

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

Case no.: OX20C00142

IN THE FAMILY COURT SITTING AT OXFORD AND IN THE MATTER OF THE CHILDREN ACT 1989 AND IN THE MATTER OF S AND T

Date: 6 July 2021

Before: HHJ Vincent

Between:

OCC

Applicant

and

a mother

Respondent mother

and

a father

Second Respondent father

and

S and T

(acting through their Children's Guardian SIMON SMITH)

Third and Fourth Respondent children

Amanda Bancroft, counsel for Oxfordshire County Council

The Respondent mother represented herself

Luisa Morelli, counsel for the Second Respondent instructed by Reeds solicitors

Andrew Lorie, counsel for the children, instructed by Trueman's solicitors

Hearing dates: 5th and 6th July 2021

JUDGMENT

Editorial notes:

- (i) *for publication the children's names have been replaced with the letters S and T, and the names of adults in the family replaced as, 'the mother', 'the stepfather', 'the father', 'father's partner' etc.;*
- (ii) *this judgment was written at the conclusion of care proceedings, which followed lengthy private law proceedings. Annexed to this judgment are the following:*
 - *Annex 1: fact-finding judgment (private law) 4 September 2020;*
 - *Annex 2: approved note of judgment (application for adjournment) 24 August 2020;*
 - *Annex 3: approved note of judgment (application for interim removal) 11 December 2020.*

Introduction

1. On 4 September 2020 I handed down a fact-finding judgment in private law proceedings between the parents of S and T.
2. In the concluding section of the judgment I wrote the following:

'The Court has made no findings against the father and proceeds on the basis that allegations raised but not proved have not happened. There is no evidence to suggest that the father poses any risk to his children.

I am satisfied to the standard of a balance of probabilities that the mother has made false allegations of domestic abuse and sexual abuse against the father in an attempt to prevent him having a relationship with his daughters.

I find that the mother has acted in ways over the last five years that have interfered with the children's relationship with their father. She does not appear to recognise any value to the children in having a relationship with him and as a consequence has failed to promote or encourage that relationship in the children's best interests. She has shown no curiosity into the reasons why the girls may have presented as unhappy or worried but has it appears at every stage jumped to a conclusion that it is their father who is the source of all difficulties for them and that they are better off without him.

There is no good reason that the father should not be seeing his children regularly. The process of reintroduction by emails, then phone calls and face time has taken place over the past six months and appears to have gone well. It has provided a solid basis for progression to direct contact.'

3. At that point the children had not seen their father since the summer of 2017. S was about to be twelve, and T was approaching her eleventh birthday. I considered that the indirect contact which the girls had been having with their father in the months leading up to the final hearing in September 2020 should progress immediately to direct contact and I urged the children's mother to do all that she could to promote that contact. An independent social worker was appointed to supervise and support the reintroduction of direct contact, but difficulties arose and the mother did not make the children available for the sessions that had been agreed, nor pay her half share of the social worker's fee.

4. The local authority had previously been directed to prepare a section 37 report (by 27 March 2020) but a series of extensions had been granted, chiefly because the local authority said the mother's lack of engagement with them prevented them carrying out their investigation. The report was finally filed in October, with its author noting that the mother had refused to meet with the previous social worker and had put up barriers to her own visits and all attempts to progress contact. The conclusion of the s37 reporter was that the threshold for commencing public law proceedings had been met. During the course of the investigation the initial concerns around contact between the girls and their father had widened to a concern about the girls' emotional welfare and the parenting they were receiving from their mother.
5. The local authority issued its application for public law orders on 18 November 2020. I adjourned the initial application for interim care orders to the New Year but the applications were restored urgently to Court because the mother had refused to allow social workers and the guardian to meet with the children. The children had not been at school since March 2020. As the girls were not in school, it was a concern that they were not being supported by any professionals. The girls presented as quiet and shy and struggling to engage in conversation. Their mother and the stepfather were presenting as highly anxious and reporting that the girls were exhibiting extreme distress at the thought of being made to see their father.
6. The children were removed into local authority foster care on 11 December 2020.
7. The mother gave birth to her fifth child, a girl, on 21 December 2020.
8. There were difficulties in arranging direct contact between the girls and their mother. The first virtual family time session was not until 12 January 2021 by which time the girls had been in foster care for five weeks. During that time they had not spoken to their mother at all. The girls had their first direct family time with her on 9 April 2021.
9. The girls had also been seeing their father on video calls and eventually had their first direct family time with him, his partner and their children on 6 April 2021. Since then they have been seeing him regularly, including for overnight stays, which are reported to have gone very well, with both children reportedly telling their foster carer they would like to stay longer during the weekends.
10. The local authority has carried out parenting assessments of the mother and stepfather and of the father and his partner. Again, there were difficulties in completing the assessment of the mother and stepfather. The first session was cancelled because the mother had raised queries about the process, which she said needed to be answered before it could go ahead. She and the stepfather attended the next two sessions but used the fourth to discuss whether or not to withdraw from the process, then missed the next two appointments. At that time the mother had still not met with the guardian, and asked that he change his initial report in certain respects before she met him. The local authority asked for a directions hearing at which the mother sought to argue that the parenting assessment should not continue until complaints that she had made about T's LAC medical, S's PEP, Dr Misch, the local authority, Cafcass and the Court had been addressed. It was made clear that the Court's previous orders could not be treated as conditional in this way and in any event it was outside the jurisdiction of the Court to carry out the sort of investigation that was being asked for.

11. Following that hearing the mother to her credit did confirm that she would fully participate with the parenting assessment and with Dr Misch's addendum report. She also met with the guardian.

Parties' positions at final hearing

12. The local authority's final evidence recommends that the girls move to the full-time care of their father and that they continue to have regular contact with their mother, which is to be supervised. The local authority proposes that the Court makes a child arrangements order together with a twelve month supervision order. The purpose of the supervision order is to provide continued support to the girls to adjust to the very significant change of moving to live with their father, who has not had them in his care for over four years, and not lived with them full-time since they were very little. It is to support supervised contact between the girls and their mother, to enable them to preserve and further their relationship, while at the same time protecting the girls from the risk of emotional harm that the local authority says she poses to them.
13. The local authority's transition plan has the girls spending increasing time with their father over the summer holidays and moving to his care full-time in mid-August, while continuing to have regular contact with their mother as they do now. From September it is proposed that they will see their mother every fortnight. The first eight contacts will be supervised by the local authority. Thereafter (from January 2022) it is hoped that the maternal grandmother can supervise, but if that is not thought to be appropriate at that stage, the local authority proposes to pay for a supervisor for the duration of the supervision order. If by the end of the supervision order it is felt that contact continues to need to be supervised by an independent professional the local authority's proposal is that the mother should cover that cost.
14. The local authority proposes to have quarterly informal family group conferences with the parents to see how things are going and with a view to mediating any disputes or difficulties that may have arisen. These meetings would also be an opportunity to explore with the parties their views about progression of contact. The local authority proposes to work with the maternal grandparents to help them understand the risk of emotional harm and to prepare them for the responsibilities they would bear as supervisors.
15. The mother parted company with her solicitor and barrister just before the IRH. She parted company with her previous solicitors just before the interim care order application in December 2020. At the IRH a position statement was filed on her behalf seeking an adjournment of the final hearing. The mother filed her own statement and spoke for herself at the hearing. She made it clear that she did not seek an adjournment. She confirmed that she had asked [her solicitors and barrister] no longer to represent her. Since then she has represented herself in these proceedings.
16. At the final hearing Ms Bancroft represented the local authority, Ms Morelli the father and Mr Lorie the children through their guardian Mr Smith. Mr Lorie was also involved extensively in the private law proceedings and I am grateful to him for his detailed chronology, which he has updated throughout.

17. Ms Bancroft took time in email correspondence with the mother, to set out the issues and to understand her position fully in respect of each of them. Ms Bancroft explained the process and timetable clearly in the draft orders and invited the mother to a Teams meeting with other advocates on the morning of the final day for further discussion. Throughout and at this final hearing Ms Bancroft has been mindful of the mother's situation, noted that she feels more comfortable holding discussions and making representations in writing, and has identified points that had she been represented would have been made on her behalf.

18. As a result of Ms Bancroft's report of discussions she had with the mother, from reading mother's statement and position statements, and a discussion I had with the mother at the hearing, I am satisfied that I have a clear understanding of the mother's position which is:

- (i) she accepts that findings were made by me in the private law proceedings which form the basis of the threshold document. She does not agree with the findings but accepts that it is not open to her to reopen that fact-finding exercise now, and that the threshold for making public law orders is crossed;
- (ii) she does not agree with the outcome of the parenting assessment of her and stands by the complaints she has made against the local authority and Cafcass. She does not believe Dr Misch to be independent. She considers the girls' voices have not been heard;
- (iii) she maintains that moving the girls from their school, home and wider maternal family is not the right outcome, will be devastating for the girls and is not necessary, because she says that the girls could have developed a relationship with their father from her care;
- (iv) however, recognising the support of all other parties for the local authority's plan, she does not now seek to oppose it;
- (v) she does not oppose the proposal that the girls now move to live with their father. Even though she does not agree it is best for the girls, she will do her best to support it;
- (vi) she accepts the making of a twelve-month supervision order;
- (vii) she and her husband will engage in the informal family group conference meetings;
- (viii) she would like to see as much of the girls as possible and for the girls to come and stay with her. She does not see the need for there to be any supervision of her contact. However, she does not oppose the local authority's plan for supervised contact once a fortnight for 3.5 hours, but hopes that it can build up as quickly as possible;
- (ix) she agrees to the proposals for video contact between her and the girls which it is proposed will take place by facetime, to be supervised by the father or his partner;

- (x) she would like her younger children and the girls' cousins on the maternal side to be able to be in touch with one another by text, WhatsApp, social media etc in a free-flowing and natural way, with no limits.
19. The father supports all the local authority's proposals. In addition he has issued an application for a section 91(14) order, providing that the mother could not make an application to the Court without permission for a period of three years. He is supported in this by the guardian, who also fully supports the local authority's plans.
20. The mother opposes the section 91(14) order. On behalf of the local authority Ms Bancroft was neutral as to the making of an order but fairly raised some points in the mother's favour that she considered ought properly to be taken into account by the Court.

The law

Children Act orders

21. The section 31 Children Act 1989 threshold for making public law orders having been crossed, the Court must decide what, if any, orders are required. Any orders made must be proportionate to the risk of harm. The children's welfare must be the court's paramount consideration and the court's welfare assessment must be informed by an analysis of the factors in the welfare checklist under s.1(3) Children Act 1989.

Section 91(14) Children Act 1989

22. Section 91 (14) Children Act 1989 provides that '*On disposing of any application for an order under this Act, the court may (whether or not it makes any other order in response to the application) order that no application for an order under this Act of any specified kind may be made with respect to the child concerned by any person named in the order without the leave of the court*'.
23. The court must balance the welfare of the child and the right of unrestricted access of the litigant to the court. The following are principles of general application (Re P (Section 91(14) Guidelines) (Residence and Religious Heritage) [1999] 2 FLR 573):
- a) The welfare of the child is paramount: s. 1 (1) applies.
 - b) The power is discretionary and all relevant factors must be weighed in the balance.
 - c) An important consideration is that to impose a restriction is a statutory intrusion into the right of a party to bring proceedings before the court and to be heard on matters affecting his child.
 - d) It is generally a weapon of last resort in cases of repeated and unreasonable applications.
 - e) A restriction may be imposed where the welfare of the child requires it, but where there is no past history of making unreasonable applications.
 - f) The degree of restriction should be proportionate to the harm it is intended to avoid. *The making of these orders should always be exceptional and careful consideration in every case should be given to the duration of the order to see that by unnecessary*

extension it did not prejudice rights of access to the court. Per Thorpe LJ in Re C (Litigant in Person: s. 91(14) Order) [2009] 2 FLR 1461 at [9].

24. Where there is no history of repeated and/or unreasonable applications, the Court should apply a two-stage test. First, the court must be satisfied that the facts go beyond the commonly encountered need for a time to settle to a regime ordered by the court and the all too common situation where there is animosity between the adults in dispute; secondly, that there is a serious risk that, without the imposition of the restriction, the child or primary carers will be subject to unacceptable strain.

