

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.

Case No: BH17P00386

Neutral Citation Number: [2020] EWFC 16  
IN THE FAMILY COURT SITTING AT BOURNEMOUTH

Courts of Justice  
Deansleigh Road  
Bournemouth  
BH7 7DS  
Date: 4.3.20

Before:

HIS HONOUR JUDGE DANCEY

Sitting as a section 9 Judge

-----

Between:

JD and LD

Applicants

- and -

VB

1<sup>st</sup> Respondent

-and-

B

2<sup>nd</sup> Respondent

-and-

A

3<sup>rd</sup> Respondent

(by her children's guardian)

The Applicants appeared in person

Kate Branigan QC and John Ward Prowse (instructed by Jacobs Reeves) for the 1<sup>st</sup> Respondent

Adam Langrish (instructed by Abels) for the 2<sup>nd</sup> Respondent

Anthony Hand (instructed by Pengillys) for the 3<sup>rd</sup> Respondent

Hearing dates: 10, 13, 14, 20, 22, 30 January 2020

-----

**JUDGMENT**

**His Honour Judge Dancey:****Index (with hyperlinks)**

This judgment is divided into the following parts (*with paragraph numbers*):

- A [Introduction](#) (1-10)
- B [Summary of decision](#) (11-22)
- C [The legal principles](#) (23-75)
- D [The background history](#) (76-149)
  - [Allegations of sexual abuse and fact-finding hearing in April 2015](#) (80-96)
  - [A moves to live with her father December 2015](#) (97-100)
  - [The mother’s application to vary the order of December 2015](#) (101-126)
  - [May 2017 – back to court](#) (127-135)
  - [The hearing in November 2017](#) (136-154)
  - [Appeal to Cohen J](#) (155-162)
- E [The current proceedings](#) (163-217)
- F [Final hearing January 2020](#) (218-279)
- G [The parties’ submissions](#) (280-369)
- H [Analysis of the witnesses and findings](#) (370-416)
- I [The welfare checklist](#) (417-460)
- J [Analysis of the options and conclusion](#) (461-489)
- K [The future](#) (490-493)
- L [Postscript](#) (494-503)

**Introduction**

- 1) “*In the battle between the parents both children risk being run over by the tanks*”.
- 2) This prescient observation by a psychologist, Ian Stringer, in a report in this case as long ago as August 2015 remains true today, perhaps even more so.
- 3) After nearly 7 years of almost continuous litigation concerning an 8 year old girl, A, involving dismissed allegations of sexual abuse, transfer of residence from mother to father following allegations of parental alienation, breakdown of contact with the mother and allegations now of parental alienation by the father, with a successful appeal from an indirect contact only order made two years ago, I am dealing with a re-hearing on the question whether to vary an order for direct contact between A and her mother and 18 year old half-sister, B. A has not seen them since February 2018.
- 4) I make no apology for the length of this judgment. If there is one thing everyone is agreed on, this litigation needs to come to an end for the sake of A and all the adults involved in it. To do that needs a robust judgment that is

complete as it can be. I have decided that the history of the litigation needs to be dealt with in some detail to explain how we have got to where we are. Also the judgment may be helpful to those working with the family and, most particularly, in any life story work done with A. And it is important for the adults involved who will need to find a strategy to promote A's best interests and convert what is now a least worst outcome into something better for her.

- 5) This acutely difficult case gives rise to a number of difficult and, at points, irreconcilable issues:
  - a) how far the court can and should go in taking measures to promote contact, including grappling with all available alternatives, where there is a real risk that in doing so the father's mental health may deteriorate, possibly to the point of suicide, or his marriage may break down;
  - b) the impact of the potential loss to A of both her primary carers – her father and stepmother - with the risk that she could end up in foster care (it being accepted she cannot currently return to the care of her mother);
  - c) the impact on A of her primary carers relinquishing her care and any contact with her in the event the court orders direct contact, as the father and stepmother say would have to happen to avoid “*continuing the warfare*”;
  - d) how to weigh those short-term risks (but with potential long-term consequences) when balancing A's long-term need for relationships with her mother and sister and the impact on her of loss of those relationships;
  - e) how the duty of the court to act as ‘judicial reasonable parent’ sits with the overriding obligation to make an order that best meets the child's welfare needs;
  - f) how to deal with the tension between the binary consequence of dismissal of allegations of sexual abuse (and the forensic discipline of treating the abuse alleged as not having happened) and real-life sustained belief in those allegations;
  - g) whether the court should restrain not only the mother but also the child (now 18) who made the allegations (and who was not party to the proceedings when her allegations were dismissed) from continuing to make the allegations;
  - h) what steps (including participation directions) the court can and should take when a party refuses to engage in the proceedings on the basis that it would be detrimental to their mental health;
  - i) whether this is in fact a case of parental alienation.
- 6) If there is one thing everyone is agreed on, there is no right answer for A. The best I can hope to achieve is the least worst outcome.
- 7) Ms Branigan QC started her written submissions by saying “*There is a strong argument for saying that her parents and the Family Justice System have all failed this young child.*” I am no apologist for the Family Justice System and I write this judgment having just read the recent talk given by former President of

the Family Division, Sir James Munby “The Crisis in Private Law”<sup>1</sup>. While there may be criticism in this case about delay and the court allowing 7 years of litigation, it is in my view fundamentally a case about failed parenting.

