

Neutral Citation Case Number [2022] EWFC 152

IN THE LIVERPOOL FAMILY COURT

Case No: LV21C01158

Courtroom No. 25

35 Vernon Street
Liverpool
L2 2BX

12.04pm – 2.02pm
Monday, 4th July 2022

Before:
HIS HONOUR JUDGE PARKER
SITTING AS A JUDGE OF THE HIGH COURT PURSUANT TO SECTION 9(1) SENIOR
COURTS ACT 1981

B E T W E E N:

THE LOCAL AUTHORITY

and

C AND F

MISS N ROSS appeared on behalf of the Applicant
MISS EDMUNDS appeared on behalf of the Respondent Mother
MR POVOAS appeared on behalf of the Respondent Stepfather
MS SCARISBRICK appeared on behalf of the Child through his Guardian

JUDGMENT
(For Approval)

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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.

HHJ PARKER:

1. I am dealing with a child called A. He was born on 8 June 2014 and is aged eight. He appears through the Children's Guardian and B and is represented by Ms Scarisbrick. A is a Gabonese international. He arrived in this country speaking Gabonese French.
2. The Local Authority are represented by Miss Ross. They apply for a care order in respect to A on the basis of a care plan of long-term foster care. The plan is for A to remain with his current foster carer. He will also continue to enjoy contact with his father and his mother, and I will say more about that later in this judgment.
3. The mother is C, and she is represented by Miss Edmunds. She is a Gabonese international who also speaks Gabonese French. She opposes the Local Authority plan and wishes to have A returned to live with her in Gabon or alternatively to be placed with D, who she says is her uncle.
4. A man called E appears on A's birth certificate as his father. However, the mother claims that his father is actually a Polish national who cannot be identified due to the lack of details provided by the mother.
5. F is the mother's husband. He was married to the mother in Gabon by way of local custom in July 2015 and by way of a civil ceremony in November 2015. He appears to have parental responsibility for A by virtue of a parental responsibility order made in Gabon. He is represented by Mr Povoas. He does not oppose the Local Authority plan and agrees threshold, save in one narrow aspect. The Children's Guardian also supports the Local Authority plan.
6. The background is set out in the judgment of MacDonald J in his judgment on jurisdiction, which is reported at [*Warrington Borough Council v W (Care Proceedings: Jurisdiction)*] [2021] EWFC 68]. That can be found at paragraphs one to 21 of his judgment, and I need not repeat it here.
7. The matter has been listed as a composite final hearing before me, which took place between 13 and 17 June, and I now deliver an oral judgment on 4 July 2022. In reaching my judgment, I have had the benefit of an extensive bundle of documents with additional documents that have been sent through to me through the currency of the case. I have also had very helpful written submissions from each of the parties.
8. I also heard oral evidence from a number of witnesses and the key parts of their evidence are summarised below where I make a comment or express a judgment about their evidence or any part of it that follows a holistic evaluation of all the evidence presented to me in the case.

9. The Gabonese Embassy were notified of these proceedings by email on 14 April 2021 from the Local Authority. A response from the embassy was received on 23 June 2021 in the following terms:

“The embassy would also like to indicate that at this point in time, as much as it is deeply concerned about this situation, it will not seek to have a representative attend the next hearing on 9 July 2021 but will carry on working very closely with you in order to preserve the best interests of the child”.

10. It transpired that there had been no further correspondence between the Local Authority and the embassy from then. I directed the Local Authority to further notify the embassy during the currency of this final hearing. The Local Authority received no response.
11. The solicitors for the mother also attempted communication but were told that the person who would deal with it was not in the office. Having heard submissions from Miss Edmunds, it was agreed by all parties that an appropriate course would be for the Court to proceed to hear supplemental oral submissions on day five, the Court having received written submissions that morning, and to give the embassy until 4pm Tuesday 21 June to indicate whether it wished to be heard.
12. If no such indication was given by then the Court should simply proceed to formulate its judgment and deliver it. If the embassy did indicate or wish to be heard, then the Court would accommodate that and also give the advocates the opportunity to supplement their closing submissions having heard the views of the embassy. Suffice it to say they have not been asked to be heard.

Oral evidence

13. I heard oral evidence from a number of witnesses.
14. G. She was the social worker who was allocated to the case in April 2022. She performed the screening assessment of D on 7 April at C207.
15. She also prepared the addendum parenting assessment of F dated 20 May at C223. She said that her colleague, H, co-worked with her. H focused on A.
16. She said that the plan for contact with the mother was monthly video contact. Contact with F was going very well, and A wants that contact. It is a good way to maintain A’s sense of identity.
17. It could increase over time. Presently, it is once per week for a duration of one hour. It takes place at the children’s centre. Both A and F want to go out of the contact centre.
18. She agreed that this would be an opportunity for A to speak French with F. She would speak

- to the children centre to see if they would allow that to happen. If not, then she would arrange for a translator to attend.
19. She agreed that a specific piece of work needed to be done to promote A's sense of heritage and identity. She agreed that heritage should be embraced and supported. That could be done through contact with the mother. If the mother signed the written agreement that had been directed by MacDonald J, then she would be able to start with face-to-face contact.
 20. She said that A said that he found it distressing to be stripped off and have his bottom checked by his mother in the toilet during contact. However, the mother had not committed to signing the document. A was saying that he did not want contact if the mother continues to say that his bottom should be checked.
 21. At the last contact review the mother maintained that he is being abused so he needs to have his bottom checked. The mother had been unable to give confirmation that she would not check A.
 22. The social worker said that A had cut virtual contact short himself on occasions as he had not liked the questions that his mother had asked. She also described how A got upset when the mother prayed. She recognised that there was a disparity in the amount of time spent by A with F and C.
 23. However, that was in line with A's wishes. A looks forward to time with F. F responds in a way that gives A pleasure. He is patient, interested in him and what he does. Indeed, A wants more contact with F.
 24. He does not have the same desire in terms of contact with his mother. She felt that A feels stressed and under pressure at times with his mother. Ideally, she should also be having a high level of contact, but at the moment she did not feel that the contact was working for A.
 25. She said that F has a high level of knowledge about A's history and his heritage. The proposal was to reduce contact for the mother to once per month. F has a level of insight and is meeting A's needs.
 26. There is a disparity as to the level of contact and at times contact with his mother has been harmful, she said. F's contact is to be reviewed in terms of duration and quality. They would look to increase from one to one and a half and then two hours initially.
 27. The social worker said that she would also be proposing that it could move out to the community. There would need to be some discussion with A and F, and to review contact before the increase.
 28. In terms of moving to unsupervised contact, she said it is still early days. There would be a

need to ensure that C is not part of that contact.

29. In terms of speaking French, he has outside school activities where he speaks French. The Local Authority are also looking at linking up with the West African community in Warrington.
30. She recognised that there was a risk of placement breakdown. There always is. However, the foster carer may consider a special guardianship order in the future.
31. In terms of his religion and faith, which the social worker recognised as important to the mother, A was supported with this through school. The school is Church of England, and he goes to church through school.
32. In terms of D, she had written to him sending all of the relevant translated documents. She had written to him with the screening documents. They were translated. She had asked him whether he had consulted a solicitor or whether he wished to formally challenge the assessment. She also asked if he had plans to ask to attend the Court hearing.
33. She said that she had worked with West African families a number of times, although not Gabonese. She had met with the mother three times face-to-face. That had included four contact reviews in April and May.
34. At this point in the proceedings, Miss Edmunds, having made an application in the face of the Court for permission to call D, I directed that at the very least a statement should be taken from him so that the parties and the Court knew what he wanted to say as there had been no written indication of a wish to challenge the screening assessment before then.
35. The following day, Miss Edmunds was able to produce a letter that had been sent from D and J and, with the aid of the mother's interpreter, she helped me with the translation as the document was in French:

“We, D and J, guarantee to take charge of all of A's needs once back in Gabon. A will stay and live in Grandfather's property alongside cousins. He will have his own bedroom. We will enrol A for education. The family will take charge of all A's needs. In conclusion, A will be brought up according to local African traditions and values”.

36. They are available for any further requests or information and the document was signed by both of them. I allowed Miss Edmunds' application so that the Court could hear from D.

K

37. She was the previous social worker for A. Her involvement with the family came to an end on 10 March 2021. She said that the mother had engaged positively in the assessment.
38. She acknowledged that she had no experience of working with African families. She did her

best to research A's cultural needs. She researched online. She spoke with African people that she worked with. There were also lots of discussions, she said, which would be reflected in the supervision records to ensure that she properly identified his cultural needs and how they might be met.

