



Neutral Citation Number: [2019] EWHC 3449 (Fam)

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19 December 2019

Before:

THE HONOURABLE MRS JUSTICE KNOWLES DBE

Re C (Female Genital Mutilation and Forced Marriage: Fact Finding)

Miss McKenna QC and Miss Chokowry for the mother.
Mr Wilkinson for the father.
Mr Hepher for the paternal grandmother.
Mr Ekaney QC and Miss Ecob for the maternal grandmother.
Mr Bagchi QC and Miss Matthews-Stroud for the maternal grandfather.
Miss Henke QC and Dr Jackson for the intervenor, F.
Mr Wallace for LA1.
Mr Purss for LA2.
Miss Kothari and Miss Cooper for J and K by their Children's Guardian.

Hearing dates: 30 and 31 October, 1 November, 4-8 November, 11-15 November and 19
November 2019

Judgment Approved

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

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THE HONOURABLE MRS JUSTICE GWYNNETH KNOWLES DBE

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Mrs Justice Knowles:

Introduction

1. I am concerned with two children, K aged 31 months, and J, aged 11 years. K is J's niece as her mother is C, the older sister of J, now aged 24 years. I will refer to C as "*the mother*" in this judgment. These proceedings commenced because, in August 2018, the mother was interviewed by the police and alleged that she had been the victim of female genital mutilation ["*FGM*"] at the age of 17, her own father and mother [hereinafter referred to as "*the maternal grandmother*" and "*the maternal grandfather*"] having arranged for her to undergo FGM during a holiday to Kenya in the summer of 2013. The mother also said she had been a victim of forced marriage. Those allegations clearly raised safeguarding concerns in respect of J who lives with the maternal grandmother and in August 2018 the local authority [LA1] issued proceedings in a county court seeking a Female Genital Mutilation Protection Order ["*FGMPO*"] and a Forced Marriage Protection Order ["*FMPO*"] in respect of J. Those orders were granted by the circuit judge.
2. In September 2018 the mother issued an application to protect K from female genital mutilation and an application in wardship to prevent K's removal from the jurisdiction in order to subject her to FGM. She also sought orders protecting herself from further forced marriage and FGM. The respondents to those applications were K's father [hereinafter referred to as "*the father*"], his mother, K's paternal grandmother, and the maternal grandparents. K was living with her father and her paternal grandmother at the time the applications were issued. Mr Justice Baker (as he then was) granted the applications sought on 12 September 2018. The matters came before me on 26 September 2018 and since then I have assumed judicial responsibility for this case.
3. In early November 2018 I caused the county court proceedings relating to J to be transferred and heard alongside the proceedings relating to K since there was an obvious connection between the two. Both children are parties to the proceedings, represented by the same CAFCASS Children's Guardian. One of the mother's younger brothers, F, has also participated in this hearing as an intervenor since the mother alleged that he sexually assaulted her in childhood and assaulted K when the mother and K were living with the maternal grandmother in late 2017. LA1 and the local authority in whose area K resides ["*LA2*"] have also been parties to these proceedings.
4. The mother made a wide-ranging series of allegations against the father, the paternal grandmother, the maternal grandparents and her brother, F. In summary, these were:
 - a) the maternal grandparents caused the mother to undergo FGM when she was 17/18 years old and forced her marriage to the father;
 - b) the maternal grandparents failed to protect the mother from sexual abuse by her brother, F;
 - c) the maternal and paternal families sought to control the mother, her freedom to interact with professionals, and prevented her having care of or contact with K;

- d) the father made false allegations against the mother of sexual abuse;
 - e) the father was violent to the mother during their marriage, including repeatedly raping her leading to pregnancy.
 - f) the father was violent to K.
5. All the mother's allegations were vehemently denied by those accused and on 24 January 2019 I directed that I would conduct a combined fact-finding and welfare hearing commencing on 28 October 2019. For reasons which will become clear in this judgment, I am unable to make final welfare decisions about either J or K though I hope to do so without any substantial delay. No party sought to dissuade me from devoting this hearing to the determination of fact.
6. This judgment is necessarily detailed given the manner in which the mother put her case. A schedule of relevant findings can be found at the conclusion of this judgment.

Hearing and the Position of the Parties

7. I have read with care an extensive court bundle. This included:
- a) material relating to J and the involvement of LA1 with her and her family;
 - b) information from all the local authorities previously and presently involved with K and her family;
 - c) documents generated during the police investigation into the mother's allegations;
 - d) medical records relating to the mother though the records of the mother's involvement with mental health services were unfortunately missing;
 - e) and the documents generated in both sets of proceedings.

I have also viewed the filmed interviews conducted by the police with the mother, the father, the maternal grandmother, the maternal grandfather and one of their other daughters, B. Finally, I have viewed a video taken at the wedding of the mother and the father in August 2015. I heard oral evidence from the mother; the father; the maternal grandparents; the paternal grandmother; the mother's brother F who was an intervenor in these proceedings; two of the mother's older sisters A and B; the mother's two female cousins P and Q; Dr Markos, a physician in Genito-urinary, HIV and Sexual Medicine, instructed to provide expert evidence to the court about the mother's experience of FGM; Dr Paul, a forensic physician working with Thames Valley Police, who physically examined the mother for the purpose of the police investigation; Miss Bola Ogunnaike, an independent social worker, who assessed the mother's and the father's parenting; and Ms KP and Mr JF, social workers with LA2 who had been involved with K, the mother and the father.

8. I have been greatly assisted by leading and junior counsel who appeared before me in this difficult and troubling case. Their written and oral submissions were comprehensive and provided much food for reflection. Unfortunately, the timetable for the hearing was exceeded, largely due to the need for several key witnesses to give

their evidence with the assistance of an interpreter. Thus, I had to reserve my judgment for a short time because of other pressing commitments in court.

9. It is important that I set out the findings sought by the mother at the conclusion of the hearing. A schedule of findings sought was available to all the parties at the commencement of the hearing and, once the evidence had concluded, I invited Miss McKenna QC to revisit and refine that schedule. I made it clear that this was not an invitation to expand its contents. Suitably anonymised, that schedule reads as follows (with any amended wording in italics):
- a. Before 2013, the mother's father abused her with the words "*you are not clean as you did not have guditan*". [Guditan is a reference to FGM]
 - b. The mother's parents arranged for her to travel to Kenya in 2013, only her father accompanied her. The mother's parents knew or strongly suspected that the mother would be subjected to FGM whilst in Kenya in 2013. The mother was subjected to FGM in Kenya in 2013.
 - c. The mother was forced by her parents to marry the father. *The father knew or ought to have known when he married the mother, or shortly thereafter, that the mother had been forced to marry him.*
 - d. The father raped the mother more than once, causing her to become pregnant and subjected her to domestic violence. This included shouting abuse, making threats, and controlling the mother.
 - e. The maternal grandmother, the father and the paternal grandmother placed the mother under pressure to refuse a reversal *investigation and/or* procedure offered to her by [redacted] Hospital *and caused her to fear 're-suturing' following the birth.* She was never left unattended without family to facilitate privacy *who were seen by hospital staff to be controlling of the mother.*
 - f. Whilst living in the home of her mother, the mother was monitored and guarded by family members preventing her free speech and movement, *in particular she was sufficiently pressured by her maternal family, and the stresses caused to her, by her forced marriage and the domestic violence she endured, to cause her to lie during an interview with a social worker on 16.8.2017 and on occasion to other professionals.*
 - g. The mother's brother, F, sexually assaulted her during her childhood and he slapped K.
 - h. [Removed].
 - i. In December 2016 the father grabbed the mother by the throat, threw her into a wall and then onto a bed, leaving red marks across her throat.
 - j. [Removed].
 - k. The father slapped K on more than one occasion and shook her once.

1. On 17.1.2018 the father falsely alleged the mother had *caused or permitted* sexual abuse to K.
10. In addition to the findings sought by the mother, LA1 invited me to make findings about the attitude of the maternal grandparents towards FGM. I will address those findings later on in my judgment, but observe that leading counsel for the maternal grandmother and the maternal grandfather both accepted that, if I considered that the evidence permitted me to make the findings sought, it was open to me to do so.
11. I summarise the positions of the parties briefly and, where relevant and necessary, will analyse any detailed submissions when I deal with each of the findings sought by the mother or by LA1. The maternal grandparents each vigorously denied arranging for the mother to undergo FGM when she was aged 17/18 years old. They both maintained that A, B and the mother had been victims of FGM when they were aged about 7, 6 and 5 years old and were living in the care of their maternal great-grandmother in a refugee camp on the Kenyan/Somali border. They asserted that they had not wanted this to happen to their daughters and had fallen out with the maternal great-grandmother in consequence. They denied forcing the mother to marry the father and said this was a love match, as were the marriages of A and B. They also denied any failure to protect the mother from sexual abuse by her brother, F, and denied controlling her and preventing her from having the care of K.
12. The father denied inflicting domestic violence on the mother, save on one occasion in late 2016 when she was pregnant, and he denied repeatedly raping her leading to pregnancy. He too, along with the paternal grandmother, denied controlling the mother and preventing her having the care of or contact with K. He also denied making false allegations of sexual abuse against the mother.
13. Finally, F denied that he had sexually assaulted the mother when they lived in the maternal grandparents' home and denied slapping K during an incident in November 2017 (though he admitted slapping both B and the mother in the face during that incident).

Assessing the Evidence of Vulnerable Witnesses

14. It is important that I identify a matter which has been at the forefront of my mind in approaching my fact-finding task.
15. As is apparent from paragraphs 38-43 of the judgment of King LJ in Re N (A Child) [2019] EWCA Civ 1997, it was only relatively recently that the Family Court has made formal provision for vulnerable adult witnesses in family proceedings – Part 3A and PD3AA of the Family Procedure Rules 2010 entitled “*Vulnerable Persons: Participation in Proceedings and Giving Evidence*” came into force on 27 November 2017. The provisions of Part 3A were intended to maximise the ability of those deemed vulnerable to give their best evidence to the court and participate as fully as possible in proceedings. Though there is no definition of “*vulnerability*” in Part 3A, they are individuals, the quality of whose evidence is likely to be diminished by reason of their difficulties, as opposed to “*protected parties*”, namely those who lack capacity to conduct the proceedings. The measures set out in Part 3A – such as the deployment of special measures, the use of intermediaries and so on – address the form of the evidence or, as Mr Bagchi QC put it, the procedural framework in which

evidence is given. However, they do not address the substance of the evidence given by a vulnerable person. In this case, the mother has made very serious factual allegations which, if true, would have life changing consequences for those accused, but because of her disabilities (and despite a raft of special measures), it was suggested that she was unable to give either a coherent account of events or an account which had some of the hallmarks of credibility. What allowances, if any, can and should the court make for this? Can evidence from a vulnerable and emotionally labile witness, without independent evidential support, provide a firm basis upon which to ground serious findings such as marital rape, forced marriage and FGM?

16. Despite my very considerable sympathy for witnesses with significant vulnerabilities such as the mother in this case, my clear view is that there is one standard of proof which applies without modification irrespective of the characteristics of witnesses, including vulnerable witnesses to whom Part 3A and PD3AA apply. I observe that many vulnerable witnesses are just as likely as anyone else either to tell the truth or to lie deliberately or misunderstand events. It would be unfair and discriminatory to discount a witness's evidence because of their inherent vulnerabilities (including mental and cognitive disabilities) and it would be equally wrong in principle not to apply a rigorous analysis to a witness's evidence merely because they suffer from mental, cognitive or emotional difficulties. To do otherwise would, in effect, attenuate the standard of proof when applied to witnesses of fact with such vulnerabilities.
17. That does not mean that the court is unsympathetic to a vulnerable witness such as the mother in this case. However, it remains the court's duty to take an entirely dispassionate approach to the process of determining whether, on the available, relevant and admissible evidence, the facts alleged by a vulnerable witness are established on the balance of probability. I have reminded myself of the wise words of Hughes LJ (as he then was) in Re B (Allegation of Sexual Abuse: Child's Evidence) [2006] EWCA Civ 773 at [43] when he observed that:

"... the fact that one is in a family case sailing under the comfortable colours of child protection is not a reason to afford to unsatisfactory evidence a weight greater than it can properly bear. That is in nobody's interests, least of all the child's."

The same forensic rigour is necessary in this case given the very serious nature of the allegations.

18. Having said that, I offer the following observations, none of them particularly novel, which might assist in assessing the evidence of vulnerable witnesses, particularly those with learning disabilities. First, it is simplistic to conclude that the evidence of such a witness is inherently unreliable. Second, it is probably unfair to expect the same degree of verbal fluency and articulacy which one might expect in a witness without those problems. Third, it is important not to evaluate the evidence of such a witness on the basis of intuition which may or may not be unconsciously biased. Finally, it is important to take into account and make appropriate allowances for that witness's disability or vulnerability, assisted by any expert or other evidence available. I have taken all these matters into account in reaching my decision.

The Law

19. I have been provided with an agreed note on the law relevant to fact-finding hearings. With some modifications of my own, I summarise the law which has shaped my approach to the evidence.

Burden and Standard of Proof

20. There is only one standard of proof in these proceedings, namely the simple balance of probabilities. The burden of proof is on the party who makes the allegations; it is not reversible and it is not for the other parties to establish that the allegations are not made out. As Mostyn J said in paragraph 8(vi) of Lancashire v R [2013] EWHC 3064 (Fam), there is no pseudo-burden upon a parent to come up with alternative explanations.
21. Having heard all the evidence, it is open to the court to conclude that the evidence leaves it unsure whether it is more probable than not that the event occurred and accordingly, that party who has the burden of proving that event has occurred has failed to discharge the burden. Where a respondent does seek to assert and prove an alternative explanation for a course of conduct but does not prove that alternative explanation, that failure of itself does not establish the applicant's case which must be established to the requisite standard [see The Popi M, Rhesa Shipping Co SA v Edmunds, Rhesa Shipping Co SA v Fenton Insurance Co Ltd [1985] 1 WLR 948].
22. The inherent probability or improbability of an event remains a matter to be taken account of when weighing the probabilities and deciding whether, on balance, the event occurred: "... *common sense, not law, requires that in deciding this question regard should be had to whatever extent appropriate to inherent probabilities*" [dicta of Lord Hoffman in paragraph 15 of Re B [2008] UKHL 35]. Having regard to inherent probabilities does not mean that where a serious allegation is in issue, the standard of proof required is higher. The inherent probabilities are to be taken account of, where relevant, in deciding where the truth lies. If a fact is to be proved, the law operates a binary system in which the only values are 0 and 1. Therefore, it is open to the court to make the following findings on the balance of probabilities: (a) that the allegation is proven; or (b) that the allegation is not proven. There is no room for a finding that something might have happened.
23. Findings of fact must be based on evidence and not on speculation. As Munby LJ (as he then was) observed in paragraph 26 of Re A (Fact Finding: Disputed Findings) [2011] EWCA Civ 12, "*it is an elementary proposition that findings of fact must be based on evidence, including inferences that can be properly drawn from evidence and not suspicion or speculation*". The failure to find a fact proved on the balance of probabilities does not equate, without more, to a finding that the allegation is false. It also follows that, if the evidence in respect of a particular finding is equivocal, then the court cannot make such a finding on the balance of probabilities as neither the burden nor the standard of proof has been discharged. The court's decision on whether the facts in issue have been proved to the requisite standard must be based on all the available evidence and should have regard to the wide context of social, emotional, ethical and moral factors [see A County Council v A Mother, A Father and X, Y and Z [2005] EWHC 31 (Fam)].

24. The court must not evaluate and assess the available evidence in separate compartments. Rather, regard must be had to the relevance of each piece of evidence to other evidence and to exercise an overview of the totality of the evidence in order to conclude whether the case put forward has been made out on the balance of probabilities [Re T [2004] 2 FLR 838 at [33]]. A failure to look at “*the whole picture*” was criticised by the Court of Appeal in Re A (Children) [2018] EWCA Civ 1718 [see paragraphs 58-61].

