues to drink her water by the window sill. Miss Rhodes is worried that she might be getting tired 'because this is a bit like being at school and having to write things down'. T is encouraged to give some 'quick answers' by 'talking' responses. PSI Tarry suggests that maybe she could just write down the answers. T continues to write out the questions followed by her answers.

- (8) She is asked how old she was when this happened and she writes '3'.
- (9) She is asked 'How many times did this happen?' and responds *'40 times'*.

T is then asked if she can go back to her answer about "putting one finger in my bum at a time" and is asked where she was when that happened.

- (10) She writes *'Eny wer'* and then on a separate line, *'the AI'*.

She clarified that response by telling PSI Tarry *'except on the train. Can't do it on the train...or maybe the underground'*. She is asked what she was doing just before that and responds, *'I can't actually remember that. I don't really know and I don't really get what you're saying'*. Miss Rhodes then tries to help her by thinking of a number of places in London (i.e the park, Buckingham Palace, somebody's house). T responds that she could not remember the place, *'... so basically Buckingham Palace or ... so like, wherever there's toilets or something'*.

(11) She then writes a fresh note (numbered 11): *'Eny wher ther is toilets'*.

(12) She confirmed that Dad took her to the toilet when she was little. She was asked what Daddy would do and she pointed to her note numbered 6. There is then a discussion during the course of which PSI Tarry tries to elicit an understanding from T as to whether she is speaking about her 'bum' for 'having a wee' or her bum 'for having a poo'. T responds, *'Any'*.

She is then asked "When you say Daddy put his finger in your bum, was that on your bum or in your bum or don't you know?". She replies, *'In, I think'*.

(13) PSI Tarry asks her, "so how did that feel?" and T writes in her next note, *'saw ichy'*. She then asks to go to the toilet. In her absence, there is a discussion that she appears to be getting very tired and a bit worn out. T returns to the room dabbing a sore place on her arm. She is asked about whether Daddy said anything when he did that. T is not sure. She is reminded not to guess. She says that she might remember in the end.

(14) She was asked if he said anything after it happened. She wrote on her next note, *'Don't tell this'*. She was asked who she has told about this. She responds *'No one yet, but when I was in reception I had, um, everyone who had a bad life or something had to go to this person and I used to do that, Samuel and Pippa used to do that.'* Asked what she said when she went, T said, *'Well, nothing really, but then I said it and then the – some other police came and I wasn't really sure because I was just like four and ... it was just quite hard, but this is the first time I've ever told anyone ... so it's much easier now'*.

(15) When asked about how she felt seeing Daddy, T said, *'You've just got to change the first letter for dad'* and she wrote *'Bad'*.

She confirmed that her father had not done any more things that she did not like, except cooking her macaroni cheese.

T was then very anxious to gain PSI Tarry's attention in order to talk about the other things she had written on her note: *'Pippa hirts me'* and *'Nanna is dide'*.

268. Following T's interview, the mother spoke to DS Anderson. His record of that conversation on 30 May 2017 records the mother's reportage that the father has no direct access to children "but works as a documentary photographer and may well be involved in photographing vulnerable children in foreign countries".

269. On 2 June 2017, the mother sent a text to the father indicating that she would not be bringing T to contact as she no longer wished to meet him.
270. On 15 August 2017, the father voluntarily attended an interview with the Metropolitan police. This was his second interview in connection with the allegations. He repeated his denial of any form of abuse perpetrated against his daughter. He explained that although T had been staying with him for two nights during the Summer of 2014, that level of contact was very swiftly reduced to one overnight stay after about two visits. He described the sort of activities which he and T would undertake during their London weekends. He described the “toilet routine”. When he was asked why T might be saying things suggestive of some form of abuse, the father recounted some of the litigation history to the police and suggested that every time one of the agencies closed its investigations into these allegations, the mother would make a “disclosure causing you guys to become involved and preventing me from having contact”. He answered questions about his work with the K Trust, the charity for which he carried out some overseas work. He explained that he was never alone or unsupervised with children and this had been dealt with at the earlier court hearing.
271. On 5 September 2017, the police closed its investigation. I have within the material in the bundles a full copy of the Closing Report. The decision to take no further action was based on the following factors:
- the absence of any corroborating medical evidence
 - strenuous denial of the allegations on the part of the father
 - lack of independent evidence or third party corroboration
 - no disclosures of sexual touching by T despite the involvement of police and partner agencies
 - judgment from the Family Court – allegations not proved
 - T had been assessed as “highly suggestible to leading questions and adult tones” and was prone to “guess” at answers.
272. The mother remained dissatisfied with the decision taken by the police and was given permission to disclose the papers in the family proceedings to the Metropolitan police for a further review. Over 700 pages of material were sent to the police. The decision following that review remained unchanged on the basis that there was no new material which might influence a different charging decision.
273. The rehearing of the case was listed before the original trial judge at the end of January 2018. Judgment on the father’s appeal against the outcome of that hearing was handed down on 29 March 2019. The appeal was allowed and the case was remitted to me. Because I have been dealing with a complete rehearing of all the evidence in this case, it is neither necessary nor appropriate for me to analyse the original judge’s reasons for reaching a different conclusion following the hearing in January 2018. In one sense, my task has been a more straightforward exercise than that which confronted the original judge when he reconvened his enquiry into the

allegations of sexual abuse in January 2018. By that stage, he was essentially reviewing developments in the evidence as they had emerged over the course of several months following the conclusion of the earlier hearings in July and December 2016. His focus, perhaps understandably, was on whether, and to what extent, those developments could or should cause him to review his earlier decision that the allegations were not made out on the balance of probabilities. Because I have started with a completely blank canvas, I have had the benefit of being in a position to look at the overall *totality* of the evidential landscape and to see how, and when, the allegations first emerged and subsequently developed. I have been able to analyse not only the development of T's various accounts but also to set into a proper forensic context what was happening as each milestone occurred and which professionals were involved at the relevant time. I have also had the benefit of understanding from contemporaneous records and documents produced at the time how the mother's approach to the unfolding events was made manifest both to T and to the professionals charged with supporting T and investigating the truth or otherwise of her concerns. What I accept to be a necessarily lengthy and detailed analysis of the chronology of the evidence as it emerged has given me a clear view of the pathway which this investigation took from 15 November 2015 (which has to be the starting point) to the ABE interview some eighteen months later in May 2017. Apart from the continuing entries which the mother made in her electronic log, the substance of what T said during that ABE interview was the concluding piece in the forensic jigsaw which underpins the mother's allegations of sexual abuse.

