



Neutral Citation Number: [2021] EWHC 3045 (Fam)

Case No: WV18P00841/WV19F00188/  
WV19P00188

**IN THE HIGH COURT OF JUSTICE**  
**FAMILY DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 15/11/2021

Before :

**MR JUSTICE KEEHAN**

Between :

|   |   |
|---|---|
| A   | <b><u>Applicant</u></b>                 |
| - and -                                   |   |
| B   | <b><u>1<sup>st</sup> Respondent</u></b> |
| -and-                                     |   |
| C   | <b><u>2<sup>nd</sup> Respondent</u></b> |
| (A Child through his Children’s Guardian) |   |

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**Re C (A Child) (Parental Order & Child Arrangements Order No. 3)**  
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**Mr T Wilson** (instructed by **Shoosmiths**) for the **Applicant**  
**Mr S Uddin** (instructed by **Duncan Lewis**) for the **1<sup>st</sup> Respondent**  
**Mr T Bowe** (instructed by **Glaisyers**) for the **2<sup>nd</sup> Respondent**

Hearing dates: 18th - 20th and 26th - 27th August 2021  
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**Approved Judgment**

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

.....  
MR JUSTICE KEEHAN

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.

**The Hon Mr Justice Keehan :**

Introduction

1. This judgment should be read with my two previous judgments in this matter of 17<sup>th</sup> April 2020 and 3<sup>rd</sup> August 2020.
2. I am concerned with one child who is 3 years of age. His father is the applicant, A, and his mother is the respondent, B.
3. C has two half siblings, twins P and Q. They were born in 2019 and they live with the mother.
4. I have the following applications before me to determine at this hearing, namely:
  - i) an application that C should live with his father and an application that C should live with his mother;
  - ii) an application by the father in respect of the time C should spend with his mother;
  - iii) an application by the father inviting the court to restrict the exercise of the mother's parental responsibility; and
  - iv) an issue about how and when C should be told about his half siblings, how and when he should be introduced to them and thereafter how frequently he should spend time with them.
5. At present, C does not know that he has two half siblings who live with his mother. Since March 2020 and prior to the arrival of the twins in this jurisdiction from X Country, C has lived with his father and has spent time with his mother.
6. Earlier this year the mother began a course of chemotherapy to treat the fibromatosis with which she has been diagnosed. Her inability to travel to where C lives with his father has resulted in contact moving from weekly direct contact to twice weekly indirect contact by video calls.
7. In broad terms the father invited the court to order that C continues to live with him, that the mother's twice weekly indirect contact continues for so long as the mother is receiving chemotherapy. Once that treatment regime is concluded he contended that contact should revert to direct contact but be limited to six occasions per year of visiting contact. Further he invited the court to place a number of restrictions on the mother's exercise of her parental responsibility given her past conduct and actions. The father agreed that C should be told about the twins and that he should be introduced to them, but he was cautious about the timescales within which C would first meet his half siblings.
8. The mother invited the court to order that C lived with her and the twins and spend time with his father. She accepted this could not happen until C had been told about his half siblings and had been introduced to them. If C was to continue living with his father, she opposed her contact being limited to six times per year but ultimately sought her regular weekly visiting contact with C being restored and leading to staying contact at

her home. She opposed any restriction on the exercise of her parental responsibility for C.

9. The children's guardian supported C continuing to live with his father but did not support the limitations on the mother's contact with C sought by the father nor did she support the father's application for the exercise of the mother's responsibility to be restricted.
10. This matter was listed for final hearing for three days commencing 18<sup>th</sup> August 2021. For the reasons set out in this judgment it became necessary for the matter to be listed for two additional days on 26<sup>th</sup> and 27<sup>th</sup> August, for counsel to file and serve written closing submissions by 13<sup>th</sup> September and for me to reserve judgment.

## The Law

### *Fact Finding*

11. The burden of proof rests with the party who is inviting the court to make a finding of fact against another party or a third person.
12. The standard of proof is the simple balance of probabilities: *Re B* [2008] UKHL 35.
13. The rule of *R v Lucas* [1981] QB 720 was adopted in the family courts in *A County Council v K, D and L*. The principle is that if the court concludes that a witness has lied about one matter it does not follow that he has lied about everything. A witness may lie for many reasons, for example out of shame, humiliation, misplaced loyalty, panic, fear, distress, confusion and emotional pressure.
14. In the criminal courts a lie can only be used to bolster evidence against a defendant if the factfinder is satisfied that the lie is deliberate, relates to a material issue and there is no innocent explanation for the lie.
15. In the case of *Re: H-C (Children)* [2016] EWCA Civ 136 at paragraphs 98 to 100 McFarlane LJ, as he then was, said:

“98. The decision in *R v Lucas* has been the subject of a number of further decisions of the Court of Appeal Criminal Division over the years, however the core conditions set out by Lord Lane remain authoritative. The approach in *R v Lucas* is not confined, as it was on the facts of *Lucas* itself, to a statement made out of court and can apply to a "lie" made in the course of the court proceedings and the approach is not limited solely to evidence concerning accomplices.

99. In the Family Court in an appropriate case a judge will not infrequently directly refer to the authority of *R v Lucas* in giving a judicial self-direction as to the approach to be taken to an apparent lie. Where the "lie" has a prominent or central relevance to the case such a self-direction is plainly sensible and good practice.

100. One highly important aspect of the Lucas decision, and indeed the approach to lies generally in the criminal jurisdiction, needs to be borne fully in mind by family judges. It is this: in the criminal jurisdiction the "lie" is never taken, of itself, as direct proof of guilt. As is plain from the passage quoted from Lord Lane's judgment in Lucas, where the relevant conditions are satisfied the lie is "capable of amounting to a corroboration". In recent times the point has been most clearly made in the Court of Appeal Criminal Division in the case of *R v Middleton* [2001] Crim.L.R. 251.

In my view there should be no distinction between the approach taken by the criminal court on the issue of lies to that adopted in the family court. Judges should therefore take care to ensure that they do not rely upon a conclusion that an individual has lied on a material issue as direct proof of guilt".

### *Welfare*

16. My paramount consideration is the welfare best interests of C: s.1(1) Children Act 1989 ('the 1989 Act').
17. I have taken account of the factors set out in the welfare checklist of s.1(3) of the 1989 Act insofar as they are relevant to the circumstances of this case.
18. I have had regard to the Article 6 and 8 rights of the father, the mother and of C. Where, however, there is a tension between the Article 8 rights of a parent, on the one hand, and the Article 8 rights of the child, on the other, the rights of the child prevail: *Yousef v. The Netherlands* [2003] 1 FLR 210.

### *Background*

19. I propose to set out the full background history of this matter including the chronology set out in my two previous judgments. The mother is a British Asian who was born in the UK. The father is British Bangladeshi and came to this county in December 2008.
20. The parents met in March 2009 and were married on 1<sup>st</sup> November 2009.
21. They decided to start a family but, very sadly, the mother suffered seven consecutive miscarriages. The miscarriages invariably occurred around the beginning of the second trimester.
22. In early 2017, the parents decided to pursue a surrogacy arrangement in the hope of having a child. On 24<sup>th</sup> March 2017, the mother made contact with a surrogacy agency in X Country.
23. This contact culminated in the parents entering into an agreement with the surrogacy agency in X Country on 26<sup>th</sup> April 2017. The contract as signed by the parents has the words written in manuscript 'To Proceed' adjacent to the parents' signatures on each page of the contract. The mother and the father both claimed to have written these words

on each page of the contract. In my judgment of January 2020 I found that it was the father who had written these words.

24. The parents having considered a number of women as potential surrogates and having met one, D, the parents signed a written surrogacy agreement with her on 13<sup>th</sup> June 2017 in X Country.
25. On 4<sup>th</sup> August 2017 the mother sent an email to the director of the surrogacy agency in X Country, E. She requested the agency to store the father's unused genetic material until December 2017. The relevant part of the email said:

“can we store the [father's] sperm for 5 months for now, hopefully by then we can see what we have from this [course] of treatment now”

The mother forwarded a copy of this email to the father.

26. On 5<sup>th</sup> August 2017 the embryo, created using the father's genetic material and an egg from a donor, was implanted into the surrogate mother, D. The pregnancy was confirmed by an ultrasound scan performed on 7<sup>th</sup> September 2017.
27. In October/November 2017 the mother alleged she has discovered the father was having an affair with a colleague at the hospital where he worked as a consultant. In her first witness statement the mother asserted that the father:
  - “was behaving in a weird and threatening manner all of the time and I started feeling intimidated around him.”
28. On 21<sup>st</sup> November 2017, the mother sent an email to E enquiring about using the remaining stored embryos for a second surrogacy. It is of note that the mother did not forward this email to the father.
29. E replied to the mother on the same day stating that she would send a power of attorney to be signed by the parents and continued:

“if we start straight away, you and [the father] .... send us apostilled power of attorney (we will give you an example) and our lawyer will sign papers instead of you.”