Determining Allegations of Sexual Abuse

25. The court should adopt a two-stage process: first, is there evidence of sexual abuse; if so, is there evidence of the identity of the perpetrator [see Re H and R (Child Sexual Abuse: Standard of Proof) [1995] 1 FLR 643]. The court is reminded to exercise caution before making a finding that a non-perpetrator has failed to protect. As King LJ observed in paragraph 64 of L-W (Children) [2019] EWCA Civ 159, “*any court conducting a finding of fact hearing should be alert to the danger of such a serious finding becoming ‘a bolt-on’ to the central issue of perpetration or of falling into the trap of assuming too easily that, if a person was living in the same household as the perpetrator, such a finding is almost inevitable*”.
26. In Re J (A Child) [2014] EWCA Civ 875, McFarlane LJ (as he then was) made the following observations in a case where findings of sexual abuse were sought on the basis of the evidence of a vulnerable witness:

“... No case of alleged sexual abuse, where there is an absence of any probative medical or other direct physical evidence to support a finding, can be regarded as straightforward. In the present case where X was rightly regarded as an extremely troubled individual, whose various physical ailments were considered to have a psychological origin, and who could only give an outline account of these serious allegations, the need for care and caution in assessing her testimony was, in my view, at the extreme end of the spectrum.” [73]

and

“... As I have acknowledged, the experience of observing the emotional content of X’s presentation over the video link, and the congruence of those emotions to the subject matter of F’s alleged activities with her (in contrast to her demeanour when talking of other mundane matters), was plainly a powerful factor for the judge in her evaluation of the essential truth of the allegations. Nothing that I now say is intended to hold that judges should ignore the emotional content of a witness’s testimony; on the contrary such matters are plainly an essential component in the evaluation of key oral evidence. Where, however, significant weight is to be placed upon witnesses apparent emotional asset, there is a pressing need for the judge, having rightly acknowledged the importance of that factor, nevertheless to step back and conduct a reality check by having regard both to the factual content of the evidence and the other evidence in the case. Strong emotional presentation may otherwise have a disproportionately powerful effect, one way or the other, on the otherwise dispassionate process of determining whether or not a particular fact is established on the balance of probability.” [77]

Lies

27. It is common for witnesses in these cases to tell lies in the course of the investigation and the hearing. The court must be careful to bear in mind at all times that a witness may lie for many reasons, such as shame, misplaced loyalty, panic, fear, and distress. The fact that a witness has lied about some matters does not mean that he or she has lied about everything [R v Lucas [1981] QB 720]. It is important to note that, in line with the principles outlined in R v Lucas, it is essential that the court weighs any lies told by a person against any evidence that points away from them having been responsible for harm to a child [H v City and Council of Swansea and Others [2011] EWCA Civ 195].
28. The family court should also take care to ensure that it does not rely upon the conclusion that an individual has lied on a material issue as direct proof of guilt but should rather adopt the approach of the criminal court, namely that a lie is capable of amounting to corroboration if it is (a) deliberate, (b) relates to a material issue, and (c) is motivated by a realisation of guilt and a fear of the truth [H-C (Children) [2016] EWCA Civ 136 at paragraphs 97-100].
29. In this context, I have borne in mind the words of Jackson J (as he then was) in Lancashire County Council v The Children [2014] EWHC 3 (Fam). At paragraph 9 of his judgment and having directed himself on the relevant law, he said this:

“To these matters I would only add that in cases where repeated accounts are given of events surrounding injury and death, the court must think carefully about the significance or otherwise of any reported discrepancies. They may arise for a number of reasons. One possibility is of course that they are lies designed to hide culpability. Another is that they are lies told for other reasons. Further possibilities include faulty recollection or confusion at times of stress or when the importance of accuracy is not fully appreciated, or there may be inaccuracy or mistake in the record-keeping or recollection of the person hearing and relaying the accounts. The possible effects of delay and repeated questioning upon memory should also be considered, as should the effect on one person hearing accounts given by others. As memory fades, a desire to iron out wrinkles may not be unnatural - a process that might inelegantly be described as ‘story-creep’ - may occur without any necessary inference of bad faith.”

Forced Marriage

30. The Forced Marriage (Civil Protection) Act 2007 introduced Part 4A into the Family Law Act 1996. Part 4A sets out the provisions for the making of a Forced Marriage Protection Order [s.63A-D]. Section 63A(4) provides that a person is ‘forced’ into marriage where the marriage is entered into without ‘free and full consent’. Section 63A (6) provides that ‘force’ includes to be coerced by threats or other psychological means. In paragraph 18 of West Sussex County Council and Anor v F, M, N, P and T [2018] EWHC 1702 (Fam), Williams J repeated the guidance on the proper approach to the jurisdiction to grant forced marriage protection orders given by the then President of the Family Division, Sir Nicholas Wall, in paragraph 9 of Chief Constable and Another v YK and Others [2010] EWHC 2438, namely that:

“... Nonetheless forced marriage cases are likely to throw up issues which are profound in the extreme, the subject matter itself is highly sensitive. In every case, as

it seems to me, a clear distinction needs to be drawn between, on the one hand, forced marriage as a form of domestic violence and a serious abuse of human rights, and, on the other, the concept of the consensual arranged marriage which is rightly perceived as a cultural norm in certain societies and thus wholly acceptable...

Female Genital Mutilation

31. I adopt the relevant paragraphs in the judgment of Cobb J in Re X (Female Genital Mutilation Protection Order No. 2) [2019] EWHC 1990 (Fam) and incorporate these into my judgment as follows:

“14. Female Genital Mutilation (‘FGM’) or Female Genital Cutting is a practice widely carried out mainly among specific ethnic populations in Africa and parts of the Middle East and Asia. FGM is a generic term for a range of procedures which involve the partial or total removal of the external female genitalia for non-medical reasons; it serves as a complex form of social control of women’s sexual and reproductive rights. In 1997, the World Health Organisation (‘WHO’) jointly with the United Nations Children’s Fund and the United Nations Population Fund jointly classified FGM into four types; see the identification and discussion of these types in domestic case law (see Sir James Munby P in Re B & G (No.2) [2015] EWFC 3 at [7]).

15. I identify the categories of FGM below, drawing from the Government’s Multi-Agency Statutory Guidance on Female Genital Mutilation issued in April 2016 (updated October 2018) which cites the WHO’s most recent categorisation. I do so to set a context for my discussion of the evidence:

Type 1 – Clitoridectomy: partial or total removal of the clitoris (a small, sensitive and erectile part of the female genitals) and, in very rare cases, only the prepuce (the fold of skin surrounding the clitoris); this type is subdivided into type 1a: removal of the clitoral hood or prepuce only, and type 1b, removal of the clitoris with the prepuce;

Type 2 – Excision: partial or total removal of the clitoris and labia minora, with or without excision of the labia majora (the labia are the ‘lips’ that surround the vagina); when it is important to distinguish between the major variations that have been documented, the WHO propose three subdivisions: type 2a, removal of the labia minora only, type 2b partial or total removal of the clitoris and the labia minora, and type 2c, partial or total removal of the clitoris, the labia minora and the labia majora;

Type 3 – Infibulation: narrowing of the vaginal opening through the creation of a covering seal. The seal is formed by cutting and repositioning the inner, or outer, labia with or without removal of the clitoris; type 3a describes the removal and apposition of the labia minora, and type 3b describes the removal and apposition of the labia majora; and

Type 4 – Other: all other harmful procedures to the female genitalia for non-medical purposes, e.g. pricking, piercing, incising, scraping and cauterising the genital area.

16. This categorisation comes with an important cautionary note. Professor Bradley (see [76] below et seq.) rightly warned that a serious danger of classification is that one type of FGM may be seen as ‘less bad’ than another; she told me that in some respects labelling the mutilation in this way “is not helpful. It might appear that some

cutting is not as harmful as others. That understanding needs to be dispelled. All of what is described above is abusive, harmful and serious ill-treatment. ...Type 1 is not 'lighter' than the others". This advice was material in the instant case: in a conversation in her college in December 2018 the mother wrongly referred to Type 1 as "not the worst level" (see [52] below).

17. [omitted]

18. These are not, of course justifications at all. FGM is a crime and its practice is utterly objectionable. There are multiple serious harmful consequences of FGM for the young female, which, in the short term, can include severe pain, shock, haemorrhage, wound infections, urinary retention, injury to adjacent tissues, genital swelling and/or death. Among the longer term consequences are genital scarring, genital cysts and keloid scar formation, recurrent urinary tract infections and difficulties in passing urine, possible increased risk of blood infections such as hepatitis B and HIV, pain during sex, lack of pleasurable sensation and impaired sexual function, psychological concerns such as anxiety, flashbacks and post-traumatic stress disorder, difficulties with menstruation, complications in pregnancy or childbirth, and/or increased risk of stillbirth and death of child during or just after birth. It is obvious in this case (note what is said below about the paternal grandmother), as in others, that devastating and long-term psychological and physical effects of the procedure endure.

19. It is, I repeat, an abhorrent practice, and unquestionably a serious form of abuse on girls and young women. There can be no doubt, as Sir James Munby P made clear in Re B & G (No. 2) at [68] that "any form of FGM constitutes 'significant harm' within the meaning of section 31 and section 100 of the Children Act 1989. He added: "[t]he fact that it may be a 'cultural' practice does not make FGM reasonable; indeed, the proposition is specifically negated by section 1(3) of the 2003 Act"; this provides that in considering whether an offence has been committed "it is immaterial whether she or any other person believes that the operation is required as a matter of custom or ritual".

Background

32. I set out the background pertinent to these proceedings, drawing on both the written and oral evidence. It includes some observations which have informed my fact-finding.
33. The maternal grandfather is 61 years old and was born in Mogadishu of Somalian descent. The maternal grandmother is 47 years old, also of Somalian descent. They married when the maternal grandmother was about 20 years old and the maternal grandfather about 34 years old. As is still customary in Somalia, the maternal grandmother underwent FGM as a child. The couple had 10 children, the first six of whom were born in Somalia and the remaining four in England: a daughter A aged 26 years; a daughter B aged 25 years; C the mother; a son D aged almost 21 years; a son, E aged almost 20 years; F, the intervenor, aged 19 years; a son G aged 17 years; a son H aged 16 years; a son I aged 14 years; and J who is one of the subjects of these proceedings. All the family now hold British passports. In consequence of the civil war in Somalia, the maternal grandparents sold their home, left Somalia and spent a period of about 10 months in Kenya before travelling with D, E and F to England in

April 2002 where they obtained indefinite leave to remain in May 2002. [redacted] The family appear to have been very observant Muslims. The maternal grandparents separated in April 2018 and the maternal grandfather now lives in another town with F, B and her three children.

34. The maternal grandparents left A, B and C in the care of their maternal grandmother. All three girls and the maternal great-grandmother lived in a refugee camp on the Somali/Kenyan border where conditions were harsh. In October 2003 A, B and C re-joined their parents in England on a family reunion visa. Other than the facts recorded above, there was considerable dispute as to what happened to the mother and her sisters whilst they were living with the maternal great-grandmother. For example, in August 2016, the mother told her GP that she had been the victim of repeated sexual abuse by a family member as a child aged 5/6 years. This would have occurred whilst she was living with the maternal great-grandmother. One matter was certain: both A and B were subject to FGM at that time which was arranged by the maternal great-grandmother. A key issue in this case was whether the mother had FGM alongside her sisters or whether, as she alleged, she had FGM in Kenya whilst on holiday as a young woman of 17/18 years.
35. The maternal family settled in LA1. In about 2012 or 2013 A married a man from Kenya she had allegedly met on Facebook. She travelled to Kenya with her mother and married him, but then returned to England for a while. She seems to have visited her husband once more in Kenya before the marriage broke down some months later. It was an odd feature of this case that A denied in her oral evidence that she had been married twice though the statement she gave to the police said clearly that she had been married in about 2015. Confirmation of an earlier marriage by A emerged later in the proceedings when her young cousin Q was cross-examined and was later confirmed by the maternal grandmother and grandfather in their oral evidence. Very shortly after A married, B also is said to have met a man on Facebook who lived in Germany. She married him very shortly thereafter and went to live in Germany. Their marriage ended because of his violence to her and B and her two young children now live with the maternal grandfather. How A and B came to be married are matters relevant as to whether the mother was a victim of a forced marriage.
36. In 2008 the maternal grandparents and their children went on holiday to Kenya. The maternal grandmother appears to have spent the entire holiday in hospital in Nairobi as she had serious kidney problems. However, the maternal grandfather told me that he took the children to stay with the maternal great-grandmother, now living in a small town in Kenya. This trip was confirmed by F who had vivid memories of being beaten by the local schoolmaster when he rejected the food given to him for breakfast and threw stones at the maternal great-grandmother. What was surprising was the maternal grandmother's denial that the children had ever seen the maternal great-grandmother during this trip as she asserted that they had been with her in Nairobi at all times.
37. The mother and her family moved house on a number of occasions prior to her leaving the home of her parents in 2015. The mother told me that she had changed schools often though the maternal grandfather said she had only changed school more than once after the age of 11. What is clear is that by the time the mother started secondary school, her father had become aware of problems with what he described as "*her communication*". I was hampered from getting a clearer picture of the mother's

difficulties at primary and secondary school as her education records were not available, but no party disputed that her problems with learning became more prominent in the eyes of her parents once she was in secondary school. I discuss the mother's cognitive difficulties in greater depth later in this judgment.

38. The mother was not the only child of the family with educational problems. Her brother, F, was expelled from his secondary school in December 2013 for attempting to strangle a teacher. This happened when he lost his temper after a fight with another pupil. The evidence about his behaviour in school thereafter demonstrated that his school career was fraught with problems. Indeed, F also had substantial behavioural problems which were evident in the family home. He got into fights with his older brothers in the family home to which the police had to be called in 2014, 2015, 2016, and twice in 2017. Neither the maternal grandmother nor the maternal grandfather appeared able to exercise any restraint on the behaviour of their sons and on F, in particular. Though the family were at pains to stress that the home was generally harmonious, I do not accept this. These incidents were, in my view, the tip of an iceberg and I am satisfied that there were many arguments and rows. That was unsurprising given F's own problems with temper and the tendency of the brothers to pick fights with each other when even slight disagreements arose. It was also unsurprising as these were small properties – no larger than four bedrooms with only one bathroom and toilet - which had to accommodate the maternal grandparents, their ten children and the female cousins, P and Q.
39. The educational/behavioural problems experienced by the mother and F caused the maternal grandfather to arrange for them to go to school in Kenya in order that, as he said to me, their attitude to education would change. Both the mother and F travelled to Kenya with the maternal grandfather in summer 2011 and were staying with the maternal great-grandmother when the maternal grandfather placed them in schools in that country. The mother and F had thought the trip was a holiday and it appears they were not told by the maternal grandfather about the plan to educate them in Kenya. This educational experiment came to an end rather quickly and all three had returned to the UK by the end of the summer.
40. The mother and the maternal grandfather travelled to Kenya on 1 July 2013 and returned to this jurisdiction on 14 September 2013. The mother understood that, during this trip, she would be attending a family wedding. Once more they stayed with the maternal great-grandmother. The mother alleged that, during this trip, she was subjected to FGM arranged by the maternal grandparents. On her return to this jurisdiction in September 2013, the mother went to college but did not tell anyone about her alleged experience of FGM. She told me that she had a boyfriend and spent a night away from home with him which she said had made her parents very unhappy. She described her mother monitoring her behaviour much more vigorously thereafter.
41. Following what seems to have been a relatively short courtship, the mother and the father had an Islamic wedding ceremony at the maternal grandparents' home on 15 August 2015 followed by a wedding party about a week later. How the mother and father came to meet and marry was also a matter of intense dispute as the mother asserted that she had been forced into marriage by her parents. The mother moved to the father's home which he shared with his elderly parents on 26 August 2015 where the couple lived on the upper floor of the house separate from the paternal grandparents who lived downstairs.

42. The father is of Somali origin and is now 39 years old. He lived with his family in Somalia until he was about 11 years old when they moved to Kenya. The family had a comfortable lifestyle and in 1996 they moved to this jurisdiction. The father went to university and obtained a degree; travelled abroad on holiday; had a variety of jobs until about the time K was born; and enjoyed a wide friendship network. His mother, the paternal grandmother, described him as '*Westernised*' though he told me that he did not like this label. It was obvious that his life experiences were radically different from those of the mother. The father has one half-sister from his mother's first marriage who lives in Canada with her children. She is separated from her husband. Like all the adult women on the mother's side of the family, the paternal grandmother and her daughter have also experienced FGM.
43. The mother became pregnant within a few weeks of the marriage, but this was a molar pregnancy which required surgical removal, causing the mother very considerable distress. She became pregnant very shortly thereafter and, at the end of 2015, her medical notes recorded another miscarriage. In April 2016 she was advised by her GP not to become pregnant whilst she was under follow up for the molar pregnancy. The mother's medical records showed that she experienced what seems to have been an episode of depression in 2016 when she was prescribed citalopram and the father told me that he had had to take three months off work to care for her. He reported her to have had a '*breakdown*'. Unsurprisingly, it was evident to the paternal grandmother that all was not well in the marriage as, despite her deafness, she heard rows and shouting in the family home coming from upstairs where the mother and father lived. Despite the mother's difficulties, she was pregnant with K by autumn 2016. In December 2016 the father assaulted the mother during a row about whether he should go out to see friends or spend his evening with the mother. He held his hands round her throat, pushed her against the wall and then pushed her onto the bed before leaving to see his friends. The father admitted this incident to professionals involved with the family.
44. During the pregnancy with K, the mother's medical records mentioned for the first time that her midwife booking form recorded her as having experienced FGM. Her pregnancy was not an easy one as she was seen in hospital on several occasions with difficulty passing urine and lower abdominal pain. In January 2017 the mother told hospital staff she was very stressed due to financial pressures and debts. At a hospital consultation on 22 February 2017 for abdominal pain and cramps, the mother said she had experienced FGM at the age of 13. Though the notes recorded that the mother declined an internal examination using a speculum, she was described as having had Type 3 FGM. Some discussion was had with the mother about undergoing an FGM reversal surgical procedure and appointments on at least two occasions were made for her to discuss this. She did not attend any of these appointments. On 12 April 2017 the mother told the midwife that she had had Type 3 FGM as a teenager and that her family, in particular the paternal grandmother, were pressurising her not to have the reversal procedure. She said both the maternal grandmother and paternal grandmother were supportive of FGM and that she was scared for her unborn baby girl. The paternal grandmother was said to be giving her a lot of information about FGM, including that her FGM would be reinstated after the mother had her baby. The mother again said she had had FGM at age 13, having been taken to Somalia by the maternal grandmother.