274. Counsel for both parents have provided me with many, many pages of closely analysed written closing submissions. Mr Langrish, on behalf of the Guardian, has made similarly full closing submissions which he addressed orally on the final day of this hearing. Having completed my survey of the evidence, I have read and re-read all of that material and the very detailed notes which I made whilst listening to submissions on behalf of the Guardian. I have been taken to many inconsistencies in relation to the evidence of both the mother and the father. In terms of their overall credibility as witnesses of the truth, I have factored into my approach all that has been said and written in this respect. I do not propose to set out in my judgment the 40 or so pages of written closing submissions which I received on the final day of the hearing from Miss Giz and Miss Hendry and/or the 10 pages of notes which I made whilst Mr Langrish was on his feet. Clearly, I am going to deal with much of the ground covered in the context of my findings and the reasons for those findings. However, I would wish the parents, the Guardian and their respective legal teams to know that I have read and absorbed everything which has been said and the fact that I do not specifically rehearse the relative strengths and weakness of each and every submission does not mean that those individual submissions have not been carefully weighed in the balance as part and parcel of my holistic survey of *all* the evidence in this case.

ANALYSIS AND CONCLUSIONS

275. As I have remarked earlier in this judgment, each of these parents presents as a complex individual in many respects. Both have been adversely affected as parents and as individuals by the toll which this litigation has taken on them over the course of more than three years. Each has given evidence on four separate occasions at different hearings. The material before the court, whilst extended in terms of the

evolving chronology, has by and large covered the same narrative. Previous inconsistencies in the written and oral evidence have been forensically exposed both in the 2018 hearing and during the course of the rehearing with which I have been dealing. The parents are well aware of the factual inconsistencies in their respective accounts and the impact which those inconsistencies may have on the conclusions which I am being asked to reach. In the main, neither has wavered from his or her previous accounts of events and, in particular, the circumstances of the handovers on 15 November and 13 December 2015.

276. What is clear to me is that the mother has accurately anticipated the father's ability to present as a charming and articulate professional academic. I do not say that to undermine any of those qualities which he undoubtedly possesses. It is clear to me that the father understands the traction which a presentation based on professional insight and a child-centred appreciation of T's circumstances has the potential to achieve. For what I suspect have been entirely straightforward reasons, he has taken informal advice from at least one professional psychologist as to how he should deal with his situation over contact and these emerging allegations. I am quite prepared to accept that he has gained a degree of insight into his own behaviour and reactions to the events of the last three years. He has clearly reflected carefully on the situation in which he finds himself and what he needs to do in order to move forward if there is to be a restoration of his relationship with his daughter in whatever form is considered appropriate by the court. He told me that much of his self-reflection had led him to review the mother's role in these allegations and it was apparent from some of his answers that his position has softened somewhat as time has gone on. That said, he continues to pursue his case that T's mother has deliberately misled the court in certain key aspects of her evidence.
277. I do not regard the evident distress and exhaustion which I observed in *each* of these parents to have been feigned or manufactured. It is quite clear to me that each loves this child and each, from his or her subjective viewpoint, has continued to put T's interests at the forefront of the evidence they have given. From the mother's perspective, this presentation flows from what appears to have been a growing (and now unshakeable) belief that T has been sexually abused or harmed in some way and that the physical and psychological harm which the father has inflicted on their daughter has resulted in damage to her wellbeing. For his part, and from a perspective of persistent denial that he has, or ever would, inflict harm on T, the father has continued to battle on through what he has experienced as a gale of litigation (which he described, at various points, as '*Kafkaesque madness*'), including a successful challenge on appeal to findings which identified him as likely to have been the perpetrator of such harm.
278. There is no doubt in my mind that the mother emerged from her short marriage to the father with deeply entrenched feelings of antipathy towards him in terms of the effect which their relationship had on her own sense of self-worth and value as an individual. On her own admission, she emerged from the marriage with a catalogue of grievances which, for the most part, were sensibly contained as they negotiated their way through the divorce, the financial repercussions of that divorce, and the arrangements for T's contact with her father. She had apparently found happiness and support in the new relationship she established with G and she very honestly conceded that, in the early days of the separation, T's London visits to see her father

enabled her to spend time with G at his home in London. I was told that that relationship no longer subsists.

279. I accept that both during and after the marriage the father experienced episodes of her presenting as a somewhat mercurial personality. It seems to me that the counsellors' notes of their sessions bear out his description of her occasional "outbursts"¹⁰. Whilst I accept that she was under pressure during these sessions in the immediate aftermath of the breakdown of their relationship, it confirms my impression that the mother felt that the dynamics of the marriage were such that she often felt at a disadvantage in making herself heard. I cannot accept that, from the outset, the mother was intent on marginalising the father in T's life. I can well understand that his very clear distress at the collapse of his marriage fed into her perception of his overbearing manner, insisting (as she saw it) on establishing *his* rights to spend an appropriate amount of time with T. He would not be the first father in these circumstances to resent the apparent 'control' which a primary care giver is often perceived to hold in terms of an ability to restrict time spent in the departed parent's home. Her actions in supporting the contact which they were able to agree in the early months after the separation suggest to me that she was then genuinely committed to ensuring that T spent as much time with her father as she could cope with. It has to be borne in mind that this child was little more than a toddler when the marriage broke down. All the important milestone developments which she went on to achieve in her pre-school years were met against the background of commuting between the homes of her separated parents. In the particular context of this case, that included the transition from what I was told was a fairly short period of potty training into taking responsibility for her own personal hygiene. She was only two and a half years old when the marriage broke down.
280. Both parents agree that their co-parenting relationship was at its best in the weeks and months which led to the two handovers in November and December 2015. It is those two events which have provided the catalyst for this entire litigation. Whilst T was exhibiting tiredness and a high level of anxiety about being separated from her mother, there is not a scintilla of a suggestion that the father's care of this child prior to 15 November 2015 was exposing her to a risk of sexual, or any other form of, abuse. There were what might be described as the 'fairly predictable' concerns expressed by the mother as the contact arrangements settled down but there was no occasion on which she sought to prevent contact on the basis of a concern that T was not 'safe' in her father's care.
281. I can see for myself her evident delight in the interactions which T shared with her father. His activities as set out in his written and oral evidence appear to me to have been entirely child focussed and appropriate for a child of this age. He clearly put considerable thought into what he might do to remain a presence in T's day to day life through his frequent cards and Facetime calls.
282. What is abundantly clear and established from the foot of unchallenged evidence is that:

¹⁰ In the interests of balance, it is right that I record that the counsellors observed *each* of the parties during those sessions displaying both anger and distress over past behaviours about which each complained during the marriage. They comment in this context that "it was normal for them to rally quickly and refocus on the future".