30. On 7<sup>th</sup> December 2017 the mother and father signed a power of attorney which authorised the surrogacy agency to sign documents on their behalf. The father asserted that he was told by the mother that the purpose of the power of attorney was to assist with the registration of the expected child's birth and in obtaining a passport for the child.
31. On 5<sup>th</sup> April 2018 C was born in X Country.
32. Both parents arrived in X Country and C was placed in their care. All three remained living in X Country until 7<sup>th</sup> July when C travelled with his parents to the United Kingdom.

33. On or about 24<sup>th</sup> April 2018, E emailed the mother a copy of a second surrogacy agreement. In response the mother emailed E and requested her not to discuss the second surrogacy agreement with the father. The email continued:

“[the father] wanted me to inform you that he is happy to read and sign all necessary documents for new contract and for me to discuss everything with you fully... [the father] does not want to discuss in detail as he finds it difficult each time we face miscarriage.... [the father] said for you not to feel offended as he will not make any attempts to talk about this tomorrow.”

I note a copy of this email was not forwarded to the father by the mother.

34. On 24<sup>th</sup> April 2018 the agreement with the agency for a second surrogacy was purportedly signed by the father. The father denied ever signing an agreement for a second surrogacy. I note that the words ‘To Proceed’ do not appear on this second document and it is undated.
35. On 13<sup>th</sup> June 2018 the mother forwarded an email to the father attaching a DNA report in respect of C. Further on 26<sup>th</sup> June the mother forwarded to the father an email containing a summary of the surrogacy arrangements which led to the birth of C.
36. On 12<sup>th</sup> July 2018 the parents’ made their application for a parental order.
37. On 15<sup>th</sup> July 2018 A Local Authority (‘the local authority’) received a MARAC referral.
38. On 23<sup>rd</sup> July 2018 the mother left the family home with C. The following day she transferred £60,000.00 from the parents’ joint account to her own bank account. In light of the disappearance of the mother and C, and being unable to find C’s passport, the father contacted the police.
39. By 22<sup>nd</sup> August 2018 the local authority had completed an assessment and closed the referral. It was noted that:
- i) the mother had returned home with C; and
  - ii) had told the social worker that she felt safe.

In her evidence the mother accepted she had made no reference to the social worker about the second surrogacy arrangement.

40. The Parental Order Reporting Officer, JG, made three visits to the family in September and October 2018. On no occasion did the mother mention or make any reference to a second surrogacy arrangement.
41. On 19<sup>th</sup> October 2018 the parents attended an initial relationship counselling session. Thereafter between 23<sup>rd</sup> November and 21<sup>st</sup> February 2019 the parents or, at least, the mother attended further counselling sessions. On not one occasion did the mother mention the second surrogacy arrangement.
42. On 23<sup>rd</sup> October 2018, 22<sup>nd</sup> January 2019 and 5<sup>th</sup> March 2019, the parents attended before HHJ Dowding at a directions hearing in respect of the application for a parental

order in respect of C. The mother said nothing to the judge about a second surrogacy arrangement.

43. On 25<sup>th</sup> October 2018 a second surrogacy agreement was signed by the proposed surrogate mother, not D, and the agency's lawyer signed the agreement on behalf of the parents using the 7<sup>th</sup> December 2017 power of attorney.
44. The following day E send an email to the mother notifying her that the contract had been signed and that a scanned copied of the same was attached. I note that this email was not forwarded to the father.
45. On 10<sup>th</sup> December 2018 the embryo was implanted into the second surrogate mother. A pregnancy was confirmed by blood test on 22<sup>nd</sup> December. E emailed the mother with this news on 26<sup>th</sup> December. I note, once more, that this email was not forwarded to the father.
46. On 9<sup>th</sup> January 2019 a scan revealed that the second surrogate mother was carrying twins.
47. The mother alleged that the father physically assaulted her on 3<sup>rd</sup> February 2019. The mother and her sister asserted that the mother spoke to her sister about the alleged assault on the following day, 4<sup>th</sup> February.
48. In her witness statement made in June 2019 the mother alleged, for the first time, that on 4<sup>th</sup> February the father had called her and threatened her to not tell anyone about this alleged assault. This threat is not referred to in the mother's police statement of 8<sup>th</sup> March nor in her statement of 15<sup>th</sup> March made in support of her applications for a non-molestation order and occupation order.
49. On 5<sup>th</sup> February 2019 a social worker visited the family. There was no mention made of the second surrogacy nor of the father's alleged assault two days before.
50. After a court hearing on 5<sup>th</sup> March the father asserted that for the very first time the mother told him about the second surrogacy and told him that if he did not take responsibility for the twins, then the marriage would be over. The same day the father telephoned the surrogacy agency in X Country to ask about the purported second surrogacy arrangement.
51. On 6<sup>th</sup> March 2019 the mother reported the father to the police in respect of the alleged assault on 3<sup>rd</sup> February. Thereafter she changed the door locks at the family home to prevent the father gaining entry.
52. On 8<sup>th</sup> March 2019, whilst on her way to the police station to give a witness statement, the mother telephoned the relationship counsellor and revealed, for the first time, the second surrogacy.
53. After this date there was no contact between C and the father until June 2019 when, at a hearing before me, it was agreed contact would commence at a local contact centre supervised by the local authority. The father's contact was extended, albeit still supervised, by my order of 25<sup>th</sup> July 2019. His contact with C moved to unsupervised

by my order of 7<sup>th</sup> October. The father then moved to have C for overnight contact by my order of 14<sup>th</sup> November 2019.

54. On 15<sup>th</sup> March 2019 the mother made a without notice application for a non-molestation order which was granted by a deputy district judge on 18<sup>th</sup> March.

55. On 8<sup>th</sup> April 2019 E sent an email to the mother in which she said:

“some time ago we received a call from [the father] who said that he will go to court because he never agreed for the second surrogacy program and did not sign any contact, of which we have the original.”

This email was not forwarded to the father.

56. On 11<sup>th</sup> April the mother responded and requested that E send:

“me only, a copy of the contract agreement we both signed...”  
(emphasis as in original)

This was followed by a further email from the mother to E on 17<sup>th</sup> April when the mother requested:

“please continue only to communicate with me and let me know when [the father] or someone on his behalf contacts you”  
(emphasis as in original)

These emails were not forwarded to the father.

57. On 6<sup>th</sup> June 2019 the mother sent an email to E asking her to confirm that the second surrogacy agreement was signed in her presence. E replied:

“We can not write the letter you are asking for since it’s been like a year ago and I cannot remember the situation clearly.”

58. On 5<sup>th</sup> August 2019, the twins were born as a result of the second surrogacy. They remained living in X Country with the mother or alternate carers until they arrived in this jurisdiction with the mother on 6<sup>th</sup> April 2020. The mother originally planned to divide her time between caring for C and travelling to X Country to care for the twins on, roughly, a two-weekly cycle. The mother was not able to maintain this regularity of visits.

59. C has been in the sole care of his father since 3<sup>rd</sup> April 2020 and has enjoyed weekly contact with his mother.

60. The first welfare hearing commenced on 22<sup>nd</sup> April 2020. During the course of the father’s cross-examination by counsel then acting for the mother the father was asked whether he had visited the mother at one of her brothers’ home the day after the conclusion of the fact-finding hearing on 24<sup>th</sup> January. The father accepted that he had but denied he had taken flowers for the mother, or that he had entered the house, or that he had had a meal with the mother’s family and spent several hours with the mother and members of the maternal family.



61. After a short while counsel for the mother said she had a matter of law to raise with the court. It transpired that the father's visit to the family home on 24<sup>th</sup> January had been recorded on CCTV cameras installed at the brother's home.
62. I propose to say no more in this judgment about the circumstances in which this recording was disclosed to and then made available to the court and to the parties.
63. At the hearing on 6<sup>th</sup> May 2020, I gave permission for transcripts of the CCTV recordings to be obtained and for them then to be translated into English.
64. At the first hearing of the mother's application to re-open the findings of fact on 8<sup>th</sup> June 2020, I was met with an application by the mother to obtain a further transcript of the CCTV and further translations of the same into English because of various deficits identified in the first transcription and/or translation of the same. The mother's application was supported by the guardian and by the local authority. I very reluctantly acceded to the same.
65. I eventually heard the mother's application to re-open the findings of fact on 13<sup>th</sup> July 2020. I dismissed the application and indicated I would give my reasons for so doing in my second substantive judgment. I gave the mother permission to seek findings against the father of financial, coercive, controlling abuse during their relationship and I gave permission for the guardian and the local authority to explore these issues at this welfare hearing. On 3<sup>rd</sup> August 2020, I handed down judgment. I did not make any of the findings sought by the mother against the father and found that the mother had been lying to the court.
66. On 1<sup>st</sup> October 2020 the mother applied to the Family Court for a child arrangements order in relation to the twins including:
  - i) no reference to my findings regarding the conception of the twins and the rejection of the allegations of domestic abuse;
  - ii) statement that "Father of babies currently do not want involvement in their upbringing" and that he "is biological parent but has currently refused to be involved in babies upbringing, since their separation on 5<sup>th</sup> March 2019; and
  - iii) claiming an exemption on the grounds of "domestic violence".
67. On 7<sup>th</sup> October the mother telephoned the police and repeated her allegations against the father.
68. On 13<sup>th</sup> October the mother gave a statement to the police raising the following allegations against the father, which I had previously found to be false:
  - i) the father has perpetrated 'emotional abuse' against her;
  - ii) the father has perpetrated financial abuse against her, including by transferring money to his mother and by asking to borrow money;
  - iii) she has been the victim of 'one physical assault';
  - iv) the father has threatened to harm and to abduct C; and