45. On 24 April 2017 the mother attended hospital in the early stages of labour and was admitted. During discussion with the medical staff, the mother said she wanted to have a reversal procedure for her FGM but was anxious that her family wanted her to be re-sutured. The medical staff spoke to the father in order to emphasise to him that re-suturing was illegal and that it would be illegal to take the baby abroad for FGM. Labour was prolonged and medical staff wanted to administer an epidural. The mother consented to this but was seen to be upset, telling the medical staff that the maternal grandmother was advising her not to have an epidural as both she and her baby would be disabled. Medical and nursing staff reported the family to be very controlling. The mother eventually had the epidural and K was born although the mother suffered a third-degree tear and episiotomy. The medical records described the mother saying, after K had been born, that she had experienced FGM aged 17. I also note that the medical records stated the mother was seen by a perinatal psychiatrist some three days after K was born. That consultation concluded that the mother had recurrent anxiety in the context of childhood trauma, neglect and recent forced FGM by her parents when she was aged 17. She did not appear to be suffering from depression but had occasional panic attacks arising from K's recent difficult birth. She was not thought to be suicidal and was described as having "good support" from the father and the paternal grandmother which meant she was fit psychiatrically for discharge. It is very unfortunate that the psychiatric records concerning the mother have not been available to me during this hearing. The concerns about the extended family's behaviour and the mother's experience of FGM prompted the midwives to make a child protection referral to LA2. Informed by LA2 of the risk of FGM to J, LA1 conducted an assessment in respect of the risk of FGM within the maternal family but closed the case on 26 September 2017 as both the maternal and paternal family were said to be aware that FGM was illegal in this country.
46. Sadly, the mother began to have what eventually turned out to be significant difficulties passing urine shortly after K's birth and the medical records stated that she was not prepared for K's birth. By early June 2017 the records showed that the mother had begun to live something of an unsettled existence with K, moving to the maternal grandparents' house in June 2017 to flee alleged domestic abuse and then, later that month, returning to live with the father before moving into temporary accommodation in early July 2017. By late July 2017 the mother was once more living with the maternal grandparents in LA1, apparently once more fleeing domestic abuse but she was then seen with the father in August 2017. This chaotic lifestyle cannot have been conducive to either K's or to the mother's overall wellbeing. In August 2017 the records noted professional concern that the mother might have learning difficulties.
47. By early October 2017 the mother and K were once more living with the father in LA2. At a GP appointment on 31 October 2017, the father was seen to speak over the mother and the mother was described as looking emaciated. The couple's relationship was not explored as they had attended the appointment together. On 18/19 November 2017 the mother moved to a refuge with K and reported domestic abuse from the father. Shortly before moving to the refuge, the mother had been staying in the maternal grandparents' home where there was an ugly incident during which she and B, her older sister, were assaulted by F. On 1 December 2017 the mother was evicted from the refuge after she brought a man back there and she was then placed in temporary accommodation with K. Before her departure, the mother told the refuge she had been forced into marrying the father by her family.

48. On 18 January 2018 the mother and K visited the father's home so that he might see K. Whilst the mother went to the shops, the father reported to the police that he believed K had been sexually abused as he thought her vagina looked 'big' and red. It is noteworthy that this observation was not shared by the paternal grandmother who thought K had a sore bottom because she had been wearing a dirty nappy for too long that day. The police found no evidence of abuse, but an ambulance was called and K and her mother were taken to hospital where the father's concerns were found to be unsubstantiated. By 23 January 2018 the mother and K were reported by a social worker to be in foster care. On 6 February 2018 the local authority then involved held an initial Child Protection Conference which decided to place K's name on the Child Protection Register under the category of neglect. Immediately after the conference, the social worker held a meeting between the parents during which the father said he wished to have the care of K. The mother became very upset and left the meeting, leaving K in her father's care. She has remained with him ever since.
49. In March 2018 the mother's problems with urinary retention increased and by the end of that month she was fitted with a catheter. She has lived with one ever since. I have little doubt that her physical problems have been a source of significant pain and emotional/psychological distress for the mother. By June 2018 the mother was living at the maternal grandmother's home. She had contact with K from Monday to Wednesday in an arrangement which had been brokered by LA2. Throughout this time, the mother seems to have complained to various professionals that her family were emotionally abusing her and, by the end of June 2018, she was living in temporary accommodation in LA1. This move resulted in the breakdown of her contact with K for many months.
50. By July 2018 the mother was in crisis. She attended Accident and Emergency on at least five occasions between 23 July and 2 August 2018 with, variously, chest pains, vaginal bleeding and urinary symptoms. It was notable that, when she attended hospital, she made allegations against the father and her family. On 23 July 2018 the mother had also been allegedly assaulted by another resident at the refuge where she was then living. She reported feeling unsafe in her accommodation because her attacker was also abusing her in the street. On 1 August 2018 the mother initially refused to leave the hospital following a psychiatric assessment. She was said to have suicidal thoughts though had not acted on these. The following day the mother became aggressive to hospital staff when told she would have to go home if her blood pressure was fine and later that evening, after an ambulance call-out, there were concerns she had taken an accidental overdose. Contemporaneously with these events, the mother made allegations against her family and her husband. Thus, in July 2018 the mother reported to ambulance staff who had taken her to hospital that she had had an arranged marriage and had experienced FGM. Amongst other matters, she alleged rape by the father and claimed he had been talking to his mother about taking K to Africa. The mother made similar allegations to the Psychiatric Liaison Service on 1 August 2018. On 10 August 2018 the mother reported to police in LA1 that K and her youngest sister, J, were at risk of FGM and three days later alleged that she had been a victim of FGM in 2013 and had been forced into marriage. Thus began the police investigation into the mother's allegations and, consequential upon those allegations, the application by LA1 for protective orders in respect of J and her older cousin, Q then aged 17 years, and the mother's own applications seeking protective relief on behalf of both K and herself.

The Witness Evidence

The Mother: General Observations

51. The mother, whose allegations brought these proceedings into being, is on any view a very troubled young woman. First, she has significant physical problems seemingly consequential on the birth of K, in that she has a urinary catheter which triggers frequent urinary tract infections and abdominal pain especially during menstruation. Second, the mother's early life experiences were, on any analysis, traumatic. Together with A and B, she was separated from her own mother at a very young age and left in the care of her maternal great-grandmother. That separation took place in the context of a civil war in Somalia and these three very small girls lived something of a peripatetic existence with their grandmother, eventually ending up in a refugee camp on the Somali/Kenyan border. The mother told me that, whilst in that refugee camp, she was sexually assaulted by older men who came to visit her maternal grandmother. That account was gravely concerning even though I have reservations about whether, had such a finding been sought, I could have made a finding that the mother suffered such profoundly damaging and destructive abuse. If her account is true, the damage to the mother would be incalculable.
52. The mother and her sisters arrived in the UK in October 2003 to join the maternal grandparents who, at that time, were caring for five other children, one of whom was a baby. The mother effectively joined strangers in an alien country and her adjustment to them and to life here was very likely to have been fraught with difficulty given what is now known about her cognitive limitations. The family moved house on numerous occasions and the mother reported changing schools very often. It was accepted by her family that the mother had problems communicating at school and, though I had no education records about her available to me at the hearing, I am satisfied that her experience of education left much to be desired.
53. Most importantly, the mother has a very significant learning disability, assessed during the proceedings by Linda Jeffes, a clinical psychologist. This learning disability and its impact on her functioning appears not to have been fully appreciated by her family or the father until these proceedings began. They told me, and I accept, that they had no knowledge of the extent of the mother's learning difficulties and it seems clear that neither the mother nor her parents were ever offered help with this issue whilst she was at school. It is noteworthy that some medical and social work professionals involved with the mother also thought she had learning difficulties though no assessment of these was undertaken until LA2 undertook a cognitive assessment of the mother in April 2018. The outcome of that assessment was almost identical to the conclusions of Linda Jeffes. LA2 shared the conclusions of that report with the mother in June 2018, but, unfortunately and unhelpfully, those conclusions were not more widely shared with the family or acted upon by professionals prior to the commencement of the proceedings.
54. Linda Jeffes was instructed to conduct a cognitive and a capacity assessment of the mother and on 29 January 2019 she concluded that the mother lacked capacity within the meaning of the Mental Capacity Act 2005 to conduct the proceedings. She considered it possible that, with the specialist support of an intermediary, the mother might develop that capacity in the future. Her report caused me to invite the Official Solicitor to act as the mother's litigation friend. The mother was subsequently

assessed by an intermediary, Amy Harrison, who made detailed recommendations as to how the mother might participate in the proceedings and how she might be assisted in giving oral evidence to the court. On 2 October 2019 the Official Solicitor was discharged from acting as the mother's litigation friend following a further capacity assessment from Linda Jeffes which concluded that, with the assistance of an intermediary, the mother did indeed have capacity to conduct the proceedings.

55. The cognitive assessment undertaken by Linda Jeffes concluded that the mother's overall cognitive ability was in the Extremely Low range with a full-scale IQ of 56, below the first percentile. Her verbal comprehension abilities were in the Borderline range; her perceptual reasoning abilities were in the Extremely Low range; her ability to process simple or routine visual material without making errors was in the Extremely Low range as was her ability to sustain attention, concentrate, and exert mental control. Thus, her capacity to comprehend information presented visually and verbally was significantly limited and her working memory was also restricted, making information processing more time-consuming and tiring for her than the average person, as well as resulting in frequent errors on a variety of complex tasks. These results also suggested that the mother might experience difficulties multi-tasking and managing a complex environment outside of the home. Though the mother said she was able to read and understand simple text, she had difficulty understanding and retaining information read to her. She was unable to manipulate numbers reliably beyond 10 and had not grasped the concepts of multiplication and division. She was able to tell the time using a digital clock but her ability to calculate time for planning purposes was poor. Though she was able to recognise coins of various denominations, her ability to add and subtract coins was limited to small sums.
56. Linda Jeffes concluded that the mother fulfilled the criteria for learning disability. The onset of that disability was likely to have begun before she was 18 years old and her overall functioning was below 70, with impairments in adaptive functioning. The mother was a vulnerable individual who required a high level of protection and support from a Learning Disabilities team and a specialist resource centre. It was possible that the mother's intellectual functioning had been compromised to some degree by both mental health problems and a lack of opportunity to access formal education, but Ms Jeffes was of the opinion that her intellectual potential was, nevertheless, likely to be within the Extremely Low/Borderline range. She observed that there was a remarkable discrepancy between the mother's presentation and her cognitive ability in that she was an articulate young woman who was able to express her thoughts and feelings, often with clarity. It was however when the mother was required to provide a coherent account of events or to process and retain complex information that her cognitive difficulties became apparent. Miss Harrison's report in February 2019 underscored Miss Jeffes' conclusion in this way: "... [the mother] is able to use her social skills and the rules of social communication to mask the difficulties she may experience in following conversations around her".
57. Linda Jeffes was also instructed to undertake a full psychological assessment of the mother but was unable to do so because of the way the mother presented to her and engaged in the assessment. She found the mother to be struggling to cope with pervasive psychological and emotional difficulties and she thought it likely that the mother met the DSM 5 criteria for Post-Traumatic Stress Disorder, Depression and

General Anxiety with panic attacks. Linda Jeffes stated that “... *During any assessment situation, it is important to understand [the mother’s] agitation and hostility in the context of her fragile mental health. Given time, patience and clear boundaries, [the mother] is able to calm herself and re-engage. When calm, she is an insightful, articulate and warm young woman who is able to express her thoughts and feelings with clarity.*”

58. The cognitive assessment conducted by LA2 also concluded that the mother had significant cognitive difficulties given that her Full-Scale IQ fell within the extremely low range of intellectual functioning. Her cognitive abilities fell significantly below the average range, indicating that she had significant difficulties and was likely to struggle to process and make sense of information more than others would. She was also likely to struggle to think in an abstract way and to manage non-verbal thinking and perceptual organisation. Those issues would be further affected by her problems with memory and speed of processing. Though the mother performed better at verbal comprehension, her ability to process verbal information would still be affected by her difficulties with memory and processing in addition to her comprehension of the English language.
59. It was obvious to me that the mother’s significant learning difficulties impacted upon her oral evidence and, moreover, presented a considerable challenge when assessing her credibility as a witness of fact.

The Mother: Oral Evidence

60. The mother gave her oral evidence via a video-link with the support of her intermediary, Ms Harrison. In line with the suggestions made by Ms Harrison, the mother had frequent breaks in her evidence and, by and large, counsel asked her simply structured questions. When they did not, I intervened to ensure that the question was put in a manner which the mother could understand. However, the mother had many more breaks in her oral evidence than had been expected. When asked questions in cross-examination she found painful to answer or when she perceived her answer might put her in difficulty, she would leave the witness suite, abruptly forcing a break in the proceedings. The mother’s obvious heightened emotional arousal at these times, coupled with all these interruptions, meant that her evidence was not subjected to the necessary scrutiny by means of cross-examination normally required on behalf of those against whom she had made very serious allegations.
61. Alarming, the mother made a variety of fresh and very serious allegations about several matters in the witness box. For example, she alleged that the maternal grandparents had forced B into marriage; that the paternal grandmother had shaken K and was violent to the mother herself; that her cousin, P, had physically assaulted her in the street during an argument; and that her brother, F, had wanted her to perform oral sex on him. Those new allegations were not susceptible to careful cross-examination as the mother became obviously angry and upset when asked about them and left the witness suite before these matters could be fully explored with her.
62. Certain aspects of the mother’s evidence, for example, about her experience of undergoing FGM suggested to me that the mother had vivid memories of what had taken place. However, as so much of the mother’s case was entirely dependent on her

oral account of events, the significant inconsistencies in her accounts of abuse, the fresh and serious allegations made in the witness box, and the mother's unwillingness to be questioned about these matters led me inevitably to the conclusion that I should treat her oral evidence with very great caution indeed.

The Family Evidence

63. A very considerable additional difficulty in this case, in my view, was that those able to give a direct account of events, which formed the foundation of the facts which I was invited to find, did not give accounts on which I felt entirely confident in relying. I formed the distinct impression that the mother's sisters and cousins had a great deal more to say but chose not to do so out of loyalty to the maternal grandparents. Leaving aside the oral evidence of the mother, I am satisfied that many of the family witnesses were giving me a very edited version of events. In coming to those conclusions, I have made every allowance for oral evidence given with the assistance of an interpreter. The obvious deficiencies in the family evidence made my overall task much more difficult indeed.
64. The **maternal grandmother** was a woman in poor health. She underwent a kidney transplant in 2017 but told me that there were problems with that transplant and that she had been told it was failing. Her case was put on the basis that everything the mother had alleged was a lie. One might have assumed that the maternal grandmother might have been able to provide a straightforward account in response to the mother's allegations. That was not the case. It was painfully apparent that, even between her account and that of her husband, there were significant inconsistencies. Her account for example, that she had left the mother and her sisters in the care of the maternal great-grandmother when the mother was about a year old and had not seen her again until she was eight, was incredible. It was flatly contradicted by the evidence of her husband, namely that his daughters had lived with their parents until about 2001. Additionally, the maternal grandmother's failure to acknowledge the frequent and sometimes serious rows in her home even when confronted with the contents of police reports also undermined her credibility.
65. Though initially appearing to be a more straightforward witness than his wife, my overall impression of the **maternal grandfather** was that he tried to explain everything untoward away in a manner which became increasingly unconvincing as his oral evidence progressed. In his first statement to the court, he said that the mother's marriage had been arranged but then told me in the witness box that his statement was inaccurate. He sought to cast doubt in this one matter on those who had prepared the statement yet relied on the remainder of the statement as being accurate. I suspected that he was altering the narrative in order to bolster the case advanced by the father as to how he had met the mother. One significant aspect of his oral evidence caused me to have real doubts about his credibility. For the first time in his oral evidence, he told me in cross-examination on behalf of the mother that, during the family holiday in Kenya in 2008, the maternal great-grandmother had apologised to his daughters for having subjected them to FGM. He simply could not explain to me why he had never mentioned this to anyone before. None of his daughters mentioned this event when all were at ages when they might have been expected to recall it as being significant. I am afraid that I did not believe the maternal grandfather and considered it noteworthy that he gave this account when being pressed to explain why the family had maintained contact with the maternal great-grandmother (it being his

case that her behaviour in causing his daughters to undergo FGM had occasioned a huge family rift because he and his wife were fundamentally opposed to that practice).