- (i) there is no independent or corroborating evidence of any injury or physical damage to T consistent with digital penetration or any other form of sexual abuse; and
 - (ii) the mother's increasingly acute anxiety had on occasions been projected onto T in circumstances where she has been found to be "highly suggestible" (per Miss Rhodes). Whilst PSI Tarry told me that this was a common feature of presentation in a child of this age and was not a particular presentation or characteristic which *she* had observed in T, Miss Rhodes' notes, as an experienced intermediary, are quite clear;
 - (iii) the mother herself accepted during cross-examination that her demeanour and tone were capable of influencing any account given by T to her mother or other professionals;
 - (iv) the mother had over time asked of T a series of leading questions and, in certain respects, those questions had not only led the child in terms of the response sought or suggested; they had also introduced new concepts and information which had not previously been the subject of anything which T had said prior to being asked such leading questions (in particular the use of 'secrets', 'being hurt by Daddy', 'fingers' and 'digital penetration').
283. Miss Hendry makes what I consider to be a valid submission when she says that at no stage did the mother seek to reassure T that her father had explained to her what had happened over the washing in the soft play area. T remained unaware throughout the involvement of the many professionals in this case that her father had attempted to allay her mother's concerns. From T's perspective, I am satisfied that the mother's narrative was likely to have been perceived as binary throughout: the clear message which was being reinforced over many discussions with her mother and others was that 'Daddy had done something wrong', it involved washing bottoms; she had been 'hurt'; and she needed her mother's protection from whatever it was that he had done. At a much later stage, she was exposed to the explicit suggestion that he might have put his fingers inside her bottom and that she needed to tell someone 'the secret'.
284. The findings which I am asked to make against the mother include allegations of deliberate manipulation (or, at worst, manufacture) of evidence in this case to support her belief that T was the victim of abuse. It is contended on behalf of the father that she lied about certain aspects of her evidence (for example, her knowledge about his habit of washing T and the handover on 13 December 2015) and it was suggested that she may herself have written (or suggested to T the wording of) the two post-it notes which T took to her session with Julie Taylor in April 2017. It is said that T's evolving account closely mirrors the language which her mother has used in her deployment of leading questions. I accept that, in relation to the latter (i.e. leading questions), there is a solid evidential foundation for that submission.
285. Inevitably in circumstances such as these, there is a tendency for positions to become polarised. The father has been prepared to reflect on the mother's position, her belief in the fact that something has happened to T whilst in his care, and his role in the rapid decline in their relationship as parents. Whilst he still seeks a raft of findings which are underpinned by a submission that she has deliberately sought to "destroy" his life through these allegations, I detected that he has over the course of these

proceedings gained some insight into the predicament which faced his former wife when she was presented with what she observed on 15 November and 13 December 2015. I am prepared to accept that she did indeed observe the symptoms of redness and soreness on and around T's labia and vaginal area on each occasion. I do not believe that she has fabricated those observations notwithstanding the fact that T was, on both occasions, entirely symptom-free within less than twenty-four hours after each occasion.

286. That she then held strongly antipathetic feelings towards the father however well she was managing the contact arrangements is clear from the contents of her report to the GP and the local authority in the weeks following those two handovers. These suspicions had not then crystallised into formal allegations of abuse and the investigations, such as they were, were in the very early foothills of what was to become a multi-agency investigation of T's developing account. The mother told me that as at 13 December 2015 she found it incomprehensible that the father *could* have abused his daughter sexually. She maintains that when her own mother came round to the house on that evening and matters were discussed, it was her mother who advised her to consider the possibility of abuse. She maintains that she sought to "shut her down" very quickly. She says that her counsellor advised her to report the matter to the authorities when it was discussed shortly thereafter in the privileged confines of that meeting. In my judgment, the mother moved very swiftly in her approach to an entrenched view that T had been abused and all professional efforts must be focussed on providing T with the appropriate space to make her "disclosure". I believe that the father is right when he contends that at no stage leading up to the January 2018 hearing had she accepted the findings of the local authority, the police or the court to the effect that there was insufficient evidence to establish the allegations to the requisite standard of proof. The mother might well say that she was vindicated in her determined approach to protect the interests of their child by the subsequent findings of the original trial judge. However, those findings have been set aside in their entirety and, as I have said before, I have approached my task as one which requires me to start again with a completely open mind and a blank canvas.
287. I have repeatedly stressed in my judgment thus far the positive support which I believe this mother was prepared to give to the contact arrangements until the allegations of abuse found traction in her overall approach to T's developing relationship with her father. However, one aspect of the mother's evidence did give me considerable cause for concern. In the statement dated 5 July 2019 which she prepared for the purposes of this rehearing, she made a completely new allegation, the particulars of which she had not raised previously. She recounts a conversation with the father which took place at some point in the first six months of T's life when she was an infant. She states that he told her "*he had inserted his finger in her vagina and given her a 'good clean inside and out'. I told him in no uncertain terms he was never to put his fingers inside her vagina*". She maintains that this conversation, together with a subsequent and much later conversation in 2015 about T and her father taking a bath together, were the only two occasions on which they had spoken together about T's intimate care. No such allegation had been raised in these proceedings prior to receipt of that statement.
288. It is quite true that in an earlier statement which she made in April 2016 the mother had said that "incidents" had led to her recollection of an occasion when T was a baby

and he was changing her nappy. She claims to have “*noticed that he was a bit too curious about what he was doing. He was a bit too thorough in cleaning her, and it made me uncomfortable*”. That iteration is a very far cry from a direct assertion that she was told by the father that he had inserted his finger into the child’s vagina. In my judgment, that statement from the mother tells me two things. First, with the original findings overturned, she was fighting tooth and nail to persuade the court that her belief in T’s “disclosures” was genuine and deserving of belief by the court. Secondly, it suggests to me that this mother has a tendency to exaggeration and, at times, hyperbole in order to make the points she seeks to put before this court.

289. I entirely reject as a fact that there was ever such a conversation between these parents. It is inconceivable to me that this mother would have done what she did to encourage contact in the early days of the separation had she been remotely concerned about this aspect of the father’s care or “unconsciously keeping an eye on him”¹¹. It is beyond the realms of probability that, had this specific conversation occurred, she would not have relayed its contents to those charged with undertaking the two investigations of these allegations. When she was cross-examined about this aspect of her evidence, the mother retreated from her written evidence to this extent. In answer to questions put to her by Miss Hendry about the conversation, she said,

“I remember clearly that we were in the bedroom. He said to me, “She has had a really messy poo. It [i.e. ‘the poo’] had gone up and in and I had to wash her out”.

290. She said he was using cotton wool and water at the time. She confirmed that she had no thought that this was some form of sexual abuse at the time. Rather, she thought that this was a new father who did not quite know what he was doing. She accepted that at no stage did the father tell her that he had inserted his finger into T’s vagina as a baby of less than 6 months. This assertion was plainly untrue and in my view it should never have found its way into her written evidence (which she had sworn to be true). As to her description of needing to ‘keep an eye on him’ thereafter as he seemed ‘a bit too curious’, she told me that his nappy changing had appeared “a bit too much like a business transaction. It did not seem to me that he behaved like a father who wanted to make sure she was clean. I had lots of friends where Dads were very involved [in nappy changing]. I thought there was a disconnect. It was all a bit, ‘Bish, bash, bop – there you are’”. She accepted that this incident did not in any sense cause her to stop the father doing his fair share of nappy changing thereafter.