39. She said that she had difficulties in speaking to D. If he proved to be a viable option for placement, then the child would obviously be better off placed with family than in long-term foster care. A is, however, in a fantastic foster placement, she said, but she recognised that the foster placement did not meet his cultural needs.
40. In terms of his French speaking, online applications had been put in place for him to continue French learning, but also his English had developed phenomenally. She recognised that he did use to say prayers and had religious beads by his bed, but after six months that stopped. She acknowledged that it could have been encouraged more.
41. She also agreed that his favourite cultural foods were not being provided. She agreed that he needs to know his roots and that they had been forgotten a bit, she said. They had searched for a placement that was a cultural fit, but none had been identified.
42. She agreed that he had been told by the foster carer that he had a choice whether to say his prayers. However, his primary school is Church of England and they do say prayers there. Again, she acknowledged that A is the only one in the foster family who has those religious beliefs.
43. When asked about the issues surrounding physical chastisement of A by the mother, she maintained that A had shared with her and the foster carer that the mother would physically chastise him and that would include hitting him across the head. A had not said that she hit him with the shoe, however. He would say that she hurt him and made him cry. She agreed with the suggestion that reasonable physical chastisement takes place in Gabon and that could be regarded as a cultural difference.
44. The witness said that the mother would benefit from a parenting course, but at the time the mother was exhibiting periods of behaviour that were suggestive of mental health issues. The mother was offered a psychiatric assessment, but she refused.
45. No training was offered to the mother about physical chastisement, and the social worker accepted that some work could have been implemented around parenting and physical chastisement. At paragraph 5.3 at C102, the social worker wrote:

“The Local Authority are concerned with C's presentation. C has shared her concerns with witchcraft, which C strongly believes is causing her pain and misfortune in the United Kingdom. C shared that

for the pain she is feeling to stop, she needs to return to Gabon to the witch doctors. C has also expressed that when she is deep in prayer the Holy Ghost takes over her body and when this happens, she does not have control but is aware of what is going on around her. Incidents have been witnessed by contact workers of C in what has been described as a psychotic state. This has been distressing for A to witness. The Local Authority are concerned with how C's presentation will impact upon A's emotional wellbeing if he returns to her care".

46. The social worker said that the mother had ended up in hospital as a result of her presentation on two occasions. She also described Mother's presentation in their offices as unstable. On another occasion the father had had to put C to bed. She felt that the mother's presentation was likely to cause significant harm to A.
47. She said that she had seen the cognitive and capacity assessment of the mother when performing the parenting assessment at D5. In particular, she was referred to D15 paragraph 7.5:

"C's background is culturally, linguistically and socioeconomically very different from the British context. Her values and her way of perceiving the environment are grounded in West African culture and she is not yet familiar with British cultural norms, standards and expectations. This, in my opinion, explains her unusual approach to problem solving".
48. The witness said that she had taken this into account even though it was not referred to in her final evidence. She also suggested that the irrational behaviours only began in September 2021. She said they tried with an interpreter to explain to the mother why A had been removed from her care, but she was unable to demonstrate any insight or understanding. It seemed as though she just wanted to resume her relationship with F.
49. She said that A expressed such happiness in his current placement. He said he wanted to stay in his current placement. The social worker said that we need to take his wishes and feelings into account. He would be at risk of significant harm if he returned to his mother's care.
50. The social worker was asked about the threshold document and in particular under paragraph 5A, the suggestion that there had been little consideration given to how A's emotional needs would be met. She said that there were no suitable or appropriate toys to stimulate a six-year-old child. The electronic devices in F and C's bedroom such as the television were not very stimulating and kicking a football in the garden would not be sufficient.
51. Furthermore, the home conditions were sparse. His care was not appropriately met, and his lived experience was not appropriate. A had also said that he saw rats running across the floor when lying down on his mattress on the floor.

52. Even though there was some virtual learning with his school in Gabon, A would have no interaction with school friends, no communication with children in Gabon. She acknowledged that when he had been removed, it did take the Local Authority two months to place him in the school and she agreed that that was inappropriate. However, in the interim, he had had access remotely to French and English learning with the Flash Academy, which was a French online learning tool. She acknowledged that A did enjoy his time with F but disagreed that A's time with F had satisfied his emotional and educational needs.
53. In dealing with C, the social worker said that her behaviour varied. She would see her become very irate, which happened during a parenting session. There was another occasion when she became very irate during a looked after child review.
54. She became very heated. She leant across the table. The IRO said that unless she desisted, they would end the meeting. The social worker said that she found the mother intimidating. She said her behaviour had been erratic and towards the latter end of her involvement she found the mother to be difficult.
55. In March 2021, the social worker said that she had tried to complete a genogram with the mother. However, the mother could not provide names and dates of birth of family members. It was only towards the latter end of the social worker's involvement that D was even mentioned.
56. After she finished her evidence, I was asked to watch three videos of the mother's presentation at a contact session. This was the sort of behaviour that was witnessed by A said the Local Authority.
57. Having viewed the videos, the mother was called. She said that the person that A should live with is either her father or herself. Her father lives in Libreville in Moanda in Gabon.
58. She said the name of her father is D. He is the big brother of her father, which would make him her uncle. She said that she would go and live in the same village.
59. She said presently she has no intimate relationship with F. If A lives with her, she does not know if F would be involved in that arrangement.
60. She said her relationship with A is very good and when she goes to see A it goes really well. She maintained that A does have a relationship with D and the relationship is like grandfather to grandson.
61. In terms of A's education, she said that when A was with her, he studied well. They also prayed very well together and went to church together. She said that A and she speak French. Currently, she is allowed 30 minutes to speak to A in French at the foster carers. She said

that when A was in her care and he spoke with her sisters and cousins, everyone got on well with A.

62. If she was allowed to move to the Gabon with A, they would live in the house that she designed in Gabon. A would go to private school.

63. She also has an older daughter called L, whose relationship with his sister is very good she said. Her daughter lives with her boyfriend. She is some distance away on a train.

64. Having moved to the United Kingdom with F, she said that the plan was to go and live in Gabon or maybe France afterwards. She said that she recognised that home conditions in the UK were poor. She denied hitting A and said that:

“In Africa when a child makes a mistake, we tell them to go over there. We do not hit”.

65. She described her mental health as very well. She has never suffered from any mental health difficulties. She was asked about the occasion when she was having contact with A and the Local Authority were concerned for her mental health as she was on the floor moving around and shaking.

66. The mother said that she remembered that occasion. She said that she was praying, sitting down, softly in her heart, and after praying she went on her knees and the Holy Ghost got hold of her and she fell backwards. She said:

“I was calling my son, my son, my son. It is the heart of a mother that truly trembles. A was not there yet. A came later with a lady”.

67. She was also asked about one occasion where she took A into the bathroom, wanted to look at his bottom, saying that A had been sexually abused from behind. The mother said that she remembered. When she went to visit A, the interpreter was there. She said, “A said to me, ‘Mum, my bottom hurts’”. A grabbed her by the arm and said, “Mum, my bottom hurts. It is open”.

68. She said she took A and went to the toilet. She gave a visual description of A walking with his legs open as if he was straddling. She said:

“A said, ‘Mum, my bottom is hurting. It hurts’. He said, ‘Mum, look at my bottom’”.

69. When she looked at his behind it was open. She said she asked why is the child’s bottom like this? The social worker said it is because he fell down.

70. She was pressed on what she had actually seen when she examined his bottom. She said around the anus it was truly open. I asked if she meant the anal sphincter and she said, “It

was really open when the child bent forwards”.

71. She denied touching him to examine him. She also said, “When he opens his mouth the throat was open”, again, suggesting that this was from abuse. She then said, “He said to me in front of the social worker that they tie up my hands and they cover my eyes and sexually abuse me”.
72. She went on, “I told K that the child is walking with a limp very badly, trailing his leg cause his behind was hurting a lot”. Again, she gave a visual demonstration, which was different to the previous demonstration because this one showed A walking with a pronounced limp. She said that she did not know who A was talking about when saying they tie him up.
73. She was then asked about being asked to sign a document to say that she would not examine A again at contact, but that she would not sign. She agreed. She was asked if it is correct that she refuses to sign.
74. She said the social worker told her that she must not look at the child’s behind anymore. However, she had said:

“I said considering what they did to me, you refuse to tell me the truth.
I am not signing”.
75. Her counsel then asked her, “As you refused to sign, A is not seeing you”. She replied, “I did not sign concerning the behind of A”. She clearly avoided answering the question about the impact on A of the mother not seeing him due to her refusal to sign. She demonstrated no insight into the harmful effects of her conduct in exposing him to an anal examination, which in my judgment was a form of abuse in itself, and no insight into the emotionally harmful effects on A of depriving him of good, wholesome direct contact with his mother.
76. She was then asked about evidence showing that she had been touching her genitals in a communal area for 15 minutes. She said that she had a vaginal infection. She went to hospital.
77. She put on the lotion that was given which stings. She smeared on ointment. After that, she went to make herself a cup of tea. She was scratching herself for 15 minutes, she said.
78. The mother went on to say that the foster carer told A not to eat the food that she brings for him. She also said that the foster carer hits A and punishes him for eating the food. She said that she has seen the foster carer hit A on video during the contact. I simply do not believe this evidence.
79. She was then cross-examined by counsel for the Local Authority. In cross-examination it was put to her that the proceedings had started because she had said that A had been sexually