66. The **father's** evidence demonstrated some recognition that he had not behaved as sensitively as he should have by continuing his sexual relationship with the mother after her miscarriages when she was plainly unwell and vulnerable. He was very emotional at the conclusion of his evidence, saying that he loved the mother and K and asserting that K was not a child of rape. His account of how he came to meet the mother was contradicted by other witnesses and I formed the view that he was being less than frank about the circumstances of their marriage because it would not show him in a good light.
67. I found that the mother's oldest sister, **A**, was not a witness on whose evidence I could rely. Her evidence appeared to me to be tailored to support the account given by her parents and to protect them and her younger brother, F. She lied to me about her first marriage even when asked specifically if she had married a man of Somali origin. Her denial of being married to a man other than her present husband was contradicted by her own parents, her brother F and her cousin P. Though embarrassment at a marriage breakdown might have played some role in shaping her evidence, I considered that unlikely given that she told me of a sexual relationship outside marriage before she married her second husband. I was left with the impression she was being circumspect about her first marriage because of the circumstances in which it had taken place. With respect to the mother's allegation of FGM, A's account left much to be desired. In her police statement she was vague as to where the mother was when she and B were being cut. In oral evidence she said the mother was next to her and that all the girls went into the room at the same time to be cut. That contradicted her statement where she said that the girls went in one by one (a detail with which B agreed). She accepted in her oral evidence that she had been wrong to say that the maternal grandfather had come to collect her and her sisters from Africa, but she could not explain why she had given this detail in the first place.
68. As with A, I found **B's** evidence was strongly influenced by her desire to protect her parents and her brother, F. Her memories of FGM in her police interview did not place the mother at that event, but she told me in her oral evidence that she was 100% sure that the mother was present. The significant problem with B's evidence was her retraction in the witness box – notwithstanding admissions made by F that he had assaulted both B and the mother - of the allegations of physical assault made by her against F in November 2017. I found her to be neither a reliable nor credible witness on this issue in particular.
69. The evidence of the mother's cousin, **P** went mainly to the issue of whether the mother had been forcibly married. I had a handwritten note from her composed in 2018 at the start of the legal proceedings which explained how it was the mother and the father had met. She told me that the father had asked her to write this note because the mother was giving a different account as to how their relationship began. She had shared a bedroom with the mother and claimed to have witnessed the mother talking to the father on the telephone many times late at night. That account was contradicted by her younger sister Q who confirmed that P had left the maternal grandparent's home in early 2015 to get married and that she, Q, had been sharing a room with the mother.

70. The evidence of **Q** was marginally more credible than that of her sister. Though she was clearly anxious about saying anything which might deviate from the maternal family narrative, she responded more readily to reminders to tell the truth. Her evidence contradicted the family narrative that the marriage between the mother and the father was a love match in that she told me that they had met on only about two occasions before the marriage ceremony in mid-August 2015. Though she confirmed some telephone conversations between the mother and the father, her evidence was that these were not as frequent as her sister had said.
71. **F**'s evidence stood out from that of the other members of his family. I consider that he tried to assist me and made an effort to tell me the truth, notably he made admissions against his own interest, for example, about his loss of temper. He also volunteered information which would otherwise not have been known to me and which did not paint him in a good light, namely that in spring 2018 he had left the maternal family home in a hurry because of his involvement in drug dealing. Finally, he gave evidence adverse to his family, for example by telling me about being physically beaten in 2008 whilst in Kenya on holiday.
72. The evidence of the **paternal grandmother** was calm and measured. It was notable that she refused to turn on the mother even though the mother had made serious allegations of violent conduct against her. Her oral evidence showed concern about the mother's well-being and she did not paint a rosy picture of life in the paternal household which was to her credit. I was, however, less satisfied about what she said to me in relation to her stance about FGM given that, in her oral evidence, she had contradicted her written statement denying that she had had FGM. She told me in the witness box that she had indeed been cut as a child, but she was unable to explain to me how she had come to make that earlier erroneous statement.

The Medical Evidence

73. At the invitation of the police, Dr Paul examined the mother on 12 November 2018 and recorded her observations on a DVD. That DVD was viewed by Dr Markos, instructed as an expert in these proceedings. Dr Paul deferred to Dr Markos as an expert in FGM and there were no significant disagreements between them.
74. Dr Markos concluded that the mother had experienced Type 1 FGM and possibly Type 2 FGM as there was some evidence suggestive that her labia minora had been trimmed though there was no scarring evident in respect of that. He was clear that the mother had not experienced Type 3 FGM. It was impossible to date when the mother might have been cut as wound healing in the female genital area is good given the large quantity of blood vessels present. Dr Markos told me that the trade in FGM was a competitive one and that those performing FGM were skilful so that they could retain and expand their business. It was thus possible that the mother may have been cut by a skilled cutter and that she had experienced Type 2 FGM.
75. As to whether the mother had been stitched, Dr Markos told me that stitching could also be associated with types of FGM other than Type 3. The mother had certainly experienced Type 1 FGM, namely the removal of her clitoris, and it was possible that she may have been stitched afterwards to stop the bleeding. The stitches which could have been used by a cutter were either those which required removal or absorbable stitches. The latter were widely available, and it would not be implausible that a cutter

might use such stitches. The mother had given a very specific account that she had been stitched, leaving only a very small hole for urination. When asked about the difference in what the mother reported and the examination of her genital area, Dr Markos said that the mother's account might well be unreliable given the pain she would have experienced. He was of the opinion that it would be difficult for a lay person to give a precise description of what had occurred to them in any FGM procedure. He doubted whether medical staff in this jurisdiction had properly examined the mother so as to be able to say to her that she had experienced Type 3 FGM as the medical notes apparently recorded.

76. Dr Markos told me that he knew that World Health Organisation statistics suggested the typical age for FGM to be performed in Somalia was between 0 to 5 years. However, he knew the procedure could be carried out at any age from 5 to 14 years and possibly later. He had not personally come across cases where Somalian women had FGM done at the age of 18, but he did not consider FGM at that age to be implausible. He was clear that the psychological trauma and distress was the same regardless of the type of FGM performed. I found Dr Markos' evidence to be clear, detailed, balanced and sensitively given.
77. There is no need for me to repeat the clinical psychology evidence which is summarised above. There was no challenge to its conclusions.

Social Work Evidence

78. I heard evidence from two social workers employed by LA2 at the relevant times. Both had been allocated to K as she was deemed to be a child in need. LA2 had undertaken a brief assessment of the risk to K of FGM in May 2017 and had concluded that there was no safeguarding role for it given the attitudes of the family which were said to be firmly opposed to the practice. That assessment noted that the mother presented as if she might have learning needs, but no action was taken to explore what these might be. LA2 became involved once more in early February 2018 following a referral by another local authority who had placed K on the Child Protection Register under the category of neglect.
79. KP worked with the mother from March 2018 to July 2018. She had little experience of FGM and, due to pressure of work, had not consulted earlier records about K and her parents when allocated to the case. Following a child protection conference on 7 March 2018, KP drew up a written agreement about contact between the mother and father and made a referral for the mother's cognitive needs to be assessed by the local authority's in-house psychologist. Though the mother was assessed quite quickly, the outcome of the assessment was not available to the local authority save in outline form until 6 June 2018. KP accepted in her evidence that it might have been more helpful if she had followed up the conclusions of this report more speedily, but she was not assisted in doing so by a failure to upload the cognitive assessment onto LA2's shared computer network.
80. Towards the end of July 2018, JF succeeded KP as K's social worker until August 2019. It was clear that he too had not been able to access the cognitive assessment of the mother undertaken by LA2. He did not learn the extent of the mother's very significant learning difficulties until he received a copy of Linda Jeffes's report in spring 2019. Like his colleague, he did not consider earlier social work records

emanating from the other local authority which might have informed his report to the court in September 2018. He offered assistance to the father in filling out his child arrangements application but did not offer much practical help to the mother.

81. Both social workers struck me as trying to do their best in a difficult and complex family situation but were hampered by the lack of access to the in-house cognitive assessment of the mother and, to some extent, by the mother's many changes of address during their involvement.

Findings Sought

82. Before I address each finding sought by the mother, I make it clear that, in coming to my conclusions, I have had in mind the very clear dicta in Re T [see paragraph 23 above] not to assess the evidence in compartments. I have stood back to consider the totality of the evidential landscape in relation to both each finding and also across the totality of the findings sought. I have reminded myself that I should make findings of fact if the evidence permits me to do so but should not strain to do so if it does not. Given the mother's cognitive difficulties and the observations I made about her oral evidence, I have also had the relevant case law about lies at the forefront of my mind when evaluating each allegation made by the mother.

83. I have addressed the findings sought out of the order in which they were listed in paragraph 9 above. I have set out the chronology of each allegation made as this seemed to me to provide a clearer structure for my analysis.

Finding: F sexually assaulted the mother during her childhood and slapped K

84. The mother first alleged that F sexually assaulted her on several occasions when she was growing up in November 2017 following an incident at the family home involving F, the mother and B. She stated that the abuse occurred in 2015 prior to her marriage. F used to come to her room saying that he wanted to touch her breasts; would threaten to use force if she did not comply with him; touched her vagina on many occasions and on one occasion inserted his finger into her vagina. She said that in 2017 the maternal family had pressurised her to withdraw her statements to the police about F's alleged abuse. Both the mother and B told me that they had made statements retracting the allegations of physical assault made against F shortly after making them, but I have seen no material from the police in that regard. F also told me that he had been interviewed by the police in relation to the allegations made about a month later. Efforts have been made to obtain the retraction and interview material but without any success. I have taken that into account in reaching my decision.
85. At the child protection case conference in LA2 on 7 March 2018, the mother alleged that she had been physically abused by F. No mention was made of sexual abuse. On 26 June 2018 the mother told KP, the LA2 social worker, that her brother had sexually abused her when she was younger. When KP explored this with the mother, the mother said she had lied about this earlier and said that the father had made her say these things to cause problems between her and her family.
86. In her police interview dated 6 March 2019, the mother alleged that F wanted to touch her breasts so that he could masturbate. This happened when she was 16 or 17 and he

was 13 or 14. She described being able to see F's penis whilst he was masturbating since he would remove his trousers to his knees. These incidents occurred two or three times and in the same place, namely her bedroom in her mother's home. She claimed that F blackmailed her by threatening to tell her parents that she was smoking unless she complied with his demands. In cross examination on behalf of F, she told me that the sexual abuse occurred after her FGM in 2014. She said for the first time that F had asked to perform oral sex on her and had asked her for a 'blow job' and to give him 'head'. She claimed he had digitally penetrated her up to the knuckles of his fingers and had also touched her breasts. The mother said the abuse always occurred in the toilet but then, when challenged, said it had also occurred in her bedroom but took place '*mostly in the toilet*'.

87. This chronology demonstrates how the mother's allegations against her brother changed over time. New details were added, most strikingly in respect of alleged oral sex. The inconsistencies in the mother's evidence as to where the abuse took place and the alleged details of the act or acts complained of were difficult to explain by reference to the mother's cognitive difficulties, emotional vulnerability or poor memory. Miss Henke QC submitted that the mother clearly stated in her police interview that the abuse happened in her bedroom and indeed drew a plan of the bedroom showing where she and F were at the time. In cross-examination, having said that she shared a bedroom with J at the time, she switched the location of the alleged abuse to the toilet. Miss Henke QC submitted that the only logical inference to be drawn from the location switch was that the mother had been caught out in a lie. It was only when the inconsistency between what was said in her oral evidence and what was said in her police interview was drawn to her attention that the mother stated the abuse "*did happen in my room but also in the toilet as well, most of it was in the toilet*". Miss Henke QC relied on this as an example of the mother adapting her evidence to fit her story rather than telling the truth. Likewise, her reasons for the failure to mention being asked by F for a blow job until she gave her evidence in chief appeared unconvincing. She claimed that she had told the police in November 2017 and did not know why they had not put it in her statement. Later in her oral evidence, she told me she had omitted any reference to the blow job in her March 2019 police interview because she had been too scared. I found it difficult to understand why the mother had withheld the allegation about the blow job from her March 2019 interview given that, on her evidence, she had already told the police about this in November 2017. However, I note that in her November 2017 statement and in her March 2019 police interview the mother made clear although different allegations of sexual abuse against F. Fear of the consequences of sexual abuse being revealed provided no proper explanation for the mother's earlier failure to mention alleged oral sex.
88. There was nothing in the wider evidential canvas which could either support or remedy the defects in the mother's oral evidence. F's admissions in respect of his behaviour all related to problems with anger management and violence and did not amount to evidence of a propensity to commit sexual acts at all, let alone sexual acts against his sister. Equally there was nothing revealed in his police history, from his school or from any of his other siblings that F had ever displayed any sexually inappropriate behaviour to anyone, let alone a family member or sibling. An assessment undertaken by LA1 in January 2018 contained an account from D that the mother had told him several years earlier about F touching her private parts. Two days later the mother told D that she had lied about F because she wanted to get back at

him for not allowing her to watch television when they were on holiday in Italy. I note that the mother never claimed to have told D that she had been sexually abused by F and D has not given evidence to me at all. Though this small passage of hearsay is admissible in these proceedings, I can attach no real weight to it either to prove the allegations made by the mother or to undermine them by providing a reason why the mother might now make a false allegation of abuse.

89. The belief of the maternal grandmother in the sexual allegations made against F by the mother was, in my view, not probative. She provided no evidential foundation for forming or holding that belief and qualified her answers by reference to living in a small house with one toilet which everyone was queueing to use, implying to me a certain disbelief in what the mother was alleging.
90. Miss McKenna QC submitted that, whilst F was four years younger than the mother, his obvious greater intellectual and physical strength should be factored into an assessment of the mother's allegations. She suggested that coercing the mother to submit to sexual abuse by playing on her fear of getting into trouble with the maternal grandmother was a relatively straightforward matter for F. She properly reminded me that F's vehemence in denial did not render the mother's allegations false. Whilst I accept those submissions, they are insufficient in themselves to account for (a) the inconsistencies in the mother's allegations and (b) the manner in which the mother's evidence about F's alleged sexual abuse developed.
91. Standing back and looking at matters in the round, I am not satisfied that the mother has discharged, to the requisite standard, the burden of proof which falls upon her shoulders. I do not make the finding sought in respect of F's alleged sexual abuse by the mother. In the summary of the mother's case prefacing the final amended schedule of findings sought, the mother asked me to find that the maternal grandparents failed to protect her from sexual abuse by F. As I have failed to make the findings sought about sexual abuse, it logically follows that I cannot make that specific finding about the maternal grandparents.

Finding: F slapped K

92. The finding sought arises from an incident on 15 November 2017 at the home of the maternal grandmother. It was accepted by F that he pushed B on the sofa, lost his temper and slapped her. He also accepted that he had slapped the mother. He denied slapping K who was in her mother's arms when he slapped the mother. Though F accepted that he could sometimes be overcome by anger during a row and "lose it", he did not accept in his oral evidence that he had, either in the past or now, any difficulties with anger management.
93. There were contemporaneous accounts of this incident provided to the police by B and the mother which were available to me. B reported that F had used an open palm and struck K on the forehead and the mother reported that "*when he slapped me I was holding my baby girl, when he slapped me he also slapped my baby in the face*". In his statement in these proceedings, F said that the mother and he were arguing and "*...She kept saying 'why don't you hit me', 'come on hit me, 'why don't you hit K'. She repeatedly tried to provoke me but I could see K was in her hands. When she provoked me to hit K, I approached K, touched her face with my palm and said 'why would I hit K, she's just a little baby'. I told [the mother] 'I would never hit my*

niece' ... ". On F's account, this encounter took place before he hit B and then later hit the mother as he was leaving the house. In his oral evidence, he told me that he had slapped the mother when K was in her arms as he was leaving the house but he did not resile from the remainder of his account.