- v) the father has fabricated his CV, including his qualifications and experience.
69. She also stated she was ‘traumatised’ by the father’s actions and provided the police with a 15-page ‘incident sheet’ of all of her complaints about him.
70. She also raised the following ‘serious concerns regarding my son’:
- i) ‘He has lost a lot of weight and does not look as healthy as he did before’;
  - ii) ‘His speech has also deteriorated; he now has limited speech despite being over two years old’;
  - iii) he is ‘extremely anxious’ on returning to his father’s care. He ‘begins to cry and becomes vacant’;
  - iv) the father has lied about self-isolating in April 2020;
  - v) the father has inappropriately medicated C;
  - vi) if the father discovers she has reported matters to the police, ‘the response...will be negative, and potentially put my son C in harm or abduction’; and
  - vii) ‘When someone knocks on my door, I am worried it will be someone coming to inform me that my son has passed away’.
71. On 14<sup>th</sup> October, the police attended the father’s home to undertake a ‘safe and well’ check and it was recorded that C was healthy and happy and there were no concerns about the father’s care of him. On 15<sup>th</sup> and 21<sup>st</sup> October, the father’s and the child’s solicitor made enquiries of the mother asking for information regarding the police check and on 27<sup>th</sup> October the father applied for disclosure from the police. The mother emailed the police on 9<sup>th</sup> November seeking to stop the same.
72. The mother also completed a Domestic Abuse Risk Assessment. Her responses included:
- i) the mother asserted that she is ‘frightened he will harm me’;
  - ii) the mother ranked “9” on a scale of “0 to 10” the likelihood that the father will ‘seriously injure’ her in the future; and
  - iii) she stated that she feared she ‘will be in danger from him’ and that ‘she is in fear for her son more than herself’.
73. At a hearing before myself on 11<sup>th</sup> November 2020, I ordered the police disclosure as sought by the father after being informed by the mother that she did not make the referral to the police.
74. On 28<sup>th</sup> November the mother emailed the police:
- “At present, I am very concerned that A and his legal team are continuing to carry out his threats to jeopardise and stop my

contact with my son. In addition, I am unable to safeguard my 2 year son and myself from his abusive behaviour”

75. On 1<sup>st</sup> December, during the mother’s first meeting with Dr Y it was noted that:

“In the first interview B immediately offered details she felt were either inaccurate or missing from Schedule 1 [to the LOI]”

76. On 8<sup>th</sup> December, the mother met with the police and it is recorded that:

“So far [the mother] feels that [the father] had targeted her from the beginning of the relationship”

77. This was followed by emails from the mother in the following terms:

“I have serious concerns that whilst there is a live investigation going on by you, this information provided had fully informed my ex-husband of abducted and being removed from UK is very high, there is a live investigation going on by you, this and the possibility of my son being removed from UK is very high.”

“This evening, after the disclosure was shared to the Guardian legal team, they are now insisting that I provide them with detailed account of what I had reported to the police and if I do not, they would support an urgent court hearing to stop my contact with my two year old son.”

78. It is further recorded by the police on 14<sup>th</sup> December that:

“[the mother] has been very reluctant and is worried that [the father] will discover full details of the case through further disclosure and [the father] will leave the country with child”

79. On 31<sup>st</sup> December the mother sent another email to the police in which she made further allegations regarding the father’s curriculum vitae.

80. On 11<sup>th</sup> January 2021, at a closed hearing attended only by the police I ordered disclosure of my previous judgments to the police.

81. On 23<sup>rd</sup> January the mother emailed the police again in which she said:

“Now his legal team has made further threats to minimise and possibly stop my limited...contact I have with my two year old son, who is currently residing with him, due to A lying in the family court.”

“While my two year old son remains in his father’s care and resident, I fear further risk of direct harm to my son and to myself, every Friday when I have direct contact in Z Town”

82. On 28<sup>th</sup> January the mother asked to meet with the police to discuss:

“Concerns re the impact of the judgement on the investigation and I need to understand how you propose to proceed?”

83. On 2<sup>nd</sup> February the mother applied for a stay of the order for police disclosure, ‘pending the outcome of her proposed appeal’.

84. She then emailed PC X on both 1<sup>st</sup> April and 7<sup>th</sup> May in which she said:

“I am very concerned that the importance of the police investigation is critical to my eldest son’s welfare”

“T Organisation investigation adviser had emailed me last week on 27th April 2021. She informed me that she has been trying to contact you by phone, I have explained that you work shift patterns and this includes weekends, I have provided you an attachment with Latisha's contact details and I have also given Latisha your email address.”

“End of April 2021, I asked my oncology consultant whether the trauma from the assault had caused this tumour to develop? because I when researched on the internet, I did find many people had developed this- specific tumour following trauma. Although my consultant could not give me a confirmed cause for my tumour, she did advise that maybe a specialist in Fibromatosis tumour would be able to give a better clarity, if this is requested for the investigation.”

The mother asked the police to amend the investigation to include:

““domestic abuse of my son by his father’ following ‘the new domestic abuse bill being passed on 21<sup>st</sup> April 2021””

85. On 27<sup>th</sup> May the mother asked the police to obtain evidence from CAFCASS, C’s previous social worker, and from his previous nursery manager.

86. Another two emails were sent to the police on 17<sup>th</sup> June in which it was stated:

“I believe it is important that I provide you with the factual evidence the court had been provided regarding the second surrogacy. Unfortunately, the judge decided not to take these into account but instead went onto state in his judgement that he believed the verbal version and account of what my ex-husband told...”

“I am concerned the two judgements...did not give an accurate account or true reflection to the all the evidence the court had been provided during the court proceedings”

She then sent documentation from the second surrogacy which I had found to be fabricated.

87. The mother sent another email to the police on 27<sup>th</sup> June stating:

“You will read in this, that prior to the judgement made for the welfare hearing on 3rd August 2020, the judge had already told the court during the hearing in July 2020, that he did not believe domestic abuse, controlling or threat to harm C was made by my ex-husband in the CCTV or at any point during our marriage. Therefore, at that point I had no other option, the judge forced me say what he wanted me to agree with, just so I can have weekly contact with my son because he had changed residency for my son to live with my ex-husband and reduced my contact time with my son.”

88. Emails were sent between 10<sup>th</sup> and 14<sup>th</sup> July stating the following:

“Other evidence I shared with T, which I believe does demonstrate his controlling and dishonest behaviour, that impacted his abusive behaviour towards me.”

“Further evidence of “A’s dishonest behaviour related to his aggressive and abusive behaviour, which directly impacts safeguarding of C and the general public”

“Further evidence of “A’s domestic abuse, dishonesty and controlling behaviour, impacting C’s health and welfare and high risk of abduction”

“I do admit I have really struggled working very hard every day and night until 4am, putting together all the evidence and supporting narratives to email you...”

89. The mother then emailed version 6 of her draft statement to the police on 10<sup>th</sup> August and chased for an update on 16<sup>th</sup> August.

90. On 17<sup>th</sup> August at 8:36am my clerk emailed the parties in the following terms:

“In the absence of cogent medical evidence my decision that both parents shall give evidence in person stands.”

91. The mother’s counsel responded at 8:46am:

“It is my firm instructions that my client will not be attending in person to give evidence.”

To which, at 8:51am, the parties were notified that if necessary, an order would be made for the mother to attend in person attaching a penal notice.

92. At 3:30pm the mother’s counsel emailed:

“Few moments ago, I have received instructions from my client that she cannot participate at the hearing either in person or by remote method because she instructs me that she is not physically and emotionally fit.”