Evidence

25. I have read the contents of the final hearing bundle which includes final evidence from the girls' social worker MJ. As well as her final statement she carried out the parenting assessments, and devised the final care plans. I have read final statements from each of the parents, the reports of Dr Misch, who was instructed in the private law proceedings and has updated his reports within the public law proceedings. I have read the guardian's final analysis and reviewed his initial analysis filed in February.
26. The views of MJ, the guardian Mr Smith and Dr Misch are each based on a thorough appraisal of a very complex and lengthy history, and having met with the girls a number of times. I consider the parenting assessments to be thorough, balanced and fair, to show a good understanding of the girls' particular needs and to have addressed in depth all relevant areas of the assessment with those being assessed.
27. Dr Misch reached clear conclusions based on his professional assessment of the girls' presentation. His subsequent meeting with the mother and her husband confirmed his initial views. His observations and expert opinion is consistent with the weight of all the professional evidence in the case.
28. The guardian saw the girls shortly after they were placed in foster care and he has seen them much more recently. Over the period of his involvement he has seen a significant transformation in their presentation, noticed also by their foster carer, school teachers and their social worker. His reports set out clearly his analysis and the evidence base upon which he relies to form his conclusions which are clear and well-reasoned. There is no good reason to depart from his recommendations in this case.
29. Turning to the factors on the welfare checklist.
 - (a) the ascertainable wishes and feelings of the child concerned (considered in the light of their age and understanding);
30. MJ reports what the girls said to her in early June and the guardian a few days ago. The reports are quite similar. They both said they would like to go home to their mother. T said she had not been enjoying the contact with her dad because the beds were uncomfortable. She said she did like her dad's partner and playing with her half-sister. S said she liked going to her dad's house and going on bike rides with him. She said she would like to see him at weekends and in the week, but she would not like to live with him, again because the beds were uncomfortable. To her social worker she said sometimes she wanted to live with her dad but not as much as she wanted to go home

to her mum. They both expressed a wish to stay at their current schools. If they had to live with their dad, they said they would want to see their mum as much as possible. T asked her social worker if she were to live with her dad could she take her ipod?

31. In his final analysis Mr Smith said that although he was confident he had ensured the girls' wishes and feelings were clearly communicated to the Court, in his view, the reality of the situation was as follows:

'.. they present as children who have been manipulated into thinking their father was a bad person and that anything about him should be seen by them in a negative light. That manipulation has been promoted by mother and her partner the stepfather. It has taken the removal of S and T to unlock this misrepresentation to allow the girls to develop their relationship with their father. It is clear to me that this has been achieved but it has come at a cost and emotional damage of S and T who still present as a fraction of their real selves. Nonetheless their progress has been immense.'

32. In the circumstances, I must be cautious about the weight that I give to S and T's wishes and feelings about where they would want to live. It is important to listen to what they say but their views alone cannot be determinative. I note that all reports of the time they have spent with their father are extremely positive and the girls themselves have asked to spend more time with him. I note that there is little substance to their reasons for not wishing to live with their father. Saying that, given they have never lived with him and until moving to live with their foster carer in December they had always lived with their mother, it is not surprising that they are not putting him forward as their first option.

(b) their physical, emotional and educational needs;

33. When the girls went to school in January 2021 they were behind in some of their learning and needed to develop their social skills. They are both now doing very well in school and their foster carer has helped them to be more confident and vocal in their interactions with her. They would benefit from some consistency now in their education and to be supported to make friends and build social networks outside the family, to be encouraged in their school work and extra curricular activities. They need to be supported to develop their own interests and as they head towards adolescence, to become more independent. They need to continue to be supported to have fun and to enjoy themselves and to express their true feelings without feeling anxious that they may be saying the wrong thing either to a parent or family members or professionals.
34. They need to be protected from the conflict between their parents. They need to grow up to understand that genetically they come from both their parents, that they have family and extended family on both sides who love them and value them for who they are, and that there are no parts of them that are less loved or less valued by one of their parents because of their association to their ex-partner.
35. The girls need to be kept safe, and to feel safe. Between summer 2017 for about three years they had no contact at all with their father and over the course of that period of time developed an idea that they should in some way be fearful of him. In January 2018 their reasons for not wanting to see their father were vague and centred around him having told them to keep a secret. They were affected by the difficult handover in June

2017 but the parents subsequently agreed within the private law proceedings that there had been fault on both sides on that occasion, and no findings were sought against the father in respect of this during the fact-finding process. There was a change over the years with the children expressing fears of going to their father and saying he had hurt them. Ultimately, at the fact-finding hearing, the mother did not pursue any allegations against the girls' father and no findings were made. There is no reason for the girls to have any fear of their father and they will need to relearn that he is not just someone not to be feared, but a person to whom they can turn for security, stability and protection.

36. Over the past few months the girls have re-established their relationship with their father and are learning that they are safe and well-cared for by him and his partner. There have been no concerns raised. The situation will improve for them the more time they spend in his care, but they also need their mother to support them by showing them that she is able to trust their father and to communicate to the girls that she is confident they are safe in his care. This may take some work, perhaps the therapy that Dr Misch proposes, together with the informal family group conferences proposed as part of the supervision order.

(c) the likely effect on them of any change in their circumstances;

37. S and T have had to cope with very significant changes over the last few years. They have had three new siblings on their mother's side, a number of house moves and school moves before being taken out of school in March 2020 (as were their school friends at that time due to the national lockdown). They have then had to cope with the move to foster care in December, starting school again in January 2021 and the new arrangements for spending time with each of their parents. They have met their little sister on their father's side, and their mother has had another baby.
38. A move to live with their father will be another significant change, and will involve yet another change of school. However, T would be transferring to secondary school in any event and S has only been at her current school since January. It has been a strange and disruptive time for many students, and it is to be anticipated that September 2021 will involve a certain amount of resetting for everybody. If the girls are with their father they are likely to attend the school that [father's partner's] son and older daughter attend which would be a positive as it is well known to [father's partner] and the father.
39. The girls would miss their mother and their younger siblings. However, the proposal is that they would see her and extended members of the maternal family every fortnight and have additional facetime contact with their mother whenever they wanted, as well as some text/WhatsApp communications with their siblings and cousins. It is early days but the hope is that in time contact may eventually progress to a more conventional arrangement whereby they could go and stay weekends with their mother and spend more time in the holidays. However, their mother would have to demonstrate a substantial change in her behaviour, in particular to show the girls that she supports their placement with their father and their relationship with him, and that she can put their needs before her own when she has to.
40. If they were to return to their mother's care they would return to the familiar home of their childhoods, be near their grandparents, and other members of the extended family

again. They would however in my judgement once more be at risk of significant emotional harm as a result of their mother's limitations in parenting, in particular to support their education, their emotional development and to promote their relationship with their father.

(d) their age, sex, background and any characteristics of theirs which the court considers relevant;

41. There is nothing additional to consider under this heading.

(e) any harm which they have suffered or are at risk of suffering; and

(f) how capable each of their parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting their needs;

42. There is no question that the mother loves the girls, as she does all her children. The girls lived in a warm, comfortable home and had nice clothes and toys. They lived close to their grandparents and other members of the maternal family. Their maternal grandmother in particular is a very important person to them. Their mother has some good qualities as a parent. However, I accept the evidence that comes through very strongly from MJ, Dr Misch and the guardian that the mother has limited insight into her daughters' emotional needs and lacks the ability to put her daughters' needs before her own. This has caused the children emotional harm. I have come to this conclusion having taken into account the weight of professional evidence in this case, particularly the parenting assessment, MJ's final evidence and the guardian's reports. In summary:

- For the reasons given in the judgment from 4 September 2020 I found that the mother made false allegations of domestic and sexual abuse to prevent the children having a relationship with their father, that over a period of five years she had acted in a way so as to interfere with the children's relationship with their father, that she does not appear to recognise any value in them having a relationship with the father and as a consequence failed to promote or encourage their relationship;
- The mother has not always been able to put the girls' needs before her own. In the private law proceedings she could not take them to see Dr Misch, citing her own emotional distress. After the girls were placed in foster care it took five weeks for their mother to take up the offer of direct contact with them. MJ says in her statement that the mother seemed preoccupied with wanting her husband to be part of these contacts, to the extent that she lost sight of what her children needed emotionally, which was to see her so that they could feel valued and loved. The mother said her emotional distress at that time meant that she did not feel she could manage video calls, and felt it was best for the girls to receive letters, videos and photos instead. However, MJ reports that these mostly featured the younger children of the family, not their mother, were not personalised for the girls, and did not open any sort of dialogue for the girls to respond. The mother has maintained that the girls enjoyed the letters, but MJ says there is no evidence for that, neither of the girls responded to them. The mother was twenty minutes late to the first direct family time;

- When the girls came into foster care they arrived only in the clothes they were wearing, with no coats and S's shoes were too small. When the girls asked for their own clothes from home, their mother responded to the local authority by saying she would *'take legal advice prior to agreeing handover of belongings (without knowing what it is the girls particularly want as well)'*. MJ raises a concern that the mother was not able to identify that the girls might want some home comforts and enough clothes to be comfortable. Clothes were provided after a week;
- There have been long-standing concerns about the mother's ability to show emotional warmth or physical affection towards the girls and the impact this has had on the girls' emotional presentation. This has been observed in the contact records. In January 2018 the s7 reporter described both S and T as *'extremely quiet'*. When the reporter introduced herself to S she described her as *'very timid and hardly uttered a word for a short time. I felt as though she looked uncomfortable and almost worried to speak. When I asked her child focused questions about her life, she often did not answer but kept my gaze and stayed silent. ... When S did speak it was in a very quiet voice, almost a whisper at times.'* T was said to present in a very similar way. These reports are consistent with Dr Misch's impression of the girls when he first met them, as well as their foster carer, teachers at their previous schools and the guardian. Having spent three hours with the girls on two separate occasions before filing his initial analysis in February, the guardian concluded that the girls both presented as having:

'... very little confidence and low self-esteem. They are not animated in any way and present as having very little emotion. Very occasionally you do see a glint of normality with the girls and it is very rewarding to see them smile. On the whole however S and T present in a way that would suggest to me that their real personalities have been totally suppressed by their experience of living with their mother and their stepfather.'

The guardian likened their presentation to that of people who had been subject to a very controlling environment where they have not been able to develop their own personalities. Since the girls have been in foster care and attending school, there has been very substantial and positive change in their presentation;

- There have been consistent concerns that the girls' need to participate fully in education was limited by their mother's wish to keep them in the small bubble of the home environment, and that their welfare was compromised as a result. The girls had a number of school changes in their mother's care and since March 2020 were home schooled. At that time their stepfather was working full-time and the mother had two very young children to care for at home, while also needing to take extra care for herself during her pregnancy;
- The girls' needs did not always seem to be the priority in the mother's and their stepfather' family, for example it is noted that they shared a bedroom upstairs, spent a lot of time on devices and reported that they were not allowed to play downstairs, whereas their younger siblings had a room each. MJ notes that there was an additional unused room downstairs which could have been used so as to give the girls' separate rooms;

- The mother has been unable to work co-operatively with professionals in her daughters' interests, and at times in these and previous proceedings has denied them access to professionals. Even though there was no reason for them not to be attending school from September onwards, the mother chose not to send them. S missed the crucial first months of secondary school and both girls were working well below their chronological age when they first attended school earlier this year;
 - I agree with MJ's analysis that the mother has not demonstrated any insight into the situation she has created. I found that she had become so focused on not allowing the children to see their father that she had allowed herself to lose sight of their wider emotional needs. There have been a number of times throughout these long proceedings where she has appeared to be so focused on one particular issue that she has lost sight of a bigger picture. For example, at the time these care proceedings were issued, she was expecting her baby, and I agreed to accede to her request to adjourn the application for interim care orders until after Christmas. But her decision not to allow the children to meet with their guardian or the social worker meant that the application had to be listed urgently, just as her baby was due and before Christmas, resulting in the girls' sudden removal;
 - She has not been able to acknowledge any responsibility for her actions. She continues to pick small phrases or sentences from particular documents in support of her assertion that she is not to blame. For example she says the father had been found to have issues with anger management or that the Court 'stopped contact' when that is either not the case or a phrase has been taken out of context. It is right that the section 7 report in January 2018 identified that the father appeared to the reporter to be quite angry but that does not constitute a finding of the Court of domestic abuse. The Court did suspend the contact order on the basis that allegations were made by the mother, and pending a fact-finding hearing, but not on the basis of any findings of fact having been made. The mother did not then pursue those allegations at the fact-finding hearing;
 - In his final report Dr Misch recommends that the mother engages with therapy, but in the short term his assessment is that he has little confidence that the mother would be able to change her attitude towards the father and to promote contact between him, S and T. Although the mother says in her final evidence to the Court that she has done everything in her power to promote contact and that the children would have rebuilt their relationship with their father in her care, the overwhelming weight of the evidence suggests otherwise.
43. The parenting assessment of the father and his partner concludes extremely positively. He is an experienced father and step-parent and has shown great commitment to his daughters throughout this process. All his interactions with the girls during these proceedings have been child-focused, letting them go at their own pace, addressing issues they have raised by providing reassurance, and focusing on making the time they spend together enjoyable and relaxing. I accept the conclusions of the parenting assessment which was comprehensive, balanced and justified by the evidence obtained.

(g) the range of powers available to the court under this Act in the proceedings in question.