- abused by F. She had told the family support worker. She agreed.
80. It was put to her that she had said on 30 March, when revealing this, that A had told her two weeks before. She said that when A told her she believed him. She was asked why she had not told professionals for over two weeks and then told M.
 81. She was asked why she had remained living with A and F in the house. She said that she asked M not to tell police because she wanted to catch her husband whilst he was doing it. She was prepared for him to do it again so that she could catch him.
 82. This, in my judgment, shows either a worrying willingness to allow her son to be subjected to sexual abuse based on what I find to be a false basis or alternatively, it is an example of the mother's ability to fabricate stories. Either way, in doing so, A has been exposed or was at risk of being exposed to significant physical and/or emotional harm.
 83. She told Social Services and the police that she was very worried that F would be in trouble and go to prison because then how would she get back to Gabon as she would have no money to do it. She said that when she needs help with money, she calls on F. She agreed that in February this year, she said that both she and F were back together and wanted to be assessed again as parents for A.
 84. She also agreed that she told the social worker, K, that they were trying to make a baby together. After 15 March, they were still trying to have another baby together. She agreed that she had prioritised her relationship with F over A.
 85. She also accepted that the house was dangerous. She accepted it was not clean. She accepted that the only soft furnishing for A was a mattress on the floor.
 86. She said A is telling the truth when he says he saw rats and mice. In viewing the photographs, as I have, the presence of rats and/or mice was reasonably foreseeable in my judgment. She agreed that there was mould on the walls.
 87. She agreed that MacDonald J had found that she and F had a plan to stay in the United Kingdom for at least six months. That was until the visa expired in June 2021. She agreed. She said that she would then go back to Gabon.
 88. She agreed that she had not registered A at a school in the United Kingdom but had called the teacher in Gabon and he was following lessons online. The teacher gave the lessons on WhatsApp. She would give work to A and the teacher would check the work after. She accepted that he needed help with worksheets.
 89. She said if F had not sexually abused A they would now be back at Libreville. She denied ever hitting A or using any physical chastisement. She maintained that they do not hit

anymore in Gabon and people punish children in different ways. You might tap, she said, but not hit.

90. She said that the social worker is lying when she says that A told her that the mother hit him with a shoe across the face. It was put to her that F was saying that she hit A on the backside and on his head. She said F was making it up. He was lying.
91. F's interview was then put to her when he said that he heard A yelp and she had hit him on the back of the head. He said that he had put witch hazel on it as it calms him down. It was also put to her that F said that A would flinch when she raised her hand.
92. She said that was false. I simply do not believe her evidence on this issue. She was lying because she knew that she had.
93. It was put to her that she had not told the truth earlier when she said that A had arrived at contact after the three videos had been taken. It was put to her that when A arrived, she shouted his name and then fell to the floor. The entry is C150 states:

“Unexplained irrational behaviour from C. C fell to her knees, held her arms out wide and shouted ‘A’ very intensely and loud. C appeared frozen on the spot and was intense in prayer. She shouted it loudly and gritted her teeth. C’s body collapsed at the floor with full force. Her eyes remained closed, and she hit the back of her head on the wooden floor making a loud sound. A became upset at observing this. He held his hand over his mouth and ran towards his foster carer”.
94. I find on balance that this evidence is true. C’s presentation was described as possessed and shaking uncontrollably to the extent the contact supervisor felt she had to call 999 to request an ambulance. The mother agreed.
95. It was also put to her that her behaviour was even more extreme before the video had been taken. She said that she remembered that she was praying, that she fell forwards and then fell backwards.
96. It was put to her that A was very upset by her falling to the floor. She said that was not true. I do not believe her.
97. It was put to her that A ran to the foster carers as he was scared and did not want to be there. Again, she said no, it was the foster carer who picked up A and took him out. She would not have been able to see this in her condition, as evidenced in the videos, in my judgment.
98. She was asked if she understood that what is shown in the videos is frightening for A. She maintained that this was not a new thing for him as he had seen this in church before and at home. This shows a lack of insight in my judgment.
99. It was put to her that the contact workers called for an ambulance because they were

concerned. The mother replied that they thought that she had epilepsy, but she was praying. It was put to her that they thought it was a psychotic episode. She said, “No, I only accept I was praying”. She maintained that she can decide whether to pray and can control how she prays.

100. It was put to her that F said that in Gabon, he had had to put her to bed on one occasion because he was concerned she might injure herself. She denied that this was true. She said, “I must take control when the Holy Spirit comes, and I know I am not allowed to fall anymore”.
101. It was put to her that on 18 October 2021, she was again behaving in a way that caused professionals to call an ambulance. She said that that was because of her back pain. It was put to her the police and paramedics thought that she was having a psychotic episode. She said no, it was the back. It was put to her that she was shouting, being irrational and looking psychotic. She said, “My back was hurting a lot”.
102. She was asked about her allegation that the foster carer had sexually abused A. She said that A had shown her his open throat during a video contact. She said that he also said that the foster carer tied his hands together, covered his eyes and sexually abused him.
103. She was asked if those are the words that he used. She said:

“Yes. He said, ‘Mummy, there are people who hold me. They put on me first thing’. They put on him and they tie his hands and feet. They put on him something that you tie behind”.
104. She was asked, did he say they sexually abused me? She said, “Yes, they abused me. He said, ‘Mummy, come and look at me because they touch my button’”. This was in front of the interpreter and Social Services. He said it whilst he was saying this, “He held me on the arm, and I took him to the toilet”.
105. The contact case note at F60 say this:

“When you arrived A, you wanted to play what I thought was hide and seek. You have done this previously as you have stood near the entrance doorway, and you wanted Mama to find you. However, today Mama sat very quiet, so I asked if you wanted to come through the door to see Mama or you would like to leave, and I could take you to N. You hesitated and then said you want to come in. You told Mama that you had received a reading badge for today for good reading and tried to show Mama. Mama did not acknowledge this and immediately began to make a statement to say that you were talking strange and lifted up your jumper and tied what looked like a shoelace to your tummy. You told Mama that you did not want to have this on and Mama used scissors to cut this from you and put the scissors and shoelace in her handbag.

Mama began to walk in a straddle walk, taking large strides and was pointing to the way you were walking, A saying you were walking funny. You appeared surprised and you went quiet. Mama was talking very loud and stomping around. As Mama did not settle down you became tearful. I walked to you and offered reassurance by standing close to you. I asked if you would like to stay or if you would like to see N. You told me you would like to see N, so I said, 'This is okay. We can arrange this'. I asked O to leave so that she could make a telephone call to N. As O got up to leave the room to make the call, Mama insisted that you went to the bathroom. I followed Mama saying, 'I would need to be with you' and in a loud voice and pointing her fingers, she shouted 'No' and slammed the bathroom door closed. I stood at the bathroom door and asked O to contact the police too as I wanted to end the family time safely for you and for the staff as Mama was presenting with an aggressive tone. It was just a few seconds you were in the bathroom with Mama, and I could hear you say 'her', so I opened the door and Mama came out and walked straight past me and was saying a statement that you are being sexually abused from behind. I asked Mama to calm down and you were upset again, and I told Mama that it was her that was causing you to be upset. Mama did not acknowledge this and said she wanted to take you to the hospital immediately. As I had asked O to contact the police, I told Mama that officials would be arriving very soon, and we could look at how we get support for you and Mama too".

In my judgment, this account is accurate.

106. She was asked about tying a cord around A's waist. She said that this is a tradition:
- "If someone hurts my child, the people who have hurt my son, something will happen to them. I have tied it around A several times in contact. He knows every time I tie around him someone is hurting him. I can say it is like a spirit. When I put this on, I can feel someone is hurting my son. It is not tied to witchcraft. It is a tradition".
107. In my judgment, this is causing A significant emotional harm. First, because I find it is not true and second, because it is likely to make A think some harm will befall the foster carer.
108. She said that every time she sees her son, he has pain in his bottom and cannot sit in a particular way. It was put to her that the foster carer reported that evening that she pulled A's trousers down and pulled his buttocks apart to look at his bottom. He did not ask to do it. She said that this was untrue, A did not say that. Again, I do not believe the mother.
109. It was put to her that she had touched A to examine him. She said, "Yes, I do recognise I did touch A to examine him". This contradicts what she said earlier in her evidence.
110. It was put to her the day before in the witness box was the first time she had ever suggested that A was tied up when he was sexually abused. She said that she had explained it to the Social Services. It was put to her that she had not told anybody that he was tied up, his eyes

covered and sexually abused.

111. It was also suggested that she was saying that she believed that A was being hit by the foster carer. She replied yes. She saw the foster carer hit A during a video contact. I do not believe the mother.
112. It was put to her that she told the social worker that workers at the after-school club were abusing A as well. She maintained that it was the social worker who said that to her that A was being abused there.
113. It was put to her that all of this was simply made up by the mother as she went along. She maintained that it was true. It is not in my judgment. She is not telling the truth.
114. She was asked whether she paid any account of the fact that A was saying that he was happy in his current placement. She said:

“No, A would never say such a thing. He wants to stay with me”.