- 8) On 5 February 2019 Cohen J allowed an appeal<sup>2</sup> from an order made by HHJ Meston QC on 23 February 2018. HHJ Meston had varied an order for direct contact between A and the mother and B made by consent in March 2017 and replaced it with an order for indirect contact only, coupled with a three year section 91(14) bar. In particular Cohen J considered that the possibility of what he called identity contact and the differential positions of the mother and B had not been explored. As HHJ Meston had by then moved courts, Cohen J directed that the matter be re-heard by me. As Cohen J has subsequently made clear, the re-hearing is not restricted to the question of identity contact. Both the mother and B seek more regular direct contact with A.
- 9) Both applications are vehemently opposed by the father and stepmother. They seek non-molestation injunctions against the mother and B to restrain what they regard as ongoing harassment. There is already a non-molestation order in place against the mother until further order which she does not seek to discharge. She is also the subject of prohibited steps orders made by HHJ Meston (largely confirming earlier orders/undertakings) which she does not challenge.
- 10) The father and stepmother also seek an order under section 91(14) of the Children Act 1989 restricting further applications without leave for a period of five years. The guardian supports such an order until A’s second year at secondary school. The submissions on behalf of the mother were silent on this point, while B takes a neutral position.

### Summary of decision

- 11) Because this judgment is so long I am giving a brief summary here of my decision.
- 12) I have concluded that, all things being equal, the mother would be able to manage direct contact with A without risking her emotional stability.
- 13) Direct contact with her mother would bring long-term benefits to A.
- 14) I do not consider at this stage that B would be able to manage direct contact given the current state of her beliefs and approach.
- 15) Overriding this though is the inability of the father and the stepmother, because of the father’s mental health state, to countenance the idea of direct contact, regular or infrequent (identity contact). The risks of further deterioration of the father’s mental health, possible suicide, the stepmother (who is A’s primary care) leaving the marriage or them both relinquishing care of A is too great.
- 16) In the balancing exercise the risk of destabilising A’s current placement with the father and stepmother outweighs the harm to A which will inevitably be caused by refusing direct contact. There are no right answers, only least wrong ones.

---

<sup>1</sup> <http://www.transparencyproject.org.uk/the-crisis-in-private-law-by-sir-james-munby/>

<sup>2</sup> Reported as *VB v JD and LD* [2019] EWHC 612 (Fam)

- 17) So my conclusion is that the indirect contact order made by HHJ Meston in February 2018 should continue for the time being.
- 18) I am not prepared to extend the existing prohibited steps orders and non-molestation injunctions in respect of the mother, nor do I grant a non-molestation injunction against B. Their more recent conduct does not make that necessary or proportionate and it would be contrary to public policy to restrain B from making referrals or discussing allegations with interested professionals, including the police.
- 19) I have indicated the issues on which the mother should be notified or consulted in exercise of her parental responsibility.
- 20) Unless the local authority intend to support the family through a child in need plan or otherwise I will make a family assistance order for 12 months, primarily to assist with life story work with A, which everyone agrees has been delayed and is essential.
- 21) I am making a section 91(14) order for 4 years restricting any applications by any party for section 8 orders without leave of the court.
- 22) I have also made suggestions about how a better outcome might be achieved for A in the future.

### **The legal principles**

#### *The approach to contact in complex cases*

- 23) Section 1(1) of the 1989 Act requires that the welfare of A during her childhood is my paramount concern, taking into account the welfare checklist at section 1(3).
- 24) Section 1(2A) requires the court to presume, unless the contrary is shown, that the involvement of each parent in the life of the child concerned will further the child's welfare. 'Involvement' means involvement of some kind, either direct or indirect, but not a particular division of the child's time: section 1(2B).
- 25) The presumption as to involvement does not apply if there is evidence to suggest that involvement of that parent in the child's life would put the child at risk of suffering harm whatever the form of involvement: section 1(6). So the court must assess whether and, if so, the extent to which the parent concerned may be involved in the child's life in a way that does not put the child at risk of harm.
- 26) This sits alongside the rights to respect for their family and private lives under Article 8 ECHR, to be interfered with only to the extent that is necessary and proportionate. If the rights of the child conflict with those of a parent, the rights of the child prevail.
- 27) I am grateful to Ms Branigan for her comprehensive survey of the authorities confirming the court's approach to these complex contact cases, adopted by Mr Langrish. I largely take the following from her written submissions.
- 28) Ms Branigan starts with some early cases, the principles from which remain relevant today.
- 29) In *Re J (A Minor) (Contact)* [1994] 1 FLR 729, Balcombe LJ said at 736 B-C:

*“... judges should be very reluctant to allow the implacable hostility of one parent ...to deter them from making a contact order where they believe the child’s welfare requires it. The danger of allowing the implacable hostility of the residential parent to frustrate the court’s decision is too obvious to require repetition on my part”.*

- 30) *In Re O (A Minor) (Contact: Imposition of Conditions)* [1995] 2 FLR 124 Sir Thomas Bingham MR said:

*“...Neither parent should be encouraged or permitted to think that the more intransigent, the more unreasonable, the more obdurate and the more uncooperative they are, the more likely they are to get their own way. Courts should remember that in these cases they are dealing with parents who are adults, who must be treated as rational adults, who must be assumed to have the welfare of the child at heart, and who have once been close enough to each other to have produced the child. It would be as well if parents also were to bear these points in mind”.*