44. I have had regard to all the evidence in the case, the factors on the welfare checklist and the parties' positions. I approve the local authority's care plans and will make a child arrangements order providing that the children shall live with their father and [his partner] and that they shall spend time with their mother every fortnight for contact which shall be supervised.
45. I am satisfied that a supervision order is a necessary and proportionate intervention into the children's and their parents' lives in order to provide the support that will undoubtedly be required to help the girls transition to their new home and new schools, to rebuild their relationship with their father and maintain a safe and fulfilling relationship with the maternal side of the family.
46. I agree that progression of contact should be carefully considered and should progress only when there has been a demonstrable change, not just with the passage of time.
47. I do not doubt the maternal grandmother's love and commitment to her granddaughters and recognise her as a very important person in their lives. I have some reservations about her being the person to supervise her daughter's contact with her grandchildren as I have not yet seen any evidence of her really understanding the harm that her grandchildren have suffered in their mother's care. She has and continues to be an enormous support to her daughter, practically and emotionally, and I would worry that this role could cause difficulties if she has to set boundaries around contact that the mother and their stepfather did not agree with. However, I think the proposed way forward of the social worker doing work with maternal grandmother and this being a matter for discussion during the lifetime of the supervision order is a good idea. I think it might also be helpful to think of whether other relatives or third parties might be able to step into this role if the work does not go as hoped with the maternal grandmother.
48. I agree that the children should be able to facetime their mother in a relaxed way to check in with one another, but ultimately there must be an understanding that it is their father and his partner who are setting the rules about use of devices for the girls and it will be for them to manage this. There should not be an expectation that they must make the girls or themselves available at any moment in order to facetime their mother, this contact should be at reasonable levels, I would not think much more than once or twice a week.
49. I agree that the father must also be in charge of communications between the girls and their younger siblings and cousins. I understand that at the moment they are in touch freely with one another via gaming sites – Roblox and Minecraft – and this is free-flowing and working well. The mother would like there to be a designated phone or else to have the girls' phone numbers so that the children could be in touch with one another in a much more free-flowing way. At this time I do not consider this would be a good idea. If Roblox and Minecraft is working reasonably well, then I would not seek to change it. There is a risk that once the phone numbers are shared then managing the frequency and content of those communications would become very difficult. The trouble with a designated phone which has only one purpose is that it often gets switched off or forgotten about and that can cause issues with receiving messages. The children will be able to see their siblings and cousins when they are having contact with their mother. In the circumstances I agree that any additional contact should for now be to a designated email address that the father can receive messages and then decide

when and how best to share them. It has to be recognised that being of secondary school age the girls are likely to take their phones to school and cannot – and should not – be prevented from making decisions about who they contact. But any parent should be able to discuss with their child who they are in touch with, how often, to ask to see what they are receiving and sending on their phone and if necessary, to set some boundaries around that.

Section 91(14)

50. Over the course of these long proceedings there have been a number of applications, some for adjournments, some for permission to appeal, extensions of time, some for directions. Ms Bancroft reminds me that an application for permission to appeal is a party's right to make and should not come within the class of 'repeated applications'. I have set out at length in the fact-finding judgment the chronology which shows a pattern of the mother engaging with the proceedings or with professionals then withdrawing from the process or disagreeing with or finding an issue with something previously agreed to, so that attempts for the children to be reunited with their father were frustrated. This was a part of a much bigger picture that I found led to the children suffering significant emotional harm as a result of their mother's parenting, in particular her inability to promote their relationship with their father. The repeated applications were a part of this but all were made within the existing proceedings, largely when the mother was not represented.
51. A section 91(14) application is not there to punish, but should only be imposed where in all the circumstances the child's welfare requires it.
52. There is no question that these children need a break from litigation, a time to settle into the new arrangements, to their new schools and to understand that they will now be living with their father permanently. They will have a social worker for continued support which is a positive but also represents a significant intrusion to their lives. If another set of proceedings was to be issued it is likely that they would be subject to more involvement from Cafcass and potentially increased involvement from the local authority.
53. The plan under the supervision order is that support will be given to the parents in resolving disputes through the informal family group conferences and with regular contact with the social worker. It would be to the benefit of everybody involved, particularly the children, if all parties placed their trust in this process and did not seek to issue proceedings which is likely to cause additional stress and pressure.
54. Towards the end of the supervision order the local authority may apply to the Court for its extension. If at that time the father was enabled to make a cross-application for a variation in the child arrangements order but the mother could not do so without the Court's permission that would be unfair to her. At that time S will be fourteen and the window for making effective child arrangements orders for her, and for T, would be very narrow. They may perceive it as unfair if there were to be a restriction on the right to apply to the Court.
55. Having regard to all the circumstances, I consider that a section 91(14) order is appropriate in this case, but only for the period of the supervision order i.e. twelve

months from today. I do not find that there has been a history of repeated and unreasonable applications, but nevertheless the facts of this case do in my judgement fall *'outside the commonly encountered need for a time to settle to a regime ordered by the court and the all too common situation where there is animosity between the adults in dispute.'*

56. The children have suffered significant harm as a result of the way their mother has involved them in her dispute with the father. At times she has become so focused on her dispute with him that she has lost sight of their needs. There is a significant risk that this would happen again if she were enabled to apply to the Court without seeking permission first within the next twelve months. I find that without the imposition of a restriction both the children and the father and his partner would be subject to unacceptable strain, as they have been at many times throughout these proceedings. The prejudice to the mother is limited as she herself says she has no intention of applying back to the Court. Part of the intention of the supervision order is to provide a means for the parents to bring any issues or disputes to the informal family group conference meetings, this process could be undermined if applications to Court could easily be made.
57. The s91(14) does not prevent applications for enforcement being made nor does it prevent an application being made at all, just imposes a filter so that the Court's permission has to be sought before it can be issued.
58. Nonetheless it is an interference with the mother's access to justice and after twelve months I consider that all parties should be on an even footing when it comes to making an application to the Court, and given the girls' ages, that there should not be a restriction on making an application to the Court thereafter.

HHJ Joanna Vincent
6 July 2021
Family Court, Oxford

ANNEX 1: FACT-FINDING JUDGMENT (PRIVATE LAW) OF HHJ VINCENT 4
SEPTEMBER 2020

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

Case no.: OX17P00433

IN THE FAMILY COURT SITTING AT OXFORD AND IN THE MATTER OF THE CHILDREN ACT 1989

Date: 4th September 2020

Before: HHJ Vincent

Between:

a father

Applicant

and

(1) a mother

and

(2) S

(3) T

(acting through their Children's Guardian CHARLEY HAMPSHIRE)

Respondents

The Applicant father represented himself
The Respondent mother did not attend the final hearing
Andrew Lorie, instructed by Trueman's solicitors, for the children

Hearing dates: 24th and 25th August and 4th September 2020

JUDGMENT

Introduction

1. I am concerned with two sisters, S who is eleven and just about to start secondary school, and T who is nine, and going into year five at primary school. The applicant is their father and the Respondent is their mother. The parents were in a relationship between 2002 and 2012. After separation the children lived with their mother, but continued to see their father regularly. Over the next few years relations became increasingly strained. The children have not seen their father since summer 2017.
2. The mother has been in a relationship with the stepfather since 2014. They have two children together (a girl, nearly five, and a three year old boy) and they are expecting a baby in December.
3. The father has been in a relationship with his partner, [name redacted], since 2016. She has a daughter who is two years older than S, and they also have a daughter together, aged two.
4. The father issued an application for a child arrangements order in March 2017. The application was resolved by consent in May 2017 at the FHDRA. However the arrangements soon broke down following separate incidents in June and July 2017, following which the father has not seen the children. The father applied to enforce the original order in September 2017. The respondent mother cross-applied to vary the child arrangements order, and sought a prohibited steps order.
5. This second set of proceedings has been marked by a large number of hearings, significant delay and very little progress. The parents have largely been unrepresented. The father has filed four witness statements and eleven position statements (the first three drafted by lawyers, the rest by him and endorsed with a statement of truth). The mother has filed seven witness statements and ten position statements (three prepared on her behalf by others, the rest by her and endorsed with a statement of truth). This is the first time that the Court has been presented with the task of assessing the evidence and coming to conclusions in respect of the allegations made by the parents. The purpose of the exercise is for the Court, parties and relevant professionals to have a clear understanding of the facts. Having established the facts, and having the benefit of professional opinion, as well as proposals from the parties, the Court should then be able to resolve the wider issues between the parents in respect of what, if any, orders should be made to meet the girls' welfare needs.
6. In the weeks leading up to this fact-finding hearing the mother made a number of requests and applications seeking an adjournment. I allowed the first request for an adjournment of the fact-finding hearing initially listed in June, but have refused any further adjournments. A note of the ex tempore judgment I gave when refusing the most recent application is annexed to this judgment. The Respondent chose thereafter not to attend the fact-finding hearing, which was conducted remotely via Cloud Video Platform (CVP).
7. The father represented himself, and the children, through their guardian Charley Hampshire, were represented by Mr Lorie.

Chronology of significant events

8. Mr Lorie has prepared a chronology which I have relied on in order to set out the long history of these proceedings.

2012	Parents separate. S is nearly 4, T is nearly 2;
2014	Mother and the stepfather in a relationship, living together from January 2015;
Sept 2015	[mother and stepfather's first child] born;
March 2017	Father applies for child arrangements order and leave to take children on holiday to [<i>country name redacted</i>]. At the time he states children are staying with him every Friday and seeing him after school on Wednesdays. He applies to have the children from school pick up and to spend a week with them in Easter, summer and Christmas holidays;
April 2017	Mother opposes the application and alleges children at risk of harm from father. She alleges there have been difficulties in making arrangements, particularly over the previous 18 months. She says father has caused emotional harm because he gets angry and frustrated and T does not want to go to contact;
2 May 2017	Both parties represented at FHDRA before magistrates. Child arrangements order agreed broadly in line with father's application. Parties directed to attend SPIPs;
June 2017	[mother and stepfather's second child] born;
16 June 2017	Police report of incident at handover. T did not wish to go to contact. Parents have different versions of events. Contact with T stops shortly thereafter;
5 July 2017	Father attends school to collect S. Mother alleges this is in breach of agreement. Father says mother wrongly accused him of abduction and involved school. Father has not seen S since this date;
Sep 2017	Father issues application for enforcement of 2 May 2017 order;
Oct 2017	Mother issues application to vary contact order and for prohibited steps order. Mother alleges physical, emotional and psychological harm to the children and emotional and psychological harm to herself. Alleges father verbally abused her 2007 to 2012, father's partner's daughter has hit S, that both girls distressed at idea of contact and T has consistently refused to see her father sometimes for long monthly periods.
Oct 2017	FHDRA before lay magistrates. Both parties represented by solicitors. Cafcass s7 report directed, police and school disclosure. Father to undertake anger management course and confirm mental health via GP. Father gives undertaking not to remove children from mother's/school's care without her agreement.
3 Nov 2017	Letter from father's GP confirming he has no record of mental health problems

- Jan 2018 Cafcass report by JH. Recommends indirect contact and father to attend anger management course and parenting course
- March 2018 DRA before lay magistrates. Both parties represented by counsel. Directions for final hearing in June 2018.
- May 2018 Father and his partner's daughter [*name redacted*] born;
- May 2018 Mother sends letter to father informing him of change of schools but he says (at hearing on 8 June 2018) letter never received
- 8 June 2018 Final hearing before magistrates. Both parties represented by counsel. Cafcass officer gives evidence. Changes her recommendation to parties being referred to Cafcass Positive Parenting Programme ('Triple P'). Parents agree to Guardian appointed for that purpose, to report by 24 Sep 2018. Mother has not attended SPIP but agrees to attend. Father has done SPIP and agrees to attend parenting course. Both parties agree to do 'Getting it Right for Children programme' online.
- July 2018 Mother applies for permission to appeal against consent order agreeing to Positive Parenting Programme
- 7 Sep 2018 Appeal hearing before HHJ Vincent. Father represented by counsel, mother's partner assisting as McKenzie friend. Appeal dismissed. Case reallocated to District Judge
- 26 Sep 2018 Charley Hampshire (guardian) report. Mother not willing to participate in PPP. CH recommends guardian should be discharged, as appointed for the purpose of carrying out PPP
- Nov 2018 DJ Buckley-Clarke directions. Father represented by counsel, mother in person assisted by the stepfather as McKenzie Friend. Guardian still appointed, parties to file statements, list for final hearing in March 2019
- Feb 2019 Charley Hampshire report. Recommends adjourning final hearing for three months to allow Child Contact Intervention (CCI) to take place. Father to attend anger management course. Mother and the stepfather to encourage children to engage with CCI. Mother still to complete SPIP
- 16 Mar 2019 Father attends intensive anger management course with Citizen Coaching
- 20 Mar 2019 DJ Buckley-Clarke. Father attends in person. Mother does not attend (family commitment). Mother still to attend SPIP. Parties agree to CCI. Final hearing vacated. Guardian to file updating report by 1 July 2019
- 16 April 2019 Mother attends SPIP
- 9 May 2019 Guardian applies to instruct psychologist. CCI has not taken place beyond the first session. Father reported difficulties arranging dates as he cared for his daughter while his partner worked two weekends a month. Mother reported girls very distressed by attending first session.
- 22 May 2019 DJ Buckley-Clarke. Father in person. Mother attends in person assisted by the stepfather as a McKenzie Friend. It is recorded that:
- Mother's request for a separate finding of fact hearing refused;