I accept that A has said that he wants to live with the foster carer.

115. I then invited Mr Povoas to cross-examine the mother. He said this:

“Following on from the Court’s observations the previous day, that the only primary evidence relating to the issue of whether F had sexually abused A come to from F as nothing was said by A in ABE interview, the mother has not specified the nature of the sex abuse and F has maintained his denial in the parenting assessment and police interview and has not been requested to address it by the Court or otherwise”.

116. On that basis, Mr Povoas contended, no allegation of sexual abuse by F, the foster carer or any after-school worker is credible. In fact, he said, it is manifestly incredible and with an eye to the overriding objective and proportionality, he did not propose to cross-examine the mother on the issue. If, however, arising out of F’s evidence, the matter should be put to the mother then he said he would assist the Court. I asked the mother whether she wished to comment on the assertions made by Mr Povoas and she said, “I know it is not false”.
117. The mother went on to say that she could not accept that the child should stay in foster care. Her first choice is for the child to return with her to Gabon. She was asked again by the solicitor for the child why she would not sign the contract of expectation so that A could see her. She replied, “Whilst they are abusing my child, I must sign documents?”
118. I then heard from D. He said that A is his grandson and C is his daughter. He claimed that he had not received the screening assessment of him direct, although it is on his son’s telephone. He said:

“My son understands these things much better. He is the one who has been in touch with Social Services. He understands all the facts, but he

is not here”.

119. He said his son is J. He said that if A lived with him then his wife would look after him each day. He was asked about education, and he said that education starts at home but also in school. He said, “We have lots of children”. He said he has six or seven.
120. He said he did not speak to the mother. If A lives with him then he cannot see his father. If A came to live with him then he could not see how A could see his mother. If A came to live with him and his mother came to see the child, he would not allow it as this Court has forbidden it. He said, “I will respect your orders”.
121. He said that J is the mother’s brother. He said he has not seen the assessment, but J gave him an account of it. He said he cannot read emails. He has to wait for J.
122. He goes to the cybercafé to get his emails. He said that J had asked him to send photos and videos of the house as requested by the Local Authority. He was asked why he has not provided them. He said again J had to do that.
123. He said that he can read and write. In fact, it later transpired that he is a teacher. I asked if he knew that his daughter, C, cannot read and write recorded in the order at a previous case management hearing.
124. Initially he seemed puzzled, and I formed the impression that he did not know. He then went to say that she did not go very far in education. I asked him why, indicating that this did not make me feel confident that A would be properly educated if placed with him. He said this:
“It is very complicated. There were family problems. Balls in different directions. She [meaning the mother] went to live with her mother. It was quite complicated”.
125. When pushed further on this topic by me later on in his evidence, he said that initially the child was living with him. He put the child in school. She did the first and second year. There was discord, so she went to live with her mum and that is when everything went to awry.
126. Again, I asked him to say what the problems were. He said:
“I tell you about the problems. I was a teacher. They would assign me right, left and centre. I had to go where they sent me. That is why the child did not stay with me and I left the child with her mother”.
127. He said:
“We have schools in the bush. There is no way to get there other than by bus. We have to leave children with the mother. They keep you there for two or three years. I am trying to say I am a teacher and if they send me away to a village school and the children stay with the

mother and there is not the same kind of monitoring without the father”.

128. My understanding of the situation is that it is contended that in fact he is the mother’s uncle; the mother’s father having left when she was young to go to the Congo. He then took over as the father, to all intents and purposes, as the senior child. Yet, it is also right to note that he gave an indication, as noted by the Children’s Guardian in her closing submissions, that he was the biological father.
129. I recognise that customs and traditions are different in different countries, and it may well be that he is her uncle and not her father. However, I was left with the strong impression that he was not telling me the full story about the mother’s upbringing. Why, for example, did she start living with him and not her own mother, bearing in mind his previous evidence that the child is always brought up by the mother in Gabon?
130. Why had he not realised that she could not read and write? Even if he was sent away for two or three years, when he returned what involvement did he have in her life? In the screening assessment he was reported to have said that he brought her up very well and she is fine. There is nothing wrong with her.
131. He was also reported as saying that he would offer A the same upbringing that he had given the mother with love, communication, listening, care and meeting his needs for education, to be kind and to have family values. Overall, in my judgment, he was not being entirely open and honest with me in giving his evidence.
132. He then offered to provide the photographs and videos, but he was told that he was asked to do that in April. He maintained that he cannot use the machine. He has to wait for J. He is very busy, so he has to wait for him.
133. He was asked about the video meeting that was set up for 5 April. He said he remembered it, but it did not happen. He blamed the fact that J was on a mission. He was travelling. Later that day there was a WhatsApp message from J. In my judgment, this family has not prioritised the need to fully cooperate with the Social Services to enable a timely assessment.
134. It was put in that A has no memory of him. He agreed that they had met two or three times in the past. It was also put to him that he did not accept any problems with the mother’s parenting when the social worker spoke to him.
135. It was put to him that he had not tried to find out what the concerns are. He said that the mother had not told him about proceedings before Social Services contacted him.
136. He was asked about witchcraft in Gabon. He said that there was no tradition of tying a rope around the child’s waist. Later on, he said that a robe is tied around the hips of a child so that

the child will put on weight. He said he did not know what A was saying about staying in foster care.

F

137. I heard from F. He said that on the first day of the final hearing he found out that the mother wanted to be the sole carer for A and wanted for the father to have no access to him. He did not know why.
138. He challenged the Local Authority threshold at paragraph 5 when it referred to little consideration being given to A's emotional needs being met. He accepted there were issues with the property that could lead to physical harm. However, A was supervised.
139. Most of his play in the garden he enjoyed. He spent a lot of time with A, helping with schoolwork and playing football in the garden, riding a bike, flying a drone and helping him build things with Lego sets.
140. He had Lego sets suitable for aged seven and above, and also a Meccano set for 10 plus years. He also had his own tablet. He had access to an iPad. He had a number of puzzles he liked to play and a guitar in the house. He said he also took an interest in F's work as an engineer.
141. In dealing with the mother's allegation of sexual abuse of A against him, he denied that and said that he did not know why the allegations were made. In terms of physical chastisement, he said that he had seen the mother physically chastise A in Gabon. She smacked his bottom and tapped him on the head on occasions.
142. He had never seen her hit A across the face with a shoe. It was generally a tap to the head, but that was less frequent than hitting the bottom. He said that he did not challenge the Court should they make a care order on the basis of placement in foster care. He would have liked to have cared for A in Gabon, but that was now untenable in light of the mother's decision.
143. He wished to have contact with A. He said that his relationship with him was such and as far as he is concerned A is his son and he treats him as such. He loves him as his son.
144. A always called him Papa. He said that they loved making things together. They loved to go shopping. After the break in contact, when he saw A again, A was overjoyed.
145. A showed him certificates that he won at school. He would go through his schoolwork page by page, and F complemented him on that. He described A as very bright and astute. He said that A picks up on things and likes to please you.
146. On the first contact session back, they started to build using construction toys. Also, A liked being a café owner and serving him with food. F showed a great detailed knowledge of A in my judgment, giving detail of things done and was a very impressive witness in this respect.

- He described extremely positive activities.
147. In cross-examination, he agreed that home conditions were very poor and there were some safety issues. He was asked to look at the photographs at G306 etc., G285, etc., He accepted that the photographs did show clutter. He denied that A's room was cold, however, saying that there was a heater in there.
148. He acknowledged that A had scribbled in black over the house to describe conditions. He still maintained that A would have had happy memories of home.
149. In dealing with physical chastisement to A by the mother, he said he was aware that A said his mother hit him. He did not physically see or hear it in the UK. He described that A could cry wolf.
150. He was asked about his police interview of G197:
"I heard him yelp and she'd hit him on the back of the head. I put witch hazel on it. I did not see it".
He replied that he believed she may have tapped him on the head.
151. I then asked him about what he said on the previous page of his police interview:
"That sometimes she hits him on the head, and I told her not to do that. I've complained to her about that. It's usually the palm and sometimes a fairly hard hit against the head, the side of the head often".
152. F then said that he had seen her hit him on the head too hard. He had remonstrated with her, and she has changed her behaviour. In my judgment, F was playing down the level and extent of the mother striking A to the head. It was also clear from his interview that he expressed knowledge that she had struck him on the head in the United Kingdom.
153. In terms of the video evidence, she said that he had seen the mother's behaviour in church, in the house in Gabon and here in the United Kingdom. On the occasion when he put her to bed, he said he thought she might injure herself. That is why he had done it. A was there.
154. That was not the first time that A saw his mother in that state, but yes, it was not ideal. He said, "I believe it could be frightening for A". He had never seen the mother tie cord around A's waist, however. It was news to me, he said, that she tied cord around his waist.
155. However, he then said, "My wife said on several occasions she felt A was skinny". Again, in my judgment, he was trying to give evidence to support his wife by bringing it in line with what D said about the tradition.
156. He said he could not give an opinion on whether the foster carer had been sexually abusing A, although he did not believe it was likely. In contact, A was a happy boy.
157. He said he still loves his wife, although she does not reciprocate that. Indeed, in my judgment,