291. To this extent, I accept that she has the propensity to embellish, if not fabricate, certain aspects of her evidence. However, I remind myself, as I must, that, just because a person has put before the court a demonstrably untrue account of one particular instance or event, that alone does not mean that nothing which they have said is worthy of belief. People tell lies or mould the truth of their accounts for all sorts of reasons. A family court, in common with a criminal court, can rely on a finding that a person has lied as evidence in support of a primary positive allegation that something did or did not happen. As the well-known authority of *R v Lucas* [1981] QB 720 tells us, to be capable of amounting to corroboration the lie told must first of all be deliberate. Secondly it must relate to a material issue. Thirdly, the motive for telling the lie (in a criminal context) must be a realisation of guilt.

¹¹ [2/C:96]

Fourthly, the statement must be clearly shown to be a lie by evidence, such as an admission. The Family Courts are fully entitled to adopt this approach when judges sitting across the jurisdiction in courts up and down the land have to wrestle with these very difficult issues of searching for the truth in complex fact-finding cases concerning young children. As MacFarlane LJ has reminded us, judges must take care to ensure that they do not rely on a conclusion that a party to proceedings has lied on a material issue as direct proof of the guilt or innocence of that party or another in the proceedings before the court: see *Re: H-C Children* [2016] EWCA Civ 136.

292. There is no issue, as the mother accepts, that her description of this conversation, including the assertion that the father told her he had inserted his finger in T's vagina in order to give her 'a good clean inside and out' was a lie. As I have said, I am entirely satisfied that no such conversation took place. The mother admits she has lied about this. It was plainly a deliberate lie which related not only to a material issue in the case but to the central issue which I have to determine (i.e. has this father sexually abused T?).
293. Integral to the *Lucas* direction which I give myself is a recognition that this demonstrably untrue statement may have found its way into the mother's written evidence as a further attempt to bolster the case which she so clearly believes and a wish to protect their child from further harm. Standing back and reflecting on all the evidence which is now before the court, including many hours of oral evidence from the mother, I am persuaded that this is the most likely explanation for this particular lie. I am also persuaded that she views the prospect of a resumption of contact between T and her father at this stage as a burden which both she and their child will struggle to bear. She told me in clear terms about the toll which managing the previous contact arrangements had taken on her. She clearly found it exhausting and stressful. She told me that at times it had all become too much as she struggled to manage what she perceived to be the 'demands' of this father for more time with T. The process of this litigation will have proved to be excoriating for both parties given its substance and the length of time it has taken to reach this point. In my judgment, the mother now believes that T is safe, happy and doing extremely well at school. I am sure she views with trepidation the impact on her household and her settled life with T of once more having to engage with a parent whom she believes has caused harm to her child. I make these remarks at this stage of my analysis not to demonstrate any final conclusions but to explain why I believe the assertion of digital penetration has been presented to this court as part of the mother's developing narrative in relation to the father's guilt.
294. These matters have to be considered in the context or otherwise of the parties' respective accounts on other factual issues. Whilst they disagree on many aspects of the evidence, I propose to deal now with the key elements of those disputes.

The mother's knowledge of the father's case re: washing T's bottom

295. Much of the oral evidence and cross-examination of both parents in relation to "washing" was taken up with the practicalities of what is alleged to have happened and whether it was some form of cultural practice indulged in by the father and known to the mother. It has been the mother's case throughout that she had absolutely no knowledge that this was happening and first became aware of his case when she read his description of washing T in his first statement filed in July 2016.

She accepts that, over the summer of 2015, there had been a conversation between them prompted by T recounting to her mother that she had taken a bath with her father who had worn pants (or swimming trunks, according to the father's evidence) whilst they were in the bath together. The mother told me that there was no suggestion of any 'cultural practice' regarding washing at that time and she had told the father that T should wash herself. She told me that she had no knowledge during the subsistence of the marriage whilst they shared a common household that the father would occasionally lift her from the toilet seat and wash her as she sat on the rim of the basin.

296. The father accepts that he has helped T to wash herself in the bath whilst she has stayed overnight at his home. His case is that his practice of washing her in the sink after she has 'had a poo' did not occur on every such occasion but generally when she required more of a 'clean' than could be achieved by simply wiping her bottom with toilet tissue. He accepts that the only occasion when he washed her in this way in public was on first of the two occasions when she returned from contact with redness and soreness (15 November 2015).
297. He was pressed hard by Miss Giz in cross-examination as to the inconsistencies in the accounts he has given in relation to his own hygiene routines. There was much focus on his description of using a bidet when in fact the homes in which these parties have lived during the marriage did not have bidets installed in the bathrooms. During the course of his oral evidence the father explained how he would either wash himself after defecating in the shower or, if he needed to wash during the day, he would sit on the edge of the bath having taken his trousers down to his knees and use the shower attachment to the bath to wash himself. He maintains that the mother had frequently seen him wash T's bottom over the sink whilst they were together. He maintains that she has walked past the open bathroom door whilst this has been ongoing and that they have on occasions carried on a normal conversation.
298. In searching for the truth in the face of these two diametrically opposed accounts, it seems to me that the following matters are relevant. First, the father's ethnicity and his frequent travels to non-developed parts of India during the marriage suggest that he may well be telling the truth about his own long-standing habit of washing himself to ensure cleanliness after using the lavatory. I accept that there is a well-documented cultural practice of washing in India which is different from Western habits of personal hygiene. The father lives in a thoroughly Western environment but he has travelled to parts of the Indian sub-continent where his access to public conveniences and toilet paper will have been limited if non-existent. He told me during the course of his evidence that his brother, a general practitioner in Sheffield, practised washing in this way despite his having absorbed and adopted a settled life in this country. I accept that this aspect was not mentioned in the short written statement which Dr AR made back in 2016¹² but he was present in court with his brother for much of the oral evidence.
299. I am prepared to accept the father's evidence that this was his practice over a number of years in terms of his own personal hygiene. I do not believe that he has invented this evidence in order to 'normalise' or explain his washing of T. I accept that there have been past inconsistencies in terms of his reference to 'using a bidet' and

¹² [2/C:342]

‘washing like using a bidet’ but, having listened to him carefully, I am prepared to accept his evidence on this point.

A sexual motive or element ?

300. This has a resonance too, in my judgment, in the context of the question, ‘Why was he washing T in this way and was there any element of sexual gratification in this aspect of his child care ?’. The mother’s case, as confirmed by Miss Giz in her closing submissions, is that *any* touching of T’s bottom was (a) inappropriate once she started to look after her own toilet hygiene, and (b) likely to have been driven by some form of sexual gratification on the father’s part. The mother asked, rhetorically, during her cross-examination, ‘Why else would he be touching her there ?’.
301. When she was asked what she thought had happened to cause the redness and soreness which she observed on those two occasions in November and December of 2015, the mother did not offer any explanation. Of course, she was not there and could not have known. However, of the conversation which she had with T in relation to washing with a flannel and ‘Daddy taking ages’, she said during the course of her oral evidence,

“There is a difference between putting soap on your hand and splashing around and getting right in there and having a good feel around.”.

In similar vein, she told me that when she had observed the redness and soreness, it looked as though someone had rubbed very hard in that area.