- Mother agrees that father is part of the children’s lives and the importance of them having a positive relationship with both parents where possible;
 - M states that the CCI and court proceedings were having a detrimental effect on the children and she has taken them to the GP for help and advice and a referral to CAMHS;
 - Court grants guardian’s application for psychologist;
 - F has attended anger management and parenting courses;
 - The CCI order is suspended pending the outcome of the psychological assessment.
- 7 June 2019 Mother seeks permission to appeal re instruction psychologist
- 12 June 2019 HHJ Owens permission to appeal on paper refused
- 17 June 2019 HHJ Owens list oral hearing re permission to appeal out of time
- 26 June 2019 HHJ Owens – mother represented by counsel. Permission to appeal out of time granted
- 14 Oct 2019 HHJ Lloyd Jones – permission to appeal granted
- 9 Jan 2020 HHJ Owens – mother in person assisted by the stepfather as McKenzie friend. Father in person, guardian represented. Appeal dismissed, re-allocate to Circuit Judge level, list for further directions.
- 20 Jan 2020 HHJ Owens. Father in person. Mother in person assisted by professional McKenzie Friend, Mr D, granted rights of audience for hearing. Mother and the stepfather confirm they will not participate in expert assessment. Court warns that adverse inference may be drawn and that Court has power to make order for change of residence of its own motion. Order:
- Dr Peter Misch instructed to carry out a psychiatric assessment of father and the children, and a paper assessment of mother and the stepfather by 13 March;
 - Mother to co-operate with the children being part of the assessment.
 - Oxfordshire children’s services to file and serve s37 report by 27 March;
- 27 Jan 2020 The stepfather contacts guardian with summary of concerns mother wishes to be placed before expert, including allegations of sexual abuse
- 27 Jan 2020 Police log regarding allegations of sexual abuse referred by the NSPCC. Police public protection referral form completed. The NSPCC referral states that the referrer *‘raised concerns for three children, aged 19 months, 13 years and 17 years old, around sexual and emotional abuse and domestic violence. A separate referral has been shared with Oxfordshire Children’s Services and Police in relation to father two children from a previous relationship.’* The referrer *‘was step-father to children in Oxfordshire aged 9 years and 11 years old...’*. The referrer says that on 25.1.20 mother told him that from the age of 16 she was raped multiple times by father, the step-father noticed redness around the vaginal area when bathing the youngest child.
- 27 Jan 2020 Police visit to father’s home

- 30 Jan 2020 Guardian applies for further directions concerning proper way in which mother and the stepfather should present evidence they wish expert to take into account
- 3 Feb 2020 Social services visit father and partner to do welfare check. Case closed on 10 Feb 2020
- 5 Feb 2020 HHJ Owens. Father in person. Mother does not attend but position statement – doesn't oppose guardian's application. Mother to file statement in respect of allegations. Father to respond. Statements to be provided to Dr Misch. Parents subsequently file statements.
- 24 Feb 2020 Dr Misch emails guardian: cannot complete report without fact finding
- 25 Feb 2020 Mother emails Dr Misch directly expressing concerns that S very distressed and T demonstrated sexualised behaviour following first telephone with father
- 9 Mar 2020 HHJ Owens. Father in person. Mother does not attend. Recitals based on witness statements filed identify issues of fact. Directions to fact find in June.
- 21 May 2020 HHJ Vincent. Remote hearing. Father in person. Mother in person with the stepfather and Mr D as McKenzie friend. Order:
Having regard to mother's and the stepfather's difficulties with childcare for the fact finding hearing, noting mother shielding due to pregnancy, and mother agreeing to a hearing in August on alternate days, fact finding hearing adjourned.
- 2 June 2020 Email from Oxfordshire County Council. Local authority unable to complete the s37 report as mother has refused to engage. She has told social worker through Mr D that she does not want any involvement with the local authority until after the fact-finding hearing.
- 5 June 2020 HHJ Vincent. Remote hearing. Father in person. Mother in person assisted by Mr D. Mother's application to adjourn fact finding on 24 August refused. Arrangements for supplying written questions to the Court in advance. Final hearing listed across five days from 24 August to enable mother to have sufficient rest. OCC to file and serve section 37 report by 31 July 2020, parties to co-operate.
- 30 June 2020 Father's application (without notice) for urgent directions. He believes mother is planning to move to Spain. Provides evidence of mother's house for sale on Rightmove and Instagram screenshots from '[*account name redacted*]' suggesting offer accepted and property purchased in [Spain].
- 7 July 2020 Email from Mr D purportedly on behalf of mother requesting adjournment due to mother's pregnancy, '*The Court would be held responsible for any complications before and during the child's birth which the mother wishes to avoid.*' Letter from general practitioner expresses disappointment that hearing has not been suspended, mother is finding the process exhausting, is not sleeping well and is unable to enjoy the pregnancy due to the stress of family court.

- 10 July 2020 Email from Mr D to the Court, *'It is incredulous that this Court deems it appropriate to take medical matters in to hand...'* and *'Given the harm reported to my litigant friend who has already passed out several times, I am in shock that this Court allows matters to proceed... Please rest assured that I shall hang my head on reporting this grave disrespect nationally irrespective of Hearings 'in camera'. That burden shall fall on me personally as a McKenzie Friend.'* ... *'Quite simply, my client will not be available for the hearing on 24th August 2020. I shall be. No cross examination shall take place with my client.'*
- 13 July 2020 HHJ Vincent Order (on papers):
- Mother to deliver passports to children's solicitor within 24 hours;
 - Mother not to remove children from schools or the UK or allow to be known by different name;
 - Father's application to be considered at on notice hearing on 17 July
- 17 July 2020 HHJ Vincent (s9). Remote hearing. Both parties attend in person. Mother undertakes to the court that neither child has a current UK passport, that there is no live application for a passport and she will not apply for passports for the children.
- Recitals:
- separate disclosure order to UK Passport Agency to confirm information;
 - fact finding hearing remains listed and the court may proceed in a party's absence;
 - The court has considered the emails sent by Mr D dated 7th and 10th July 2020 and expressed concern that he has misunderstood the role of a McKenzie Friend. He does not have rights of audience nor the ability to act as mother's agent. He must not breach his duty of confidentiality by publishing anything relating to these proceedings which remain confidential.
- Orders:
- Mother must not remove the children from the jurisdiction, remove from current schools or allow to be known by another surname;
 - Port alert orders;
 - Order to UK Passport agency.
- 15 July 2020 Oxfordshire Child & Family Assessment. OCC reports it has been unable to engage mother or gain access to the children save for a virtual visit and that mother and step-father have been evasive with professionals. Girls' schools have expressed concerns about the girls' emotional presentation and that a number of school and house moves has impacted on their ability to make friends. Recommendation for s37 to be progressed and for a Child in Need Plan.
- 29 July 2020 OCC email to Court requesting extension for filing section 37
- 31 July 2020 Mother's application for adjournment of fact finding hearing until after birth of her child. Further letter from GP dated 20 July 2020:
- '[The mother] has some bleeding and cramping pain today following her attendance at court. There is a risk of miscarriage and it is*

imperative that she rests. The mother therefore cannot attend court for the foreseeable future to maintain the health and welfare of the mother and her unborn child.'

- 5 Aug 2020 Application for adjournment issued
- 10 Aug 2020 HHJ Vincent. Fact finding hearing remains listed. Mother's application to adjourn shall be dealt with on start of first day. If application to adjourn succeeds, then Court will immediately hold directions hearing to re-timetable. If application refused, Court will proceed with fact find.
- 12 Aug 2020 HHJ Hughes (s9) renews port alert orders
- 19 Aug 2020 Mother files questions for father for final hearing. She asserts that she personally is not making any allegations, they have been made by the NSPCC. She does not have any questions for the father. She has advised the Court of *'more general behaviours but is not qualified to what they may or may not indicate'*
- 19 Aug 2020 Father lodges questions for mother, the stepfather and maternal grandmother
- 24 Aug 2020 First day of fact find. Mother does not attend but sends in further statement. Application for adjournment refused. Start of trial postponed to next day to enable mother to participate. Note of judgment and order drawn up that afternoon to serve on mother.
- 25 Aug 2020 Mother and the stepfather file further statements confirming non-attendance at hearing

Background to, and terms of reference of, the fact-finding hearing

9. The parties saw HHJ Owens on 20 January 2020. At that time the mother's appeal had been dismissed against an order directing an assessment of the children, father and mother and her partner. The initial expert was no longer available and so the direction was for Dr Misch, consultant psychiatrist, to be instructed. He was to report by 13 March 2020. HHJ Owens also directed that the local authority file and serve a section 37 report by 27 March 2020. The matter was listed for a further case management hearing on 15 April 2020.
10. The mother informed the Court that she and her partner would not participate in the expert assessment and was warned by the Court as to the adverse inference that may be drawn as a result.
11. On 27 January 2020 the guardian received a phone call from the mother's partner, the stepfather. Her note is as follows:

'The stepfather called CG today – he said that over the weekend the mother had disclosed to him that the father had sexually assaulted her in some way in the past, but did not give any more details about this other than she had said they had both been under the influence of alcohol at the time and it was when she was around 16/17 years old (The father is 2½ years older than her, so would have been 18/19). The mother doesn't want to formally make any allegations about this or discuss with anyone

further. He says she is worried that if she raises any further allegations she will just be accused of parental alienation.

However, the stepfather went on to say that this got him thinking about why the children had been so adamant that they didn't want to see the father when they were small and he remembers sometimes the area around their genitals was a bit 'red in the bath' after coming back from the father's. He also said that one of the girls sometimes 'humped the floor' sometimes when they were small, but he did not describe any particular sexualised language or behaviour when I asked. The girls have never disclosed any sexual abuse and this isn't something that's come up before.

He said that he'd called the NSPCC over the weekend to seek advice and they had told him to tell CG.

CG said that the NSPCC would pass on the information to the LA and the SW doing the s37 should be made aware of all of this when they do their assessment, but there was no information there that would lead CG to have any immediate concerns for S or T, or indeed the third party children that live in the father's home now.

The stepfather is worried that the mother buries traumatic memories and won't talk about them. CG has given him the details of some domestic abuse services to pass on to the mother for support if she wishes to access them.'

12. As a result of the stepfather's call to the NSPCC a referral was made to the police.
13. The children's guardian applied to the Court for further directions. The application sought for the Court to direct that any allegations made should be formally set out in evidence. The mother did not attend the hearing on 5 February 2020 but filed a position statement in which she consented to the application. She was ordered to file and serve a formal statement in relations to the allegations raised and the father to respond. The statements were to be sent to Dr Misch.
14. The mother filed a statement dated 10 February 2020. She describes a conversation she had with her husband on 20 January 2020, after the hearing that day, about her relationship with the father. She says she noticed redness on T's vagina from around 2015 when she or her husband were giving her a bath. She describes that between 2015 and 2018 was 'witnessed' (she does not say by who), rubbing her genital area on the carpet and would demonstrate 'similar behaviours' with a favourite soft toy crab. She says she discussed this at the time with her husband and her mother and they thought about taking T to the GP but never did. She then describes how she and her husband decided to make a referral to the NSPCC, then a week later reported this to the guardian. She says she gave an initial statement to the police following the referral by the NSPCC. She says, *'I did not report the matter to the police, this was undertaken by the NSPCC.'* She describes showing the girls the 'PANTS' video, as recommended by the NSPCC. She says it is a video to protect girls from '*relevant dangers*'. She suggests that T became hot and flushed and asked to leave the room three times. She then remarks that when they went to see her parents that evening, T took the crab toy with her, which she considered to be concerning behaviour. Having said all this, she concludes by saying that *'I do not make any new allegations against the father. T's actions and the vaginal redness may be completely unrelated to the abuse which I have already made known to*

the Court. As advised by the NSPCC I made the concerns known to Ms Hampshire and make this statement in accordance with Mr Trueman's [guardian's solicitor] belief that the information herein should be passed to the expert.'

15. Exhibited to the statement are two short text message chains apparently between the mother and maternal grandmother, one from 8 February 2016 when mother texts that T had wet herself in the night, she was struggling to get her to eat, and '*she was fine till she went to his*'. A couple of lines down the conversation she says that T was '*a bit funny at dinner time again .. and this afternoon in the car .. quite clingy again tonight.*' The second chain of messages is 6 May 2017, mother reports that T was not herself, and clingy. Mother says, '*whatever happened last night seems to have affected her.*' Her mother advised, '*gently question her ... if she doesn't say maybe S will?*'
16. Father sent a statement in response, denying that there had ever been any abuse in the relationship between him and the children's mother, and setting out his concerns about the contents of the mother's witness statement. He accuses her of making serious accusations against him, but not wanting to take responsibility for them. He states that the accusations are false.
17. The statements were sent to Dr Misch who informed the guardian's solicitor by email on 24 February 2020 that he was unable to complete his report until there had been a finding of fact hearing in respect of the allegations.
18. A day later the mother sent an email directly to Dr Misch, setting out her factual account of the first phone call the children had with their father in three years and suggesting that S had been sobbing uncontrollably and that about an hour and a half after the contact she had discovered T lying face down on the carpet and rubbing her genital area on it. She wrote that she had not been aware of this behaviour having taken place '*in the past 18 months or so*'.
19. HHJ Owens saw the parties on 9 March 2020. The mother did not attend but sent in another detailed position statement in which she said she had shared the behaviour of the children with the Court, Cafcass and all parties because she was concerned about it. She goes on to say, '*naturally, I held suspicions over this behaviour and sought advice from the NSPCC. I have not made any allegations as I do not believe I am qualified to do so. I understand there is an ongoing police investigation as a result of the referral made to them by the NSPCC after my initial phone call for advice.*' She goes on to say that she does not consider herself to be in a position to make allegations to the Court for the purpose of a fact finding hearing, '*until the outcome of that police investigation is known along with the information held therein. Should either party feel it helpful to T and S to determine any findings, I will of course attend and assist in any way I am able to.*' She concludes by saying that contact has been going well and has progressed to include phone calls although she then says that while T has reacted positively, S has seemed particularly withdrawn and upset.
20. HHJ Owens considered the statements filed, the mother's position statement and then set out the terms of reference for the fact-finding hearing as follows:

Issues:

5. For the Court to determine whether the father has sexually abused his daughter, whether the mother has made up allegations to prevent the children having a relationship with their father, whether the mother has pursued allegations which are not true, believing them to be true as a result of anxieties she has concerning the father having a relationship with his daughters.