93. In the early hours of the following day, at 2:46am, the mother emailed the police with further amendments to 6<sup>th</sup> iteration of her draft police statement.
94. In a further police witness statement for submission to CPS for a charging decision in respect of the father, the mother alleged that:
- i) “I recently found out that my ex-husband had an ulterior motive for wanting to marry me, and that he targeted me specifically to obtain his UK residency to progress his career...within the UK and for other financial gains”;
  - ii) “To this date my ex-husband denies ever signing an agreement for the second surrogacy. This has formed a significant part of our subsequent legal battles...Documents were presented to the court to prove that my ex-husband had signed the second surrogacy contract. However, the judge refused to acknowledge this evidence”;
  - iii) “C my son had suffered numerous accounts of child abuse through maltreatment from my ex-husband from July 2018, 2019, 2020 and to present date. Majority of these maltreatment had been documented in C’s medical record by a number professionals; these include health visitors, social workers, my GP and shielding nurse, in [towns redacted]”;
  - iv) “All these points have evidenced how my ex-husband maltreated C and these behaviours are collectively described under “Child Abuse definition”;
  - v) “I now fear for C’s welfare and safety, as these concerns have been ignored by the family court proceedings.”;
  - vi) “I am not happy with the outcomes of the family court, to this date. I do not believe that the judge has listened to my case fairly and that he has made his decisions based upon my exhusbands testimony and has not properly considered the evidential facts provided, including independent professional reports that my legal team have presented to him. I do not agree with their findings and I feel that the Judge has been biased throughout.”;
  - vii) “I believe that he is using C as a tool to attempt to control me by making these threats.”; and
  - viii) “I am gravely afraid of the welfare of C and losing all contact with my son when he is in my ex-husband’s care. That is why I reported this matter to West Midlands the Police again, as I don’t believe the family court are taking my concerns seriously”.
95. Upon the mother producing previously requested medical evidence, the court permitted the mother to attend the whole of this hearing remotely.

#### Application to Recuse

96. After the conclusion of the evidence but prior to the commencement of closing submissions, Mr Uddin, counsel for the mother, made an application for me to recuse myself on the ground that I was biased against the mother. He further submitted during

the course of this hearing that I had bullied him which had risked undermining the confidence the mother had in him as her counsel.

97. The background to this application commenced at a directions hearing on 25<sup>th</sup> March 2021. Mr Uddin had filed and served a position statement on behalf of the mother. I considered a number of passages in this position statement to be rude and impertinent to the court. I raised this matter with Mr Uddin at the commencement of this directions hearing. I told counsel that I considered his position statement to be impertinent and impudent and that if I received a like position statement from him in the future, I would consider reporting him to the Bar Standards Board.
98. During the early part of the mother's evidence there were occasions when she gave no or no satisfactory answer to questions. I told the mother what I had written down in my notebook in order to give her the opportunity to reflect on her evidence and to give a response. Mr Uddin objected to me taking this course of action and so I stopped doing so.
99. During the course of Mr Uddin's cross examination of the children's guardian he put a proposition to her which did not reflect her evidence. I raised the matter with Mr Uddin and in the exchange that followed there came a point when I considered he was being disrespectful. I told him so and invited him to continue with his cross-examination of the guardian. He did not do so. I repeated the request and on the final occasion I did so in an emphatic manner. He did not do so and, in terms, said I was bullying him. I told him that he was coming close to being reported to the Bar Standards Board in respect of his conduct in the hearing.
100. Shortly thereafter Mr Uddin made a personal statement to the court relating to my comment about a potential referral to the Bar Standards and the risk that the mother may, as a result, have lost confidence in him. He confirmed she had not.
101. It was against this background that Mr Uddin made his application for me to recuse myself. He relied essentially on three grounds:
  - i) the manner in which I had treated him at the directions hearing referred to above and at this hearing;
  - ii) that the mother considered I was biased against her and that any fair minded and informed observer would conclude that there was a real possibility that I was biased against the mother: *Porter v Magill* [2002] 2AC 357; and
  - iii) that I had treated the mother unfairly.
102. I refused the application. In giving a short extempore judgment I said:

“I have an application to recuse myself from this case made on behalf of the mother. I have well in mind the test to be applied from *Porter v Magill*, whether a fair-minded observer would consider that the court was biased. The application is essentially based on the mother's perception that I am biased because I have made findings against her or I have held her to account to

answers that she has not satisfactorily given to the court. That is no basis for recusing oneself.

Reference was made by Mr Uddin to the occasions on a previous occasion and today when I had to admonish him for rude or offensive behaviour. I have only had to do that on one previous occasion in the twenty years that I have sat as a full-time or part-time judge. This application for me to recuse myself is utterly and totally without any merit whatsoever and it is refused.

I note in so finding that the mother in the course of this case has perceived correspondence from the guardian to be a threat to stop her contact when no fair-minded person reading that document could possibly conclude. Therefore, her perception, it would appear, is skewed and is no basis for me to recuse myself after conducting this case for so many years. Application dismissed.”

#### Evidence

103. Dr Y is a consultant clinical psychologist and systemic psychotherapist in the field of child and adolescent mental health. She was instructed to report on three matters:

- i) whether and, if so, how C should learn about the existence of his twin half siblings;
- ii) whether and, if so, how and when C should be introduced to his half siblings; and
- iii) whether and, if so, how their relationship should be enabled and developed.

104. In the conclusion to her report Dr Y advised as follows:

“Being open with children conceived through DC and surrogacy is a lifelong process that ideally starts in early childhood and is built on incrementally through into adolescence and beyond. The later children find out about their origins, the more difficult it can be as the information about themselves then has to be integrated alongside feelings of betrayal and lack of trust. Late disclosure can fracture relationships within families and require significant therapeutic intervention to resolve, both for the individual reworking their identity and for the family relationships around them.”

She continued in the following terms:

“It can be very difficult to manage the process of unfolding a narrative over years unless separated or divorced parents both place the child’s needs as central and agree to talk together about developments so that the explanations and further details are shared in an appropriate and child-centred way. It is helpful if they can agree to seek advice if necessary. Without this there is



an increased likelihood that the child will receive disjointed or conflicting stories.

C will need to integrate the facts of his own conception and birth story into his identity and make sense of the existence of the twins and eventually come to understand the differences and similarities in their origins. Given the context, in time he will have to understand and process issues relating to trust, openness and honesty in relation to each of his parents. Issues following from the deception surrounding the second surrogacy arrangement have the potential to permeate his future. This highly complex situation does not lend itself to easy or simple answers and the process of unfolding is likely to need to be revisited in the future. It is more appropriate to think of the likely psychological effects of actions taken and to consider what are the least damaging of the alternatives.

It is crucial that C develop some resilience as he has already had changes of caretaker and it is only during the last year that he has enjoyed a more settled time. Ideally, he needs to have a strong bond with both parents. However, the main responsibility for his long-term sense of security lies with his father as the resident parent. In the future he is likely to have to deal with challenging issues with both his parents and he will need avenues of emotional support during these times, including adults outside his immediate family.

While B accepts that Judgements have been made, she has continued to pursue her allegations relating to domestic abuse with the Police. She also made serious comments about C's wellbeing which led the Police to undertake a welfare check, but they found absolutely nothing to substantiate her concerns. B shows little insight into the consequences of these actions, particularly the impact these were likely to have on her former husband and the implications for communication about C. A's position of wanting nothing to do with the twins has become more entrenched, and he does not want C to know of their existence until he is much older. The circumstances have cemented the breakdown of trust between A and B. The only way to achieve a more positive outcome for C is for his parents to change their behaviours, and this appears unlikely to happen in the foreseeable future. This severely limits the options.

The attachment security and mental health needs of C need to be prioritised. The parental couple are each caught up in their own grievances about the other's behaviour and unless they find a different way forward C will end up carrying these conflicts into the future, and this is likely to cause him emotional distress. C is likely to become increasingly aware of the chasm between his parents and this can be damaging, and potentially leads children to feel that they need to take sides.

Assuming that A remains the legal resident parent for the twins, she is the mother [social, legal and psychological] of all three children in addition to A being the genetic link between them, and it could be beneficial for C to develop a relationship with P and Q. This requires that constructive safe and positive contact be supported by both parents. It does not appear that this can be provided by these parents now. A does not take C to handovers and his decision to avoid any direct communication with B appears to be predominantly based on self-protection. If the rift between them continues they would be unable to talk together about how to handle C's questions about his conception or that of the twins as he grows older. Furthermore, B's actions give little confidence that she will reliably follow agreed decisions.

I would advise caution about starting contact between C and the twins without his father's involvement. However, if a decision were taken for the children to meet, given the level of conflict between the parents, I would recommend this be in a neutral space where they can play together rather than in B's home. One possibility is that this process be supported under a Family Assistance Order, but this requires both parents to agree. Prior to this, a second chapter should be added to 'Our Story' [see below], C should see photographs of the twins and then spend time with them in a quiet play space for a short time, outside of his usual time with his mother.

To place C in a position where he is having regular [even if not frequent] contact despite his father's strong objections is likely to create a situation where he would experience his father's ambivalence and negativity. It is also likely to make it difficult for a comfortable sibling relationship to develop. If C sees the twins and returns home commenting about them, he would be likely to gain a sense of his father's discomfort and disapproval. He would not be able to easily understand this and may feel that he is at fault. This could undermine his sense of security and affect the father/son relationship.