94. I remind myself that the allegation relating to K was made in a context where there was an unpleasant row involving F, B and the mother. Though police statements were made by B and the mother later that day and both left the maternal grandmother's home with their children to live elsewhere at least on a temporary basis, both B and the mother visited the police shortly thereafter and withdrew their complaints about F's behaviour. Despite concerted efforts to obtain the relevant disclosure from the police, I did not have either the retraction statements or the record of the interview given by F about a month after the incident took place. The absence of that material hampered my assessment of the weight which could be given either to the allegations or to their retraction.
95. A curious feature was that B asserted in her oral evidence that F had assaulted no one on 15 November 2017 even though she knew F admitted assaulting both her and the mother. She was simply unable to explain to me why she was saying this. As I indicated earlier in this judgment, I found her to be neither credible nor reliable in her evidence to me on this issue – I suspect she was desperately trying to achieve what she thought was a good outcome for F and to support the family narrative that the mother was a liar. I thought carefully about whether B's police account can corroborate that of the mother and vice versa, but decided that such a conclusion was not open to me. B's evidence in the witness box about this issue was simply incredible and I reject it. Given that I have my doubts about the mother's evidence on this issue, it would be unsafe for me to conclude that her evidence corroborates that of her sister.
96. I was left relying on the evidence of the mother and I took into account in so doing the caveat from Linda Jeffes about the mother's ability to provide a coherent account of events. There were some difficulties with the mother's evidence. First, there were telling inconsistencies in the police statements given by both the mother and B on the day of the incident itself. The mother claimed to have been slapped three times in the face by F at the same time that he slapped K. B did not mention witnessing this but only recorded seeing F striking K with an open palm. She stated that both she and the mother were slapped in the face as F was leaving the house. Second, both sisters clearly discussed the events of the afternoon before giving their police statements as B spoke of being told by her sister that F had injured B's young son, causing him to have a nosebleed. Their accounts were thus likely to have been contaminated by each other's recollection. Third, the mother's account that, when B was herself present, B's young son was kicked by F causing him to have a nosebleed was unsupported by any of the police documents available to me. Had that occurred, I consider it very likely that B would have taken her son to be medically checked and that it would have been recorded by the police. Fourth, in her police statement made about this incident, the mother made allegations of sexual assault against F which I have found were not established to the requisite standard.
97. What do I make of F's account? The evidence before me, about incidents in the family home involving F to which the police had been called, was that once F *'lost it'*, his rage was uncontained and he had no apparent regard for anyone else in the house at the time, let alone for younger children. I do not accept his evidence that he had no

problems with his temper or with anger management – the largely unchallenged evidence about his behaviour (including his own admissions) painted a very different picture. F’s suggestion that he touched K’s face with his palm gently in the middle of a heated row with the mother seemed implausible. I remind myself, however, that I found his oral evidence to be a more genuine attempt to tell me what was really going on in this family than the evidence, for example, of his own parents though I acknowledge that his loss of temper might have some bearing on his reliability as a historian.

98. The difficulty with this entire incident was that all the accounts I had of it, either in documentary or oral evidence, were incomplete, confused and compromised for the reasons which I have already explained. Standing back and doing the best I can in the light of my analysis, I have concluded that I cannot make the finding sought by the mother in respect of F slapping K.

Finding: The father slapped K on more than once occasion and shook her once

99. The first time the mother alleged the father had been physically abusive to K was on 31 July 2018 when the mother reported this to hospital staff and, in consequence, the police were asked to do a welfare check on K. The mother alleged that the father had slapped K on a couple of occasions in July 2017 (causing no marks or bruising) and had shaken K once. The welfare check conducted by the police late at night on 31 July 2018 found K to be well. It was noteworthy that the police record of this referral stated that the mother did not engage well or answer questions clearly. She also seemed to be unwilling to talk to the police.
100. The mother’s statements filed within the proceedings did not mention that the father had physically assaulted K. Paragraph 5 of her most recent statement dated 20 September 2019 stated that “...*although I do not worry about his ability of (sic) [K’s] day to day care I am concerned about his ability to safeguard [K] from FGM and generally*”. She also told the independent social worker that K was developing well in the father’s care and making good progress. Indeed, in cross-examination on behalf of the father, the mother strongly denied that she had ever alleged to professionals that the father had been violent to K. However, during that part of her evidence, the mother alleged for the first time that the paternal grandmother had shaken K violently and demonstrated this to me. She said the paternal grandmother had also been violent to her. The mother claimed to have told social workers from LA2 about the paternal grandmother shaking K and being violent to her and said they had omitted this from their statements. Both social workers who gave evidence to me confirmed that the mother had never made any allegations to them that the paternal grandmother had hurt K or hurt the mother herself. All the other evidence before me was that both the father and the paternal grandmother had a close and loving relationship with K.
101. Wisely, Miss McKenna QC did not seek a finding that the paternal grandmother had physically harmed K. There was no coherent basis for doing so. The finding sought against the father was based on an unparticularised allegation which the mother appeared to have withdrawn in her witness evidence, both written and oral. In those circumstances, I do not make the finding sought against the father but observe that the mother’s allegation against the paternal grandmother – made in circumstances where she was under pressure in the witness box – highlighted the need for care in evaluating her evidence. At the very least it raised concerns about her credibility and

was suggestive of a capacity to make serious allegations with little or no consideration as to the potentially very serious consequences for others in so doing. On balance, I have concluded that the mother lied about how she said the father and the paternal grandmother had behaved abusively to K.

Finding: on 17 January 2018 the father falsely alleged that the mother had caused or permitted sexual abuse to K

102. On 17 January 2018 the mother took K to the father's home so that he might have contact with her. Shortly after her arrival the mother went to the shops, leaving K with her father and the paternal grandmother. The police record stated that the paternal grandmother had "*allegedly gone to give the baby a bath, noticed a rash on the baby's chest and thought the baby's vagina was more open than normal and a bit red in colour*". The paternal grandmother was said to have told the father of her concerns and he then called the police. The mother returned to the father's home and the police and an ambulance arrived thereafter to the mother's total surprise. K was examined by officers and by ambulance staff and her vagina was found to be normal. The rash was said to be either a teething rash or was caused by K's clothes rubbing. The mother told police the allegation was malicious and the father said he did not think the mother would hurt K, but he was concerned about the mother's mental health. The CRIS report generated by the police recorded the father's allegation as malicious. Officers at the scene were under the impression that both the mother and the father were making allegations about each other as each wanted to have care of K.
103. A Child and Family Assessment undertaken by a local authority in which the mother and K were then living recorded referral information received from the police in this way: "*Referral received from LAS [London Ambulance Service] and police advising that [the father] had called police to report suspected sexual abuse of [K], some inconsistencies of who the father believed was the perpetrator. This was reported after [the mother] attended paternal family address with baby and she was bathed by an aunt. [K] subsequently taken to hospital for examination, no evidence of sexual assault*". At the Child Protection conference held by LA2 on 7 March 2018, the father reported that the mother had said she had spent the night with a '*gypsy man*' in his caravan. He had called the emergency services so that K could be taken to hospital to be checked over to see if she had been sexually abused, the inference being that he thought those with whom the mother was associating might be responsible for abusing K.
104. In her first statement within the proceedings, the mother asserted that the father had made false allegations about her inappropriately interfering with K. She noted that, when pressed by the police, the father said he had not been accusing her of interfering with K but was asserting that K had red marks in her vaginal area caused by men with whom the mother was allegedly having relationships. In his statement in reply, the father said he called the police as the mother kept company with "*someone on a gypsy encampment*", having noticed there was redness on K's vaginal area. In his oral evidence to me, he told me that he had observed the paternal grandmother changing K on the sofa and that K's vagina appeared '*huge*'. He said he panicked and called the police and, somewhat surprisingly for a married man with a daughter, admitted to me that he had never seen either a child's vagina or an adult vagina before. The paternal grandmother's account of this incident in her oral evidence made clear that she thought K had a red genital area because she had been in a dirty nappy for too long.

She said she had not supported her son's actions in calling the police and said that he had not discussed with her what might be wrong with K's genital area before he rang the police. I detected no hostility in her oral evidence towards the mother and I believed her account.

105. The mother's case was that the allegation was maliciously made because the father wished to have care of K. The social service records suggested otherwise: the day after the incident, the father told the social worker that he was happy for the mother and K to be supported by the local authority in a foster placement and, on 31 January 2018, the father told the social worker that he had no intention of taking K from her mother. Nevertheless, it must be noted that the father took over K's care shortly thereafter on 6 February 2018 following a Child Protection Case Conference. After the conference had taken place, the social worker facilitated a meeting between the parents and the father said, at that point, he wished to care for K. On hearing this, the mother became very distressed and left the meeting, leaving K with her father. K has remained in his care to date.
106. Whilst the father's behaviour on 18 January 2018 was ill-considered and underhand in that he did not tell the mother on her return to his home that he had phoned the police to report serious child protection concerns about K, it was difficult to detect any maliciously motivated planning in what he did. The evidence pointed away from him having alleged that the mother had sexually abused K. The revised finding sought by Miss McKenna QC – that he alleged the mother had permitted K to be sexually abused by others – had no purpose unless the allegation was maliciously made. The father's own behaviour following this incident did not accord with him carrying out a concerted plan to take over K's care. Had that indeed been the case and had he pressed his concerns about the mother more strongly, he would have found a ready audience since the local authority then involved had real concerns about the mother's mental health, her possible cognitive problems and her lack of support. I suspect that his statement in the meeting on 6 February 2018 that he wished to care for K was made having been present at the case conference and having heard the concerns about the mother discussed at that meeting.
107. Looking at matters in the round, I am not satisfied on the evidence before me that the father alleged the mother had sexually abused K. I am however satisfied that he did allege the mother placed K at risk of sexual abuse by others. That allegation was not maliciously made as part of a plan to wrest K from the care of the mother.

Finding: The father raped the mother more than once causing her to become pregnant and subjected her to domestic violence. This included shouting abuse, making threats and controlling the mother

Finding: In December 2016 the father grabbed the mother by the throat, threw her into a wall and then onto a bed, leaving red marks across her throat.

108. The mother made the first allegation of sexual abuse by the father on 31 July 2018 as the records showed the police received a call from the local authority informing them that the mother had alleged the father had sexually abused her. No details were given. That same day the mother said to ambulance staff that the father had sexually abused and raped her. Ambulance staff had attended the mother's address due to the mother reporting vaginal bleeding and they called the police on hearing the mother's

allegations. On 1 August 2018 the mother told the police that the father vaginally raped her on several occasions between January 2016 and August 2016. She would try to push him off, but he would ignore this when he wanted to have sex with her. These rapes were said to have happened about every three weeks.

109. On 5 August 2018 the mother told the police that the father had forced her to have sex with him so she would get pregnant and this happened on several occasions, all in 2016. She had several miscarriages and she maintained that she was forced to have sex so she might become pregnant. On 13 August 2018 the mother told the police that she had had three miscarriages and had been advised not to get pregnant again, but the father did not care and continued to have sex with her though she did not want this. This happened eight times until she got pregnant, with the father pushing her as she was sleeping in bed and holding her hands. He would put his penis in her vagina and did not use a condom, ejaculating inside her. She claimed he had told her that *“you’re my wife; it’s in the religion; is compulsory”*. At the time the mother gave this account, the police record noted that it appeared to the officers that the mother had some form of mental health disorder though she vehemently denied this. When answering questions, she was described as going off on a tangent with her answers and getting dates muddled up. She told the officers that her family would tell social services that she had mental health problems as they did not get on with each other.
110. The mother gave a video recorded police interview on 26 November 2018 in which she reported confidently that she had only had sex with the father three times. She described the first time they had sex as an occasion when she was unwilling, but the father took her pants off and pushed his penis in her vagina. He ejaculated after about five or ten minutes. It caused her pain especially when she tried going to the toilet. Though asked specifically about this in interview, the mother did not say at any time to the father that she did not want sex with him on each of the three occasions she said they had intercourse. In her oral evidence the mother told me that she had sex with the father about twice a month. It was notable during her cross-examination on behalf of the father that she became extremely upset when the contradiction between sex twice a month and sex on only three occasions was put to her.
111. The father denied raping the mother and said that, during the time the mother was suffering from depression, they did not have sex for two months as the mother was not interested. In his police interview he described times when the mother tried to initiate sex and he would not agree.
112. Other material in the bundle shed some positive light on the marital relationship. On 27 June 2016 the mother attended the GP surgery with the father. She was described as very stressed, tearful and worried about getting pregnant again. She admitted not coping and was seen alone. No report of any abuse by the father was made by the mother. On 5 July 2016 the mother said to the GP that the father had been very supportive. On 30 August 2016 the mother told the GP that she had been the victim of repeated sexual abuse by a family member as a child aged 5/6 years. She said she was having negative and frightening thoughts about this at that time. In her oral evidence the mother told me that she had been raped whilst in the refugee camp with her maternal great-grandmother and had told the father about this after their marriage. He confirmed in his oral evidence that the mother had told him about this. Social services records described the mother saying to a social worker in May 2017 that, prior to K’s birth, she and the father got on very well and were like best friends. She explained

that the father had taken significant time off work to look after her after she had miscarried. In August 2017 the mother said there had been only one incident of domestic violence between her and the father and in November 2017 the mother told the police that the father had never harmed her sexually.

113. Those positive comments by the mother must be contrasted with reports of domestic abuse by the father. I note that the father has made an admission of physically assaulting the mother in about December 2016 when she was some 3 or 4 months' pregnant. This involved him grabbing her by the throat, throwing her into a wall and then onto a bed. This occurred during a row about the father going out to see his friends and leaving the mother at home. I will return to this allegation in due course as a specific finding is sought about it. During the initial assessment by social services in January 2018 the mother alleged there had been constant verbal abuse from the father and that she was controlled by him. She made further allegations of domestic abuse in March 2018, saying that this began when she was pregnant when the father would become aggressive at the slightest thing and that he was very controlling of her and would not let her visit her family. In June 2018 the mother told a health visitor that the father was financially, verbally and emotionally abusive to her. In her police interview dated 23 February 2019 the mother described the father slapping her on the shoulder, pushing her and sometimes threatening her that he wanted to snap her neck and leave her for dead. In her oral evidence to me, the mother said the father shouted at her and called her '*mental*' or '*stupid*'. They rowed because he wanted to go out with his friends and not spend time with her and because he thought she should be helping his mother do the chores. Sometimes he threatened her that he would marry a second wife.
114. The witness evidence of the mother's family was that she had never reported marital rape to any member of her family. Q, her youngest cousin, described staying with the mother in the summer prior to K's birth and gave an account of all being well between the mother and father. However, the paternal grandmother told me that she did hear loud arguing between the couple when the mother was unwell in 2016. In general terms, she described the mother as spending a lot of time in her bedroom upstairs and not wanting to socialise with others. The paternal grandmother thought this was because the mother was shy and would try to prompt her to go outside. She told me that she could not leave the mother at home alone and took her everywhere with her when she left the house. The father told the paternal grandmother that he argued with the mother because she did not want to leave the house and the paternal grandmother told me that after the mother and father rowed, she would try and calm the mother. She thought both were to blame for the rows.
115. The father's oral evidence showed some awareness that the marriage was marred by rows – he admitted to Miss Kothari that the couple rowed every other day. With the benefit of hindsight, he had asked himself whether he might have done more to make the relationship work. There was some acknowledgment that he had had little insight into the mother's vulnerabilities (though he told me that he had accepted her account of being raped as a child), but he maintained his denial of habitual violence within the relationship. He admitted to me that he did not know in advance of his marriage that the mother had been the victim of FGM but '*assumed*' she had been. Though he professed abhorrence of FGM and a knowledge of its devastating physical and psychological effects on a woman, the father told me that he had never discussed

FGM with the mother. Towards the end of his oral evidence, the father became distressed when talking about the mother and emphasised both his love for her and a firm denial that K had been born of rape. He said to me that he had never thought of the mother as someone with learning difficulties or labelled her as such himself.

116. Any analysis of this relationship must be shaped by an understanding of the differences between the mother and the father. As Miss McKenna QC pointed out, almost the only thing they had in common was their Somali heritage. The father was about 15 years older than the mother at the time they married; was educated to degree level as opposed to the mother who had no education until she was eight years old and was then educated in religious schools where she clearly struggled. Her childhood experiences – life in a refugee camp, her report of rape aged 5 or 6 years, life with 9 other siblings in an overcrowded family home, no social life established outside the family home – were in total contrast to those of the father. Above all, the mother’s significant learning difficulties would have affected this couple’s relationship. Though the paternal grandmother denied the mother was like a child in need of constant supervision, the picture I had of the mother was of a childlike young woman in need of supervision and protection. Even though the father did not have the contents of Linda Jeffes’ cognitive assessment available to him at the time of the marriage, I am satisfied that, despite his denial, the mother’s evident vulnerabilities and cognitive limitations would have been all too apparent to the father very shortly after they married. The mother’s need for loving, supportive care was simply not met in this relationship. The lack of common ground, coupled with growing unhappiness and disappointment in each other, was, in my opinion, a potent driver of the marital rows in this relationship.
117. The father gave seven different versions of his assault on the mother in December 2016. Some accounts were given to professionals at different times and some were also set out in his statements. Whilst there was some variation in the accounts, he admitted his guilt and embarrassment at behaving in this way towards his pregnant wife. I am quite satisfied that I should make the finding sought in respect of this assault with this modification, namely that there was no evidence that the assault caused red marks to the mother’s throat.
118. I have concluded that, despite the mother’s reports that the father was supportive to her, this was an unhappy marriage between two people wholly unsuited to each other. Once the excitement of the marriage ceremony had worn off, neither the mother nor the father had their needs met in the relationship. Both were responsible for initiating rows though I consider the father, with his intelligence and maturity, could and should have demonstrated more understanding and forbearance of the mother’s anxieties and vulnerabilities. I consider there was a ring of truth in the mother’s evidence that the father insulted her intelligence, threatened her with taking another wife and argued with her about her apparent failure to do enough of the domestic chores though I make no specific finding about such verbal abuse. However, I was not satisfied that the evidence permitted me to extrapolate from one admitted incident of domestic violence and, given all the difficulties with the mother’s evidence, find that the father was habitually violent to the mother in the manner pleaded.
119. I thought about the marital rape allegations very carefully but concluded that I could not make the finding sought by the mother. I had little doubt that this was not a marriage in which there was mutual sexual satisfaction. Within their sexual

relationship, the father had no regard for the physical and psychological consequences of the FGM suffered by the mother and I detected little understanding of the emotional and psychological consequences for the mother of her alleged childhood rape. This careless disregard by the father was however a long way from habitual rape.