6. The respondent mother has indicated in a statement to the Court dated 10 February 2020 that from 2015 [T] developed redness on her vagina intermittently, that between 2015 and 2018 she rubbed her genital area on the floor and a pink cuddly toy and that this behaviour coincided with T refusing to see the applicant father, the respondent reported this to the NSPCC and the NSPCC reported the matter to the police, this taking place between 20 and 28 January 2020, on the 28 January 2020 the respondent states that the NSPCC advised her to show her daughters the PANTS video.

OTHER RECITALS

7. Upon the Court confirming that in order to consider any allegations, they must be made by a party and that party has the burden of proving the fact alleged on the balance of probabilities, and that if a fact alleged is not proven or not pursued, the Court will make decisions on the basis that the alleged incident did not happen. To be clear, if the respondent mother seeks to make an allegation that either child has been sexually abused by the father, and for the Court to take it into account in making decisions in relation to the children's future, she must prove that fact on the balance of probabilities but if it is not so proven or she does not pursue it, the Court will proceed to make decisions on the basis that no sexual abuse occurred.

8. UPON the applicant father confirming that he alleges that the respondent mother has made false allegations of domestic abuse and sexual abuse in an attempt to prevent him having a relationship with his daughters.

9. UPON the father and children's guardian understanding that the police are taking no further action in relation to the mother's allegation of sexual abuse by the father.

10. UPON it being acknowledged that the parents' conflict at the handover for contact on 16 June 2017 reflected that the adults were not behaving in the manner conducive to the children's welfare and the father's decision to collect S from school the following week was not as child-focused as he would have liked, the Court considering there was no need for a fact finding in relation to those issues.

11. UPON the mother repeatedly stating that she was not relying upon these incidents in relation to decision making about the girls' contact with their father, the Court will be considering allegations of sexual abuse against the father made by the mother appearing in the mother's statement at C276 paragraph 3, C277 paragraphs 5 and 6 and C276 paragraphs 12, 13 and 14, and the father's allegations of the mother alienating the children from their father.

21. The case was listed for the fact-finding hearing before me in June. The parents were directed to file further statements, the father 'to set out the evidence upon which he relies in relation to his case that the mother has put forward false allegations in her statements and position statements to alienate his children from him and to prevent him having a relationship with them', the mother to file a statement of evidence in response. The mother was also permitted to file and serve a statement from her mother in respect of the allegations of sexual abuse.

22. The burden of proof is on the person making the allegations to substantiate them. The standard of proof is a balance of probabilities; disputed allegations only become proven facts if it is more probable than not that they occurred.
23. Findings of fact must be based on the evidence (including inferences that can properly be drawn from the evidence), and not suspicion or speculation.
24. I must take account of all the evidence and each piece of evidence in the context of all other evidence:

'Evidence cannot be evaluated and assessed in separate compartments. A judge in these difficult cases must have regard to the relevance of each piece of evidence and exercise a totality of the evidence to come to the conclusion of whether the case put forward by the local authority has been made out to the appropriate standard of proof.'

(Re T [2003] EWCA Civ 558 at para 33, per Butler-Sloss P.)

25. When considering the evidence of the witnesses I must take care to identify those parts of their evidence which is part of their direct recollection, and those parts of their evidence where they are reporting what someone else has said, and to assess the relative weight of such evidence accordingly.
26. I remind myself of the direction that, in a criminal case, would be called the 'Lucas' direction because it is based on the case of R v Lucas [1981] QB 720. If proved that a person has lied, the Court must analyse the relevance of the lie to the issues in the case. A lie may be in relation to an issue that has no relevance to the real issues before the court. Lies may be told for many reasons. A person may lie out of a sense of shame, misplaced loyalty, humiliation, embarrassment, panic, fear, confusion, emotional pressure, a desire to conceal other misconduct or for many other reasons.
27. The evidence of the parents is very important and the Court must be able to form a clear assessment of their credibility and reliability. I further remind myself that credibility alone cannot decide this case and that, if a court concludes that a witness has lied about one matter, it does not follow that he or she has lied about everything.
28. Any findings of fact are for the Court to make based on the evidence before it. No weight should be given to the opinions of others about the credibility of a particular witness.
29. The Guardian is independent of the parties, but this does not mean that she is neutral, and should have only a passive or bystander role in the fact-finding process. Mr Lorie on behalf of the guardian referred me to the case of Cumbria CC v KW [2016] EWHC 26 (Fam), Hayden J said at paragraph 58:

'I record that the Guardian thought it appropriate not to advance any submissions on the findings sought by the Local Authority. This is a widespread practice which I would, for my part, strongly deprecate, in most cases. The importance of strong, intellectually rigorous representation on behalf of the child's lawyer and his Guardian, has been emphasised regularly see GW and PW v Oldham MBC [2005] EWCA CIV1247; Re U (A Child) [2005] 2 FLR 444; Islington LBC v Al-Alas and Rway [2012] 2 FLR 1239. These principles apply just as vigorously, in my judgement, to the fact-finding process.'

A position of neutrality motivated solely by desire to be independent and objective in the eyes of the parents loses sight of the primary professional obligation to the child. I am aware that others take a different view.'

30. Hayden J refers above to the Court of Appeal case of GW and PW v Oldham MBC in which Wall J stated the following at paragraph 48:

'As I made clear in Re CB and JB (Care Proceedings: Guidelines)[1998] 2 FLR 211, 229-230, the relationship between the guardian and her solicitor needs to be intellectually rigorous, and in my judgement it is for the guardian and the solicitor he or she has instructed carefully to examine the factual sub-stratum of the case, and to advise the judge what evidence is required to enable the judge to reach a just conclusion.'

Evidence

31. I have read all the documents in the bundle. In particular I have focused on all the witness statements and position statements filed by the mother, including those she emailed to the Court on the first and second day of the hearing, and all the witness statements and position statements filed by the father. Exhibited to many of the statements are extracts of text conversations, emails, social media posts and photographs. I have read all the applications and Court orders. I have read the witness statements of mother's partner, father's partner, maternal grandmother and paternal grandmother. I have seen correspondence between the parties, some letters from lawyers and some documents relating to meetings with the girls' schools and some exercises done with them around their wishes and feelings. I have read all previous Cafcass reports and the police disclosure.
32. HHJ Owens had previously directed in accordance with practice direction 12J that the parties should lodge with the Court in advance any questions that they wished to put to one another.
33. The father had prepared lists of questions for the mother, the stepfather and the maternal grandmother. In the event, none of these witnesses attended Court. The stepfather stated the reason he was not attending to give evidence was in order to support his wife. It is assumed the maternal grandmother did not attend for the same reason.
34. The mother had submitted a statement on 19 August 2020 in which she said that she did not intend to put any questions to the father at the final hearing, because she did not regard herself as making any allegations against him.
35. I heard oral evidence from the father. He was cross-examined by Mr Lorie on behalf of the guardian. Using the schedule of questions provided by the father as a starting point, Mr Lorie asked the father to explain to the Court the reasons for making the allegations that he did and what in particular it was that he had wished to challenge in cross-examination of the mother and her witnesses had they attended the hearing.
36. The father gave his evidence clearly and calmly. He did not seek to make any personal attacks against the mother or her partner, and did not try to guess at her motivation, but he was absolutely clear, that he believes the mother is completely opposed to the idea

of her daughters spending any time with him. He said that all her actions over these proceedings had the effect of causing delay and from obstructing him from spending time with his children. He strongly denied that he had sexually abused either the mother or either of his children. He denied that he was or had ever been a violent or aggressive person, and said that he had never smashed any of the girls toys or caused any damage to property or shouted at the children. He said that he and the children's mother had had arguments and both of them may have shouted and raised their voices to one another. He told me that after separation he would drop the girls off and they would run upstairs and if he wanted to ask something of the mother it inevitably ended in an argument, he said because she wanted things to be *'her way or the highway'*.

37. He did attend an intensive anger management course and has attended a parenting course in the hope of progressing matters within these proceedings, but he does not accept that there is any basis for the mother to have suggested he has historically had any difficulty managing his emotions or that he has been aggressive or shown any sort of tendency to violence.
38. He said that after their separation he felt that it was the mother who made the decisions about when he was allowed to see the children and he went along with what she said because he was frightened that if he didn't keep her happy, she would get angry with him and not let him see them at all.
39. As an example he said that initially the parents had agreed that he would have the children on Christmas Eve, and they would spend Christmas day with their mother. His own mother is German and so it made sense for them to share German Christmas as a family together. However, he said that after a couple of years the mother said that she no longer wanted the children to spend Christmas Eve with him. He exhibited to his statement a text message exchange in which the mother said, *'it is important to remember the girls are English and Christmas day to them is the 25th December and not to spoil the magic of Christmas day and not to tell them Santa comes a day early'*. He said that he had only once been allowed by her to take the girls for a holiday. His mother gave evidence consistent with what he said, that this holiday to Weymouth had been planned months in advance, with family from Germany to come over and accommodation booked for a week. Shortly before the holiday the mother changed her mind and said the children couldn't come, but eventually relented and said that they could spend two or three days away, but when they were away, she insisted he brought them back on the Saturday not the Sunday as he said had been arranged.
40. The father said that he had hoped to be able to take the children on further holidays, particularly to Germany, but the mother had never agreed. He reported that S had said to him their mother had told them flying was dangerous and that Germany was dangerous.
41. Over the years they would have disagreements about changing the arrangements; his sense was that if the children missed an arranged time to see him because either he or the mother had something else on, she would not suggest an alternative, he had to wait until the next time contact was planned. He said that she interfered with his relationship with the children, for example if he had tickets to see them in a school play, she pulled them out of the school when she realised he was going to be there.

42. The father's evidence was that the mother made significant decisions about the children without reference to him. In 2017 they were pupils at the same local primary school in [place name redacted]. The mother said she had emailed the father in May 2018 to tell him they were moving school. On 19 June 2019 the father says the mother sent him an email telling him the girls were moving to [name redacted] primary school in [place name redacted]. In March 2020 the father discovered that the children were in fact at separate primary schools. While there may have been good reasons for these moves - the father understands the mother has moved house quite frequently over the past few years - it is his case that these significant decisions about the girls' education should have been made jointly with him.
43. Within his statements the father notes that T did become quite clingy and expressed some reluctance to see him when her mother was pregnant in 2015 and this seemed to be the case again in the months leading up to the birth of her son in June 2017.
44. The father has been in a relationship with his partner since around March 2016. She lives in [place name redacted]. For a few years he would either go down to [place name redacted] or she and her older daughter would come up to Oxfordshire to spend time with him. Their daughter was born in May 2018. His house was on the market in 2018 and he was spending most of his time in [place name redacted] but coming back to Oxfordshire occasionally for appointments to do with the house. Since his house sold in February 2019 he has been living in [place name redacted] with his partner full-time.
45. The father told me that he felt the mother had persistently failed to support the children in their relationship with him. He said she had suggested to them that having contact with him was like having to go to school; a thing they had to do, rather than spending time with their father who loved them and cared for them. There is evidence that the girls were already feeling conflicted in 2017. In work done with a school teacher in April 2017, T wrote that what made her happy included going to school, 'going to daddy's', as well as being with her sister [name redacted] at home and her cousin [name redacted]'s house. She wrote that what made her sad was, 'mummy asks if daddy is mean and he hasn't done anything wrong', and 'I might not be able to go on holiday with my dad, mummy won't let us.' S completed the 'three houses exercise'. She identified good things as seeing friends, learning at school, playing with her little sister, and 'dad playing games with us'. In the dreams house, she wrote, 'going on holiday with my dad, I could stay with my dad for more than 2 days, for dad to pick up from school so I have more time but I would miss [my little sister] a little bit, for everyone to say sorry to each other.' In the house of worries, she said, 'worry about [my little sister] when I'm at dad's, all of them arguing, worried that I won't be able to go on holiday.'
46. The father has been having email exchanges with the girls since January and for the past couple of months has been having video calls. I have seen the emails and I was impressed by the way the father has engaged with his daughters after such a long break. The emails are child-focused, short, fun, kind and loving without putting any emotional pressure on the girls. He asks about their interests and responds positively to what they say. The girls appear to be engaging well, talking about what they have been doing, meals they have had, asking him questions, telling him fun facts or stories or jokes. For example:

Hi [REDACTED]

Wow your going to the beach 🏖️
What are you going to do at the beach
Today? 🍷🍷🍷🍷🍷
Mmmm! Your dinner sounds nice I love jacket
Potatoes with cheese! 🍷🍷🍷
I've finished painting where they sell the tickets at
[REDACTED] station, I'm now having a few days off work
Yay! 🎉🎉🎉