302. In pursuit of her justification of a sexual motive for this touching during washing, the mother has, on her own admission, cast wide into the father’s past and her experience of him during the marriage to present to professionals and to this court some form of ‘jigsaw’ process which might support her allegations that he is an abuser. She has referred to his habit of watching pornography during their marriage. She has pointed to his involvement in India with vulnerable children who might be susceptible to some form of ‘grooming’ behaviour. She has suggested that a gift of a camera which he made to a child during one of his trips to India might be evidence of such a process. She has referred to his membership of a particular Buddhist community in London as being potential evidence of his lack of sexual boundaries. She cites the example of a relationship which he had many years ago with another male partner as evidence in this context of a general pointer towards propensity in terms of his potential abuse of their daughter.
303. The father was closely examined on each of these points. He accepts that during a period when there were difficulties in their sexual intimacy following T’s birth, he did read what might be described as mildly pornographic magazines. He told me that he had a specific conversation with the mother when he agreed that, until they were ready to resume sexual relations, he would take care of his own needs. He denies ever having embarked on what the mother describes as “grooming” behaviour and maintains that he was always in the company of others who accompanied him on his many trips to India as a documentary film-maker or as part of his role with the K Trust, a charity which supported his photographic work in India. He told me that he had donated one of his old cameras to one of the organisations which the Trust supported. It had never been given to a child and he never visited the same location

twice in his trips for the charity. He accepted that he had a relationship lasting some two years with another man when he was much younger but he denies that this caused any rift with his family and, as I understand the position, he has, since the breakdown of the marriage, formed a settled relationship with another female partner. In any event, in my judgment there is no possible basis upon which a previous relationship with a same sex partner many years ago has any relevance to the matters which I am being asked to consider.

304. I accept that there are aspects of the father's evidence which I have found difficult to accept. One such example is his account of not having read in advance the small book which he sent to T for her birthday in 2019. He told me that this last year was the first on which the mother had not sent to him an online hyperlink of what he should buy for T. Both he and his family in Sheffield had sent books to the mother's South coast home through Amazon. One of those books was called "The Truth Pixie". That came from his family. He sent 'Drawing Unicorns' and "To be a Cat". Part of the narrative of that story was the angst suffered by one of the characters over the absence of a parent. The online synopsis includes a quote from the book: '*worst of all Dad has been missing for over a year and there is no sign of him ever coming home*'. It was suggested to him by Mr Langrish that, given his love for his daughter and the investment he had made in her care whilst he had been having contact, it was inconceivable that he had not read the book before ordering it. Miss Giz has suggested that the gift was a clear signal or message to T that he was absent from her life but still a watching presence. The father's explanation to me was that he had followed a recommendation from a family member, H, who was a school teacher. He maintains that he did not read the synopsis but merely looked at the picture online and followed the advice from someone whom he thought would know what was appropriate for a child of T's age. I find that explanation difficult to accept. This was a father who was dedicated to almost every aspect of T's life during the time which they spent together. He went to great lengths to maintain an appreciation of the small moments which shaped her everyday life at home and at school. He sent cards on an almost daily basis in the early stages of this litigation in order to give them a touchstone for their regular Facetime conversations. He chose with great care the cards he sent so that T would always have something to engage with when they spoke. I simply cannot accept that this father would not have taken the same care in choosing his present for T when this gift represented what for him must have been a very precious point of contact with the daughter he was prevented from seeing because of the allegations he was facing.
305. Just as I have done in respect of the mother's evidence, I have given myself a *Lucas* direction in respect of this aspect of the father's evidence and, indeed, in relation to everything which I read in his statements and heard from the witness box. He accepts that he has misrepresented the position in relation to his knowledge of the date of T's grandmother's memorial service and I have already remarked that this episode does him no credit at all.
306. Thus, I turn to my findings in relation to the main disputes on the facts.
307. Having observed his demonstration of how the father lifted T from the toilet seat onto the edge of the washbasin by balancing her weight on his forearm, I accept that this was not only possible in terms of the bathroom configuration but also what actually happened when she was washed in this way. I am also prepared to accept his

explanation of the manner in which he washed her either by running the single mixer tap so as to allow the flow of the water to run between the cheeks of her bottom as she lent forward and repositioned herself on the rim of the sink or by running a sink of water until it reached the correct temperature when there were individual hot and cold taps on the basin. I am also prepared to accept that when she was smaller, this was something which caused T no discomfort or concerns. She was consistently clear in what she said to the professionals who asked her about this that her Daddy washed her but her Mummy did not. There was never anything to indicate that this was something which caused her distress, discomfort or concern. I have the clear impression that, for T, this was for her simply part and parcel of the care which her father gave her during the time she spent with him. I suspect that, until these allegations surfaced, this process of washing was something which was simply not an issue for this child.

308. In terms of the underlying question as to whether or not there was a sexual motive on the father's part, I am going to have to stand back and look at all the evidence holistically. In the context of everything which I now know about this case, I ask myself whether it is likely that this father would take the opportunity of the time he spent with his daughter on either 15 November or the 13 December 2015 to abuse her in a sexual manner by vigorously rubbing her genitalia or her bottom (or doing anything less in terms of sexual touching). On the mother's case, something of this nature happened on those days to cause the redness and soreness whilst they were out at the soft play centre (or at some other location). The inherent probability or improbability of an event remains an important aspect of deciding whether such an event has in fact occurred. This is as much a matter of common sense as it is a question of law.
309. What do their respective accounts about prior knowledge of 'washing' tell me about these inherent probabilities? The father has been adamant throughout that the mother was aware that he washed T's bottom in this way when it was needed after 'a poo' whilst they were together as a family unit. In her letter to Dr F on 20 December 2015, and very shortly after these events, the mother referred to the fact that there had been a previous conversation about washing long before these allegations surfaced. She said that on that occasion she had told the father he must not wash her bottom. This may or may not refer to the conversation which she said they had in the summer of 2015 after T had shared a bath with her father. I accept that the parties had by this stage been separated for the best part of eighteen months. I am prepared to accept that there was an occasion at some point earlier in 2015 when the parties were sharing a meal together in the mother's home and T had called out to her father from the bathroom asking him to wash her after she had been to the toilet. As to the mother's knowledge of his practice of washing T as a much younger child whilst they shared a common household, I suspect that she must have been aware of this even if she did not attribute any significance to it at the time. T was then a relatively small child and the mother has accepted that the father was fully engaged in all aspects of her physical care which they appear to have shared when he was not away from the home at work or abroad. I accept the father's evidence that this was not a practice which was ever conducted 'behind closed doors' and I further accept that, as they went about their normal lives, there were probably times when they spoke to one another whilst he was helping T in the bathroom. I suspect that this may be an aspect of the evidence which the mother has been able to consign to the past in her attempts, as she perceives it, to

further her increasingly anxious efforts to protect T from what she perceives to be a situation of potential abuse.