- his evidence showed that love and also a sense of loyalty to the mother still. Miss Edmunds, on behalf of the mother, declined my invitation to cross-examine the father on the basis of what the mother had said about the father sexually abusing A.
158. Finally, I heard from the Children's Guardian, B. She said that in her view A should remain a long-term foster care. His needs cannot be met in the care of his mother. She is struggling to understand his emotional needs and the impact of her behaviour on his emotions.
159. The Guardian is concerned about the allegations that the mother made and the impact of those on A. Some of her behaviours are concerning, such as the Holy Spirit, praying and cord being tied around the waist, the choices that she and the father made moving to the property in England and the state of it and the decision to stay, also physical chastisement. For all those reasons, the Guardian could not support him staying with the mother.
160. In terms of D, she said there were so many unknowns about his household and its composition. She accepted that that may fluctuate, but she was not clear how it might fluctuate. She is concerned about the nature of his relationship with A as A has no recollection of him. He spoke of two or three times that he and A had met, and yet F spoke of A staying there for a month, so there is not a clear picture on the nature of the relationship.
161. The Guardian said that she was also concerned at the level of his cooperation with the process. While she accepted difficulties with technology that had been over quite a long time and he should have done more to share his views. Furthermore, she said A does not want to countenance living in Gabon.
162. In terms of the contact plan, she supported once per month with the mother by video for the time being, unless that could be arranged safely; for F face-to-face with a view to moving it into the community unsupervised. The Guardian said that she would like for A to spend time with the mother face-to-face. It is important for A to do that.
163. However, she is saddened that the mother is not willing to sign the undertaking not to repeat her past behaviour, therefore face-to-face is not possible to support. If contact becomes more positive, then contact could be increased and monthly was a good starting point.
164. In terms of A's heritage that is very important. She had brought that up with the Local Authority, and if A had contact with the mother that would help. F could also encourage greater links with his heritage as he has knowledge of a lot of cultural practices.
165. In terms of any assessment in Gabon of D, she agreed that it was not clear who could do one and how long it would take. The absolute shortest period of time for an assessment could be three to four months and then there would need to be further hearings and directions and then

- to factor in the need for any final hearing. Proceedings had already been going on for well over a year and the impact of delay on A needed to be taken into account.
166. A needs permanence. He needs to know where he is. To delay by saying it was possible that may change means he cannot put down any roots. The Guardian felt that for A's best interest we need to conclude matters now.
167. She said that A is an absolute delight and there will be an aspect of some positive parenting in his formative years for that to be the case and the mother had been his primary carer. She said that she had taken into account the mother's cognitive assessment in June 2021, and the last paragraph of it.
168. She described A as being very compliant in his placement. A was clear, quite clear, that he wants to remain with the foster carer. The Guardian was careful to offer him all options, including placement with the mother in the United Kingdom. She said that we have to take into account what he says about what he has experienced.
169. This is very difficult to explore D with him when he has no memory of him. That would be too complicated for him. A said he does not want to live in Gabon.
170. She said that she was not clear how much time A had spent with his grandfather. There was no clarity of time spent with him. He has no sense that the grandfather is important to him and did not recognise his photograph. It does happen that family members can be found, even though there is no relationship with the child, but he has now formed an attachment to a very experienced, trained, skilled foster carer.
171. At first, they did not share the same language. It is very clearly a positive relationship now she said. The foster carer is white British, so she cannot meet his cultural needs, but the Local Authority are looking at other ways to meet those needs.
172. The relationship with the family is important and the mother should be part of that plan as well as F. They could build links with the family in Gabon and links in the area with other African families. These are things that the Local Authority can and should have done.
173. She also agreed that it is important that his language links are maintained. Again, it is important that the mother should have contact with A and F, and F can help also as he speaks French.
174. She said A is very happy in foster care. He is aware of ongoing proceedings. We do not know the day-to-day impact on him, but she was sure that it would have an impact on him. There are so many unknowns with D, and it was very difficult to get a clear picture from the screening assessment. The communication by email with the son was all very complicated,

and she said she would have liked to have seen the family making themselves consistently available for the purposes of assessment.

175. She was challenged about the lack of appropriate cultural assessment of the mother and the risk of discrimination by assessing the family based on Western standards. The Guardian said that the Court had made allowances for that and given additional time for D. She said:

“We have to look at the right conclusion for A in a timely manner. There are a number of pieces of information that could have been shared. It could have been shared over the telephone with somebody being there”.

176. In re-examination she agreed that A is of mixed race, and his father is Polish. Therefore, he has mixed heritage. She did not believe that A was aware of that fact. There had been difficulty in identifying who the father is at the beginning of the proceedings.

The law

177. In terms of threshold, the burden is at all times on the Local Authority to prove on a balance of probabilities that which they allege against C and F. I remind myself of the decision of *Re A (A Child) (Fact-finding hearing: Speculation)* [2011] EWCA Civ 12, “Findings of fact must be based on evidence (including inferences that can properly be drawn from the evidence) and not on suspicion or speculation”. In dealing with lies, I remind myself of the decision of the Court of Appeal in *Re H-C (Children)* [2016] EWCA Civ 136 set out in the closing submissions of Miss Ross on behalf of the Local Authority.
178. The position on threshold and findings is relatively straightforward as far as F is concerned. He agrees the updated threshold schedule of findings document dated 15 June 2022, save that he does not accept that there was little consideration as to how A’s emotional needs would be met as set out a paragraph 5a.
179. The position is much more complicated in relation to the mother. She failed to comply with a number of Court directions that she file and serve a statement of evidence in response to the Local Authority’s evidence. It was first ordered on 8 December 2021. It was then ordered again on 30 December 2021.
180. It was further directed on 1 April 2022, and in that order I included the following provision, “If she fails to do so, she may not be permitted to give oral evidence unless required to do so by other parties”. At that hearing, her solicitors had prepared a draft statement and the mother said that the reason that she had not approved it was that she cannot read and write.
181. I, therefore, directed that she considered the statement at Court before she left with the benefit of her solicitor and her interpreter. She still failed to sign the statement. At this hearing,

Miss Ross, counsel for the Local Authority, unsurprisingly said that she wished to cross-examine the mother. That meant, in my judgment, that it was only fair to the mother that I permit her to give evidence-in-chief.

182. In her closing submissions, Miss Edmunds, on behalf of the mother, made the following points:

Home conditions

183. The mother accepts that the home conditions were not adequate for A.

Physical chastisement

184. The mother does not accept that she has physically chastised at all. The evidence of what A said is hearsay. What the father said to police and in his oral evidence was only reported after the mother reported him for sexual abuse. His oral evidence gave a different account to his police interview. The father suggested that A could sometimes cry wolf.
185. If the Court finds that the mother has used physical chastisement, then the objective evidence would suggest that this was low level and not on the scale of causing significant harm to A. Reasonable physical chastisement is not unlawful in this jurisdiction.
186. There was no expert evidence on cultural issues. It is universally known that discipline, including physical chastisement, is tolerated in Africa.
187. The mother does not accept that she has any mental health issues. There is a real danger that professionals misunderstand the mother's presentation due to the lack of knowledge of African culture. The mother is a devout Christian and animated in her prayers. A was used to seeing his mother praying this way and would not be distressed.
188. The assertion that the mother makes unfounded allegations that had exposed A to emotional harm failed to take account of the unchallenged expert evidence of the psychologist that the mother's lack of understanding of English standards and culture cause her to behave in a unique way as her way of trying to solve the problem. The Court was invited to take account of the cognitive assessment, in particular D15, paragraph 7.5. No professional in this case is trained in assessing a parent who originates from an African country.
189. I have approached the mother's evidence with real care for the following reasons: she is from Gabon, not from the UK; she speaks French and does not speak English; she has had limited experience of this country and its cultures; the report of the psychologist into her cognitive function; her religious beliefs, which I accept, may lead her to be much more animated in prayer than somebody from the UK.
190. Nevertheless, I am able to assess the mother's evidence making all due allowances. The

mother was a very poor witness. She sought to maintain a case that she had never used any physical chastisement on her children and that in any event parents do not physically chastise their children in Gabon now, preferring to send them to their room. That is inconsistent with A's reports to Social Services and to his foster carer and, more importantly, inconsistent with the observations of F.