Have a lovely day at the beach! 🏖️

Love you loads

Daddy

♥♥♥🍷🍷🍷

Hello Daddy
We had a little friend come over to our house tonight It was green and silmy and jumps high can you guess what it is? 🐸
🐸???
He kept trying to get in the door and [REDACTED] thought it was a crocodile. 🐸🐸🐸🐸
Can you send me some photos of the aquarium?
I like doing art in school. 🎨🎨🎨
I haven't been very well. I had a bad tummy but I am feeling better now.
what are you doing this weekend? 🎨🎨🎨
From [REDACTED] 🍷🍷

47. The father told me that the face time calls were a little stilted at first and that S has still chosen not to be on screen. She sits next to her sister and often plays Minecraft on her phone. The father told me that to get the conversation past yes and no with T, he thought of things to do to get her more involved. He thought up little quizzes to do with her which she loved, and they tell jokes to each other. S has chosen not to speak to him directly but passes messages to T and asks her to show her dad what she is doing on the Minecraft app.
48. I heard oral evidence from the father's partner and from his mother. The evidence they gave was consistent with the contents of their witness statements, and was also consistent with the father's evidence. They were cross-examined briefly by Mr Lorie. [Father's partner], who was at school with the mother, said that the girls got on well with her daughter and with her. She felt the mother and father did have quite a few arguments around timings and making arrangements to see the girls at around the start of their relationship in March 2016, and she felt that it was the mother who was causing the difficulties.
49. The maternal grandmother told me that after the parents first separated she saw more of the girls than she had done when the parents were together. She said the father would bring them round to see her on a Sunday morning, and that he would take the girls to the park, or to swimming pools or soft play centres. However, it was her impression that the mother was generally resistant to the father seeing his children and that the mother's approach was that it was her decision whether or not to allow the father to spend time with his children.
50. It is not surprising that the father's partner and his mother would support him, but their evidence still carries weight. The evidence they gave was consistent with their written statements, and with the father's evidence. I thought they were doing their best to assist

me with their recollection of the facts without emotion or any form of personal attack on the mother. They confined their evidence to matters within their own knowledge and did not speculate about things they did not know about. Both their statements were filed in February 2019.

51. The father sets out in detail in his witness statement his allegations that the mother has sought to alienate the children from him. He explains the ways in which he feels he has been excluded from his daughters' lives, and the history of events that has led him to the conclusion over the years that the children's mother does not wish her children to have a relationship with him. He has exhibited to his statement text messages, emails and other correspondence, starting with text messages in August 2015 about the holiday to Weymouth. The father had brought them home on the Saturday evening, the mother says this is what had been agreed, the father says no, the dates had previously been agreed but that he had dropped them off as the mother asked only because he wanted to see his children in the future. In the course of this text conversation the mother says *'I am very fair and let you have the girls twice a week'*, and a few texts later, *'this will be the last time you have the girls any longer than the arranged time if you don't bring them home tonight ...'*. This exchange is consistent with the father's description of him feeling he had to do things the mother's way or else she would not let him have the children at all.
52. I found the father to have been a reliable witness. His recollection of conversations or particular events was consistent with the documentary evidence he submitted, and the evidence of his witnesses. When he did not remember a particular detail, for example dates and timings, he did not try and fill in any gaps, I was satisfied he was doing his best to give me an accurate account of events.
53. The mother was invited to file a witness statement in response to the father's allegations that she has sought to prevent him from having contact with the girls. The mother's statement dated 6 April 2020 is brief. She asserts that *'alienation is not a characteristic in this matter'* and highlights proposals she says she has made at different times in order to promote contact between the girls and their father. She refers to the contact order to which she agreed in May 2017, which provided for the father to collect the girls from school, but asserts that the Court decided this was an attempt by the father to manipulate S and T and that it was the Court that subsequently ceased contact.
54. I have not seen any evidence of a finding to that effect by any magistrate or judge who has had a hearing in this case.
55. The most significant thing about the mother's statement is what it does not say. She does not challenge any of the facts set out in the father's evidence, the father's partner nor his mother's evidence. This statement was specifically directed to respond to the father's allegations that she has sought to alienate the children from him. She refers to a number of emails, meetings or conversations between her and the father in which she suggests that she has put forward proposals for contact over the years. She does not suggest either that her daughters do not wish to see their father, or that she regards him as posing any kind of threat to her, or her children. She does not provide any reason why she says the children have not seen their father for so long. In response to the father's lengthy statement, she simply does not engage.

56. I must have regard not just to the witness statements but to the totality of the evidence. I have read a vast number of text message exchanges and emails. I have considered police reports. Both parties accept that at handover in June 2017 the adults present did not act in a way that was conducive to the children's welfare. The father accepted that following separation when he and the mother had discussions about the children it would often lead to arguments. I have not seen any text message, email, police report, or any other evidence to suggest that the father has ever lost his temper, struggled to manage his emotions, used language or behaved in a way that was abusive, threatening or even intemperate. The impression the father conveyed when he gave his evidence was consistent with the massive weight of evidence of his interactions with others, and consistent with the evidence given by his partner and mother. He came across as mild-mannered, laid back, perhaps a little passive, and ultimately bewildered as to why he has not seen his daughters for so long.
57. To the extent that the mother has suggested in the past that he poses any kind of threat to her children it seems to be based on her identifying behaviours in the girls that have worried her, and she has then connected them as being something to do with seeing their father. In her statement of evidence to the Court, however, she has not pursued any allegation against him. There is no objective evidence to suggest that the girls had any negative experiences when with their father. There is very little evidence from the girls directly, but the information from the school and the contents of their emails to their father contradicts the assertions made by the mother during these proceedings (although not in her witness statement to the Court) that they do not wish to see their father or are fearful of him.

Allegations of sexual abuse

58. It is disingenuous of the mother to say as she has done in these proceedings, that she is not making any allegations against the father.
59. She was the source of the allegation of sexual abuse. She is clear in the witness statement and emails she has sent that she regards the information she has put forward as relevant to the applications. She does not say in terms that she asks the Court to find that the father has sexually abused his daughter, but she suggests that it would be 'natural' to be suspicious given the information she has put forward. Although she said she did not wish to make allegations against the father, she filed a witness statement in which she is clearly inviting the Court to join up the dots and come to a conclusion which confirms the suspicions she has aroused.
60. Even though it was made very clear to her through the application made by the guardian that allegations of this nature must be made formally by witness statement, she chose thereafter to send a direct email to the expert in which she repeated the allegations she made about sexualised behaviour seen in her daughter.
61. If, as the mother suggests, this has been a concern of hers since 2015, it is extraordinary that she never raised it in these proceedings, with the father, with teachers, with health professionals, apparently even with her partner, until January 2020.
62. The effect of making these allegations at the time she did was to derail proceedings which had been going on for years, but which appeared at that time to be heading

towards a final hearing. In January 2020 the mother's application for a fact-finding hearing had been refused, and then came the instruction of the expert to which she was strongly opposed. As a consequence of making these allegations, the proceedings have once again been significantly delayed and the mother used them as a reason for disengaging with the Court process. She told the local authority that she wished to wait until after the fact-finding before meeting with them for the purpose of preparing their section 37 report. She said in a position statement shortly after making the allegations that she was not able at that time to make allegations, but now wished to wait until the police investigation had concluded and then consider her position.

63. As was made clear to her by HHJ Owens, the burden of proof rests with the mother. It was explained and recorded as a recital to the order that if the mother sought to make an allegation that either child had been sexually abused by the father, and for the Court to take it into account in making decisions about the children's future, she must prove it on a balance of probabilities. She has been apparently keen to inform professionals and the police about the allegations, particularly wanted Dr Misch to have in mind that T had exhibited what the mother regarded as sexualised behaviours after speaking to her father. She did file a witness statement with the Court, but she has not come to Court to speak to the truth of what she wrote, and has not permitted the father to challenge the evidence she wrote in statements by the process of cross-examination.
64. Considering the particular evidence she gave at paragraphs 3, 5 and 6 of her statement (in accordance with HHJ Owens' direction). The mother asserts that T developed redness on her vagina from around 2015 and that this was noticed by the mother, maternal grandmother and step-father. She also says that between 2015 and summer 2018 T rubbed her genital area against the carpet and also against a cuddly toy.
65. The witness statement is vague and unclear. The mother does not say whether she herself witnessed T's carpet rubbing behaviour, how often it occurred – 'intermittent' could mean a whole range of things - or in what circumstances. She gives no explanation for her failure to discuss these matters with either a medical or any other professional at any point during the whole three or four years she suggests she identified this behaviour in her daughter.
66. There is no contemporaneous evidence of this – the mother does not suggest that she ever consulted a GP so accepts that there would be nothing in T's medical records about this. There are no text messages or emails where this is raised. The two text message threads showing a conversation between the mother and maternal grandmother and exhibited by the mother to her statement record T as being 'clingy' or 'not herself', there is no mention of redness around her vagina or rubbing against the carpet. The mother and her witnesses are unable to explain why it is they pinpoint the time as from 2015 or which point of 2015, or why it is recalled that the behaviours stopped in summer 2018. They have not come to Court to speak to the truth of their statements about this.
67. If the mother seriously thought her children were at risk of sexual abuse from their father it is extraordinary that she would not have mentioned it at any time before January 2020 in her statements to the Court. It is incredible that she would on the one hand put this statement before the Court, but respond to the father's allegations of alienation by identifying only the positive ways that she says she has sought to promote contact.

68. Neither the stepfather nor the maternal grandmother came to Court for their evidence to be tested by cross-examination. There are significant discrepancies in their accounts which demanded explanation. For example, the guardian's report of the stepfather's account to her was that both girls used to 'hump the floor' and both girls had red genitals. The mother's account and that of the stepfather and the grandmother in their later statements focuses only on T. Even if these witnesses' statements were taken at face value, the evidence given falls a very long way of supporting a finding of sexual abuse. It amounts to them say that both the stepfather and the maternal grandmother noticed that T had a red vagina 'intermittently' between 2015 and 2018, that she would be seen to rub herself against a carpet. Apart from the fact of them and the mother holding very negative views about the father, there is nothing to connect the 'witnessed' behaviour to anything the father might have said or done.
69. I am not satisfied to the standard of a balance of probabilities that T was observed to have a red vagina on occasions between 2015 and the summer of 2018, and to rub her genital area against the carpet. Even if I were to accept the possibility that this happened, there is no evidence to suggest that either of these symptoms/behaviours are indicators of sexual abuse.
70. Paragraphs 12 to 14 of mother's statement (which HHJ Owens also directed to be the subject of this fact-finding) concern the mother showing her daughters the PANTS videos. I would be prepared to accept her evidence that the children were showed them but cannot begin to see how her interpretation of the children's reaction could reasonably have led her to believe that her daughter T could have been sexual abused, let alone by her father.
71. There is no rational basis for concluding that T has been sexually abused by anyone, least of all her father, who she had not seen for a whole year by the time these behaviours are said to have ceased.
72. For all these reasons I am satisfied that there is no basis to support any adverse findings against the father arising out of the matters contained within the mother's witness statement.
73. The manner in which the allegations were made, through third parties, on the fringes of the Court process, their timing, and the mother's subsequent reluctance to pursue them in Court, all tends towards a finding that they were made not with any real conviction as to their truth, but in order to start an investigation that would turn attention away from the mother's refusal to become involved with the assessment of Dr Misch, and bring in a number of external agencies to carry out an investigation into the father which at least would have the effect of delaying the proceedings further.
74. There is no substance to what the mother has asserted through third parties and it should be made clear to any professionals working with the family that the allegations of sexual abuse that have been raised against the father are completely without foundation.