The option to keep the twins' existence from C would not create an immediately damaging situation. However, it has the potential for detrimental consequences later. Holding a secret for many years requires that lies be told, either by omission or commission. Such secrets in families affect closeness and distance, communication and interaction and there is often a deep sense of betrayal experienced when the information is revealed particularly when the secret makers are parents in whom a child has implicit trust. Furthermore, such secrets are very difficult to contain and there is a tendency for them to emerge by accident when people are not prepared and in a way that does not attend to the feelings of those for whom they are salient. Even if B endeavoured to keep the existence of the twins

a secret, it would be very hard for her to lie to C if, when he is older, he asked directly who she lives with, or why he cannot visit her at home.

If information about the twins was not shared until C is in his late teens [as A would prefer] there is a strong likelihood that C would be angry and/or upset at not being made aware of their existence and not being allowed to see them. This would be in addition to any feelings about his father taking no part in their lives. Furthermore, this may have implications for C's connections with other maternal relatives. C may lose trust in his father as a result and this could lead to significant difficulties in their relationship. This might coincide with C having feelings about his mother proceeding with the second conception/surrogacy arrangement without his father's consent, and the fact that she too will have had a part in the concealment. Adolescence and early adulthood can be a difficult time, as young people strive to develop a sense of identity and autonomy, and this can also be a time when Donor Conceived and surrogacy born offspring think more about what this means for them and who they are. C will have to accept that, unlike children created with donor gametes in the UK, he will have no access to more information about his donor and that he will not be able to meet her or the half siblings that exist elsewhere. To be told of the twins suddenly in addition – with all the ramifications of this - is likely to place an immense psychological burden on C.”

105. In respect of how appropriate life story is undertaken with C, Dr Y advised that the following steps should be taken:

“The details of C's conception and that of the twins will need to be shared with C and in the future, he will need assistance to make sense of what has been told. Ideally this starts with a simple transparent account which, given his age and understanding, does not include every detail, but is truthful and allows for aspects to be questioned and more details to emerge in the future.

7.15 A has already begun this process in respect of C's conception. The use of books such as 'Our Story' with such young children does not mean that they understand the content, but that they grow up with a gradual awareness of the context of their conception rather than it being presented later when they are likely to have made assumptions. This usually avoids feelings of shock and surprise as children feel they have always known and cannot recall being told. It also enables parents to become more fluent and comfortable with the language and ideas that they will need to talk about over the years. A should have a copy of the details of the surrogate and egg donor held by B so that he can answer questions later – and B should have a copy of the 'Our Story' that A has personalised, so that she can read this with C occasionally.

C is not yet three and ‘Life Story work’ addressing complicated relationships cannot be undertaken with a child of his age. In my opinion, an important feature of the beginning of this work lies in a simple foundation that is honest and transparent. The story will need to be added to over time, with increasingly complex information provided. C cannot be expected to ask questions unless he has the basic information and his parents create”

106. In her evidence Dr Y explained that keeping secrets from children can be toxic and can have an extreme effect on close family relationships. She saw no reason to delay giving an agreed simple narrative to C in which he was told about his half siblings which would be added to over time as a prelude to him meeting with P and Q. Her view was the sooner this piece of work was started with C, the easier it would be for him to assimilate the information he was being given.
107. Dr Y was of the view that the narrative should be given to C over the next 3 to 4 months and that he should have his first meeting with the twins some 2 to 3 months thereafter.
108. She was of the clear opinion that both parents should be involved in drafting the narrative which could be developed over time. It was essential that the agreed narrative was consistently delivered to C. If it was not C would receive confusing and conflicting messages which would be upsetting and damaging for him.
109. It was not a sustainable position for C not to be told about his half siblings. In Dr Y’s view it would be better for C if the father could acknowledge the twins.
110. The father commenced his evidence by talking about C. He described him as a delightful, bright and happy child. The father told me that when C moved to live with him in March 2020, it was the best time of his life. The very great love and devotion that the father has for C was obvious and palpable throughout this part of his evidence.
111. He told me about the book he had made for C about his life to date and about the number of photographs of the mother he has included in it. The father explained that he wanted to ensure C knew she was his mother and that she loves him. He said that C likes this book. He said and, I accept, that he never talks negatively about the mother to C. He always tells him how much his mother loves him and never says a bad word about her.
112. In respect of Dr Y’s report and evidence, he said he had taken it seriously and positively but he did not agree with the timescales postulated by her for the narrative work to be undertaken with C nor for the time within which C should first meet the twins. Initially he said that if C wanted to meet the twins, he would not stop him. A little later in his evidence he clarified his approach to this first meeting to explain that he would know from C when his son felt ready and comfortable to meet with the twins.
113. He had last been in the presence of the mother in July 2020. The father does not believe sadly that the mother will ever stop making false allegations against him nor providing a false narrative and nor will her immediate family. He told me that part of his problem is that, despite everything, he still loves her. This has been apparent on each occasion the father has given evidence to me. He said he does not and cannot trust the mother, but he does not disrespect her. The father added that he would never cut the mother out of C’s life and that one half of the family photographs placed in his home were of C

with his mother. With real emotion he spoke of his joy about the close relationship he has with his son in marked contrast to the relationship he had had with his father.

114. It was the mother's persistent false narrative and lack of trust in her that led him to conclude that C's contact with his mother would need to be limited to 6 periods of visiting contact per year.
115. Dr Y and the children's guardian had recommended that a Family Assistance Order ('FAO') should be made to provide ongoing professional support to the family by an officer of Cafcass. The father was adamant that he would not consent to the making of a FAO. He preferred to continue to seek advice and support from his professional colleagues who were child psychiatrist or psychologists. He accepted that in light of the events which led to the conception of the twins and the nature of the parent's separation and the mother's false narrative that C had many difficult and sensitive issues to deal with in his life. His preferred option was to rely on his professional colleagues to provide him with advice and guidance to enable him to protect and support C in dealing with these issues throughout his childhood.
116. It was because of the mother's relentless false narrative and her repeated applications to the court that he sought an order limiting the scope of the mother's parental responsibility for C. He did not want the mother to micromanage C's life.
117. The mother told me that she had been advised by a Women's Aid support worker to report allegations to the West Midlands Police in October 2020. In respect of these allegations all of them were false either:
  - i) as I had found in my two earlier judgments; or
  - ii) as I find in this judgment.

She could not give a satisfactory explanation of why she had reported these false allegations to the police other than to say that she had not lied to the police. On two occasions she told me that she has made these reports to the police in order to 'clear her name'.

118. Despite having made allegations to the police relating to C's safety and welfare whilst in his father's care, the mother denied that she had any knowledge that as a result of such allegations the police would arrange for a safe and well check to be undertaken of C in his father's care.
119. At a hearing on 11<sup>th</sup> November 2020 the father sought a disclosure order against West Midlands Police (who had sought the safe and well check) and X County Police (who had carried out the check) to obtain information as to who had made a referral to the police and why a safe and well check had been undertaken. At this hearing the mother made no mention of her report to the police in October 2020. When Mr Wilson, counsel for the father, asked why she had not told the court about her report to the police or of her being the cause of the safe and well check she replied that she had not been asked those questions. Ultimately the mother accepted she had misled the court by omission.

120. The mother said in evidence she had been subjected to physical, verbal and financial abuse by the father. She asserted that C was at risk of being abducted by his father and that she remained very frightened of the father.
121. When asked why she had contacted the police to try and prevent disclosure being made by the police of her report to them and of their investigation, the mother avoided answering the question despite having been offered several opportunities to do so.
122. The mother was asked why she had reported to the police that C was at risk of harm in his father's care. Then, shortly afterwards, she asserted that the court had ignored the concerns for C's welfare and safety in the care of the father. She then said that the family case and the criminal investigation were two separate matters. For the purposes of the family proceedings she accepted the findings made in my two previous judgments – most pertinently that the allegations she had made against the father were false. However, for the purposes of the criminal proceedings she did not accept my findings, she asserted that those allegations which I had found to be false were true, she made further allegations against the father in respect of his care of C and she asserted that this court was biased against her. All of these allegations are set out in detail in the sixth version of her statement which she had prepared for the purposes of the criminal investigation.
123. In the afternoon of 17<sup>th</sup> August 2021, as set out in the chronology, she claimed she felt so physically and emotionally unwell, that it was likely that she would be unable to attend the first day of this hearing on 18<sup>th</sup> August whether in person or remotely. I note, however, that the mother felt well enough in the evening of 17<sup>th</sup> August and into the early hours of 18<sup>th</sup> August to work on the sixth version of her police statement. She emailed it to the officer in the case at 2.46am. She did attend the hearing remotely.
124. When asked about the contents of this statement the mother said she had drafted it because she wanted to clear her name.
125. The mother told me that all of the materials she has sent to the police in relation to her allegations against the father, she had also sent to the T Organisation. She said that she had not told the court about this disclosure because no one had asked her about it. She justified her actions on the basis that the father was 'a danger to the general public'.
126. Her primary case was that once C had been introduced to the twins, he should move to live with her and a live with order should be made in her favour. If the court did not approve this course, she wanted the twice indirect contact to continue and for it to be supplemented by a weekly in person contact once she had completed her course of chemotherapy. In time she would wish to have staying contact with C staying overnight at her home with the twins.
127. In response to questions from Mr Bowe, on behalf of the children's guardian, she said she would draw a line under the past and look to the future when the police investigation had been completed. When asked if it would be an end to the matter if the CPS decided not to prosecute the father the mother said yes.
128. She told me that she accepted the reports and recommendations of Dr Y and of the children's guardian and would comply with everything the professionals suggested. She

supported C being introduced to and having a relationship with the twins. Further, she supported the making of a Family Assistance Order.