310. As to the mother's knowledge of whether or not this 'washing' had continued during periods of contact at the father's London home, I look to the letter which her solicitors wrote to the father's solicitors after the two handovers in November and December 2015. Her solicitors' letter before action written on 14 January 2016 contains a clear reference to 'washing'. It states:

“Your client [i.e. the father] is well aware that no one should be washing [T] in this manner, she has been capable of washing herself for over a year now. Our client has explained this to yours on several occasions and yet your client has seen fit to continue to wash [T] in this manner both at his home and when out and about.” [my emphasis]

311. It is the mother's clear case that she had been completely unaware of any 'cultural' aspect to this practice prior to July 2016. I am reinforced in my view about the mother's prior knowledge of the father's practice by the evidence produced by Julie Taylor. When, in May 2017, Ms Taylor made a safeguarding referral to Children's Social Care as a result of what T had said during her fifth CEDAR session on 2 May that year, she had included in her document a reference to a previous allegation of inappropriate washing in the context of which the father had raised the issue of this being a 'cultural' practice. During the course of her evidence in January 2018, Ms Taylor had confirmed in cross-examination on behalf of the Guardian that this information had come to her from Donna Blanche as an explanation which had been given to the contact centre supervisor by the mother at the time when the contact arrangements in that centre were being set up. The mother does not accept this and I accept that there is no reference to such a 'cultural practice' in the initial referral form which she completed. The first supervised contact session took place at the centre at the beginning of March 2016, some four months before the mother claims to have been aware of this element of the father's explanation of 'washing'.
312. On the issue of the mother's knowledge that the father had in the past washed T's bottom, and surveying all the evidence which has been placed before the court, I accept his evidence in preference to the mother's. I am also concerned that this was information which she did not share with the professional agencies with whom she engaged well before the father became aware that she was pursuing formal allegations of abuse.

Handovers on 15 November and 13 December 2015

313. I have set out in some detail the parties' respective cases in relation to these two occasions in paragraphs 76 to 87 of this judgment. I do not think that much turns on whether or not the father could recollect hearing T crying. He has accepted that she was sore and that the mother observed the symptoms of redness and soreness which she describes. It is accepted that he provided her with an explanation of how he had washed T using soap from the dispenser whereas he was accustomed to using a (presumably milder) children's soap when he washed her at home in London. It is clear from what I heard from both parties that there was a conversation on that occasion when the mother made it clear to the father that T was old enough now to take care of herself when she went to the toilet, a proposition with which the father

appears to have agreed. He confirmed in his evidence that he has not washed her since in this way. The fact that they were able to have an apparently civilised conversation thereafter for what appears to have been some two hours after T was put to bed about the mother's application for her PhD suggests to me that the mother was not overly concerned by his explanation at that stage in terms of any pointer towards potential sexual abuse. If and insofar as there are differences in their respective recollections, I prefer the evidence of the father in relation to what transpired on this occasion.

314. Of perhaps greater significance is the differing accounts which each has given of the second handover on 13 December 2015. The significant issue between them is whether or not there was any reference by the mother on this occasion to further redness and soreness. The mother accepted in her evidence that these symptoms were not as obvious as they had been on 15 November. The father maintains that he only became aware of a further episode of redness during a telephone conversation which he had with the mother a few days later. It is accepted by the mother that there was no complaint by T on that occasion. The mother claims to have taken T back downstairs and to have said to her in front of the father, "Okay, T has a red bottom again. Can someone tell me what is going on?". As I have described already, her case is that father and daughter stood in front of her 'like cartoon characters', apparently whistling, with neither prepared to look at the other. Whilst she states that he definitely stayed for a period of time on that occasion, she told Miss Giz that she could not recall whether the father stayed for dinner or tea. She told Miss Hendry in cross-examination that she wanted him out of the house before her mother arrived. She maintains that she was trying to address the issue in an open way and 'give everyone a chance to say what they wanted to say'. The father refutes this account and maintains that, although he wanted to stay, he hardly got beyond the front door.
315. In terms of context, I remind myself that during this window of time at the end of 2015, the father was pushing for more extensive contact with T. His aspiration at that stage was to share T's school holidays. He was well aware that there had been an exchange between them but a month before about the mother's concerns over washing T's bottom. He had acknowledged on that occasion that she was old enough to take care of herself and that he would not do this again. If the mother did indeed observe further physical symptoms on 13 December which could indicate yet another incident of rubbing or other inappropriate sexual touching, one has to ask the obvious question: why would he do this when he was clearly on notice that the mother was already vigilant and concerned? The mother's explanation to me was that he was a "chancer" and "liked to push things to the edge". I confess that I found this a singularly unconvincing explanation and one which I do not accept.
316. As to the written material which is available to assist me on this issue, I look first to the mother's initial written account. It appears in her statement dated 21 April 2016. This is what she says of 13 December 2015:
- "After [T] returned from a day out with the Respondent. I took her up for a bath and to find exactly the same scenario. This time I asked both [T] and the Respondent what had happened and addressed them both. Neither of them said anything. I told both of them that nobody needs to touch [T]'s bottom except [T]. Later the Respondent suggested that maybe [T] got hot at soft play because she was wearing too many clothes."

317. There is no hint of a suggestion in that early description of father and daughter ‘looking like cartoon characters’, whistling or unable to make eye contact with one another. It is true that her subsequent email to the father on 11 January 2017 made reference to “all 3 of us discussed the situation” on the second occasion which was “the next time you went to soft play and she came back red again”. Her email records the father’s suggestion that she might have become hot whilst running around.
318. The father evidently tried to telephone the mother on receipt of her email having expressed himself to be “taken aback” by her concerns. When he could not reach her, he wrote the following day. Of the second occasion he said this:
- “2) You reported redness after another visit to softplay – mid-Dec I think ? – again this was news to me. On that occasion I took her to the loo when asked but did not wash her. I encouraged her to wipe herself, which she did. I was surprised when you told me of the redness as there’s no washing now. The only thing I could think of was that it may have been because she was wearing woolly tights and running a lot. I said this at the time – that redness of a child’s sensitive skin can be caused by lots of things – from the kind of washing powder or reacting to particular fabrics etc.”
319. The reference to ‘I said this at the time’ is, on the father’s case, a reference to what he said during the telephone call when, sometime after 13 December 2015, the mother had reported a reoccurrence of those symptoms.
320. I have found the resolution of this particular conflict on the evidence to be difficult. We know that the mother’s solicitors’ letter was written on 14 January 2016 as the means by which overnight staying contact was halted. Whilst that letter set out a number of general concerns over the father’s care of T, what was expressed to be “the most pressing issue” was the lack of clarity in the mother’s mind about these two handovers and the two occasions when T had returned with the symptoms which the mother has described. As this solicitors’ letter makes plain, the mother’s ‘follow up’ email on 11 January 2016, some three days before, was designed to elicit a clear response from the father as to the cause of these symptoms. Whether or not that email was written as a direct precursor to her solicitors’ letter and as part of her justification for reducing contact to daily visits, I know not and I do not speculate. From the content of the written material which provides some support for the mother’s account that there was a conversation between them on 13 December 2015 which involved an explanation about running around a lot, it may well be that the passage of time has caused each of these parents to conflate what was said at the handover and what was subsequently said (on the father’s case) during the course of a telephone call a few days later.
321. I listened with care to the father’s repeated denials that there was any sort of staged or other confrontation at the home on 13 December during which T and her father were confronted with the mother’s concerns and remained mute in the face of those accusations. On balance and after much reflection, I am prepared to accept his evidence in relation to what did and did not happen at the handover. However, I do not believe that this mother fabricated her report of seeing redness again on that afternoon and I cannot eliminate altogether the possibility that there was some sort of exchange between these parents for the brief time which I find the father to have spent at her home on that occasion.