Parental alienation

75. Parental alienation is a loaded term which means different things to different people. It can describe a child who is estranged from a parent for justifiable reasons; if that parent presents as a risk to them. It can describe the motivation or actions of one parent deliberately acting to manipulate and control their child so as to reject the other parent. That process can also take place deliberately or inadvertently, a parent unconsciously transferring onto their child their fears about the other parent or fears of losing control. It can describe the behaviour of a child who appears to reject a parent completely with no rational basis.
76. It is a matter for an expert psychologist or psychiatrist to look at the particular circumstances of a situation and if they regard the term parental alienation to be helpful, to explain why, and how it applies to that particular situation. The father's case is clear however; he asserts that the mother's conduct over the years has amounted to a deliberate attempt to alienate the children from him.
77. The evidence I have seen of interactions between the girls and their father would strongly suggest that in fact they are not alienated from him. Even though he has reported that the conversations they have had on the phone or on facetime have not always been easy – he would say it has not helped to have the mother and her partner being present in the room with the girls – in fact he and T have managed to have fulfilling and fun conversations with one another, and S has found a way to participate in a way that she is comfortable with and at her pace.
78. The emails between the children and their father are evidence that despite not having seen each other for three years, they do have a connection, an interest in one another's lives and strong love and affection for one another.
79. However, having regard to all the evidence I have heard and read, I am satisfied to the standard of a balance of probabilities that the children's mother has acted in a number of ways to obstruct and interfere with the children's relationship with their father.
80. I accept the father's evidence, which was not challenged within these proceedings, that the mother has not been able to convey to the children that their relationship with their father is to be valued or cherished in any way. She has pointed to a few moments where she says she has made suggestions or sought to promote contact but there is little evidence of her following through. I accept the father's evidence that the mother has sought to cast him in a bad light to the girls, to their schools, to professionals and to the Court, or to create a sense of conflicted loyalties in the girls by stressing that when they are with their father they are missing out on family life with her, her husband and younger siblings. I accept his evidence that she has not involved him in decision making as a parent, and from very early on, regarded her role as the person who would 'allow' contact, rather than a co-parent, sharing responsibility for the care and upbringing of their children.
81. For two to three years after separation the father saw the girls twice a week, including overnight stays. The girls spent Christmas Eve with him as agreed.
82. In his evidence to the Court, which the mother has not sought to challenge either by questioning him, or in a written statement, the father describes issues around Christmas and holiday contact from around 2015. The mother and the stepfather were living

together from January 2015. The father says that T first started saying she didn't want to see her father around the time her little sister [name redacted] was born. While the father acknowledges that T was excited about her sister and wanted to spend time with her, he believes that the mother would tell the girls about the things she did with [their baby sister] while they were with their father, and as a consequence T felt she was missing out. Such feelings of conflict are evident in the work done with the girls in April 2017. The father says things got worse when he started his current relationship. Consistent with his partner's recollection, the father says there were increased difficulties over arrangements and the mother was not accepting of the father's partner, for example objecting to S having been given a bath at 'a stranger's house', in December 2016, by which time the father and his partner had been in a relationship for nine months. When he told her to tell them about the birth of their half-sibling, he says her response was to say the girls didn't realise he was still in a relationship with his partner.

83. The father's evidence is not challenged that from 2017 he sent regular messages to the mother asking how the girls were, what they were doing and that he missed them. He said he sent regular letters and gifts but only received responses from the mother close to Court dates. The messages sent from the mother essentially say that she and her partner have asked the girls if they want to see their father and they say no, or are critical of cards and letters sent by father.
84. In his statement about parental alienation, which the mother has not challenged, the father says that throughout the proceedings the mother has accused him of domestic abuse, having mental health issues, anger management issues and most recently of sexual abuse. Within these proceedings the mother has suggested at times that she and the children are frightened of the father, due to 'domestic abuse'. She has not pursued any of those allegations within these proceedings but instead in her final statement maintained that she has promoted contact throughout. I do not accept this. The evidence is that she has done very little to promote contact. She has a very negative view of the father. She has sought to delay or derail these proceedings by refusing to co-operate with professionals and latterly by disengaging with the Court process.
85. She has hidden behind allegations made to third parties, or in schedules or application forms, but when it came to providing the evidence to the Court in which she might have provided justification for her inability to promote contact, she was silent.
86. The father has attended anger management and parenting courses but this was not in response to any finding by the Court to suggest that he presented any kind of risk to his children, but in response to a series of allegations raised by the mother. As directed by the Court he attended the SPIP, the mother took nearly two years to do the same.
87. In the context of the whole of the evidence, of frequent and sudden house moves, school moves, of seeking to influence proceedings from behind the scenes, I was extremely concerned by the evidence suggesting she and her husband were planning to move to Spain. This led to me to making prohibited steps orders and port alert orders. These orders will need to be reviewed at the next hearing.
88. The mother has more recently maintained that she has not been able to participate in these proceedings because of the stress and anxiety they are causing her and her concern

about the impact upon her pregnancy. Of course I have been anxious to reduce her distress as much as is possible and would not wish her to be exposed to an unacceptable level of risk. However, I do not accept that the mother's current pregnancy and her anxiety around it should be regarded as justification for her failure to engage with this fact-finding hearing. My reasons are as follows:

- (i) HHJ Owens set out very clearly the issues to be determined, and the need for allegations to be contained in evidence;
- (ii) The mother has prepared a large number of statements and position statements over the course of the proceedings, she clearly understood what was required;
- (iii) In April she prepared a statement in support of her allegations of sexual abuse, but chose effectively not to engage with the father's allegations of parental alienation;
- (iv) The fact-finding hearing was adjourned and re-listed exactly to her requirements, consistent with medical advice and providing for her to attend from her own home and allowing for frequent rests;
- (v) One motive for raising allegations of sexual abuse in January appears to have been consistent with seeking to delay the local authority and psychiatric reports pending a police investigation. In my judgement this is consistent with the mother's previous conduct during these proceedings which has often led to delay, it cannot be attributed just to her current pregnancy;
- (vi) The mother was not able to formulate any sort of plan for reconvening the proceedings once she has given birth. Her wish for the hearing not to go ahead is consistent with a general sense that she does not wish the father's application to progress;
- (vii) Even though she has chosen not to give evidence or ask questions of the father or his witnesses, she has continued to send emails and file statements for the Court's consideration. This is consistent with a pattern of her seeking to influence events outside the Court process, for example by sending an email to Dr Misch setting out her concerns even after it had been made aware to her that allegations should properly come in a witness statement, or by triggering an investigation by the NSPCC and the police, maintaining that the Court should regard this as relevant information, then distancing herself from that process.

89. In coming to my conclusions, I have considered all the evidence before me and weighed it in the balance. I have read all the statements that the mother has put forward, considered what weight should be given to them in circumstances where she has not come to Court to speak to their truth, I have not disregarded them. I have considered her evidence in the context of the weight of the evidence as a whole, and in particular had regard to the evidence from contemporaneous documents, including text messages, emails and information created by third parties.

90. The Court has made no findings against the father and proceeds on the basis that allegations raised but not proved have not happened. There is no evidence to suggest that the father poses any risk to his children.

91. I am satisfied to the standard of a balance of probabilities that the mother has made false allegations of domestic abuse and sexual abuse against the father in an attempt to prevent him having a relationship with his daughters.

92. I find that the mother has acted in ways over the last five years that have interfered with the children's relationship with their father. She does not appear to recognise any value to the children in having a relationship with him and as a consequence has failed to promote or encourage that relationship in the children's best interests. She has shown no curiosity into the reasons why the girls may have presented as unhappy or worried but has it appears at every stage jumped to a conclusion that it is their father who is the source of all difficulties for them and that they are better off without him.
93. There is no good reason that the father should not be seeing his children regularly. The process of reintroduction by emails, then phone calls and face time has taken place over the past six months and appears to have gone well. It has provided a solid basis for progression to direct contact.
94. I cannot identify any reason to delay the commencement of direct contact.

Next steps

95. Longer term, the question for Court will be whether the mother will be able to promote the children's relationship with their father, and what if any orders may be required to ensure that the children are enabled and encouraged to have fulfilling and loving relationships with both parents and their extended families.
96. This judgment has been sent to the parties in advance in draft so that they may consider its contents and consider next steps before it is handed down formally on Friday and we discuss further directions.

HHJ Vincent
Family Court, Oxford
Judgment sent in draft to all parties by email: 2 September 2020
Judgment handed down: 4 September 2020

Post-script: clarification of paragraphs 75 to 79 of the judgment and update

97. The remote hearing at which judgment on 4 September 2020 was handed down, was attended by father, guardian and guardian's representative. The father asked for clarification of paragraphs 75 to 79 of the judgment, in particular whether a finding had been made that this was a case of parental alienation. In summary:
- (i) the mother's actions as described in this judgment could be categorised as consistent with what in recent years is generally recognised as attempts at 'parental alienation';
 - (ii) It is a matter for professional assessment as to any psychological factors informing this course of conduct, or whether it is a helpful label to apply in this case;

- (iii) Although the children have not seen their father for over three years, there is no objective evidence before the Court that they are presenting as ‘alienated’ from him. The indirect contact has been positive, and the children should progress to having direct contact with their father;
 - (iv) If contact is not re-established and sustained, and the course of conduct consistent with parental alienation continues, the children will suffer (as they are likely already to have suffered) significant emotional harm, as a result of being prevented by their mother’s actions from having a relationship with their father;
 - (v) The mother must demonstrate to the father, the children and to the Court, that she is able to promote the children’s relationship with their father.
98. The mother did not attend the hearing for handing down judgment but on 3 September 2020 sent a draft application to the Court for removal of the prohibition on travel abroad, and for permission to take the children out of their current schools and home-school them, and a further position statement.
99. The applications will be listed for directions once issued and the mother will have the opportunity to provide evidence in support of them and explain her reasons for asking the Court to make the orders she seeks. At the hearing both the Court and the guardian expressed concern that on the face of it the mother’s response to the draft judgment was to seek to keep the children at home shielding with her for the duration of her pregnancy and (it appears) thereafter.
100. In the meantime, the Court notes the mother’s expressed intention to promote contact at the girls’ pace and in accordance with the guardian’s advice. The guardian has clearly stated her view that arrangements should be made for the girls to spend time with their father as soon as possible, and at least once a week until the next hearing. The father and the guardian considered that in the first instance it would be helpful for contact to be supervised by a contact supervising agency or independent social worker.
101. A hearing has been listed to take place in four weeks’ time at which the local authority has been invited to attend. The Court will consider the progress that has been made in respect of contact, the local authority’s current and planned involvement with the family, and further directions.

ANNEX 2: APPROVED NOTE OF JUDGMENT OF HER HONOUR JUDGE VINCENT
ON 24TH AUGUST 2020 ON THE MOTHER'S APPLICATION DATED 12TH AUGUST
2020 FOR AN ADJOURNMENT OF THE FINDING OF FACT HEARING

1. I am concerned with S and T. This is the mother's application for an adjournment of the fact-finding hearing.
2. I make it clear from the start of this judgment that I am going to refuse the application for an adjournment. However, I intend to give the mother every opportunity to participate in the fact-finding hearing. So I plan to start the evidence tomorrow as we have sufficient time listed and I am pretty confident we could get through the evidence in a day either way.
3. It is difficult to make decisions in a party's absence, but I have familiarity with this case. It was a difficult decision but I am sure it is right to press ahead with the fact-finding hearing.
4. The children are 11 and 9 and since their parents' separation in 2012 they have lived with their mother and saw their father regularly. Then in around 2017 the relationship broke down and the father has not seen the children for over three years. The current application was issued in September 2017, for a child arrangements order to spend time with the children. The mother cross-applied for a prohibited steps order in October 2017. There has been a large number of hearings. There have been some final hearings listed but there has never been a hearing where evidence was heard and judgment given and the judge come to a conclusion about disputed issues.
5. There was a final hearing in June 2018 but concluded when the parents agreed to attend the Triple P programme. Then the mother sought to appeal the order and was unsuccessful, but then did not participate in the Triple P programme.
6. A further final hearing was listed in March 2019 but vacated by consent with the parents agreeing to a CCI order. The CCI did not proceed for reasons which are not clear. The next hearing was in May 2019 when the court directed a psychologist to report. The mother appealed that decision. It took seven months for the appeal to be heard. The appeal was dismissed. Then the mother said she did not wish to co-operate with the expert's instruction.
7. The case was then allocated to a circuit judge. HHJ Owens directed a s 37 report from the local authority to be filed at the end of March. The local authority say from their perspective that the mother has not co-operated. The mother says she has. And then around that time the mother sent emails to the Children's Guardian asking that certain information be provided to the expert and the social worker and that information was in addition to phone call from the stepfather which implied or said that the mother was raising allegations of sexual abuse by the father towards her and the children. That meant the final hearing that had been planned for was effectively adjourned and put off and then a fact finding hearing was listed in June with careful directions from HHJ Owens to the parties, to set out the allegations clearly and for them to file statements.

8. There was a further case management hearing before HHJ Owens where she identified the issues of dispute between parties and listed the fact find before me on 1st June.
9. At the PTR on 21st May I acceded to the mother's request for an adjournment. We spent a lot of time sorting out practical arrangements. I was aware that she was in her first trimester at that point and I was aware of her partner's work commitments and they were shielding and there were significant restrictions at the time from the covid pandemic. In all the circumstances I considered it fair to have a short delay of the fact-find hearing.
10. I had another case management hearing on 5th June to discuss arrangements, primarily to consider the mother and her situation, to make sure the hearing would be fair. The mother again asked for the fact-finding hearing to be adjourned and I refused it. I gave a detailed judgment where I set out the history and paid attention to whether the hearing could be carried out remotely, considering the nature of the allegations, the abilities of the parties to participate remotely, the amount of documents and how it would be provided to the parties, the number of witnesses. I balanced having a remote rather than in person hearing against the need for the children to have the proceedings about them resolved, and the issues between parents to be resolved, and considered the harm of further delay to the children.
11. Following that decision I then received a further letter from mother's GP in support of her request to adjourn. We had another hearing in July as there was a question over whether the mother and her partner were planning to move to Spain and the mother asked for another adjournment, but there was no formal application.
12. On 12th August I received this further C2 application with another letter from the mother's GP. The letter is dated 20th July and it says *'[The mother] has had some bleeding and cramping pain today following her attendance at court. There is a risk of miscarriage and it is imperative that she rests. The mother therefore cannot attend court for the foreseeable future to maintain the health and welfare of the mother and her unborn child.'*
13. I of course take the letter very seriously and as I said throughout I am concerned for the mother and the welfare of her unborn child. I have noted the letter is based on mother's self-report of her symptoms to the GP and I am pleased to see that since that time there doesn't appear to have been any need for a referral to hospital or for specialist investigations, nor am I aware of any further symptoms or concerns about the pregnancy. I do not seek to underestimate the mother's worry, but I also note the GP recommends lots of rest and it says she cannot attend court in person. For those reasons when planning the fact-finding, I spent time - balancing the mother's welfare and making careful arrangements for a remote hearing spaced over five days so she could give evidence and listen to others in smaller manageable chunks, and so she could rest each day. Ultimately there isn't anything in this letter that tells me anything different from previous letters. I am not demanding she comes to court to give evidence. I appreciate there are anxieties and she prefers not to. The way we have planned the hearing is not inconsistent with the advice in the GP's letter.
14. I understand the mother's desire to rest and not to attend court, but I also have to look at the bigger picture. What is the reality of what she is being asked to do? She has no

questions for the father. She says that she is not making allegations against him. He has proposed questions for her which I will put to her. It will not take longer than an hour and she would attend the hearing from the comfort of her own home remotely and we have built in a huge amount of breaks.