120. Given the mother's difficulties with understanding numbers, I was less troubled by trivial numerical mistakes in the mother's accounts as to how many times the couple had sex, but it did seem to me that there was a world of difference between an account claiming that each rape resulted in a pregnancy and one which said that there were more regular rapes. The inconsistency could not be explained away and I suspected the mother recognised this at some level when she was cross-examined on behalf of the father, in that she became upset and left the witness suite. There were also inconsistencies in the mother's accounts of what had occurred during the alleged rapes and no account from her in her police interview that she had said to the father on each relevant occasion that she did not consent to sex with him (though she had earlier alleged she had tried to push the father off).
121. I was also struck by the mother's presentation at the time she made her allegations of rape against the father. As Miss Kothari submitted, the mother was plainly in crisis. Her hospital attendances for various symptoms in a period of about a fortnight proved to be occasions where, often as not, the mother made serious allegations. At the time the mother was estranged from all sources of family support; was fearful of assault in the place she was living; desperate for help and comfort; and having no contact with K. Whilst all these events might well have played a role in the making of the rape allegations, I am not persuaded this is the only explanation for what occurred. These difficulties could also be consistent with the effect on a victim of reporting rape and other serious matters to professionals, but they indicated an additional need for a degree of caution when assessing the allegations made by the mother at that time.
122. In summary, I find that the marriage was marred by frequent rows initiated by both parents. Both parents were verbally abusive to each other. Apart from the admitted incident of domestic violence to the mother in late 2016, I make no finding about violence generally in the marital relationship or that the father controlled the mother and threatened her.

Finding; The mother was forced by her parents to marry the father. The father knew or ought to have known when he married the mother or shortly thereafter that the mother had been forced to marry him

123. The first time the mother alleged she had been a victim of forced marriage was at LA2's Child Protection Conference on 7 March 2018. However and in contrast, on 23 March 2018, the mother told nursing staff that she had married at the age of 19 and that "*everything was fine with her partner*". There was no mention that the marriage had been forced. Hospital records on 16 July 2018 recorded the mother saying that she had been forced into marriage by her parents yet about a fortnight later she told ambulance staff that she had had an arranged marriage. On 13 August 2018 the mother told the police she had been forced into marrying the father by her parents. In her interview dated 16 August 2018 the mother described getting married in these words:

“I was introduced to my husband then, that I’m married. My mum said to me that oh you know, you have to get married and stop being a slut and stop being a whore and stuff like that, you have to get married and then I didn’t want to get married coz I was in education and I was still going to college and then I finished my first year of college then I started to plan my wedding, I was having a wedding planned and everything like that after I finished college and then all I remember was I was planning a wedding and that was quite a strain. I said I didn’t wanna do that and then by the time it was August 26th, I was married...”

The mother said in her second police interview on 26 November 2018 that she had been forcibly married. She said she had ‘sort of met’ the father at a family reunion when her cousin was getting married and that the maternal and paternal grandmothers had met there. This account seemed to be consistent with that given by the maternal grandmother in her evidence.

124. On 23 January 2019 the mother told Linda Jeffes that she had been forced to marry the father. Linda Jeffes commented that the mother’s account of being forced to marry was confused, inconsistent and unclear how or why her parents had forced her into marriage and why she had agreed. Initially the mother said she had not met the father before the wedding, but later she said she was with him in his family home prior to the wedding when his cousin raped her. The mother could not clarify these conflicting statements to Linda Jeffes.
125. The mother told me that she had never asked to be married and that she never wanted to marry the father. She denied telling the maternal grandfather that she was in love with the father. She said that she had told the maternal grandfather she was not ready to marry, wanted to finish college and do what she wanted but the maternal grandfather had not let her do that. She said she had met the father 1 or 2 times prior to the wedding. She did not accept that her cousin P had given her the father’s telephone number but said her mother had done so. She said the father would come unannounced to the house and her mother would force her to go out with him. She also said she had been on a double date with the father and P and her fiancé (who was the father’s cousin). The mother told me she had felt unhappy, sad, upset and depressed on her wedding day. B told the police that the mother connected with the father through Facebook and through her cousin.
126. The mother told me that A had not wanted to get married to her first husband and said that the maternal family had disowned A when she fell pregnant outside of marriage. The evidence suggested that, at the time of the mother’s wedding, A was living elsewhere with a man from Pakistan. The mother also told me that B had been forced into marriage and had never met her husband before she married him.
127. In February 2018 the father told a social worker that he had met the mother at a wedding. In his oral evidence the father distanced himself from this account, saying that he met the mother through his cousin and that he did not “do” weddings. He was clear that if he had had any doubts as to whether the mother was a willing participant in either the arrangements for or the ceremony of marriage, he would not have gone through with it, describing being married to someone who was forced into it as a prison sentence. The paternal grandmother said she had first met the maternal grandmother at the time of P’s wedding when she had gone to the maternal

grandmother's house to meet P. She did not recall meeting the mother on that occasion.

128. The maternal grandmother's statement dated 1 July 2019 said that the maternal family and the mother had met the father at a wedding in 2014. With the idea of marriage in mind, she invited the father to the maternal family home and told me that the mother and father dated and agreed the marriage between themselves. In the maternal grandfather's first statement to the court, he said that the mother's marriage was arranged in 2014 but then said in his oral evidence that this was incorrect. He told me that he had trusted the father would be a man to cope with the mother's difficulties and described how the fact that all his daughters had married young was seen in a very positive light by the local community.
129. Given the allegation made, the circumstances surrounding the marriages of both A, B and P were clearly relevant. The picture in that regard was more than a little unclear. Neither maternal grandmother nor the maternal grandfather mentioned A's marriage in 2012 in their statements. A herself denied both that she had been married to a Somali man in Kenya in 2012 and that she had been divorced. In her oral evidence she claimed she had only ever been married to her current husband but struggled to recall when they in fact got married. She said she had met her husband on Facebook and denied that her parents had any involvement in this. She denied any pressure being placed on her to marry but this answer appeared to be by reference to her current husband. In contrast to their written statements, the oral evidence of the maternal grandparents made clear that A was married to a Somali man in Kenya in 2012 when she was 18 or 19. She had not met this man before being taken by her mother to Kenya for the marriage ceremony but had met him on Facebook, it being said by them that it was her choice to marry him.
130. In her police interview on 12 December 2018, B described being "*married off*" in 2012. She had moved to Germany thereafter and returned in June 2013 to have a civil wedding. B told the police that she was "*persuaded*" into marriage and said that she did not want to be married but had wanted to leave the maternal household, saying "*it was just a runaway thing*". She said that her husband had come to her parents' home a couple of times and she had said on several occasions that she wanted to study and did not want to get married. She described herself saying to the maternal grandmother "*I don't want to get married and mum was like no, get married, it's okay and she just kept telling me and I was like all right, I'll get married, I'll give it a try*". B confirmed in her oral evidence that she had indeed given this account to the police, but she denied that she had told her mother she didn't want to get married. She said that maternal grandmother had just "*encouraged*" her to get married. In her oral evidence she confirmed that she met her husband at a family wedding (as A had stated) and had met him a couple of times before she was married.
131. The mother's cousin, P, told the court that she had met her husband on Facebook in 2014 when she was 16 years old and he was 24 years old and they had met each other three times before they got married. According to P, the maternal grandmother had no issue with the age gap or how the couple had met.
132. F gave evidence about the marriages of his sisters. He said that he had met the father only once prior to the wedding and had been surprised when the mother got married. He said this was because, at the time, the mother was only 19 and had her whole life

ahead of her. He was however clear that the mother had had a choice whether or not to marry the father. He said that he had not been shocked when A got married as he was not that close to her. He was however shocked when B got married as she had been telling him earlier that she would never get married. He was unsure whether B knew her husband before the wedding.

133. I have already indicated my impression that many of the family witnesses were giving me a very edited version of events. This was evident with respect to the mother's marriage and those of her two sisters and her cousin, P. What conclusions, if any, can I draw from the evidence overall? Mr Ekaney QC reminded me that the age difference between the mother and the father and the small number of occasions they had met prior to their marriage were well within Somalian cultural norms and that I should not view courtship through a euro-centric prism. I accept that submission in its entirety.
134. First, I was satisfied that all three sisters, together with P, were married at the ages of 18/19 to men that they had either not met before or had met on no more than three occasions. All the men to whom the girls were married were about 8 to 15 years their senior. There was nothing unusual about these matters in the Somalian community. Second, I was sceptical about how each of these couples were said to have met. The maternal grandmother told me that, if her children did not arrive home at about 5 or 6 pm, she would begin to call them to find out where they were. In stark contrast, she claimed to have had no concern about any of her daughters or P meeting men on Facebook and then deciding that they wished to marry them. No evidence of any messages from Facebook between these young women and their respective matches have been produced when it might have been expected that such messages would support the family narrative that these marriages had been love matches. P's account of how she had introduced the mother and the father to each other was not one on which I could rely given the difficulties I have outlined with respect to her evidence. The father's evidence about how the couple came to meet relied on P's account for support but I prefer his earlier statement to the social worker about meeting the mother at a wedding. I also consider it far more likely that the maternal grandfather's original written statement that the marriage between the mother and the father had been arranged was far more likely to be an accurate description of what occurred. For the avoidance of doubt, the date on which the maternal and paternal families met at a wedding was not a matter of significance in my view. The maternal grandfather was simply unable to explain to me why that one matter in his written statement was incorrect whereas the rest of the statement, allegedly not properly interpreted to him at the time it was made, was correct. His original statement also, I note, accorded with the oral evidence given by his wife. Third, even allowing for cultural differences, it was difficult to see how A's marriage to a man in Kenya and B's marriage to a man from Germany could properly be described as love matches. A's denial that she had been married before meeting her present husband suggested that her first marriage to a man she had never met was an experience she was at pains to excise from her life story. At the very least, B's own evidence was that she reluctantly married her husband following family pressure to do so.
135. I also bear in mind the evidence from family members that the mother was keen to get married and was resistant to suggestions that she ought to wait. Despite the lack of anything in common with the father, Mr Bagchi submitted persuasively that the mother's impulsive nature and perhaps her learning difficulties led her to rush into

marriage as a means of escape from her family, a place where, on her own account, she was unhappy and did not feel her individual needs were respected. That submission also accorded with evidence that the mother and the father spoke regularly on the telephone and had got to know each other a little better prior to the marriage ceremony even though they had only met a very few times. I watched the mother's and the father's wedding video, but I was cautious about drawing any conclusions therefrom.

136. Much was made by Miss McKenna QC of the mother's attendance at the dentist on 14 August 2015. The mother attended the dentist that day but appeared to have had a panic attack and an ambulance was called to take her to hospital. She told medical staff she was under a lot of stress and had a lot going through her mind, but she did not wish to discuss her stresses in detail. I was invited to ascribe significance to that incident because it was said the mother was being forced into marriage by her family. I am unable to do so as what occurred on that day seemed to me to be consistent with a bride-to-be under stress, an experience not uncommon amongst brides everywhere. A sinister interpretation was unsustainable on the balance of the evidence before me.
137. Standing back and doing the best I can with the evidence available to me, I have concluded that the mother's marriage to the father was not forced as she claimed. However, I was not satisfied that this was a love match entirely free from family influence as was suggested. Rather, this struck me as a consensual arranged marriage brokered initially by the maternal grandparents after they met the paternal family at the wedding of P to her husband, the father's cousin. That the mother's marriage was arranged rather than forced fits more neatly with the evidence that the mother and father got to know each other on the telephone and met on a couple of occasions before the marriage ceremony. It was also consistent with the submissions made by Mr Bagchi about the reasons why the mother might have rushed into matrimony. Incidentally, if the marriage was arranged, this might explain the lack of common ground for this couple and, given their respective life experiences and personalities, might also have contributed to their mutual unhappiness once they had been married for a little while. An arranged marriage also accorded with the little that I knew about the circumstances of A and B's marriages though I stress I am not making findings about those marriages. The account the mother gave to the police on 16 August 2018 was, in my view, consistent with an arranged marriage.
138. Given that I have found the mother was not forced to marry the father, it follows that I cannot make a finding about whether he knew or ought to have known when he married the mother or shortly thereafter that she had been forced to marry him.

Finding: The mother's parents arranged for her to travel to Kenya in 2013, only her father accompanied her. Her parents knew or strongly suspected that she would be subjected to FGM whilst in Kenya in 2013. The mother was subjected to FGM in 2013 in Kenya.

Finding: Before 2013, the mother's father abused her with words "you are not clean as you did not have guditan [a reference to FGM]"

139. One matter was crystal clear, namely that all the adult women on both the maternal and paternal sides of the family have experienced FGM. That was wholly unsurprising given the prevalence of FGM in the Somali community, especially

among women from that community who were born in Somalia or East Africa as all these adult women were.

140. Dealing first with the medical evidence, I accept the evidence of Dr Markos and find that the mother had Type 1 FGM rather than Type 3 FGM as she asserted. Like Dr Markos, I was satisfied that, for all the reasons he gave, the mother would have been an unreliable reporter of the type of FGM she had experienced. Whilst it would have been obvious to her that she had been cut in her genital area, she had no one with whom she could talk about what had happened to her in order either to come to a better understanding or to seek medical help. There was, I am satisfied, a culture of absolute silence about FGM in the maternal family home. Thus, I was less concerned about the inconsistencies about what type of FGM the mother reported to professionals. I also accept Dr Markos' evidence that FGM did happen to older girls and women although I note his evidence that he had not come across a case involving a woman aged almost 18 years.
141. The real issue for me was when the mother had FGM and whether her parents were involved in arranging this. The medical evidence did not help with dating this event and so I was reliant on medical and social work records and the accounts of both the mother and family members about each of whom I had real reservations.
142. The mother first alleged that she had had FGM when she was aged 13 years old. This allegation was made to hospital staff on 13 April 2017 and led to a referral to LA2 prior to K's birth. The second time the mother made an allegation about FGM was during an assessment by LA2 in May 2017. On this occasion she said she had experienced FGM aged 17 and had been taken '*back home*' by her father but it was notable that she said the FGM was done without her father's knowledge by other members of her family. The third time the mother made the allegation of FGM was on 11 May 2017 during a social work visit when she said she had had FGM aged 13 years. In July 2017 a contact record from LA1 stated that the mother had said she had FGM when she was 16 or 17 years old. She said that her father had taken her to Kenya which was where her maternal grandmother lived, and this was where the FGM was performed. Shortly thereafter, on 10 August 2017, the mother told the social worker that her FGM happened when she was 17 years old. Her father had taken her to Kenya for what she thought was a holiday, but once she arrived, she was told what would be happening. She recalled being in a room with about 10 people during the procedure and that the same thing had happened to her sisters. The social worker noted that the mother initially said she could not speak as she was in the maternal family home and she subsequently called the social worker on the telephone to give her account.
143. During the child protection investigation conducted in early 2018 by the local authority where the mother and K were temporarily living, the mother alleged that, at the age of 18, she visited Somalia for a holiday and that whilst there, her father and 10 female relatives forced her to have FGM. They held her down and performed the procedure which was Type 4 FGM. Her legs were tied together to stop her from running off. She had stayed in Somalia for six months in total. At the child protection conference held by LA2 on 7 March 2018, the mother alleged she suffered FGM at the age of 18. On 16 July 2018 hospital records noted that the mother reported FGM arranged by both of her parents and that her father had travelled to Kenya with her where it was performed. On 31 July 2018 the mother stated to the ambulance service

that she had had FGM at an unknown age. This was performed in Kenya and she said that she had wanted the FGM reversed prior to having children but that her husband had refused. She went on to state that the FGM had been reversed prior to the delivery of K.