191. In my judgment, the account that he gave to the police in interview was truthful. He had seen the mother striking A to the head and striking him too hard. He was so concerned that he had asked her to stop.
192. She had recently struck him to the head shortly before his police interview. That caused A distress and led F to apply witch hazel to his head in an attempt to calm him down.
193. Whilst it is right what F said to the police followed on from the mother making allegations of sexual abuse against him, I find that during his oral evidence before me, due to the love that he undoubtedly feels for the mother and out of a sense of loyalty to her, he sought to downplay what she had done by way of physical chastisement in striking A's head. I simply did not believe the mother's evidence.
194. I also find on one occasion in Gabon that the mother did strike A across the face with a shoe. A reported this to K and it appears in her statement at C157.
195. I approach this allegation with great care because I am conscious of the fact that I have not heard directly from A on this issue, whereas I have heard from the mother. It is right that K was unchallenged on this issue during the hearing. The fact that A is reported to have said that she used an implement on only one occasion is significant, in my judgment, in assessing the credibility of that report. I note the mother's denial and that F said that he had never seen her use a shoe.
196. I was particularly troubled by the mother's evidence on the issue of her allegations of sexual abuse now levelled by her against F, the foster carer, and various staff at after-school clubs. Having performed a holistic assessment of the evidence, in my judgment, she was quite literally making it up as she went along.
197. One example is in dealing with her allegations of sexual abuse against the foster carer. On the first day of her evidence she described that the foster carer would tie A's hands together and put something to cover his eyes. This was the first time I had heard of that particular allegation. The following day, the allegation had grown to tying A's hands and feet together as well as covering his eyes.
198. Her allegations grew through the hearing to include saying that the social worker told her that

staff at the after-school club were sexually abusing A. I find this allegation to be wholly and inherently implausible.

199. From the witness box, the mother also alleged that the foster carer hits A. The mother also alleged that during face-to-face contact and video contact with A, he had made various allegations of sexual and physical abuse and that the contact workers who are present at contact, with the benefit of an interpreter, are lying in the notes about contact.
200. The mother also said on the second day of her evidence that she physically witnessed the foster carer hit A during a video call. Again, I find this inherently unlikely. The foster carer has been described in glowing terms by safeguarding professionals in this case and is clearly highly skilled and experienced.
201. Having performed a holistic assessment of all the evidence before me, I am satisfied that the truth is almost a stranger to this mother. Her willingness to invent false allegations and to spray them around almost indiscriminately in a bid to improve her case was quite disturbing.
202. In respect to the allegations that she made against F of sexually abusing A, which she repeated from the witness box, I cannot be satisfied on a balance probabilities that F has sexually abused A. The mother was fortunate to have been represented by Miss Edmunds, who is a very experienced and highly able senior junior barrister. She did not take up the invitation to put this allegation to F in cross-examination.
203. I have considered the other material in the papers, including the police interviews of the mother, F and ABE interviews of A where he made no allegations against F, together with the statement of P. Having performed a holistic assessment of all the evidence, I can well understand why the police have not taken this matter any further. I can understand why the Local Authority have not pursued findings against F.
204. I can understand why the mother's counsel chose not to put the allegation to F. I can understand why F's barrister decided that the allegation was so incredible and having F's evidence of denial of any such allegation, that that was the submission for the Court to find that the allegation was not proved.
205. The Court was placed in a very difficult position in dealing with the allegation made by the mother from the witness box. As I have said before in this judgment, she deliberately chose not to file and serve her written statement of evidence contrary to several Court directions. That meant that her evidence was heard for the first time from the witness box.
206. The Local Authority, in advance of the hearing, had reached a view that it was neither necessary nor proportionate to try the issue of the alleged sexual abuse by F on A. The Court

was deprived of a proper opportunity to make an Oxfordshire type ruling in advance of the hearing. However, the mother repeated the allegation from the witness box.

207. The Court cannot pretend that that allegation was not made. Yet, the Court is able to understand the anxiety of the advocates in dealing with that issue when the expectation was that they would not be dealing with it. Nevertheless, the mother repeated the allegation, and the father denied it.
208. On the available evidence, I am unable to find on a balance of probability that the mother's allegation against the father is proven. Therefore, I find that F did not sexually abuse A.
209. A demonstrates nothing other than a desire to see and be with F and his reticent only about spending time with his mother. It is significant, in my judgment, that having made these allegations, not only did the mother continue to live with F up until the first day of the final hearing, they presented as a couple and wish would be assessed as joint carers for A. Indeed, the mother accepted that she was trying to conceive another child with F until after March 2022.
210. The evidence provided by P is riddled within consistency. Two lengthy and careful ABE interviews revealed nothing to support a finding that F perpetrated sexual abuse on A.
211. The mother's behaviour at the contact session on 12 November 2021 was deeply concerning. Her willingness to expose A to an abusive anal examination, on what I find to be a completely false basis that he was being sexually abused by his foster care, will have caused him significant emotional harm. She simply cannot see the harm that she is doing to her child.
212. Her reprehensible behaviour is compounded by her obstinate refusal to sign an undertaking or contract of expectations not to expose him to such anal examination again. She could not even be consistent in describing what caused her to perform the examination. The first visual description that she gave was of A performing a straddling walk.
213. The next demonstration that she gave from the witness box later in her evidence was of A walking with a pronounced limp. The two demonstrations were significantly different. I did not believe a word that she said. She was lying.
214. She lied when she made allegations of sexual abuse against F, the foster carer and members of staff of various after-school clubs saying that that is what she had been told by the social worker. She lied when she denied physically striking A, particularly to the head. This is a mother who simply cannot be trusted to be truthful.
215. This is a mother who demonstrates no real insight into the emotional harm that she is causing her son by her behaviour. This was one of those cases where it was really important to be

present to see and hear this mother give evidence to gain the full picture.

216. In the absence of any medical evidence around her health, I am unable to find that she has an undiagnosed and untreated mental health difficulty which causes her to behave erratically and in a manner which mirrors a psychotic state. I do, however, find that she behaved erratically and to her presentation and behaviour of the three videos that I saw would, in my judgment, be very distressing to A. It is simply not good enough to say A has seen it before and, therefore, it will not affect him.
217. First of all, the mother was not in a situation where one would expect a prayer, particularly such an animated prayer. She was about to see her son for contact. He had arrived. I am satisfied that he was distressed by her behaviour and that he did run to the foster carer.
218. The mother said that it was the foster carer who picked him up. She could not know this. She was lying on the floor with our eyes closed making strange noises.
219. During questions from me, the mother told me that even though the Holy Ghost got hold of her, she was still able to control when she prayed and how she prayed. In those circumstances, in my judgment, the mother chose what to do, what she did and demonstrated no insight into the emotional harm that it would cause her son to see it. Her bizarre behaviour was also witnessed in the Warrington police station on 18 October 2021, when she was taken by paramedics to hospital for a mental health assessment.
220. The threshold, pleaded at paragraphs 6, 8 and 9, are proved against the mother. Seven is proved, save that I am unable to find that she has an undiagnosed and untreated mental health difficulty. There is no issue over the allegations of neglect and poor home conditions as far as the mother is concerned.
221. I am also satisfied that F and C failed to give sufficient consideration to A's emotional need to bring him to the United Kingdom and to the property and the condition that it was. I found the evidence of A scribbling black crayon over the house during direct work to be illuminating on this issue. I also accept the submission of the Local Authority that the conditions of the house, well-shown by the photographs in which A was living for over three months confined almost exclusively to the home, were likely to and did cause emotional harm.
222. In the circumstances, I am satisfied that at the time the proceedings were commenced the child was suffering and was likely to suffer significant emotion and physical harm, and the likelihood of harm was attributable to the care that had been given and was likely to be given to him, not being what it would be reasonable to expect a parent to give to him. Therefore, the gateway is open to the making of a care order.

Welfare

The application to adjourn for further assessment of D

223. Miss Edmunds, on behalf of the mother, argues that there is no confusion as to who this man is. He is the mother's paternal uncle, the brother of her father. In addition, because he is the oldest child, he assumes the role of father and by default to the next generation grandfather.
224. If A cannot be returned to the mother, then Miss Edmunds argues for A to be placed with D. She argues that this is a realistic option on the current available evidence, and a full assessment is now mandated in accordance with Article 6 and 8 of the mother, A and D. Miss Edmunds relies upon the following passage from *K, T and U (Placement of Children with Kinship Carers Abroad)* [2019] EWFC 59:
- “My narrative account as to the background in this case raises two more points of general importance. First, professionals working within a foreign jurisdiction may not understand the concept of a ‘viability’ report. Indeed, I am not currently convinced that the professionals working within this jurisdiction did. Such an assessment may take many forms, but it best described perhaps by reference to paragraph 67 of *Re P-S* where Sir James Munby said that the question to be answered is whether the proposed carer is ‘a runner’. That appraisal will need a solid foundation, ‘But the appraisal, assessment or evaluation (call it what you will) need not necessarily be too lengthy or too searching at this stage; what is sometimes referred to as a viability assessment or something similar may well suffice’. The positive assessment from the local social worker took almost 4 months to prepare (5 months if one includes the answers to the supplemental questions) and was highly detailed as I have said. It was plainly not a ‘viability’ assessment”.
225. Miss Edmunds argues that screening assessment does not reveal any reason why there should not be a full assessment. The evidence pulls in favour of a full assessment. The screening assessment does not raise any barriers to full assessment. It simply identifies what needs to be further investigated. The social worker confirmed on oath that the preferred placement for A would be in Gabon with D subject to assessment.
226. D was impressive in the witness box argues Miss Edmunds. He was parachuted into proceedings with little warning and no support. He engaged with the process and was a fundamentally credible and honest witness who wants to step up and do the right thing by A. He is a man of his word and one who unconditionally and fundamentally respects authority.
227. Miss Edmunds argues that whilst the Children's Guardian said that there were more unknowns as a result of the screening assessment, which would not justify full assessment, that argument does not withstand scrutiny. The approach of the Children's Guardian has

fallen into error as she is looking for something more comprehensive.