15. I listed the hearing for this week in August and cancelled my leave as this was the only week she said she was available. I did it as they said it was the only week the stepfather could make himself available for childcare. In practical terms, though not ideal, I consider the arrangements made were sufficient to allow her to participate fairly without disregarding the advice of the GP.
16. My concern is that if I grant an adjournment there is no plan and no promise that we can have an effective hearing any time soon. Her baby is due in December. She says she can't participate until after that time and I question whether she would be in a better position than she would be now with a small baby and young children.
17. The impact of further delay on the subject children is massive. It is harmful to them not to have seen their father for all this time, and if that is to continue, it is harmful for them not to have an understanding as to why that is. If they should have been seeing him then this prolongs the harm caused by the delay. Either way, delay to decision making is harmful.
18. This is not a final hearing. If I proceed to today the mother is not losing the opportunity to participate later. There is in my judgment an urgent need for a judge to consider the evidence and come to a view in order to inform the professional assessments.
19. The context of the mother's application is also significant because of the chronology and she is under scrutiny. The father suggests and the Children's Guardian highlights there is a pattern of delay and non-engagement. This needs to be explored and if this application is part of that pattern there is real risk of unfairness to the father and the children if it is not explored at this hearing.
20. The mother has not attended court to make the application. I set out the timetable carefully – she was aware of what was happening. She has chosen not to attend court. She has had an opportunity to give thought to the proceedings. She has prepared a detailed statement and has thought about whether or not to put questions to the father and she is aware that if she chooses not to participate the court may proceed in her absence.
21. I have no confidence that if I grant the application, there would be a hearing in a few months time. I consider there is a real risk the proceedings would just drift.
22. For all these reasons I do not accede to the mother's request for an adjournment. I will proceed with the fact-finding hearing this week.
23. In order to be completely fair to the mother as I have strived to do throughout, it is only fair that I adjourn till tomorrow so she has one last opportunity to participate by attending Court remotely.

24. I therefore order that the application is refused and the fact-finding hearing will continue on Tuesday 25th at 10.30am.

HHJ Vincent
Family Court, Oxford
24th August 2020

ANNEX 3; APPROVED NOTE OF JUDGMENT OF HER HONOUR JUDGE VINCENT
(INTERIM CARE ORDERS)

IMPORTANT NOTICE This judgment was delivered in private. It is confidential to the parties and their legal representatives and accordingly neither the judgment itself nor its substance may be disclosed to any other person or used in the public domain without permission of the Court. The parties must take all reasonable steps to ensure that its confidentiality is preserved. A breach of any of these obligations may be treated as a contempt of court.

Case no.: OX20C00142

IN THE FAMILY COURT SITTING AT OXFORD

Between:

OCC

Applicant

and

a mother

Respondent mother

and

a father

Second Respondent father

and

S and T

(acting through their Children's Guardian SIMON SMITH)

Third and Fourth Respondent children

**APPROVED NOTE OF JUDGMENT OF
HER HONOUR JUDGE VINCENT ON 11.12.2020**

1. This is my judgment. I appreciate that this has been a very difficult day for the mother, her due date is tomorrow, and she has had to spend the whole day involved in this hearing. She parted with her legal team this morning after deciding last night she didn't want to be represented by the barrister instructed on her behalf. Exceptionally I have allowed [the step-father] to put questions for her, and allowed her to attend by telephone because she felt more comfortable. I appreciate nobody wants to be in the position she found herself in today, but also want to make clear I have done all I can to make this a fair hearing. It is also her choice that we are here for two reasons. Firstly, because at the hearing a couple of weeks ago in the face of opposition from the other parties I did adjourn this ICO application to 4 January 2021 to accommodate the mother, but on the basis that in the meantime she would work with the local authority and guardian. She then refused social workers and the guardian access to the children. Secondly, even though she had a legal team she chose not to use them. The message I got at 11.30pm was the mother was prepared to represent herself and that was what she was planning to do, so she had time to prepare.

2. I am satisfied it has been a fair hearing. It is clear to me from written submissions and the questions asked on her behalf by [the stepfather] that the mother has understood the test to apply, the evidence needed, and the issues I was concerned with, and clearly had a chance to think through the questions she wanted put, and which were put. And so, given that her baby is due any day now, and she was not seeking actively an adjournment, I am satisfied it was the right decision to go ahead today rather than put this off to another day when the baby may actually be coming or just arrived, and the mother would be in a much more difficult position.
3. The background to the application comes from the private law proceedings which went on for three and a half years and are still ongoing. I have been involved since May of this year. The issue was the relationship between S, T and their dad. At the conclusion of the fact finding hearing I found that in a number of different ways the mother had tried to obstruct and prevent the relationship between the girls and their father. I found she had raised false allegations of sexual abuse and had not pursued them, made allegations of domestic abuse but put no evidence before the court, and said that she would work with professionals or said she would pursue interventions, but she never engaged in a meaningful way, and in a number of ways sought to delay or derail the proceedings. Whether consciously or unconsciously she sought to influence the children against their father and not represent him as someone who was of value to them in their life as a father.
4. The conclusion of the judgment was her actions could be categorised as consistent with parental alienation, but it was a matter for a medical professional to give that diagnosis. Although the children hadn't seen their father for over three years, on the evidence I had at that time I didn't think they were presenting as completely alienated in the sense they weren't expressing extreme negative views against him. The little amount of indirect contact seemed positive, and there seemed no reason at that stage to prevent the children from progressing to direct contact. When I said that the children were not presenting as alienated, I wasn't saying it was because the mother hadn't done anything wrong, it was because I felt there was something to hold on to – there was no reason that contact could not progress, and I hoped the girls didn't need social work intervention or support at that stage to re-establish their relationship with their father.
5. But I made it clear it was for the mother to demonstrate to the father, the children and the Court that she was able to promote their relationship with the father, and if contact wasn't re-established and sustained, and if the mother continued to behave as she had - consistent with conduct that could be described as parental alienation - then the children would be at risk of suffering, as I found they had already suffered, significant emotional harm as a result of being prevented by the mother from having a relationship with their father. That is where we were at the end of the private law proceedings.
6. The next thing to happen was that the mother had to show she could promote contact, Dr Misch was to report, and the local authority to continue their investigations.
7. The mother's immediate response to the judgment was not to attend the hearing for handing down, but on 3 September 2020, the day before, she sent a draft application to the court for removal of the prohibition on travel abroad, seeking permission to take the children out of their schools, and a further position statement. Around the same time there was

a report to the police raising further allegations, and that seemed to me again to be consistent with the pattern of the mother saying there is this allegation and other people need to investigate, and to pause the proceedings whilst that happens, but distancing herself from it.

8. Since that time, essentially there would appear to have been an escalation and intensification of all the issues I raised in the judgment. The concern now is not just about the girls' relationship with the father, but also the impact of the mother's influence and the way she has behaved towards the children; it would appear it has had much more wide-ranging and negative impact on the girls. It appears to me in that period of time the mother was so focused on the need to prevent contact with the father, that she lost sight to a certain extent of the girls' physical, educational, and emotional needs.
9. It is that factual background that led to the local authority issuing proceedings and now seeking orders for interim removal - Interim Care Orders - for the girls to be separated from their mother.
10. In terms of that decision, which I deal with today, I heard evidence from the social worker and guardian. And their evidence I found clear and compelling and based on a thorough knowledge of all the evidence submitted in this case.
11. Interim threshold is crossed. There are reasonable grounds to believe that the girls have suffered, and are at continuing risk of suffering, significant harm as a result of the parenting they received from their mother. That comes from the findings I made in my judgment and Dr Misch's evidence. It is not fair to say Dr Misch came to his conclusions after spending only forty minutes with the girls. He spent that time with them, but it is clear he read and analysed a substantial amount of material and used his expertise and experience to inform his conclusions that this is a case of parental alienation, and it is not going to be fixed just by the girls being made available for contact. There is something more going on here.
12. I must then consider whether or not to make orders as the local authority invites me to do, supported by the girls' father and the guardian. I have had regard to all the factors on the welfare checklist and bear in mind that in these applications I must decide only that which is necessary to decide now, and not final hearing issues. I should only make the order if the girls' safety requires their immediate separation, and I must when considering what order to make weigh in the balance the harm undoubtedly caused by being separated from their mother against the harm of them staying in her care.
13. I have had regard to the factors in the welfare checklist, in particular the girls' wishes and feelings. I am sure they wish to stay with their mother to see their new baby sibling arrive, and to remain with their siblings where they have always lived in that family unit. I accept that. But I also am asked to take note of the fact that the girls are also subject to the huge amount of influence of their mother and [the stepfather] because they are in this particular bubble and not exposed to many external influences.
14. So far as their needs and the parental capacity to meet it, there is no question the mother can provide a lovely warm home and meet their daily needs. The real concerns are her ability to safeguard their emotional, social, and educational welfare. The guardian's analysis that

the girls' world has shrunk is I think a good one. They are not going to school or seeing friends. There were repeated concerns in the past about their presentation at school, and they are now deprived of that network of support from peers and teachers. There has been intensification of their fears and irrational responses to the idea of having contact with their father when there is no factual basis for it, and it is a concern the mother's response to the findings is to raise further allegations. The father's fear and concern this will just never stop does appear to be founded, based on recent actions, unless something is done. The mother's ability to work with professionals to provide that support the girls need is called in question by her refusal to allow the social worker and guardian to visit in the last week or two. And the issues as I say in terms of harm have escalated beyond the need to support contact.

15. I am concerned that the mother hasn't shown at this hearing an understanding of why professionals and the court are concerned. As I say the genesis of this is the girls' relationship with the father, but there is more to it than that. It is now an understanding that the girls need to be in an environment where they are free to have their own feelings and thoughts and the worry is they are so much under the influence of the mother at the moment that it is causing them harm. I am concerned the mother hasn't shown any understanding or insight into the judgment, and her response is very careful wording that she will make the children available for contact, but very firmly doesn't see it as in their best interests to see the father and says it is very clear they don't want to. She is going back over similar ground in the private law proceedings, picking out lines here and there from historical reports but not seeing the bigger picture or context of the findings I made. I am worried that essentially, as I say, she is really preventing the children engaging with the outside world in a way that is of significant concern.
16. Obviously I take into account the impact of separation on the children. It would be incredibly difficult, confusing, bewildering, there is a real worry they will get the wrong message and blame the father, and it could be counterproductive in establishing the relationship. It is awful timing with the baby, two weeks before Christmas, and will be really difficult.
17. I have thought about whether the risk of harm could be managed in a different way by some agreement or making different arrangements. But I think the offer of supervised contact from the mother now is way off the mark. The guardian explained, and the social worker explained, why having the opportunity of just remote video contact or just observing the girls having contact with the father would be completely inappropriate and would not let professionals get to the heart of the issues here. Professionals need meaningful access to the girls to understand them, their lived experience, and build up a trusting relationship.
18. I don't believe the mother would be able to comply with any agreement at this stage because the pattern of behaviour so far and since the private law proceedings is that she has chosen not to comply with orders if she didn't wish to. She didn't pay her share of the costs of the independent social worker, didn't promote contact, and has not sent the girls to school. Her perspective seems to be very much as I said in my judgment that it is she who is the parent and allows access to the father or professionals. I think that is an attitude that is difficult to work with to safeguard the girls' welfare at the moment.

19. And so for those reasons, I am satisfied that the local authority has established that there are reasonable grounds to believe that the girls have suffered significant harm in the mother's care, would continue to suffer that harm if they were to remain in her care without intervention from the local authority, and I am satisfied that there is no lesser form of intervention by means of say a programme of announced and unannounced visits, or written agreement, or the court directing some different arrangements – I am satisfied no lesser form of intervention could keep the girls safe. Although I accept it is incredibly difficult to make the move to foster care and they will be upset and confused and miss their mother and siblings very much, I am satisfied that the balance does fall the other way and that the girls' safety requires that I make the Interim Care Orders placing them in the care of the local authority, separating them from their parents, and placing them into foster care whilst these proceedings are ongoing.

HHJ Vincent
Family Court, Oxford
11 December 2020