- 31) *In Re M (Children)* [2013] EWCA Civ 1147, Macur LJ said

*“...there is no question that an order that there should be no contact between a child and his non-residential parent is draconian. In this case, the order dated 17 May 2013 can only be lawful within the meaning of Art 8(2) of the Convention if the order for no direct contact is necessary in a democratic society for the protection of the right of the mother, and consequently the minor children in her care, to grow up free from harm. In order to reach that conclusion, the court must consider and discard all reasonable and available avenues which may otherwise promote the boys’ rights to respect for family life, including, if in the interests of promoting their welfare during minority, contact with their discredited father”.*

- 32) *In Re J-M (Contact Proceedings: Balance of Harm)* [2014] EWCA Civ 434 the Court of Appeal summarised the guiding principles when the court is considering making an order that there will be no direct contact:

- a) the welfare of the child is paramount;
- b) it is almost always in the interests of a child whose parents are separated that he or she should have contact with the parent with whom he or she is living;
- c) there is a positive obligation on the State and therefore on the judge to take measures to promote contact, grappling with all available alternatives and taking all necessary steps that can reasonably be demanded, before abandoning hope of achieving contact;
- d) excessive weight should not be accorded to short term problems and the court should take a medium and long-term view;
- e) contact should be terminated only in exceptional circumstances where there are cogent reasons for doing so, as a last resort, when there is no alternative, and only if contact will be detrimental to the child’s welfare.

- 33) Ms Branigan also referred me to the European jurisprudence.

- 34) The starting point in *Gnahoré v France* [2004] 1 FLR 800 is that:

*"The mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life."*

- 35) See also *Görgülü v Germany* [2004] 1 FLR 894:

*"it is in a child's interest for its family ties to be maintained, as severing such ties means cutting a child off from its roots, which can only be justified in very exceptional circumstances."*

- 36) *Kosmopoulou v Greece* [2004] 1 FLR 800 made clear that these principles apply not merely to public law cases but also to private law cases where

*"Art 8 includes a right for parents to have measures taken with a view to their being reunited with their children, and an obligation for the national authorities to take such measures."*

- 37) Repeating the substance of the language used in *Glaser v United Kingdom* [2001] 33 EHRR 1, the court in *Kosmopoulou v Greece* continued at para [45]:

*"However, the national authorities' obligation to take measures to facilitate reunion is not absolute, since the reunion of a parent with children who have lived for some time with the other parent may not be able to take place immediately and may require preparatory measures to be taken. The nature and extent of such preparation will depend on the circumstances of each case, but the understanding and co-operation of all concerned is always an important ingredient ... the interests as well as the rights and freedoms of all concerned must be taken into account, and more particularly the best interests of the child and his or her rights under Art 8 of the Convention. Where contact with the parent might appear to threaten those interests or interfere with those rights, it is for the national authorities to strike a fair balance between them."*

- 38) In *Glaser v United Kingdom* (2001) 33 EHRR 1, para [66], the court had said:

*"The key consideration is whether those authorities have taken all necessary steps to facilitate contact as can reasonably be demanded in the special circumstances of each case."*

- 39) The primacy of the child's welfare is reflected in the settled Strasbourg jurisprudence; see for example *Scozzari and Giunta v Italy* (2002) 35 EHRR 12, where it was made clear that a parent:

*"cannot be entitled under Article 8 ... to have such measures taken as would harm the child's health and development."*

- 40) This point was elaborated in a public law case *Gnahoré v France* [2002] 34 EHRR 38, para [59]:

*"The Court emphasises that in cases of this type the child's interest must come before all other considerations. However, when properly analysed, that interest is seen to comprise two limbs.*

*On the one hand, the interest clearly entails ensuring that the child develops in a sound environment and that under no circumstances can a parent be entitled under Article 8 to have measures taken that would harm the child's health and development ...*

*On the other hand, it is clear that it is equally in the child's interest for its ties with its family to be maintained, except in cases where the family has proved particularly unfit, since severing those ties means cutting a child off from its roots. It follows that the interest of the child dictates that family ties may only be severed in very exceptional circumstances and that everything must be done to preserve personal relations and, if and when appropriate, to "rebuild" the family."*

41) And from *C v Finland* [2008] 46 EHRR 24:

*"The ... authorities enjoy a wide margin of appreciation, in particular when deciding on custody. However, a stricter scrutiny is called for as regards any further limitations, such as restrictions placed by those authorities on parental rights of access, and as regards any legal safeguards designed to secure an effective protection of the right of parents and children to respect for their family life. Such further limitations entail the danger that the family relations between a young child and one or both parents would be effectively curtailed."*

42) And in *Scozzari and Giunta v Italy* [2002] 35 EHRR 12:

*"the ultimum remedium of interference is justified if (a) it is objectively in the best interests of the child, (b) it balances the rights of the parents (and other close relatives) against the best interests of the child and (c) it demonstrably strives to re-establish the parent-child relationship."*

43) Mr Hand also refers me to *Re A (A Child)* [2013] EWCA Civ 1104, a case involving, like this, seven years of litigation and an appeal from an experienced judge who had started his judgment by saying that in the 24 years he had been sitting, no case had left him with such a sense of failure of the family justice system. A perfectly worthy father was left without an effective remedy. McFarlane LJ (as he was) said:

*"39. Where, as in the present case, there is an intractable contact dispute, the authorities indicate that the court should be very reluctant to allow the implacable hostility of one parent to deter it from making a contact order where the child's welfare otherwise requires it (Re J (A Minor) (Contact) (1994) 1 FLR 729. In such case contact should only be refused where the court is satisfied that there is a serious risk of harm if contact were to be ordered (Re D (Contact : Reasons for Refusal) (1997) 2 FLR 48). It is however to be noted that in each of the two cases to which I have just made reference the Court of Appeal upheld a "no contact" outcome, with the consequence that these oft quoted statements are in fact obiter. Further, in Re J, where contact was refused in order to avoid placing the child in a situation of stress as a result of the mother's implacable hostility to contact, Balcombe LJ rightly acknowledged that affording paramount consideration to the child's welfare may, in some cases, produce an outcome which is seen as "an injustice" from the perspective of the excluded parent.*

*...the father may feel that he is suffering injustice. I am afraid to say that I think he is suffering an injustice, but this is yet another example where the welfare of the child requires the court to inflict injustice upon a parent with whom the child is not resident".*



*The reasonable parent*

- 44) Ms Branigan says that, if the father is unable to take an objective view and act as the reasonable parent, it is the court's duty to do so on his behalf. In principle I have no difficulty with that proposition.
- 45) From *Re O (A Minor) (Contact: Imposition of Conditions)* we see the requirement that the court treats parents as rational adults.
- 46) In *Re M (Children)* [2017] EWCA Civ 2164 the children had been brought up in an ultra-orthodox Jewish community. The father had left the family home, was transgender and living as a woman. He sought contact with his five children ranging in age between 3 and 13 years. If the children had contact with their father they and their mother would face ostracism by their community. That was the stark tension the court had to grapple with.
- 47) Peter Jackson J concluded that, while the children would suffer serious harm if they were deprived of a relationship with their father, the likelihood and consequences of the children and their mother being marginalised or excluded by their community was so great as to prevail as a factor militating against contact.
- 48) The Court of Appeal reversed Jackson J's decision, holding that the court had to act as the judicial 'reasonable parent' by challenging, in that case, discrimination and victimisation.
- 49) The tension in the present case is whether the requirement to apply an objective viewpoint and act as judicial reasonable parent should prevail if to do so risks undermining the child's primary attachments, contrary to her welfare.
- 50) And, of course, the reasonable parent would not pursue a remedy (direct contact) in the knowledge that it might result in serious harm to the child.
- 51) The only legal principle that applies is that the welfare of the child, interpreted in accordance with the provisions of section 1 of the 1989 Act, is paramount. The decision of the court has to be faithful to that principle. To that extent the duty of the court to act as judicial reasonable parent must be qualified by the overriding requirement that the court's order promotes the child's welfare. This is consistent with the authorities, in particular *Glaser v UK* (supra). The question in each case is whether the child's welfare requires interference with Article 8 rights and whether the extent of such interference is proportionate.

*The need for judicial strategy in complex cases*

- 52) In *Re L-W (Enforcement and committal: contact)* [2010] EWCA Civ 1253, Munby LJ (as he then was) stressed the need in intractable contact cases for:
- judicial continuity,
  - judicial case management including effective timetabling,
  - a judicially set strategy for the case; and
  - consistency of judicial approach.
- 53) In *Re A(A)* (supra) McFarlane LJ agreed:
- “60...In doing so I would stress the latter two elements in the judicial armory that I have listed. The need for the single judge who has charge of the case to establish a 'set strategy for the case' and to stick consistently to that strategy, so that all parties and the judge know what is happening and what the court plainly*

*expects will happen, cannot be understated. If, as part of that strategy, the court makes an express order requiring the parent with care to comply with contact arrangements, and that order is breached then, as part of a consistent strategy, the judge must, in the absence of good reason for any failure, support the order that he or she has made by considering enforcement, either under the enforcement provisions in CA 1989, ss 11J-11N or by contempt proceedings. To do otherwise would be to abandon the strategy for the case with the risk that a situation similar to that which has occurred in the present case may develop; to do otherwise is also inconsistent with the rule of law.*

*61. The first time that a judge should give serious consideration to whether or not he or she will, if called upon, be prepared to enforce a contact order should be before the order is made and not only after a breach has occurred. Such forward thinking should be part of the judge's overall strategy for the case. If a directive contact order is called for, then, on making it, the judge should be clear, at least in his or her own mind, that, upon breach, enforcement may well follow. If, on the facts of the case, enforcement is not to be contemplated, then an alternative judicial strategy not involving a directive court order (and which might in an extreme case include a change of residence or, at the other extreme, dismissing the application for contact) must be developed. The error ... that I have already identified in deciding whether or not to 'attach a penal notice', when now, as a matter of law, all contact orders are to contain a warning notice as to enforcement (CA 1989, s 11N), is not a minor technical error. It is an error that, with respect, indicates a misunderstanding of the nature of the task of making a directive contact order in the first place. Under the modern law, the judicial discretion is not whether or not to attach a penal notice, it is whether or not to make the contact order itself.*

54) In this case:

- (a) subject only to retirement and court move, judicial continuity has been achieved;
- (b) the court has actively case managed and set timetables – to the extent that those timetables have not always been met has largely been beyond the court's control;
- (c) my strategy has been to hear this case within a reasonable time and with the best available evidence, both professional and lay, and to be in a position to reach a robust conclusion that will bring an end to this interminable litigation;
- (d) to that end I have been particularly concerned to secure the participation of the father and stepmother, who made clear their intention not to engage, while endeavouring to maintain a level playing field between all parties;
- (e) I have also been concerned that there should be a strategy beyond this decision for the adults, supported by professionals, to try and achieve a better outcome for A than this decision permits;
- (f) the consistent judicial approach has been to try and find a way to promote A's relationship with both her parents.