129. When asked how she and the father could agree a narrative to be given to C when she believed in a different set of facts from the father (and having been asked this question five times) she eventually replied that she would have to accept the findings and judgments of this court. She continued that she would have to draw a line under past events and that she was willing to work with the father.
130. She was asked whether she accepted that the father did not pose a risk of harm to C. She agreed. This stance is completely contrary to many of the assertions and allegations made by the mother to the police: most notably in the sixth draft of her most recent police statement.
131. The children's guardian recommended that C should remain living with his father and should have contact with his mother. She did not agree with the father's position that the mother's contact should be reduced to six occasions of visiting contact per year. In her view, there should be monthly visiting contact between C and his mother. She supported C being told about the twins via an agreed narrative and then meeting with the twins. In order to support and assist the parents through this process she recommended the making of a Family Assistance Order. An officer of Cafcass would be appointed to provide this support and assistance.
132. She did not support the father's application for orders to be made limiting the mother's exercise of her parental responsibility for C. She told me, however, that she considered the father had C's best interests at heart.
133. In light of the allegations the mother had made to the police about the father and the overall tenor of the mother's evidence, the children's guardian was asked how the mother could contribute to the narrative for C. She responded that the mother was a very child centred lady who could separate out her views from C's best interests. I asked in what sense was the mother 'child centred' when she had commissioned a second surrogacy without the knowledge or consent of the father but using his genetic material and bringing two innocent children into this world, she could not provide any satisfactory answer.
134. If this view of the mother has informed the children's guardian's analysis of the issues in this case, the foregoing evidence completely undermines her assessment of the case and her recommendations.

#### Analysis

135. After the conclusion of the evidence and the application for me to recuse myself, there here was insufficient time available to hear all of the parties' oral closing submissions. Accordingly, I directed the parties to file and serve written closing submissions by 13<sup>th</sup> September 2021.
136. I am most grateful to all counsel for their helpful and comprehensive written closing submissions.

137. The father is a quiet, reserved and private man. He is devoted to his son C. His face broke into a spontaneous beaming smile when he began to talk about C. He movingly told me that he enjoyed the close relationship with C which he had never achieved with his own father. The father is devoted to C and plainly seeks to do all he can to promote C's best welfare interests.
138. There is but one caveat to enter and that relates to the twins. The father knows and acknowledges that he is their biological father, but he cannot yet see himself as a father figure to them. One cannot imagine the emotional and psychological impact on the father upon learning that, without his knowledge or consent, his genetic material had been used which resulted in the birth of two innocent children. His struggle to come to terms with what has happened and the fact that he is the father of twins is entirely understandable. It, however, clouds the father's thinking and judgment on the issue of introducing C to his half siblings.
139. To some extent I can understand about being too prescriptive about the time when C should be introduced to the twins. However, I fear he is very wary about the prospect of C meeting the twins and is worried about the impact of the same on C but also the impact on him. The fact that the twins, to a greater or lesser extent, will become a part of C's life will bring into sharp relief the father's approach to and role in the lives of the twins.
140. In fairness to the father he has taken a lead role, guided by Dr Y, in preparing a first narrative to introduce C to the existence of the twins and the fact that they are living with his mother. It is one thing for him to have prepared this narrative and to speak with C about his half siblings but quite another matter of a wholly different order for him to meet with them.
141. Unlike the children's guardian I did not understand the father's evidence to be that he would leave it to C to decide if and when he would wish to meet the twins. Rather, I understood that the father was saying that he would know when C was ready and happy to have his first meeting with the twins.
142. In the years to come C and the twins will have some immensely difficult, confusing and painful information to assimilate about their family history. Of course, at their current respective young ages the explanations can be kept relatively easy and simple but as they develop and mature so the explanations given will have to be more detailed and profound.
143. It is the actions of the mother in commissioning a second surrogacy without the knowledge or consent of the father which has caused this very sorry state of affairs and which will result, in all likelihood, in emotional and psychological damage and harm for C and the twins. In the circumstances it beggar's belief that the children's guardian should describe the mother as 'a very child centred lady'.
144. The father still loves the mother despite everything that has happened over the last three years, but he does not trust her. To some degree the children's guardian is critical of the father's degree of refusal to meet with the mother, most especially if they are the only adults present. I very much hope the time will come when these parents can work co-operatively together but this would require a massive sea change in the approach and mind set of the mother. As matters stand, I completely understand, in light of my



previous findings and the findings set out in this judgment, the father's reluctance or refusal to meet with the mother, most especially if they are the only adults present.

145. For the avoidance of any doubt my exchanges with Mr Uddin during the course of this hearing, which are set out above, and my observations upon his conduct have had no bearing whatsoever on my assessment of and findings about the mother and the evidence she gave to the court.
146. The mother plainly loves C and she plainly loves P and Q. Her physical care of the twins and her past care of C when he lived with her or when she had direct contact with him is beyond question.
147. The real and substantive issue in respect of the mother is the level of risk that she poses to C's emotional and psychological wellbeing as a result of her views about and attitude towards the father. For the last three years or so, she has conducted a relentless campaign to vilify and denigrate the father. Her visceral hatred of the father is all consuming and in truth she will not willingly concede there are any positives about him as a person or as a father. She has repeatedly lied about the father with alacrity and, I regret to find, she has continued to do so.
148. In my judgement of 17<sup>th</sup> April 2020, I said at paragraphs 120-124 as follows:
  - “120. I do not believe the mother's account of the father threatening her on 5th March. I consider it most likely, and find, that the father's adverse reaction to the news of the second surrogacy so incensed and angered the mother that she sought to punish the father and/or exact revenge by:
    - i) making a false allegation of assault against the father to the police; and
    - ii) stopping all contact between C and his father, for no good or child focussed reason whatsoever.
  121. There is one peripheral aspect of the evidence I should deal with. Despite telling the parents' counsellor that he had been having an affair, which he denied saying, the father was adamant he had not had an affair with a female colleague at work. The weight of the evidence, especially his mobile telephone records which disclose a very large number of calls and messaged being sent o and received from his colleague, very strongly suggest there was some sort of liaison. Nevertheless, the father's lack of candour on this issue does not materially affect my overall assessment of him being a reliable and credible witness. There may be all manner of reasons for why he has adopted this stance, none of which, in my judgment, undermine his credibility.

122. In summary, I do not make any of the findings of fact sought by the mother against the father. I do however make findings that:
- i) the mother deliberately concealed the second surrogacy from the father until 5th March 2019 when it was far too late for him to do anything about it – the surrogate mother’s pregnancy being so far advanced;
  - ii) the father did not consent to the extension of the period of storage of his genetic material by the surrogacy agency in X Country; and
  - iii) the father did not consent to the second surrogacy arrangement.

#### Conclusion

123. I find the mother to have serially lied in her evidence and to have deliberately concealed the second surrogacy from the father.
124. I find the father to be a measured, reliable and credible witness. I do not find that he assaulted the mother or subjected her to domestic abuse as she alleged or at all.”
149. In my judgment of 3<sup>rd</sup> August 2020, I make the following observations at paragraphs 96 to 100:
- “96. The mother asserted that she accepted my findings of fact made in my judgment of 17th April 2020. What she has accepted is that the court made those findings of fact but she still maintained that:
- i) the father assaulted her on 3rd February 2019, when I had found he did not, and
  - ii) the father knew all about the second surrogacy and had consented to it, when I had found he did not know and he had not consented.
97. In the same vein as her oral evidence during the fact-finding hearing, she almost continuously criticised the father and spoke of him in negative terms. At the outset of her evidence, for example, she claimed the father had ‘doctored’ an email in relation to his employment as a consultant. There was not a jot of evidence to support this malicious and baseless allegation.
98. When challenged by Mr. Wilson about her relentless criticism of the father, she claimed she had moved on and that she wanted to move forward with the father in C’s best

interest. Aside from these assertions, in no other aspect of her evidence did the mother demonstrate that she had changed at all or that she wished to move forward with the father.