144. On 14 August 2018, the police received a referral from the mother stating that she was subject to Type III FGM at the age of 18 in Kenya. This took place on a holiday arranged by both of her parents. She was taken to a building, in a small room, crowded with women. She was held down and FGM performed. She said that she remained in Kenya for one year before she was brought back by the maternal grandfather and then forced to marry the father. The mother gave a video recorded interview to the police on 16 August 2018 explaining what had happened to her. In her court statement dated 11 September 2018, the mother alleged that her FGM took place a few months after she arrived in Kenya in June/July 2013 and said that she returned to England in November 2013 with the maternal grandfather.
145. It was noteworthy that the mother's first account of having been taken to Africa purportedly on a family holiday but really for the purpose of FGM was made prior to K's birth and prior to there being any notable tensions recorded between her and her parents. Above all, it was prior to the possibility of any legal proceedings being in the mind of any of the parties. At the time when the allegations were first made, the social work records noted that the mother and the father were clear that they did not agree with the practice of FGM. There was no suggestion at that time that the father did not believe what the mother said in respect of having had FGM as a teenager.
146. The police interview given by the mother on 16 August 2018 provided a vivid and detailed account of FGM with little prompting from the officers. There was a detailed description of the building in which the FGM was performed; the description of the ground she was held against (like a beach); a description of the woman who cut her as being very fat and sitting on a chair; a description of the instruments available including a very big needle and a small knife; a description of being held down so that the cutter did not make mistakes or cut her too far, with her head being held back accompanied by the hand gestures of being gagged; a description of the internal pain as the knife/needle went into her; and a description of how her legs were bound and of how she had to be carried to the toilet in order to urinate. One detail added in the mother's oral evidence was that she was blindfolded as well as gagged. This did not fit with her description of being able to see the instruments used upon her. The mother has never retracted this allegation or altered it to any significant extent other than as I have indicated. It was accepted that she was taken to Kenya by the maternal grandfather in 2013, arriving on 2 July 2013 and leaving on 13 September 2013. That timeline fitted with the timeline given by the mother save for the discrepancies in her accounts as to how long she spent in Kenya.
147. The mother said that the maternal grandfather would say to her that she was unclean as she had not had "*guditan*", that is FGM. The maternal grandfather denied saying this though I note that all the family members asked about this word clearly knew what it meant.
148. Nevertheless, there were inconsistencies in the account given by the mother. First, the mother said she was cut at differing ages, namely 10-15, 13, 17 and 18. The two latter ages - 17 and 18 - did not concern me as much since the mother turned 18 during the

trip to Kenya in summer 2013. Secondly, it was unclear when during the trip the FGM was said to have happened. Third the mother gave different accounts as to how long she spent in Kenya. Fourth, the mother's assertions as to having had Type 3 FGM and of being left with only a small hole from which to urinate were at variance with the medical evidence and also with some of her accounts. I have already explained why I was less troubled by the inconsistency in the type of FGM performed on the mother. I was also mindful of her real difficulties with dates and times evident from the report of Linda Jeffes and those differences might well explain the discrepancies as to when, during the trip to Kenya, the FGM occurred. However, the crucial inconsistency, in my opinion, was the age at which the mother said she experienced FGM, an inconsistency which was difficult to explain by reference to the mother's cognitive difficulties.

149. This was a highly unusual but very specific allegation made by the mother. Putting the inconsistencies in her evidence to one side, the detail given in her police interview suggested lived experience in the relatively recent past rather than a memory of FGM carried out when the mother was a much younger child. It was a more vivid account compared to the accounts given by A, B and P of their own FGM which lacked telling detail and which, in the case of A and B, were contradictory. However, there were very significant concerns about the mother's reliability as a witness of fact and it was submitted by more than one of the parties involved in this litigation that the mother had fabricated allegations and had exaggerated and embellished her accounts.
150. Putting to one side the criticisms made of the mother's evidence, I was struck by her insistence that she was born in Kenya and not Somalia and that her parents left her when she was a baby. This insistence seemed to me to be entirely at odds with the objective facts, namely the nationality of her parents, their account of having lived in Somalia with their children until forced by war to flee, her own passport and the fact that she herself would have had no memory of life before the refugee camp. Equally odd was her insistence that her parents went to Germany, which is where she said her brothers were born, a matter about which there was simply no evidence to support her assertion. Why the mother might retain these erroneous beliefs was unclear to me but the fact that the mother did underlined the caution with which I had to approach her evidence.
151. Some examples of what might be said to be fabrication, exaggeration and embellishment by the mother are itemised as follows. First, the mother gave an account of the father hitting and shaking K, but then in her oral evidence said that it was the paternal grandmother who she had witnessed shaking K hard. Second, the mother alleged she was locked in both a closet and in a basement in the maternal family home with no water sometimes for days by the maternal grandmother. I note that this was not an allegation relied upon by Miss McKenna QC in her written submissions given that there was no evidence of the family ever having lived in a property with a basement. Third, the mother for the first time in her oral evidence alleged that F had wanted her to perform oral sex upon him. Fourth, when challenged in her oral evidence with the accounts of others which contradicted her allegations, her response was to make additional allegations against them, for example she suggested that P had seriously physically assaulted her and that her brother, D, had beaten her up and made her lip bleed. Whilst I made every allowance for the difficulties the mother had in giving evidence to me, it was notable how almost

instinctively quick she was to make allegations against those who she thought were undermining her. I also bear in mind that the mother's significant inability, whether arising from unwillingness or incapacity, to engage meaningfully in the process of cross examination meant that it was simply not possible to explore her account of events, particularly in relation to FGM, in the manner that would normally be expected in a fact-finding hearing.

152. Finally, my task is made all the more complex because the mother herself admitted to having given false accounts for effect. KP, the social worker from LA2, made the following observation in her statement:

“During the time that [the mother] was in LA1, I was made aware of previous allegations that she had made regarding her family and the abuse that she had been subjected to when she was younger. I spoke to [the mother] regarding this and she informed me over the phone that she lied to professionals about this and stated to me that [the father] had told her to make up these allegations in order to separate her from her family. I discussed this with [the mother] and asked her if she wanted to discuss this in person. Again she assured me that she had lied about these allegations and that she was happy living with her family in LA1.”

KP's statement did not assist me to pinpoint when this discussion with the mother took place. However, KP had a subsequent conversation with the mother on 26 June 2018 and I have seen a record of this conversation, the relevant part of which reads as follows:

“... [The mother] informed me that she was no longer able to take living at her mother home [sic] and felt as though they were abusing her. [The mother] stated that her brother has sexually abused her when she was younger. I spoke with [the mother] about this and she confirmed that she had lied when she had said this previously and stated that [the father] had made her say these things so cause problems [sic] between her and her family. [The mother] stated that her parents made her lie that [the father] had done this to her. I discussed with [the mother] that if this information was true then she has placed [K] at risk by allowing [K] to be in the same house as her brother. [The mother] would not take any form of responsibility for her actions and stated that she was not given the opportunity to be true full [sic] and also did not have any other place to live which is why she allowed [K] to stay there. [The mother] became very defensive quickly and started to raise her voice and get angry. I told [the mother] that it may be best that a manager contact her to discuss this further.”

KP told me that the professional impression she had formed of the mother was that she was very confused and unreliable in her accounts.

153. Turning to the family evidence, I have already pointed to difficulties with the evidence given by the mother's sisters and I have concluded that I can place very little weight on the accounts given by A and B in respect of FGM. A was vague in her police statement as to where the mother was when both she and B were being cut. In her oral evidence she said she recalled the mother being next to her face down on the ground and that all the girls had gone into the room where they were to be cut at the same time. That evidence contradicted her statement where she said that the girls had gone into what might be described as the cutting room one by one. She was able to provide pertinent detail about B having been cut badly, bleeding heavily and

screaming but she was unable to provide any detail about the mother. B said very little in relation to her memory of being cut when she was a child or as to the mother's presence when that took place. In her police interview B gave no descriptive account of the mother being cut but she told me in her oral evidence that she was 100% sure that the mother had been present when she and A were cut. Notwithstanding all the misgivings I had about A and B's evidence, it seemed to me that one of the biggest hurdles the mother had to overcome was the inherent improbability that she would not have been cut at the same time as both her sisters.

154. The evidence given by the maternal grandparents in respect of the mother's FGM had many unsatisfactory features. First, the maternal grandmother told me she left the mother when she was one year old and did not see her again until she was eight years old. This was completely contradicted by the evidence of her husband that the family were together in Somalia until almost 2001 when the maternal grandparents left with their sons for Europe via Kenya where they stayed for some time. Second, the accounts given by the maternal grandparents as to where the maternal great-grandmother was living with their daughters were confused. Third, the maternal grandmother told me that she was opposed to FGM and that she believed the maternal great-grandmother would have been aware of this. This struck me as implausible given the maternal great-grandmother's views about FGM and the prevalence of that practice in Somalia even during the Civil War. I note that the maternal grandmother did not however instruct her mother to ask for permission before arranging FGM for her granddaughters. Fourth, in contrast, the maternal grandfather told me that he had given the maternal great-grandmother specific instructions that she was not to have his daughters cut when they were left in her care. This was the first time he had ever said this. This assertion was coupled with an account that he had sent the maternal great-grandmother a cassette tape telling her not to have the girls cut, again something never mentioned before. I consider he was being untruthful about these matters in an attempt to persuade me that he and his wife had not left the girls with a woman strongly wedded to the practice of FGM without trying to restrain her. Fifth, there were significant discrepancies in the accounts given by the maternal grandparents as to how they discovered that their daughters had indeed been cut. In his oral evidence the maternal grandfather said that they had first been told that the girls had been cut by relatives who had come to this country and then it was confirmed by the maternal great-grandmother on the telephone. The maternal grandmother in her statement said that she found out about the FGM as the maternal great-grandmother had telephoned the maternal grandfather and told him about it. Sixth, the maternal grandparents gave confusing and contradictory evidence about a cassette recording. In her statement, the maternal grandmother said that this cassette recording had been made by the maternal grandfather after they had discovered the girls had been cut. It contained a message from him to the maternal great-grandmother that he would never forgive her, whether dead or alive, for having his daughters cut. The maternal grandfather did not mention this cassette in his statement, but he told me that he had sent a cassette warning the maternal great-grandmother that she should not have the girls cut if she had not already done so. When challenged, he then told me that there had indeed been two cassette recordings, one pre-emptive and one after he knew about the FGM. I consider this evidence was an attempt to reconcile the discrepancy between his evidence and that of his wife and to reinforce his account that he was opposed to FGM. Seventh, the evidence of the rift which was said to have developed between the maternal great-grandmother and the maternal grandfather was not credible given the family (or

certain members of it) visited the maternal great-grandmother in 2008, 2011, 2012, 2013 and again in 2018. Finally, the maternal grandfather told me in the witness box that the maternal great-grandmother had apologised to him and to all three of his daughters during the trip in 2008. This incident, which would have been very memorable to those present at the time, had not been mentioned by any of the other witnesses and he simply could not explain to me why this significant event had been omitted from any of his own witness statements or from any of the accounts given to professionals involved with the family.

155. I will consider the evidence given by the paternal family in relation to FGM later in this judgment.
156. Mr Wallace on behalf of LA1 very helpfully provided me with a table addressing the macro risk factors identified by Cobb J in Re X (Female Genital Mutilation: Protection Order, No 2) [2019] EWHC 1990 (Fam) in respect of both Kenya and Somalia. He also provided me with reports from UNICEF as to the prevalence of FGM in both Somalia and Kenya. It is plain from this material and indeed from the evidence of Dr Markos that a small but not insignificant number of Somali girls and women were cut in late adolescence (some 4% cut at age 18 or over).
157. I have thought very carefully about why the mother made the FGM allegations that she did and indeed why she did not tell anyone about her experience of FGM as a young adult until April 2017. As to the latter, the mother had extensive involvement with medical professionals following the molar pregnancy. There was no reference to FGM in circumstances where she was living away from her family and might be thought to be freer to speak out. The mother also had extensive involvement with medical professionals when she became unwell with depression in spring/summer 2016. I note she was able to tell her GP on 30 August 2016 that she had been raped as child and it is somewhat surprising that she did not mention FGM at this time.
158. Mr Bagchi QC submitted that the mother's allegations in respect of FGM in 2013 and forced marriage were made at times when she felt she was losing her daughter, when she felt unsupported by her family, and when she felt she was not being taken seriously by the authorities. The overall time-line about the emergence of the mother's allegations did not lend itself to a convincing analysis supportive of Mr Bagchi's contentions. I accept the proposition that the mother was in crisis, as Miss Kothari put it, when some of the allegations emerged in 2018. Quite what the motivation was for her to make the allegations she did at the various times she did before the summer of 2018 is difficult to perceive with any clarity from the evidence before me.
159. Having reflected on the totality of the evidence available to me both on this issue and in general, I have concluded that the mother has not discharged the burden on her in respect of the allegation that she was subjected to FGM by her parents in 2013. I am also not satisfied that the maternal grandfather told the mother she was unclean because she had not had guditan. Her evidence was the sole foundation for that finding and, for all the reasons relevant to her credibility, I cannot rely on it.

Finding: The maternal grandmother and the father and the paternal grandmother placed [the mother] under pressure to refuse a reversal investigation and/or procedure offered to her by [the hospital] and caused her to fear 're-suturing' following the birth. She was

never left unattended without family to facilitate privacy, who was seen by hospital staff to be controlling of [the mother].

160. The first mention of a procedure to address the mother's FGM was on 19 January 2017 when the mother was pregnant with K. On 22 February 2017 the mother was told that she needed to be seen by a consultant specialising in FGM before she had her baby. The notes recorded the mother had such a 'reversal' appointment on 7 March 2017 which she did not attend. The first account of family pressure on the mother not to have a reversal procedure came from the mother herself who spoke to the midwife about this on 12 April 2017. The midwife noted that there had been three appointments with a consultant in relation to reversal which the mother had not attended "*because her mother-in-law has told her not to attend*". The mother told the midwife that the paternal grandmother was isolating her from her family and giving her misinformation about FGM, telling her that FGM was best dealt with in labour and FGM would be reinstated post-delivery. On 27 April 2017, during her labour with K, the mother was recorded by medical staff to be happy to have a reversal of her FGM yet was also reported to be anxious because her family wanted her to be re-sutured. The medical records noted that the father was spoken to and it was explained to him that it was illegal to re-suture the mother and illegal to take the baby abroad for FGM.
161. During the labour, the mother told staff she wanted to have an epidural as medically advised and said that the maternal grandmother was telling her not to have one as this would make the baby be born disabled and would also make the mother disabled. The medical records recorded that the family were "*very controlling*". In any event the mother had an epidural without incident. On 2 May 2017 hospital records noted that the mother was keen to access the reversal clinic but was prevented from doing so by her mother-in-law who "*is very controlling*". Those same records recorded that the paternal grandmother seemed to be very controlling and had attempted to stop the mother having an epidural as it would disable the child. On 3 May 2017 the midwife notes recorded their concerns for the mother that either the paternal grandmother or the maternal grandmother would attempt to have her re-sutured to reinstate her previous Type III FGM. Later, on 3 May 2017, the mother was seen by a perinatal psychiatrist and was reported to have said she had good support from her husband and from the paternal grandmother.
162. The father's evidence was that he did not usually attend medical appointments in relation to the mother's pregnancy other than when she had a scan. He said that neither the maternal grandmother nor the paternal grandmother accompanied the mother to her hospital appointments. This was confirmed by both grandmothers though the paternal grandmother told me she had been present when the mother had scans during her pregnancy. All three family members denied pressurising the mother not to have FGM reversal and the paternal grandmother and maternal grandmother denied pressurising the mother not to have an epidural. In fact, the maternal grandmother told me she had had an epidural for the birth of one of her children and it was thus nonsensical to suggest that she would pressurise the mother to refuse one.
163. I note that the medical and nursing staff were wholly reliant upon the accounts given by the mother of pressure from her family in respect of both the reversal procedure and the epidural. There were no records of conversations with the family where they

appeared to object to either procedure or indeed any records of observations about their interaction with the mother during conversations with medical professionals.

164. Given the difficulties with the mother's reliability, I am not persuaded that I should make the finding sought in circumstances where the mother was the originator of these complaints and where there was no evidence from any other untainted source to support these allegations.

Finding: Whilst living in the home of her mother, [the mother] was monitored and guarded by family members preventing her free speech and movement, in particular she was sufficiently pressured by her maternal family, and the stresses caused to her, by her forced marriage and the domestic violence she endured, to cause her to lie during an interview with a social worker on 16 August 2017 and on occasion to other professionals.