*Section 91(14)*

- 55) The welfare of the child is the paramount consideration when the court is asked to make a section 91(14) order restricting future applications without leave. Such orders amount to a significant statutory intrusion into a person's access to justice and right to be heard. This discretionary power has therefore to be used sparingly, having regard to all the circumstances including where there have been repeated/unreasonable applications, but also to prevent serious risk of unacceptable strain even in the absence of a history of repeated applications. An order under section 91(14) must be proportionate to the harm it seeks to prevent and in its duration: *Re P* [1999] EWCA Civ 1323.
- 56) The application in the present case is on notice with full opportunity for representations, so the need for procedural fairness, so often the subject of appellate criticism, is met.
- 57) While each case turns on its own facts, I note that in a number of cases orders of the duration sought by the father were held to be disproportionate:
- In *Re C* [2009] EWCA Civ 674 a 5 year order in respect of an 8 year old girl was held to be disproportionate and was set aside, largely because of procedural unfairness;
  - In *Re F* [2010] EWCA Civ 470 a 5 year order in respect of a child aged 3½ was said to be 'excessive' and was replaced with a 2 year order;
  - In *Re T* [2015] EWCA Civ 719, the necessity and proportionality of a 5½ year order in respect of a child aged 4½ was 'insufficiently explained'.

*Non-molestation injunction*

- 58) Section 42 of the Family Law Act 1996 empowers the court to make a non-molestation injunction – a provision prohibiting a person from molesting another associated person - in family proceedings (whether applied for or not) in respect of associated persons (as the mother and B plainly are). In deciding whether and, if so, in what manner to make such a non-molestation injunction, the court must have regard to all the circumstances including the need to secure the health, safety and well-being of the applicant and any relevant child: section 42(5). An order may be made for a specified period or until further order: section 42(7).
- 59) 'Molestation' is not defined in section 42. In *Vaughan v Vaughan* [1973] 1 WLR 1159, CA the Court of Appeal considered the OED definition: '*to cause trouble; to vex; to annoy; to put to inconvenience*'. The provisions of section 42 may apply to any conduct which can properly be regarded as constituting such a degree of harassment as to call for the intervention of the court: *C v C* [2001] EWCA Civ 1625.
- 60) Conduct falling within the definitions of domestic abuse, including controlling or coercive behaviour, in Practice Direction 12J: Child Arrangements and Contact Orders: Domestic Abuse and Harm (paragraph 3) would fall within the provisions of section 42. 'Domestic abuse' includes any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between intimate partners or family members. 'Coercive behaviour' means an act or pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish or frighten the victim. 'Controlling

behaviour’ means an act or pattern of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.

- 61) Any restriction of an individual’s actions by injunction must be necessary for protection of the applicant and proportionate to the conduct complained of.

*The father’s claim to protection by injunction in respect of his Convention rights*

- 62) The father says that the court’s intervention is necessary to protect his rights under Article 2 (right to life), Article 3 (prohibition of torture, inhuman or degrading treatment or punishment) and Article 8 (the right to respect for private and family life). He points out that any right B has under Article 10 to freedom of expression is qualified by the ‘*protection of the reputation of the rights of others, for preventing the disclosure of information received in confidence*’.
- 63) I have not heard argument on this issue as it was raised for the first time by the father in his submissions.
- 64) A number of European authorities make clear that Article 3 can be engaged, and public authorities have a duty to investigate and take action to protect, in respect of domestic violence (as it is termed in those cases): see for example *E.S and Others v Slovakia* (2009) (no. 8227/04) and most recently, *Volodina v Russia* [2019] ECHR 539 and *Affaire Buturuga v Romania* [2020] ECHR 136<sup>3</sup>.
- 65) Domestic authorities have also held that the duty under Article 3 can include a duty to investigate and protect against the risk of inhuman or degrading conduct on the part of private individuals: *D v Commissioner of Police of the Metropolis* [2016] QB 16. In *Allen v Chief Constable of the Hampshire Constabulary* [2013] EWCA Civ 967, the Court of Appeal said it would be necessary to consider long and hard before extending that duty to Article 8.
- 66) In *MLIA v CLEL v Chief Constable of Hampshire* [2017] EWHC 292 (QB), it was agreed that the duty under Article 3 arose only in relation to the investigation of a ‘grave and serious crime’ and Lavender J doubted that the allegations of domestic abuse made in that case (which included physical assault and criminal damage) met that threshold.
- 67) While I accept that Article 3 at least can be engaged on an application under section 42, in my experience it is not normally necessary to determine such an application by reference to Convention rights. I have, as I say, not heard argument on this point.

*Findings of fact*

- 68) It is important in this case that I make findings necessary to the determination of A’s best interests.