99. For the avoidance of any doubt I do not accept that:

- i) this loving and devoted father ever made any threat to harm C, whether in anger and/or to antagonise the mother; or
- ii) on 30th April 2020 he made threats to the mother in relation to her not being a biological parent of C.

In making these allegations the mother was, once again, lying.

100. The mother was completely unable to accept the harm she had caused C, not least, by pursuing a second surrogacy in X Country. This took her away from C for prolonged periods of time whilst she was in X Country looking after the twins. This second ‘undisclosed’ surrogacy has caused an immensely complex set of family relationships which will have to be explained to C and the twins.”

150. I note that the mother did not and has not sought to challenge any of my findings in either of the above judgments by seeking permission to appeal.
151. At this hearing, once again, the mother said that she accepted the findings made against her in the above two judgments for the purposes of these proceedings. Yet, once again, all of her other evidence and actions demonstrated that she does not accept any of my adverse findings against her. I am afraid I found her to be a most unsatisfactory witness.
152. In her evidence she asserted that these proceedings and the police investigation are separate matters. In one sense the mother is right. However, she went to say that for the purposes of these proceedings she accepted all of my adverse findings of fact but for the purposes of the police investigation she did not accept any of these findings. She maintained her original position that all of her allegations against the father are true and that he knew about and had consented to the second surrogacy arrangement. Moreover, she made new allegations against the father to the police in respect of his care of C and asserted that this court had been biased against her and had failed to consider relevant evidence submitted by her.
153. It is deeply troubling that the mother gave no indication that she recognised or understood the utter absurdity and illogicality of this stance. In my judgement this stance is cogent evidence of:
- i) the depth of the mother’s hatred of the father;
  - ii) the zeal with which she has relentlessly conducted a campaign to vilify and denigrate the father irrespective of the adverse consequences for C; and

- iii) the fact that she has not moved on and that there appears to be little or no prospect of the mother changing her views or approach in the foreseeable future.
154. In my judgment, it is self-evident that if the mother persists in maintaining her false accounts of past events and if these are communicated to C it would be likely to confuse him and cause him to question which of his parents he should trust. This would inevitably cause him emotional and psychological harm.
155. I have no confidence that as C grows older that the mother would not refrain from communicating some or all of this false narrative. Indeed, on the totality of the evidence it is more likely than not that she would do so.
156. The mother said in evidence that if the CPS decided not to prosecute the father, she would accept this decision. Based on past events, I consider this to be highly unlikely.
157. When she made an application for a child arrangements order in respect of P and Q in October 2020 she included allegations which I had found to be false and she failed to make any reference to my judgments of April and August 2020.
158. In her complaint to the West Midlands Police she asserted inter alia that:
- i) she had been experiencing continual abuse from the father;
  - ii) the father had threatened to harm and abduct C; and
  - iii) C was malnourished in his father's care.
159. None of the foregoing is true and there is not a shred of cogent or credible evidence to support the same.
160. The mother did not disclose the fact that she had made a complaint to the police: not even at a hearing when the father made an application for disclosure against the police in order to establish why they had undertaken a safe and well check on C in October of last year. Indeed, the mother emailed the West Midlands Police on at least two occasions when she sought to persuade the officer in the case to oppose the father's applications for disclosure of statements and logs etc from the police. She repeatedly lied to the police when she asserted that the father and/or the children's guardian were seeking to stop her contact with C. There is no truth in these allegations and the mother's attempt to explain her accusations was woeful.
161. The mother said in evidence that once she had made her complaints to the police the investigation was out of her control. Extensive disclosure from West Midlands Police reveals this assertion to be a blatant lie. In truth she pursued her false complaints with endless emails to the police. Her stance is best exemplified by her assertion made in the late afternoon of 17<sup>th</sup> August 2021 that she was too emotionally and physically unwell to attend the start of this hearing on 18<sup>th</sup> August whether in person or remotely, and yet that very same evening she stayed up until the early hours of the following morning revising the 6th iteration of her draft police statement.
162. Most unfortunately the mother's false narrative against the father is accepted and adopted by the maternal family.

## Findings of Fact

163. On the basis of the totality of the evidence I have read and heard and my analysis of the same, I make the following findings of fact on the balance of probabilities:

- i) C is safe and well in the care of his father and is not at risk of suffering any harm as a result of the care given to him by his father;
- ii) the mother continues not to accept this court's findings in relation to:
  - a) the circumstances of the twins' conception and her deception and dishonesty in relation to the second surrogacy arrangement;
  - b) her false allegations of domestic abuse by the father; or
  - c) the father's ability to care for C.
- iii) From 7<sup>th</sup> October 2020 to date, the mother has knowingly, deliberately, and repeatedly lied to West Midlands Police by making false allegations against the father, despite this court having found that those allegations to have been fabricated by her;
- iv) the mother made those false allegations to the police in an attempt to secure C's return to her care;
- v) between 7<sup>th</sup> October 2020 and January 2021, the mother misled the police by failing to inform the investigating officers of the findings made by this court;
- vi) the mother attempted to stop the police from disclosing details of its investigation to this court and to the parties, in part at least because she did not want the court to know that she had lied to the police;
- vii) in addition to repeating false allegations, the mother has lied to the police as follows:
  - a) on 28<sup>th</sup> November 2020, the mother told the police that she was 'very concerned that the father and his legal team are continuing to carry out his threats to jeopardise and stop my contact with my son'. No such threats were ever made;
  - b) on 8<sup>th</sup> December 2020, the mother told the police that the Guardian's legal team were supporting an urgent hearing to stop her contact with C. The Guardian has never supported stopping C's contact with the mother; and
  - c) on 21<sup>st</sup> January 2021, the mother told the police that the father had made 'further threats to stop my limited...contact'. No such threats were ever made.
- viii) the mother has lied to T Organisation, repeating her false allegations about the father's behaviour. She did so in an attempt to discredit him;

- ix) the mother lied to this court during her oral evidence about the circumstances in which she reported her allegations to the police, in that:
  - a) she stated in her written and oral evidence that her support worker told her that the police wanted to talk to her, and that that was why she got in touch with them;
  - b) in fact, she contacted the police unprompted to report her concerns.
- x) the mother lied to the court during her oral evidence, in that she stated that she had told the police about this court's findings in relation to her false allegations and credibility, when she had not done so;
- xi) the mother misled the Family Court when applying on 1<sup>st</sup> October 2020 for child arrangements orders in relation to the Twins, in that, in her C100 application:
  - a) she claimed a MIAM exemption on the grounds of domestic violence, without referring to the fact that this court had rejected her allegations of abuse as fabricated;
  - b) she referred to the circumstances of the Twins conception and the father's position in relation to them, but made no reference to this court's findings in relation to the same; and
  - c) she referred to a parental order having been made in respect of C within these proceedings, without making reference to any of the findings made by this court.
- xii) the mother misled this court at the hearing on 11<sup>th</sup> November 2020. One purpose of the hearing was to determine the father's application for police disclosure following the unannounced "safe and well check" on 14<sup>th</sup> October 2020. She informed the court that she did not make a "referral" to the police.

#### West Midlands Police

- 164. The mother reported her allegations against the father on 13<sup>th</sup> October 2020. The case was reviewed and allocated to a police officer on 18<sup>th</sup> October 2020.
- 165. Upon the father's application, I made a disclosure order against West Midlands Police in respect of this investigation on 15<sup>th</sup> December 2020. I note that upon receiving this application the mother contacted the officer in the case and sought to persuade him to oppose the application for disclosure.
- 166. On the 27<sup>th</sup> January 2021, I gave permission for my judgments in this matter of 17<sup>th</sup> April 2020 and 3<sup>rd</sup> August 2020 to be disclosed. Notwithstanding, the adverse findings against the mother made in these judgments – most especially that the mother's allegations were false – West Midlands Police decided to proceed with their investigation into the mother's allegations. I am told and accept that this decision was endorsed by the Chief Constable.
- 167. On 2<sup>nd</sup> February 2021 the father was interviewed under caution at a Police Station.

168. By the end of April 2021, the police had reviewed what is termed ‘third party material’. Between April 2021 and early August 2021, the police were awaiting outstanding evidence from the mother and the final version of her substantive police statement.

169. The police had permitted this inordinate delay in the progress of this investigation because it was asserted that

“It is important to be sensitive to victims, particularly where the allegation is of coercive and controlling behaviour or financial abuse. It is for this reason that West Midlands Police have given a significant period for B to respond.”

In a statement dated 2<sup>nd</sup> September 2021 the senior officer with oversight of this investigation, Detective Inspector M, said that he had instructed the officer in the case to give the mother a further period of 28 days in which to provide outstanding evidence and the final version of her statement: failing which the file would in any event be sent to the Crown Prosecution Service. It was anticipated that a charging decision would be made by the CPS within 28 days of receipt of the investigation file. So more than 12 months after the mother first made her complaint to the police, I still do not know whether or not the CPS will seek to prosecute the father for offences based on the false allegations of the mother.