228. Miss Edmunds also relies upon *Re CB (A Child)* [2015] EWCA Civ 888:

- i) local authorities and the courts must be appropriately pro-active in bringing to the attention of the relevant consular authorities at the earliest possible opportunity the fact that care proceedings involving foreign nationals are on foot or in contemplation [and this was done in this case];
- ii) the court must, whether or not any of the parties have raised the point, consider at the outset of the proceedings whether the case is one for a transfer in accordance with Article 15 of BIIA [not relevant here as jurisdiction was dealt with by MacDonald J];
- iii) if there is no transfer in accordance with Article 15, the court, if the local authority's plan is for adoption, must rigorously apply the principle that adoption is 'the last resort' and only permissible 'if nothing else will do' [that is not relevant here, in my judgment];
- iv) the court must adopt an appropriately rigorous approach to the consideration of the 'welfare checklist' in section 1(4) of the 2002 Act [that is not relevant here, in my judgment]".

229. Miss Edmunds argues that whilst the Local Authority's application does not require the application of the Welfare Checklist under the Act of 2002, it does mandate the evidence to be considered through the lens of the Welfare Checklist under the Children Act 1989, and to that extent A's national cultural, linguistic, ethnic and religious background are relevant considerations. I wholly agree with this submission and clearly these are all factors which support further assessment of a family member in Gabon.

230. I do not agree with the suggestion that while this is not an adoption case, it has all the hallmarks of it. The Local Authority are very clear that it needs to do more to maintain A's link with all of those factors and in particular his family in Gabon, and that it needs to do more to encourage an ongoing relationship with extended family members.

231. Indeed, the Local Authority has tried time and time again, and repeatedly done so during this hearing, to encourage the mother to sign the contract of expectations or undertakings as directed by MacDonald J to enable direct contact to take place with A. The mother has chosen to refuse and maintain that refusal before the Court. That, in my judgment, is reprehensible conduct on her part.

232. Miss Edmunds suggests that the screening assessment and the evidence of the Children's Guardian do not take into account the many positives that such a placement could offer A and are focused on the here and now rather than his medium and longer-term needs. Miss Edmunds goes on to argue that there will be consequential harm to A by not having his welfare needs met if the Court does not delay the proceedings to allow for a full assessment.

233. Miss Edmunds then deals with the arguments advanced against adjourning for a full assessment. She argues that A's purported wishes and feelings should not be a factor that the Court attaches weight to and certainly should not be the determinant factor. In my judgment, the Court should attach some weight to A's wishes and feelings, but obviously it is not a determinative factor and bearing in mind his age, it will not even be one of the magnetic factors.

Insight

234. Miss Edmunds argues that it is unfair to criticise D for not knowing the full details of what has been happening on the ground for A since December 2020. He has not seen any material. Fairness requires him to have an opportunity to read and digest the concerns so that he can have informed views. In my judgment, D's commitment to this process has been somewhat limited and making all allowances for his lack of skills with technology and the fact that he lives in Gabon, the evidence does, in my judgment, demonstrate limited commitment.

235. My paramount consideration is A's welfare and his welfare needs do not change just because some of his relatives and the would-be carer live in Gabon. It is for me to reach a judgment on whether D has shown enough commitment to the cause of A's welfare to enable me to be satisfied that in terms of a potential carer he is "a runner". When I perform a holistic assessment of all the evidence, I am not so satisfied.

Lack of relationship

236. Miss Edmunds continues, a lack of relationship, and it is not uncommon for family relatives who come forward to have a weak or a non-existent relationship with the child. I agree with that submission.

237. The fact that A has no recollection of D is not significant. He was six when he came to the UK and 18 months has passed. I do attach weight to the fact that A has no recollection of D. Consideration of moving A to the Gabon to live with D would require consideration of whether it is consistent with his welfare to move him to the Gabon against his stated wishes and to an effective stranger.

Communication

238. Miss Edmunds argues that it is unfair to criticise D for not being proactive in his communications to the standards expected of grandparents living in this jurisdiction. The geography landscape is misunderstood by the professionals. He has little access to technology. His age is a barrier to understanding the technology available to him. He has a proven track record in raising children and any concern about A's educational needs are

misplaced.

239. I do accept that I must make due allowances for geography and lack of technology skills, although he was clearly able to engage in a WhatsApp video link for the hearing, and he has the assistance of J to help him. Indeed, J appears to be the prime mover in communication between the local authority and the grandfather.

240. Miss Edmunds identifies that the Court is duty bound to consider the issue of delay. She invites me to consider the decision of the Court of Appeal in *P-S (Children)* [2018] EWCA Civ 1407, and in particular paragraph 64 referring to the decision of Sir James Munby, the then President in *Re S*:

“33. There will, as it seems to me, be three different forensic contexts in which an extension of the 26-week time limit in accordance with section 32(5) may be ‘necessary’:

(c) cases with an international element where investigations or assessments have to be carried out abroad and ...

(c) cases where a realistic alternative family carer emerges late in the day.

67. The first question is whether the proposed special guardian is a ‘runner’, to adopt the language of McFarlane LJ in *In re W (A Child) (Adoption: Grandparents’ Competing Claim)* [2016] EWCA Civ 793, [2017] 1 WLR 889, [2017] 2 FLR 31, para 70. This appraisal, to adopt the language of *In re S*, must be ‘evidence based, with a solid foundation, not driven by sentiment or ... hope’.

69. If the answer to these questions demonstrates that the process cannot be completed justly, fairly and in a manner compatible with the child's welfare within 26 weeks, then time must be extended... In relation to SGOs, as elsewhere, justice must never be sacrificed upon the altar of speed”.

241. Miss Edmunds suggests that whilst the Court is bound to factor delay into its decision and attach weight to it, it does not cause the scales to tip in favour of abandoning D as a realistic option. On the ground, the reality is an adjournment will not impact on A. He is settled in his placement and there are no evidential indicators that these proceedings are negatively impacting upon him. For the Children’s Guardians to suggest otherwise was speculation without objective evidence.

242. There are many positives for A in having the assessment completed. He will know that all options were properly and fairly considered. There is a real risk as he gets older, and the inevitable harm of his global needs not being met comes to the surface, he will ask why D has not given a chance.

243. The Court has engaged in a process, the assessment of D that has not yet reached its

conclusion and a safe destination. Miss Edmunds refers to an email from CFAB dated 15 June 2022, which sets out the requirements if the Court decides to commission an assessment from Gabon via their organisation. Significantly, in my judgment, the following appears:

“As discussed, we have not worked with the ISS partner in Gabon, and we have not been able to find an ISS partner with previous experience of this partner. Therefore, although we generally advise a time scale of 12 to 16 weeks to receive a report back from abroad, we are unable to advise as to the likelihood this partner will be able to meet this time scale or as to the comprehensiveness of the report we receive back”.

It is clear that at this stage direction for assessment via CFAB would evolve a journey into the unknown both in terms of timescale and also quality of assessment.

244. Finally, Miss Edmunds refers to *K, T and U (Placement of Children with Kinship Carers Abroad)* decision, again identifying the problem that assessments abroad, being of varying quality, and rarely meet the requirements of the UK assessment. Furthermore, there can be long timeframes waiting for information abroad, misunderstandings in communication and overseas social workers not necessarily understanding the assessment requirements of the UK.
245. CFAB have made a number of recommendations to try to assist Local Authorities in resolving this conundrum, which includes inviting the prospective carer to the UK for further assessment and the social worker here working in partnership with the social worker in the foreign country. This sort of issue, late assessment of family member abroad, was grappled with by Hayden J in the case of *Cheshire West and Chester Council v LM (A Child)* [2022] EWFC 32. At paragraph 56, Hayden J said this:

“Very late in the day, paternal relatives have come forward. N, is the half sibling of F and K, is his partner. They have never met LM. They have told the social services, and I accept, that they have only known about LM’s current situation for the past month. I do not know what this signals in terms of the family’s communications with each other, nor do I speculate. It is self-evident that an application made at a final hearing, in a case that has been before the Court for over 12 months, presents real challenges. The pace of proceedings must always be set by the needs of the child and not the exigencies of the litigation. Children’s lives cannot be ‘freeze framed’ or kept in suspended animation whilst the adults organise their options. In this sphere of law, it cannot be repeated too often that the child is the paramount consideration. I touch upon the difficulties that such applications present in: *Tower Hamlets London Borough Council v (1) D (2) E (3) F* [2015] 2 FLR 535:

‘Before turning to the respective arguments, I should observe that, to my mind, even the prescient architects of the Children Act 1989 could not have envisaged the considerable cultural changes that were to take place in the United Kingdom in the 23 years that followed the implementation of that Act. British society is now multicultural. Assessing parents and family members may, quite frequently does, involve considering individuals based anywhere in the world. I do not believe that the obligation to explore the family option for a child is weakened in any way by geography, although it can provide real challenges to already overstretched resources. The viability of these options must, from the outset, be evaluated rigorously and reviewed regularly. The need for such assessments must be addressed at the very beginning of proceedings. Late identification of potential family carers abroad may bring two fundamental principles of the Children Act into conflict, namely the desirability, if possible, of a child being brought up in its extended family (where parents are for some reason unable to care for the child themselves) and the need to avoid delay in planning for a child’s future. Neither principle should be regarded as having greater weight. The recent reforms to the family justice system have sought to emphasise why it was that the avoidance of delay was given statutory force by the Children Act and the real and lasting harm delay causes to children, particularly in public law care proceedings. There will, in my judgement, be occasions when the obstacles to assessment of family members abroad create such delays that to pursue the option will be inconsistent with the child’s own timescales. These are taxing and exacting decisions, but they require to be confronted with integrity and without sentimentality’”.