---

<sup>3</sup> Reported on BAILII in French only – for an English summary see: <http://ukpolicelawblog.com/index.php/9-blog/222-10-000-damages-for-failure-to-investigate-allegations-of-domestic-violence>

- 69) I remind myself that the burden of proving a fact lies on the person who seeks the finding and that the standard of proof is the balance of probabilities. The court is entitled to take into account inherent improbabilities in deciding whether the standard of proof has been met. Findings must be based on evidence, not speculation. The court may draw proper inferences from the evidence but must not reverse the burden of proof: *Re B* [2008] UKHL 35; *Re A (A Child) (Fact-finding hearing: Speculation)* [2011] EWCA Civ 12. It is essential to make findings on all (the totality of) the evidence, taking into account social, emotional, ethical and moral issues. The court must not compartmentalise the evidence.
- 70) If a fact is proved it happened, if it is not proved it didn't happen and must be disregarded – the so called binary consequence. This was set out in paragraph 2 of the speech of Lord Hoffman in *Re B* (supra):
- “If a legal rule requires a fact to be proved (a "fact in issue"), a judge or jury must decide whether or not it happened. There is no room for a finding that it might have happened. The law operates a binary system in which the only values are 0 and 1. The fact either happened or it did not. If the tribunal is left in doubt, the doubt is resolved by a rule that one party or the other carries the burden of proof. If the party who bears the burden of proof fails to discharge it, a value of 0 is returned and the fact is treated as not having happened. If he does discharge it, a value of 1 is returned and the fact is treated as having happened.”*
- 71) This forensic discipline is necessary to avoid a court proceeding on the basis of risk arising from the possibility that something might have happened which falls short of being proved. Certainty is required one way or the other. The problem of course is that, for the party or witness against whom a finding is made or who fails to prove an allegation, the court's decision does not operate as a mental switch. They may have to accept that the court has reached a certain decision which is in reality unlikely to affect their belief system. That difficult tension is one that courts have commonly to grapple with.
- 72) Although it has not been canvassed in this case, I do need to consider whether the findings of the district judge in April 2015 are binding upon B. Although A was a party to the proceedings represented by her guardian, B was not. Nor was she called as a witness; the district judge saw and heard her ABE interviews.
- 73) I have not heard argument on this point but it does seem to me that, while this court proceeds so far as A is concerned on the basis that the matters alleged by B did not happen, and the mother is bound by those findings, B as a child then of 14 who was not a party, is not bound by the findings.
- 74) That said, neither the mother nor B seek to re-open the findings. So, in considering the outcome for A, I proceed on the basis that allegations were not proved and therefore what was alleged did not happen.
- 75) The more interesting question is whether I should restrain B from pursuing her allegations with third parties (including professionals) where she is not bound by the findings.

### The background history

- 76) The very wide contextual canvas in this case requires me to set out the history. Much of this I am able to take from HHJ Meston's detailed judgment of 23 February 2018.
- 77) A's parents were in a relationship from about 2009 until January 2013 when they separated. A, remained living with the mother and her half-sister B, the child of the mother's previous relationship. It is clear there was hostility and acrimony between the parents from the start.
- 78) In February 2013, when A was just 20 months old, the father applied for contact and a prohibited steps order (preventing removal to the Channel Islands) after contact was stopped. In a brief early involvement in the case I (then a district judge) made a prohibited steps order. The mother cross-applied for permission to take A to the Channel Islands, where her parents lived. She did not pursue that application. The father alleged irrational and obsessive behaviour by the mother. The mother alleged intimidating and controlling behaviour by the father.
- 79) Contact orders were made in August 2013 and January 2014 but the mother applied in May 2014 to vary them as, according to her, A was showing fear and distress around contact. The father applied to transfer the care of A to him.

#### *The allegations of sexual abuse and the fact-finding hearing in April 2015*

- 80) In April 2014 the mother alleged that the father had behaved sexually inappropriately towards B and A (but principally B). There were also allegations about the circumstances in which the father had left his previous employment. Contact was suspended and a guardian appointed for A.
- 81) In March/April 2015 District Judge Willis heard the allegations and dismissed them on the basis that, while he was "*unable to say that nothing untoward happened*", the mother had "*wholly failed to discharge the burden of proving what she alleges*".
- 82) District Judge Willis found the mother's evidence very unsatisfactory and doubted that she had a genuine belief in B's allegations. The district judge found that, when interviewed, what B said amounted to almost nothing. This was not just natural reticence or embarrassment and the district judge was left with the feeling that B was "*not relating incidents that had truly happened*". The district judge drew an inference that "*this mother appears determined at any cost to ensure that [A] has no contact or relationship with the father and in doing so to try and get her friends unquestioningly on her side.*" Further he concluded that "*the mother appears blind in her belief that "something" happened and seems to have influenced her friends to the extent that one of them [named] expressed herself appalled that no action was being taken against the father. If the mother has expressed herself in ways that have led to that strength of reaction by an adult, how much greater is likely to have been the effect on [B], and [A].?"*" The district judge later appeared to agree with the clear view of psychologist Mr Stringer and the social worker that the mother had coached B.

- 83) While the district judge did not make a positive finding in favour of the father that nothing happened, the binary consequence of the finding is that the court treats the matters alleged as not having happened.
- 84) Although the mother told HHJ Meston at the hearing in November 2017 that she accepted the findings, she also said in cross-examination at that hearing that the only people who knew what had happened were the father and B. She also told HHJ Meston that the district judge's words, "*unable to say that nothing untoward happened*", continued to ring in her ears. HHJ Meston concluded that the mother maintained her belief in the allegations despite the findings.
- 85) In May 2015 the father sought a non-molestation injunction against the mother, claiming that she was harassing him by telling friends and others that he was a paedophile and sexually abusing children. The mother gave an undertaking not to discuss the case with any third party save professionals involved in the case and not to refer to the father as a paedophile, abuser or other derogatory term, including through social media.
- 86) Such was the concern that District Judge Willis directed a report by the local authority pursuant to section 37 of the 1989 Act. He must have had in mind at that point the possibility of care or supervision proceedings. The local authority reported that it did not intend to issue care or supervision proceedings.
- 87) The district judge also directed a psychological assessment.