165. The allegation as pleaded is a little unclear as to which time period is in issue. Miss McKenna QC's closing submissions make it plain, however, that the time period in issue ran from about summer 2017 until spring 2018. Her submissions were predicated upon the court being satisfied that the mother had been forced to marry the father and had been the victim of significant domestic violence. She referred me to the mother's description of her maternal family having control of her finances and of their constant presence when she spoke to professionals. The finding sought did not implicate the paternal family though I have inferred from the chronology within Miss McKenna QC's submission that the behaviour of the paternal family was also alleged to be controlling.
166. The reference in the finding sought to a meeting between the mother and the social worker on 16 August 2017 is a reference to a meeting between the mother and a social worker from LA1 on 16 August 2017. The mother was seen alone and reported that she was happy in the care of her parents. The mother claimed several days later that she was so controlled by her family she had lied to the social worker. I am not persuaded as to the overall case about control of the mother by her family for reasons which I will give below, and this interview did not provide evidence of anything conclusively untoward. First, I am wary of relying on the mother's evidence about this interview. Second, any reading of the interview highlighted the detailed discussion the mother had with the social worker about the various ways in which she was being assisted by her family, for example, by making sure she took her anti-depressant medication and help with K's care. Third, it was notable that the mother was recorded to be able to make decisions without the maternal grandmother's intervention when she met with the social workers several days later.
167. The chronology attached to Miss McKenna's submission does not, in my view, support the finding sought. For example, on 10 November 2017, the health visitor met the mother at maternal grandmother's home and was able to speak to her alone. The mother made allegations of domestic violence by the father when she was pregnant but was reported to be happy staying at maternal grandmother's home. The next reference by the mother to the behaviour of the maternal family was recorded on 1 December 2017 when the mother had been evicted from the refuge where she was staying. She reported to the refuge that she had been forced by her abusive and controlling family to marry the father. No details were given. On 29 December 2017 the mother said she had tried to live with her parents, but they would not let her out

and took her money. This was the last direct reference to the maternal family in Miss McKenna QC's chronology. There were references in the chronology to the involvement of the paternal family with the mother, for example the health visitor seeing the mother and father speak over each other in clinic on 15 November 2017 and the reports made by the mother about domestic violence from the father. I also note that the mother's GP rang the social worker involved on 12 February 2018 to discuss the concerns about the mother's mental health and learning disability and to express concern about what was said to be her untruthfulness in respect of domestic violence and of her playing one social worker off against another.

168. I am not persuaded that the mother was the victim of coercive control by either the maternal or paternal family. Despite what was alleged to be overt control by the maternal family during this period, the mother was able to report the assault by F to the police in mid-November 2017. The maternal grandmother was hospitalised during October and November 2017 having had a kidney transplant and it was thus questionable whether she was able to exercise any effective control over the mother in the manner alleged. The mother left the maternal family home following her assault by F and went to a refuge followed by temporary accommodation. A GP record dated 29 December 2017 noted the mother did not appear to be depressed and was doing "remarkably well" given her social history. I observe that the mother told the GP she did not feel threatened by the father despite the history of alleged domestic abuse.
169. Control by the paternal family during this period is also unsustainable on the evidence before me. The mother had no contact with the father or the paternal grandmother for some time after about mid-November 2017. Indeed the mother took K to see the father at his home on 18 January 2018 so that he might have contact with her. After 6 February 2018 the need for any control over the mother had gone as, put bluntly, K was in the father's care with the apparent blessing of LA2. By spring 2018 the mother was, in any event, pre-occupied with her own significant health problems especially those arising from her catheterisation. She had returned to live with the maternal grandmother and complained in late June 2018 that her family were controlling her and taking her money. Nevertheless, she left the maternal grandmother's home at that time and moved into a refuge.
170. Standing back, the wider evidential canvas suggested that, whilst the mother could be warm, engaging, articulate and calm, she could also be very difficult in her interactions with others. She was not an easy person to help as at times she was happy to accept support and at other times she was adamant she had no problems and did not need help. I note that she attended Linda Jeffes's office for a psychological assessment in spring 2019 on two occasions. On the first occasion, the mother was angry and anxious and required much encouragement to even enter the consulting room. She complained that the earlier cognitive assessment conducted by Linda Jeffes had been unfairly critical of her ability to care for herself and her child, but she was able to calm herself and engage for a little while in the assessment. On the second occasion, the mother again arrived in an agitated and unhappy mood. Her manner remained confrontational and hostile for some time before she became tearful and upset about her present circumstances. The social worker, KP, also experienced the mother as defensive and hostile, describing her ranting at her for about 25-30 minutes. Hospital staff also found the mother to become aggressive when she was told she needed to be discharged in July 2018. Finally, in a telephone call to the children's

Guardian on 21 October 2019, the mother's mood changed rapidly from one moment to another. She sobbed uncontrollably but then became angry, accusatory and agitated to the extent that the Children's Guardian did not think a visit from her to the mother would be suitable. Though these observations post-dated the start of the proceedings, my perusal of the social work records supports this reading of the mother's personality and interactions with others. She was, despite her real vulnerabilities and cognitive limitations, a young woman with agency who was, by late 2017/early 2018, far from being the passive subject of family control.

171. I have thus concluded that I cannot make the finding sought by the mother for the reasons I have given, namely the history of events and my analysis of the mother's personality and interactions with others.

Conclusion: The Mother's Case

172. Given that I have rejected much of the mother's case, I must address a key submission made by Mr Bagchi QC. He contended that the mother had fabricated the key allegations, namely FGM and forced marriage. Though Mr Ekaney QC's submissions did not go quite that far, both made common cause – Mr Bagchi QC in the alternative to his primary submission - in submitting that the mother had failed to discharge the evidential burden which lay upon her shoulders.
173. I indicated in paragraph 158 above that it was difficult to discern coherent reasons or motives which explained the allegations of FGM and forced marriage, let alone all the allegations made by the mother. I am thus unwilling to conclude that the mother has falsified every allegation she has made. I have accepted that she lied to me about the father being an abuser of K and about the paternal grandmother assaulting K and herself but these specific findings do not drive me inevitably to the conclusion that everything the mother said was motivated by malicious or desperate fantasy.
174. Standing back and looking at the overall picture at the conclusion of the evidence, these seem to me to have been the most pertinent macro-features in my analysis:
- a. The allegations made by the mother were very serious and could only be properly established on cogent evidence;
 - b. All the allegations were vehemently denied;
 - c. The allegations were highly dependent on the mother's account of events since other evidence was scanty;
 - d. The mother is a young woman with significant vulnerabilities who has a clear need for care and support in her own right rather than just by reason of being the mother of K;
 - e. The mother has significant cognitive difficulties which impact on her ability to provide a coherent narrative;
 - f. The mother has been untruthful about some matters and made desperate allegations in her oral evidence prompted by her emotional arousal at that time;
 - g. The mother has false beliefs about some factual matters;

- h. Her narrative was confused and inconsistent and some of it did not make sense when evaluated against other evidence;
- i. Cross-examination of the mother was truncated which meant that her evidence was not tested as it should have been;
- j. It was very difficult to discern the motives which might have explained the mother's behaviour because of her cognitive and emotional difficulties and her intense emotional arousal in court;
- k. The evidence of the family witnesses was, in some significant respects, wholly unsatisfactory;
- l. Given all the above, there was little firm ground on which I might base any findings with confidence.

175. It will be apparent from a reading of this judgment that, in respect of many of the allegations made by the mother, I have been unable to conclude that the mother has discharged the burden of proof on her, having had regard both to all the macro-features set out in paragraph 174 above and all the micro-features identified in respect of each specific allegation. For the avoidance of doubt, I have made no findings with respect to the overarching allegations set out in paragraph 4 above.

Findings Sought by LA1 in respect of FGM

176. LA1 invited me to consider the following matters arising from the evidence, all of which are unchallenged:
- a. Several members of the extended maternal family continue to live in Kenya, including the maternal great-grandmother who made the arrangements for all three of J's older sisters to undergo FGM.
 - b. It appeared from the maternal grandfather's oral evidence that there were also members of his own family living in Kenya.
 - c. The maternal grandfather had frequently visited family in Kenya, namely in 2008, 2011, 2013 and 2018.
 - d. When spoken to by her previous social worker and by the police on 6 September 2019, J said that she believed her father was planning to take her to Somalia over the school Christmas holidays.
 - e. The practice of FGM among the Somali community living in the area where the maternal great-grandmother lives was near universal, namely 94%.
177. LA1 also invited me to make findings about the attitude of the maternal grandparents towards FGM. It submitted that these findings would inform further decisions about J's welfare and the orders that may be necessary to safeguard her. LA1 submitted that the accounts given by the maternal grandparents were characterised by inconsistency and untruthfulness. That submission was supported by the Children's Guardian.

178. I indicated earlier in this judgment that I found the evidence of the maternal grandparents to have many unsatisfactory features. Perhaps anticipating that LA1 might seek findings to inform decisions about J's welfare, Mr Ekaney QC properly and realistically made several concessions on behalf of the maternal grandmother, the pertinent ones being set out below:
- a. The precise details of the circumstances in which the three girls were left in the care of their maternal great-grandmother were objectively unclear from the evidence of the maternal grandparents.
 - b. The maternal grandmother and three of her daughters have been subjected to FGM albeit that the mother maintained she was cut in 2013 aged nearly 18 years old.
 - c. The family is of Somalian heritage and there is a high prevalence of the practice of FGM in that country and in Somalian communities worldwide.
 - d. The maternal grandmother said that she had not broached the subject of FGM with her daughters.
 - e. The family and J would benefit from more education and teaching about the harmful effects of FGM and, in J's case, how best to stay safe.
 - f. It followed from the above that the court was likely to find that there were cogent macro and micro risk factors in relation to J, but it was submitted that the risks were manageable.
 - g. The maternal grandmother asserted that she would not cause or subject J to any form of FGM. However, she took no issue with a Female Genital Mutilation Protection Order being made, though its ambit and duration would need further consideration.

No such concessions were made by the maternal grandfather. I accept the concessions made by the maternal grandmother which, leaving entirely to one side the evidence of the mother, were amply supported by the evidence before me.

179. Given the wholly unsatisfactory accounts given by the maternal grandparents about the mother's FGM as a child, there was no reliable evidence as to either the maternal grandmother's current beliefs and attitudes towards FGM or those of the maternal grandfather. I am however satisfied that, at the point when the three older girls were left in the care of the maternal great-grandmother in about 2001, their parents were not in fact as vehemently opposed to the practice of FGM as they claimed. I find that the maternal grandparents left their daughters in the care of the maternal great-grandmother in the knowledge that it was highly likely she would make arrangements for all three girls to undergo FGM.
180. The silence about FGM in the maternal family underscores what appears to be the absence of any protective individual within the family. J's unchallenged account that there was a plan by her father to take her to Somalia in December 2018 raises very significant concern given the attitudes of the extended family in East Africa and given the fact that all the adult females in the maternal family have been cut. The maternal family continue to have close links with their extended family in Somalia and Kenya

and on the evidence available, it is likely that the maternal grandfather will make further trips to East Africa and also not unlikely, now that she has been given the all clear medically to do so, that the maternal grandmother will also visit family there.

181. I make the findings set out in paragraph 176 above. I also make findings incorporating some of the concessions made by the maternal grandmother and those matters to which I have alluded in paragraphs 179 and 180. I will consider at a future hearing how these findings might affect any welfare decisions I may need to take with respect to J.

Paternal Family: Attitude to FGM

182. In his closing submissions on behalf of the father, Mr Wilkinson submitted that the father would agree to the making of a Female Genital Mutilation Protection Order with respect to K. However, he submitted that such an order may be unnecessary given what the father told the independent social worker, namely that FGM was repugnant and he would be horrified if his daughter had it. The paternal grandmother accepted in her closing submissions that a protective order in respect of FGM should remain in place subject to provision being made to allow for K to enjoy occasional holidays abroad to non-African countries.
183. The paternal family's attitude towards FGM may require, in my view, further assessment. The paternal grandmother filed a statement declaring that she had not been subject to FGM but changed her evidence in the witness box to acknowledge that she too had been cut. The reason for that change in her evidence about this significant matter remains wholly unclear to me. Additionally, the father reported to LA2 in February 2018 that his sister underwent FGM against his mother's wishes yet later reported that his sister underwent FGM "*through choice*" which he was reported to find baffling. In his oral evidence and not entirely convincingly, the father told me that his sister had given him conflicting accounts about her own FGM. As with the maternal family, it was clear to me that the paternal family never discussed FGM between themselves prior to these proceedings. Furthermore, I had little sense from the father's or the paternal grandmother's evidence they had had any discussion about this difficult issue after the proceedings in relation to K had commenced.
184. Neither LA2 nor the Children's Guardian invited me to make any findings about the attitude of the paternal family towards FGM which might inform K's welfare. I do not do so but consider that this risk issue requires further assessment. I note that the Children's Guardian shares my misgivings about the discrepancies in the accounts given by both the father and the paternal grandmother regarding FGM in the paternal family and considers that, contrary to her instructions, this issue has not been satisfactorily addressed by the independent social worker in her parenting assessment.

The Conduct of LA2: The Mother

185. In her closing submissions, Miss McKenna QC made trenchant criticisms of LA2's conduct in that, amongst other matters, it had failed to have regard to the mother's learning difficulties; failed to make a referral to the adult learning disability team to ascertain what if any service they could offer the mother; undertaken cursory assessments of the risk of FGM; failed to undertake a parenting assessment of either the mother or the father; and failed to engage adequately in these proceedings until

forced by the court to do so. Miss McKenna QC contended that LA2 had acted in breach of the human rights of both the mother and of K. However, I was not asked to adjudicate on these matters during the hearing. Miss McKenna QC submitted that such an adjudication would be a matter for another hearing. I agree.

Conclusion

186. That is my decision.

SCHEDULE OF FINDINGS: THE MOTHER'S CASE

1. The maternal grandfather did not abuse the mother with words “you are not clean as you did not have guditan”.
2. The maternal grandparents did not arrange for the mother to travel to Kenya in 2013 so that she might undergo female genital mutilation whilst there. The mother did not experience FGM in Kenya in 2013.
3. The mother was not forced by her parents to marry the father. The marriage of the mother and the father was arranged by both the maternal and paternal families. Both the mother and the father were willing to marry each other in those circumstances.
4. The father did not rape the mother causing her to become pregnant and did not subject her to domestic violence, save for one incident admitted by him when, in December 2016, he grabbed the mother by the throat, threw her into a wall and then onto a bed.
5. The marriage between the mother and the father was marred by frequent rows initiated by both adults. Both were verbally abusive to each other. The father did not control the mother.
6. The father, maternal grandmother and paternal grandmother did not place the mother under pressure to refuse a reversal investigation and/or procedure offered to her by the hospital and did not cause her to fear re-suturing following K's birth. The family did not accompany the mother at all times.
7. The mother's brother, F, did not sexually assault the mother during her childhood.
8. The mother's brother, F, did not slap K in November 2017.
9. The father did not slap K more than once and nor did he shake her once. The mother's allegation that the father was abusive to K in this way is false. The mother made a false allegation in her oral evidence that the paternal grandmother shook K and was physically violent to the mother herself.
10. The father did not allege on 17 January 2018 that the mother had caused sexual abuse to K. He did allege that the mother had placed K at risk of sexual abuse by others. That allegation was not maliciously made as part of a plan to wrest the care of K from the mother.
11. Whilst living in the home of the maternal grandmother in late 2017/2018, the mother was not monitored and guarded by family members thereby preventing her free speech and movement.
12. The paternal family did not control the mother or her freedom to interact with professionals or prevent her from having care of or contact with K.

SCHEDULE OF FINDINGS: LA1

1. Several members of the extended maternal family continue to live in Kenya, including the maternal great-grandmother who made the arrangements for all of J's older sisters to have FGM.
2. The maternal grandfather has members of his own family also living in Kenya.
3. The maternal grandfather has visited family in Kenya in 2008, 2011, 2013 and 2018.
4. When spoken to by her previous social worker and the police on 6 September 2019, J said she believed the maternal grandfather was planning to take her to Somalia over the school Christmas holidays.
5. The practice of FGM among the Somali community living in the area where the maternal great-grandmother lives is near universal, namely 94%.
6. The precise details of the circumstances in which J's older sisters were left in the care of the maternal great-grandmother were objectively unclear from the evidence of the maternal grandparents.
7. At the point at which the maternal grandparents' three older daughters were left in the care of the maternal great-grandmother in about 2001, their parents left them in the knowledge that it was highly likely that the maternal great-grandmother would make arrangements for them to have FGM.
8. The maternal grandmother and her three adult daughters have been subjected to FGM.
9. The maternal grandmother has admitted that she has not discussed FGM with her daughters.
10. There is no protective individual within the family as yet identified.
11. The maternal grandmother has accepted that she would benefit from assistance about the harmful effects of FGM and that J would benefit from assistance about how to stay safe from FGM.
12. There are thus potent macro and micro risk factors for FGM in relation to J.