246. This is such a decision for this Court now. I remind myself that my paramount consideration in making decisions relating to A’s upbringing is his welfare. Also, that any delay in making that decision is likely to prejudice his welfare; section 1 of the Children Act.

The ascertainable wishes and feelings of the child concerned considered in light of his age and understanding

247. I accept that A’s wishes and feelings are recorded at C157 and C191 to 194. It is clear that A does not wish to return to Gabon and does not wish to return to his mother’s care.

His physical, emotional and educational needs and how capable each of the parents, and any other person in relation to whom the Court considers the question to be relevant, is of meeting his needs

248. I accept the Local Authority submission that A’s physical and emotional needs are being met within his current foster placement where it is anticipated that A will stay if a care order is made, subject to further consideration of his needs to preserve his heritage. The foster carer meets his emotional needs, and I accept that contact with F and C is an important factor in

those needs being met.

249. Contact with F is progressing extremely well, and the mother must do more to ensure that she begins to meet his emotional needs for a wholesome relationship with her. Somehow, some way she must develop the insight to realise that her ongoing refusal to sign the undertaking or contract of expectations and to abandon these pernicious allegations against F, the foster carer, various members of staff at after-school clubs, which will cause significant emotional harm for A insofar as he is aware of them.
250. I have made allowances for the lack of experience that K had in working with a Gabonese family, although I note the steps that she took to improve her own knowledge base and to consider matters from the mother's perspective. I also make allowances for the difficult process that this will have been for the mother, which is compounded by language barrier and cultural differences. However, in my judgment, the assessments made of her by the Local Authority do withstand scrutiny and, in my judgment, if A were placed with his mother, he would be likely to suffer significant emotional and physical harm.
251. There is no proper and sufficient acknowledgment by the mother of those matters set out in the threshold and found by me that have, in my judgment, led to significant physical and emotional harm for A. She has developed no proper or sufficient insight into his welfare needs, and she presents very little to enable me to have confidence in her ability to change sufficiently.

The likely effect on A of any change in his circumstances

252. If A were to return to live with his mother in the Gabon, then this would be a significant change in his circumstances following the determination by MacDonald J in July 2021, that A was habitually resident in the United Kingdom. He has continued to integrate into life in the UK and his English language skills have dramatically improved.
253. I find that he does not want to go back to the Gabon and nor does he want to return to live with his mother, although I acknowledge his tender age. At the moment, the relationship that he has with F is more conducive to his welfare than that with the mother. That is largely due to her own actions.
254. In my judgment, it is likely that his relationship with F would either dramatically reduce or even disappear if he moved to the Gabon to live with his mother. The evidence shows that he has now invested emotionally in his foster placement, although clearly the Local Authority must do more to maintain his links with his heritage. They will also face a challenging piece of work around his paternal heritage, that being Polish, as I have been reminded more than

once by the Children's Guardian.

His age, sex, background and any characteristics which the Court considers relevant

255. The Local Authority must do more around his heritage. His cultural and religious needs have not been met to date as they should, particularly as he is placed with a white British foster carer. Clearly, if he were to return to the Gabon to live with his mother or D for that matter, then those needs would be met. His ongoing needs for contact with his mother and F are clear and much rests with the mother in determining the quantity and quality of that contact moving forwards.
256. The plan currently is for weekly face-to-face contact with F with a review taking place next week. It is proposed that in short course contact can increase to two-hourly sessions in the community progressing to longer activity-based contact, possibly supervised by A's foster carer if willing to do so. The mother's contact will be monthly and can take place face-to-face if the mother signs the written agreement. Until then it will continue by way of video. The Local Authority should also take steps to encourage a relationship between A and his extended family in the Gabon.

Any harm which A has suffered or is at risk of suffering

257. I have made my findings under this heading earlier in this judgment. If returned to his mother's care then he is, in my judgment, likely to continue to suffer significant physical and emotional harm. She is likely to continue to hit him too hard. She is likely to pursue this campaign of trying to prove that he is the victim of sexual assault by F, the foster carer and various staff at after-school clubs and that may extend to others over time.
258. He is also likely to have his relationship with F either diminished or lost. F is the only father figure in his life.
259. In my judgment, A's welfare needs are best served by the Court making a final care order and refusing the application to adjourn for further assessment of D. Having listened very carefully to his evidence and making all due allowances for the fact that his evidence was given through an interpreter; that he was sitting outside of his home using a mobile telephone; that he was given extremely short notice of the Court's agreement to hear from him and he was unsupported, I am not able to find that he is a runner as a potential carer.
260. My reasons are: (a) these proceedings have been ongoing now for some 15 months, so this is not an application to extend the 26-week period pursuant to section 32 of the Children Act. These proceedings have already taken two and a half times that long.
261. It is impossible to say how long the delay would be caused by further assessment; a CFAB

assessment ordinarily taking 12 to 16 weeks. It is impossible to be confident that such an assessment would be of a standard that would meet the Court's requirements.

262. My assessment of D as a witness is that he was less than straightforward, contrary to the submissions of Miss Edmunds. In my judgment, he was unaware that the mother cannot read and write, recorded in the Court order in April this year as her excuse for not filing and serving of statement of evidence. Yet, in the screening assessment he is reported as saying that she had had a good upbringing.

263. When I probed him on the issue of the mother not being able to read and write, I made it clear that I was concerned that A's education could be impacted by living with D. He went on to explain as follows:

“She did not go very far in education. It is very complicated. There were family problems. Balls in different directions. She went to live with her mother. It was quite complicated”.

264. When I probed this with him further to try and understand what the problems were, he said:

“I put the child in school. She did the first and second year. There was discourse, so she went to live with her mum. That is when everything went awry”.

265. I probed this further. He went on:

“I tell you about the problems. I was a teacher. They would arrange me right, left and centre. I had to go where they sent me, so I left the children with their mother. That is why the child did not develop. I am trying to say I am a teacher. I have a family in Libreville. They send me away to village schools and the children stay with their mother and there is not the same kind of monitoring by the mother without the father”.

266. Earlier in his evidence he told me that A would be brought up by his wife if he came to live with them. He did not explain how the mother was living with him in the first place. I understand that his brother, the mother's birth father, had left when she was young to go to the Congo. The whole picture appeared to me to be pregnant with what was left unsaid.

267. D claimed to have provided the mother with a good upbringing yet was unaware of her inability to read and write until I told him. I find that the mother has not put him forward as a potential carer when asked to do so by the Court, and D told me that he was unaware of the proceedings until he was told by Social services. That is very late in the day and the impact on A's welfare of adjournment for further assessment is likely to be detrimental.

268. A cannot lay down any roots to quote the Children's Guardian. Whilst there is a superficial attraction to Miss Edmunds' argument, that there is no objective evidence of harm to A by

these ongoing proceedings, in my judgment, such emotional harm is often latent and manifests itself in teenage years. The Court cannot naively accept such an argument however well-intentioned and well-made.

269. Section 32 and its time limit were introduced for good reason. It is harmful for children to languish in the care system for many months whilst adults attempt to make decisions about their lives.
270. I shared the views of the Local Authority and the Children's Guardian that D had shown insufficient commitment to the process. Even making those allowances urged upon me by Miss Edmunds, the record presented to me by the Local Authority left me diffident as to his real commitment to care for A, and his acknowledgment that it would be his wife who would be caring for him was significant. I did not hear from her.
271. This is a balancing exercise, as identified by Hayden J, which does reveal a tension within the Children Act. In my judgment, the balancing act favours a final care order being made rather than an adjournment for further assessment. Key to that decision is that the Local Authority are not seeking a placement for adoption and the Local Authority's acknowledgement that more must be done to forge links between A, his heritage and his Gabonese family, and I am confident that it will be.
272. I approve the permanence provisions of the care plan, and I make a care order in favour of the Local Authority. The care order based on that current care plan is necessary, proportionate and consistent with A's welfare. That concludes this judgment.

End of judgment

Transcript from a recording by Ubiquis
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