The holistic overview

322. As the courts have acknowledged on many previous occasions, in the context of a private law dispute between two estranged parents, there is significant potential for misinterpretation, exaggeration and ‘downright fabrication’. In one material respect, I have found this mother, on her own admission, to have fabricated a critically important piece of evidence: the alleged admission that the father made to her when T was a baby that he had digitally penetrated T’s vagina whilst washing her. The mother accepts that this was a lie and I have tried to explain why she might have felt driven to mislead this court in the circumstances of the escalation of this litigation and her deep-seated belief that T has been abused by her father.
323. I have direct first-hand evidence of T’s demeanour with her father skipping to school on the morning after the second handover in December 2015. As I have already said, when that video clip was recorded on his phone, he had not the slightest inkling of the accusations which were to follow. I can find nothing in that video clip or that taken at the soft play centre on 13 December 2015 to suggest to me that there was anything sinister or untoward in the apparently easy and affectionate relationship between this father and his child.
324. What was available to me at this rehearing but not available to the court below was the short video clip taken of T at the soft play centre on 13 December 2015 where she can be seen sliding directly down the two contiguous edges of parallel slides instead of sitting flat on her bottom on one or other of the slides. Those edges appear from the footage to form a narrow single elevated edge and she appears to be sliding down that single narrow edge with her legs on either side of it. I cannot know, and do not speculate, about whether or not this might have caused some inflammation on the area between her legs.
325. In similar vein, it may very well be that the inflammation and soreness which the mother observed on the earlier occasion of 15 November 2015 was indeed the result of T running around in damp tights and pants after she had been washed in the basin with soap. There is evidence before this court volunteered by the mother that on a much earlier occasion which did not involve the father, T had a very similar reaction to her skin when she had bathed in water in which a “Lush” soap ball had been dissolved. The mother accepted in cross-examination that the soap which the father used to wash T’s bottom on this occasion could have caused the redness and soreness which she observed.
326. Having listened to all the evidence, I accept the father’s account of what transpired at the soft play centre when he washed T’s bottom in the sink in the ladies’ toilets.
327. In the context of the mother’s allegation that this act amounted to sexual touching, I reject the suggestion that there was any sexual motivation for, or sexual gratification on the part of the father as a result of, his actions on that afternoon. There is no evidence that T did not return swiftly and happily to the soft play area or that she raised any concerns at all when she returned to her mother. Her complaint was about the stinging sensation which she was by then experiencing some hours later. In my judgment, and in the absence of any other plausible explanation, this could well have been caused by his application of soap from the dispenser which trickled down from her bottom into her labia with the flow of the water from the tap. It may be that she

was not properly rinsed or that her pants and tights were chafing against her skin as she continued to run and play for the rest of her time at the soft play centre. I know not and I do not need to make any finding about that because the burden of proof in this case remains with the mother to establish on the balance of probabilities that some action or actions on the part of the father amounted to sexual abuse and accounted for the redness and soreness which she observed. I reject any suggestion that on that occasion, or any other, he attempted to penetrate her digitally with his finger or fingers and/or that he was rubbing hard around the area of her vagina in order to secure for himself some sexual pleasure.

The contamination factor

328. Those two episodes are the catalyst for all that follows and the future evolution of T's account over the course of the next eighteen months. Earlier in my judgment I have set out at some length a careful and detailed analysis of how that account developed and the climate in which the succession of professional interviews with this child took place. The number of interviews to which T was subject as this litigation has unfolded is a matter of significant concern to me. She was a very young child when those interviews commenced and, as I have found, the interviews were conducted against what was clearly a deeply entrenched and hardening position which was taken by the mother in relation to the truth of T's evolving "disclosures". There is no doubt in my mind at all that a significant impetus for the evolution of that account was a series of leading questions and suggestions emanating from the mother. I accept that, as time went on, she became increasingly anxious about T but I find that, in her desperate wish to establish what had happened, she effectively closed her mind to any option but that her daughter had been abused and that the father was the perpetrator of that abuse. She had clearly begun to construct a case to support her suspicions as early as her letter to Dr F in December 2015, but a matter of weeks after the two handovers in November and December. She was very keen that the police should check the father's computers as part of these investigations long before there was any solid evidence of his involvement as a perpetrator of such abuse. She rejected the conclusions reached by professional bodies that there was no reliable evidence to support her concerns and, as a result, I have little doubt that T was well aware that her mother was extremely concerned that she should engage with the professionals to report her "worries".
329. The mother's case to me was that it was the 'unfolding story' which had convinced her that T has been describing sexual abuse at the hands of her father. For reasons which I can well understand given her day to day involvement in the care of such a precious child, I regret to say that I believe she has lost sight of her own role in that developing story.
330. In terms of the evidence which I heard from the various professionals who have become involved in this case, I appreciate that each has been placed in a difficult position for the purposes of this rehearing. Although they had access to the transcripts of their previous evidence and to the bundle of contemporaneous material which they produced, it must be acknowledged that giving evidence in a court of law can never be simply a test of memory. I am sure that each has dealt with many cases since their involvement with this. On the whole, I am satisfied that each did her best to help me in terms of each stage of this long investigation.