170. The decision of the police to afford such latitude to the mother took no account of the adverse emotional and psychological stress upon the father of having an ongoing police investigation hanging over him, when he is the primary carer of C. Nor did it take any account that this court was awaiting the final outcome of this police investigation before it could make final welfare decisions and orders in respect in C.

171. The latitude given to the mother might, in other circumstances, be considered necessary and reasonable. On the facts of this case it was wholly unnecessary and wholly unreasonable. It has caused the father unwarranted and prolonged anxiety and it has delayed the conclusion of these proceedings. It will be for others to judge whether this police investigation was a meritorious or unmeritorious use of police time and of scarce public resources.

#### Analysis - Welfare

172. C is extremely well cared for in his father’s care. He is settled and stable in his current living arrangements. I accept the father’s evidence that he has and will promote a positive view of the mother to C and that he will promote contact between them.

173. In any event it is agreed that, whatever the merits of C moving to live with his mother, this could not be achieved until C has met and been introduced to the twins.

174. Although C would be physically well cared for by his mother, I have come to the same conclusion that I did in my August 2020 judgment, namely that if C lived with his mother the prospects of him enjoying a meaningful relationship with his father are poor at best and non-existent at worst. Unless there is a sea change in the attitude of the mother and of members of the maternal family towards the father, C would be exposed

to false and negative views about his father which would undoubtedly be harmful to his emotional and psychological well-being.

175. I fear the prospects of any such sea change in the mother are poor. However, I cannot ignore the fact that C loves his mother very much indeed and enjoys having contact with her. I can only make an informed decision about the degree and nature of the mother's future contact, post the conclusion of her chemotherapy, once I know:
- i) the decision of the CPS in respect of the police investigation; and
  - ii) the mother's reaction to the same.
176. If there is no change in the stance of the mother, it is most likely given the risks of harm to C, that her contact would have to be limited to infrequent visiting contact and be supervised. I know that C enjoys seeing his mother and therefore his welfare best interests require me to have the best evidence available to me to determine where the balance of harm falls between frequent and unrestricted contact with his mother or, sadly, very infrequent and supervised visiting contact.
177. The case is complicated by the potential relationship between C and the twins and whether, and if so, how it can be promoted. There is agreement that C must be told about the twins and that, in time, they must meet each other. At their respective tender ages only the most simple of explanations need to be given. I can well imagine they will happily play with each other and will enjoy each other's company without any understanding or awareness of the hugely difficult and complex background to their familial relationship. How this first and any future contact is to be arranged is fraught with difficulty.
178. Once again, the stance of the mother is key. All matters being equal it would be in the welfare best interests of all three children to enjoy a relaxed and enjoyable relationship with each other even if they are living in separate households. The risk of harm to all three children, but for the purposes of this judgment most especially C, are high if the mother maintains her false and negative view of the father.
179. The father understandably struggles with seeing himself or holding himself out as a father figure to the twins. He knows they are the innocent victims of the mother's subterfuge and deceit, but he cannot yet bring himself to acknowledge that he is their father. This will serve to further complicate C's understanding of his family and of his ability to trust his parents and others involved in his life. I hope the father will reflect on what is ultimately the best outcome for C and for P and Q.
180. If the mother does not change her stance and approach towards the father, it will call into serious question her future role in C's life, his relationship with the twins and her future care of the twins.

## Conclusions

181. I am wholly satisfied that it is in C's welfare best interests that he remains living with his father. Accordingly, I will make a child arrangements order that C shall live with him.



182. I recognise the father's strongly held desire that these proceedings are concluded with final orders. For the reasons I have given above I regret I am unable to do so.
183. For the duration of the mother's chemotherapy the contact with C will remain twice weekly by a video call. Thereafter it will revert to direct face to face contact. The frequency and duration of this contact will very much depend on the extent to which the mother accepts my findings and my decisions as set out in this judgment. It will also be informed by the mother's reaction to and the stance adopted by her once the police investigation and any criminal proceedings have concluded.
184. These factors will be relevant to the deciding whether the mother's contact should be supervised and, if so, by whom, or whether it should continue to be unsupervised.
185. My fear is that as C grows and matures and as the narrative of his and his family's life has to deal with the more complex aspects of this case, the mother will not provide the narrative which reflects the court's findings of fact. Rather I fear she will impart an account of their lives which reflects her distorted and/or false view of past events. If the mother adopted this approach it would be hugely harmful to C's emotional and psychological wellbeing: it could not be tolerated.
186. Regrettably and notwithstanding Dr Y's recommendations, I foresee no realistic prospect of the parents being able to work cooperatively to agree a narrative to be given to C by both of them. The father has, following the advice from Dr Y, started to draft the first narrative. In light of C's age, it will be a simple and straight forward account of his early life and that of his half siblings. The father will send this narrative to the mother for her comments and observations. Insofar as her comments and observations are in accordance with the court's findings of fact, they should be incorporated into the narrative. Each parent should have the final draft of this narrative in order that there is some chance that C receives the same consistent message from both of his parents.
187. I am not going to fix a date by which C should have an introductory meeting with the twins. Reflecting the time scales referred to by Dr Y, I would expect that sometime around Easter 2022 C and the twins will have met each other for the first time.
188. The children's guardian recommended the making of a Family Assistance Order ('FAO') to help and support the parents around issues of contact, the narrative and C meeting his half siblings. Dr Y considered this would be a positive step. The mother says she would consent to the making of a FAO, but the father would not. I cannot make a FAO without the consent of both parents. I hope the father will reflect on this decision. Whilst I entirely accept he has ready access to a range of his professional colleagues who treat children and young people, it would, in my judgement, be beneficial for an officer from Cafcass who under the auspices of an FAO could support the parents and, if needs be, to mediate between them to resolve their issues in the welfare best interests of their children.
189. The father sought an order restricting the mother's exercise of her parental responsibility in a number of areas. Whilst I have found some of the mother's actions to have been utterly appalling, there is no evidence or no cogent evidence that she has interfered with the father's exercise of parental responsibility. Thus, since C has lived with him, the father has encountered no interference from the mother in, for example,

registering him at a school, registering him with a general practice or in seeking medical treatment for him. In the premises I will dismiss this application.

190. The father sought permission for:

- i) my previous two judgments;
- ii) a court approved summary of these judgments; and
- iii) the order made at this hearing.

to be disclosed to:

- a) a wide range of professionals who may be involved in C's life (e.g. school or GP or therapist);
- b) the T Organisation and U organisation;
- c) the CPS;
- d) Her Majesty's Revenue and Customs;
- e) any legal representative or professional legal advisor;
- f) any court in which he is being tried for criminal offences relating to the mother's allegations against him;
- g) the Home Office; and
- h) Her Majesty's Passport Office.

191. The father sought permission for a court approved summary to be disclosed to:

- i) his current or any future employer; and
- ii) any person whom he reasonably believes that the mother has repeated false allegations against him.

192. Further he sought a direction that the mother's solicitors should serve all three judgments, the summary and the order from this hearing on:

- i) the individuals advising the mother at Women's Aid and S; and
- ii) A Local Authority.

193. Finally, the father sought permission to disclose all of the papers in this case, strictly for the purpose of preparing any defence in respect of any criminal offences arising out of the mother's allegations against him to:

- i) any legal representative or professional legal advisor;
- ii) the CPS;

- iii) the Police; and
  - iv) any court in which he is being tried for criminal offences in respect of the mother's allegations against him.
194. The mother opposed these applications and the children's guardian did not support the wide-ranging disclosure sought to a number of the individual set out above. The disclosure sought by the father is extremely unusual and very wide ranging even when viewed against the exceedingly complex and unusual features of this case. I completely understand the father's need and desire to protect himself and C from the future potential adverse consequences of the mother's false allegations against the father and of her malicious conduct towards him. Nevertheless, I am not persuaded that the breadth and scope of the disclosure sought is justified and/or necessary or proportionate even on the facts of this case.
195. The father has permission to disclose my three judgments, the summary and my order to the individuals or organisations set out at paragraphs 190 (a)-(c) and (e)-(f) above. The summary and the order may be disclosed to the individuals or organisations set out in:
- i) 190 (d) and (g)-(h);
  - ii) 191(i); and
  - iii) 192(i) and (ii) above.
196. Further, the father has permission to disclose all of the case papers to those individuals or organisations set out in paragraph 193 above.
197. If it is asserted that any individual or organisation referred to in paragraph 195 above requires further material to be disclosed, an application must be made to this court setting out on what basis there is the need for further disclosure. Similarly, if it is asserted that any other individual or organisation requires or should have disclosed to them the judgments, the summary and/or the order, an application will have to be made to this court.
198. Once the CPS has made a charging decision the matter will be listed for a further case management hearing before me in order to decide how this case should proceed. I anticipate listing the matter for what I very much hope will be the final court hearing in this prolonged litigation.