331. From the first home visit by Becky Bowles on 22 January 2016 it is clear that T displayed no hesitation at all in allaying any concerns that something wrong or that something bad had happened to her. Ms Bowles accepted that T might have been under the impression that she needed to say something. As far as Mrs Butchers involvement is concerned, T's ELSA sessions through February and March 2016 reveal that T was still happy to see her father notwithstanding that the mother had by then stipulated that contact must move to the Family centre on a supervised basis. The reports from the mother of what transpired on 2 and 8 April 2016 were clearly unhelpful in terms of the trajectory of the ongoing investigation. They tell me a great deal about the increasing pressure to which T was being subjected and her mother's insistence that she had to be 'brave' and to 'talk to Mrs Butchers about what Daddy has been doing to you'. PC Dalley accepted that anything which T said as a result of this pressure had the potential to contaminate any ongoing criminal investigation.
332. Despite the fact that the mother was told in clear terms that she must not ask leading questions of T, that is precisely what she did when, on 30 April 2016, she asked T directly, in the context of being 'hurt', whether her father had put his fingers inside her bottom. As before, T's account to the professionals who were by then involved appears to have mirrored very closely the suggestions which had been put to her. An issue which separates the parties on the facts is whether or not the mother may herself have written the notes on the heart-shaped pieces of paper which T presented to Julie Taylor on 2 May 2017. Despite the apparent inconsistencies in her account as to whether or not those notes bore T's handwriting when she returned with her plastic folder from her session, I am not persuaded that this mother deliberately wrote on those notes and presented them as T's own work. I am sceptical as to whether or not she was able to insulate herself as completely as she has suggested from what was going on in those sessions given the hyper-vigilance which she was demonstrating by that stage. However I do not believe that she manufactured these notes and passed them off as T's own despite my finding that she has lied about the issue of a previous admission of digital penetration.
333. Whilst I accept that both Mrs Butchers and Ms Taylor in their ELSA and CEDAR sessions were there to support T over any worries or concerns she might have, there is nevertheless some evidence that these sessions and the issues which were raised during them may have only reinforced in T's mind the need to say something to someone. I have already found that there was inappropriate pressure from her mother in this respect. There is further evidence in the records of these sessions that suggestive or leading questions were put by each of Mrs Butchers and Ms Taylor. For example, when Ms Taylor was confronted with T's note on 2 May 2017 and the reference to the father having put one finger in her bottom at a time, an experienced safeguarding professional would have recognised immediately that no further questions should have been asked. In effect, Ms Taylor was conducting something akin to an interview of this child and she was not professionally equipped in these circumstances to undertake that task. None of the recognised safeguards was in place in terms of the relevant statutory and non-statutory guidance. This mirrors the issues which flowed from the fact that what T had said at an earlier session on 26 April that year involved the introduction of a doll. T's comments on that occasion ought to have alerted Ms Taylor to the fact that the introduction of a doll and the invitation to re-enact what had happened were highly inappropriate in that context and in breach of recommended and accepted guidance and practice.

334. In terms of the consistency of T's account, I cannot ignore the fundamental fact that from an absence of any complaint on the two occasions when she presented with an inflamed and sore genital area, to making no complaint whatsoever to the social worker over any discomfort or inappropriate touching whilst her father was washing her bottom when she first spoke to the social worker, she had moved over the course of 16 months to alleging that the father had put his finger into her bottom one at a time. Despite her increasing maturity by the time of the ABE interview in May 2017 she was unable to provide any reliable narrative account of how this happened, where, or on how many occasions. Her response to the effect that it happened anywhere there were toilets demonstrates to me that it is highly likely that T has continued to see the narrative of the continuing professional involvement in her life as having its genesis in her mother's initial concerns about washing bottoms, toilets and Daddy having done something wrong. I accept that there were concerns on the mother's part about other examples of T's apparently sexualised behaviour (sitting cross-legged on the floor with a finger in her vagina) but, without more and in the light of my findings that this father has not abused his child in the manner alleged by the mother, there may be other plausible explanations which do not involve the father.
335. At the end of the day, and on the basis of all the evidence which is now before the court, I am entirely satisfied that these allegations of abuse are not made out on the balance of probabilities. All the evidence leads me to the inevitable conclusion that there is no credible or reliable evidence to substantiate the allegations of abuse made against this father by the mother.
336. Whilst the schedules of allegations and cross-allegations which have been put before the court are lengthy, I have already indicated to counsel that I regard it unnecessary to make specific findings on each and every allegation. I agree with Williams J that the core factual allegations are those set out in paragraph 87 of his appeal judgment. It is for this reason that I have not embarked on a lengthy exposition of the various allegations and cross-allegations which are made in relation to the Facetime calls. They are there as part of the weft and weave of the evidential fabric of this case but they do not require any further forensic investigation in relation the core allegations over and above what I have already said about them in this judgment.

MY FINDINGS

337. In the course of my judgment, I have made a number of discrete findings in relation to issues and disputes on the facts as they have emerged during the course of my analysis of the evidence. I do not propose to set them out again here. In terms of my specific findings on the substantive issues, they are these:-
- (i) On 15 November 2015 the father washed the child's bottom in the public conveniences at the soft play centre in circumstances and in the manner he has described in his evidence to the court. There is no reliable evidence to support the mother's allegation that he put his finger inside T's bottom or genital area on that or any other occasion.
 - (ii) There is no reliable evidence to support the mother's allegations that during contact on 13 December 2015 he touched the child around the area of her bottom and/or touched her around her genital area and/or put his finger inside her bottom or genital area.

- (iii) On neither of these occasions, and in particular in relation to 15 November 2015 when washing is admitted, is there any reliable evidence to support the mother's allegations that the father's actions in washing the child in this manner were sexually motivated and/or that he has caused physical, psychological or emotional harm to T as a direct result of his actions in washing her in this manner.
- (iv) There is no reliable evidence to support the mother's allegations that on other unidentifiable dates the father touched the child around the area of her bottom and/or touched her around her genital area and/or put his finger inside her bottom or genital area with a view to sexual gratification or otherwise. It is accepted by the court that until 15 November 2015 he had on occasions washed her bottom after she had been to the lavatory in order to ensure that she was clean.
- (v) It follows that the court accepts that there is no reliable evidence to support the mother's contention that T has been manipulated by the father 'not to talk' about the alleged abuse and/or that she should keep the washing a secret and/or that on any occasion he told the child to 'zip it'.

338. In terms of the findings sought by the father:

- (vi) As at 15 November 2015 the mother was aware that he had on occasions washed T's bottom;
- (vii) On the basis of the evidence before the court, and by way of a response to her questions about the redness she had observed on that occasion, the father gave to the mother on 15 November 2015 an accurate account of the manner in which he had washed T in the sink at the toilets in the soft play centre;
- (viii) The parties' respective accounts of what transpired on 13 December 2015 when T returned from contact is as set out in paragraph 321 of my judgment;
- (ix) In the early stages of the investigation into the mother's allegations, she did not alert professionals (CSC and the police) to the fact that the father used to wash T's bottom from time to time after she had been to the lavatory whilst they were living in a common household;
- (x) The mother did not take any steps to reassure T or to explain to her after 13 December 2015 that the father had provided her with an explanation of what he had done in terms of washing her bottom on 15 November 2015.
- (xi) The mother's belief that T has been sexually abused by her father is subjectively genuine and entrenched.

The way forward

339. These are my findings. The case has been listed for further consideration on 15 November 2019. Both parties will need time to digest what I recognise to be a lengthy judgment. As I indicated at the conclusion of the hearing in September, I expect the parties' legal representatives to have organised an advocates' meeting in advance of that hearing when the next steps can be considered. I have already

indicated, and wish to reassure the mother, that there is no question at this stage of any change in the arrangements for T's care. I am entirely satisfied that T is deeply attached to her mother and there are no contra-indicators at this stage which would warrant any change in those arrangements.

340. Any re-establishment of the father's relationship with T will undoubtedly need to be guided by expert input and I anticipate that one of the matters with which I shall need to deal at the next hearing, absent agreement, is a Part 25 application in the context of identifying that expert and the work which he/she will be required to undertake.

Order accordingly