*Mr Stringer's psychological assessment August 2015 and hearings December 2015*

- 88) I started this judgment with an observation from Mr Stringer's report to the court. He described B as "*the most damaged young person I have ever assessed*". Given Mr Stringer's vast experience of dealing with young people, some of whom had committed the most serious criminal offences, this remark struck District Judge Willis as "*especially chilling*". Mr Stringer, whose evidence the district judge accepted, took a very strong view of the mother. He did not think either child should be living with her. He was clear A should live with the father, with very limited contact to the mother. Such was the negative effect of the mother on A, Mr Stringer seriously questioned whether she should have any contact at all, certainly for the time being.
- 89) At a hearing on 2 December 2015 District Judge Willis was sufficiently troubled by Mr Stringer's report that he asked the local authority to reconsider its position about care proceedings. At a hearing on 11 December 2015 the local authority indicated its intention to issue care proceedings in respect of B, and A if she remained living with the mother, but on the basis that it was unlikely early removal would be sought.
- 90) At the welfare hearing before District Judge Willis on 14 December 2015, Mr Stringer was concerned that there was a degree of border-line personality disorder in the mother (or at least that she presented with many of the symptoms to be expected in that condition) which might make change difficult or even impossible. His view, which the district judge appeared to accept, was that the mother had coached B to make comments about the father, that B was "*self-destructing*" and this might happen with A too. While the mother had "*started all this*", the father had responded in kind, although he had made more effort to be neutral and considerate. There was also, thought Mr Stringer, the risk that B would "*whisper poison*" to A.

- 91) The social worker considered that problems with contact would persist whoever the children lived with. She thought both children needed therapy.
- 92) District Judge Willis formed a generally favourable view of the father. The guardian had seen an emerging child centred attitude in him. He seemed to recognise the importance of the relationship between A and the mother and insisted that he would continue to promote contact were A to live with him. The father had considered walking away in the event that A remained with her mother but said that A would be devastated if he did not take up contact.
- 93) The mother said A struggled and was distressed when she returned from contact with the father. She proposed a reduction in contact. She denied discussing the proceedings with A or encouraging her to be fearful of her father. She said she would not dream of coaching B. She maintained the findings were wrong and she believed B.
- 94) District Judge Willis concluded that the mother would never accept his findings. He found that she had an animosity towards the father so deep-seated that she would simply be unable to foster contact with the man she believed had abused her daughters.
- 95) The then guardian described A's behaviour when with the father as far more normal than when with the mother, which she described as abnormal. The guardian thought any contact with the mother would have to be supervised. It was clear A and B had a good relationship which should be maintained.
- 96) District Judge Willis was overwhelmingly satisfied that A's welfare required that she should live with the father and his wife, who should also have parental responsibility for her. An order was made on 16 December 2015 which also provided for contact between A and her mother (which was to include B) for one day every four weeks, supervised by an independent social worker. A family assistance order was also made providing for the guardian to advise, assist and befriend the parents and children. The district judge made a plea to the parents to work together for the sake of the children.

*A moves to live with the father - December 2015*

- 97) A, at 4½, duly moved to live with her father and has been there since. The mother was plainly unhappy at the outcome. On 27 December 2015 she e-mailed an organisation called the Centre for Judicial Excellence under the heading "*Family courts granting custody to abusers*". In February 2016 she lodged an appeal against the transfer of residence. The father filed a respondent's notice cross-applying to vary the contact order, to extend the prohibited steps order, and for non-molestation and section 91(14) orders.
- 98) The local authority did start care proceedings in relation to B. Those proceedings were withdrawn following assessment and support was provided to the mother and B as a child in need for 12 months.
- 99) The dispute between the parents continued. The mother said A was confused, upset and distressed that she was no longer living with the mother and B. The father suggested this was caused or aggravated by the mother and B. There were problems about schooling and funding supervision of contact. The father accused the mother of telling parents of other children that he was a paedophile. The stepmother was concerned about the turmoil A was going through as a



result of the stress of contact with her mother. B consulted solicitors and wanted to be involved in the proceedings so that she could be heard.

- 100) The matter first came before HHJ Meston on 31 May 2016 for the hearing of the mother's application for permission to appeal. The mother withdrew her application for permission but sought variation of the child arrangements order with a view to A moving back to live with her. As District Judge Willis had by then retired, HHJ Meston kept the case, as he did down to his judgment and order of 23 February 2018.

*The mother's application to vary the order of 16 December 2015.*

- 101) On 23 June 2016 the mother issued her formal application to vary the order, seeking A's return to her care. She said A was unhappy and had continued to ask why she could not live with her and B whom she missed. The father pursued his cross-applications (see above) and sought the curtailment of direct contact. He also sought to add his name to A's surname by way of hyphenation. That at least was agreed. The applications were listed for three days starting on 31 August 2016 with a view to concluding it before the start of the new school year. The guardian expressed her concern that it was abusive for A for the proceedings to continue.
- 102) Statements and communications from B via Action for Children repeated the allegations that the father had been physically and sexually abusive towards her. B said she acted emotionally because she knew A was in trouble and she could not protect her. She thought it was crazy that she built up the courage to say what had happened only for that to be thrown back at her mother.
- 103) I set out what HHJ Meston recorded at paragraph 29 of his judgment of 23 February 2018 because it reflected largely the father's position in the current proceedings:

*"In a strongly worded position statement dated 30<sup>th</sup> June 2016 the father said that he could not ever see a resolution or an end to the proceedings and that he could not allow the constant litigation to destroy his wife and his marriage. He said that if the court considered nothing else, it must consider the effect on [A]. He said that the mother would never stop with her beliefs, actions, defamation or litigation against him. He said that he was at the point where it was no longer feasible, realistic or tolerable to deal with the mother any more, and if the judicial process could not protect him and his family from her then unfortunately it would leave him with little alternative but to take those steps reasonably required to do so himself. He stated that he had been forced into a position which was then non-negotiable. Among the points which he listed as non-negotiable he said that he would only support indirect contact, he would not support unsupervised contact in any form whatsoever, he would not pay under any circumstances the costs in connection with the mother's contact and he could not attend any further court cases or applications. He reiterated his request for prohibited steps orders and a "barring order"."*

- 104) In her report of 30 August 2016 the guardian noted there was no sign from either parent that the ongoing conflict was likely to improve. The guardian did not consider that A should move to live with her mother or that contact with her should be increased as that would simply serve to increase the existing tension

and conflict. The guardian recorded that A had a secure relationship with B and that any change to the time she was spending with her mother and B was likely to be “*extremely disappointing and upsetting for her*”. B was described as devastated when A went to live with her father and gave a worrying description of the impact on her.

- 105) The guardian was concerned that, unresolved, the parental conflict was likely to cause A significant emotional harm no matter how much her primary carers tried to shield her from it. The most identifiable risk was of emotional harm to A during contact with the mother and B and the fear of the father and stepmother that the mother would use any time with A to tell her that her father was a paedophile or undermine the care they were providing. That risk had to be balanced against A’s need and expressed wish for contact with her mother and B. The guardian thought the frequency of contact was problematic and suggested reducing it from once every four to every six weeks (as Mr Stringer had recommended).

*The hearing on 31 August 2016*

- 106) The mother did not attend the hearing on 31 August 2016. The court was told she had become distressed and wretched as a result of reading the guardian’s report, received the day before, to the point where the mother’s counsel had not been able to take meaningful instructions or give advice. The next day the mother’s counsel sought an adjournment. Letters from her GP indicated she was unfit to attend court or, at least, give evidence but did not give any prognosis or timescale for recovery.
- 107) The father strongly opposed any adjournment, referring to the ongoing strain of the proceedings. The stepmother had been signed off work and he was due to undergo serious surgery in October 2016 requiring 8 weeks recuperation. Thereafter he needed to return to work at the busiest time of the year<sup>4</sup>.
- 108) HHJ Meston adjourned the mother’s principal application, for the return of A to her care, to stand dismissed unless she restored the application within 8 weeks. Because of the mother’s state of mind, direct contact was suspended, with indirect contact to continue.
- 109) On the basis that B qualified to apply for contact without a requirement for leave and was competent to give instructions, it was decided that A should have contact with her every four weeks. The order recorded that an explanation had been given to B that she should not make unpleasant comments or remarks to A about her father or refer to him as a paedophile and that to do so would be harmful to A and might affect contact between them.
- 110) There was an issue about supervision of B’s contact. Despite the father’s reservations, HHJ Meston accepted the mother’s godmother as a responsible supervisor with a requirement on her to report to the father any inappropriate or concerning remarks in contact.

---

<sup>4</sup> I have not indicated the nature of the father’s work. Everyone directly involved in the case knows what he does and my concern would be jigsaw identification if I disclosed it in a public judgment. Suffice it to say, and I hope without being too Delphic, the nature of his work is such that there is a risk to his career of the continuation of allegations by the mother or B.

- 111) An undertaking given by the mother to the court on 30 June 2016 was confirmed by which she was not without permission or in genuine emergency to contact, try to contact or communicate with school staff or the child or parent of any child attending A's school or encourage anybody else to do so.
- 112) A prohibited steps order was made prohibiting the mother from denigrating the father or stepmother to A or any other person or organisation (including A's school) and from describing him as a paedophile or child abuser. The order also prohibited the mother from referring to the proceedings in any communication with the media or publishing anything about them on the internet or through social media.
- 113) HHJ Meston also made a non-molestation order prohibiting the mother from communicating with the father or stepmother save through solicitors or in the case of genuine emergency relating to A or if necessary in relation to contact arrangements. That order was made without limit of time and has, it is agreed, been complied with by the mother, as have the undertakings and prohibited steps orders.
- 114) On the basis that the history did not show repeated unjustified applications, the father's application for a section 91(14) order was adjourned.

#### *Hearing October 2016*

- 115) The father sought permission to appeal the order for contact with B and the supervision provisions. There was a further hearing on 5 October 2016 when that order was confirmed.
- 116) At this hearing the mother sought to restore her application to vary the child arrangements order. HHJ Meston lifted the suspension on the mother's contact, allowing contact on three occasions supervised by an independent social worker pending the final hearing which was listed for 4 days from 10 January 2017.
- 117) On 21 October 2016 the stepmother wrote to the court about the stress and anxiety she felt about the never-ending court case. She said that despite their best efforts A was becoming more aware of the hostility. She wrote that indirect contact for both the mother and B was "*the only way for a long term liveable solution*".

#### *The hearing on 10 January 2017*

- 118) When the matter came before HHJ Meston on 10 January 2017 the mother said she would not pursue her application for the return of A to her care but did seek contact for one day every four weeks. HHJ Meston heard evidence and submissions and gave a judgment allowing four weekly contact with the mother and B supervised by the mother's godmother.
- 119) Before that order could be drawn, however, the father said that he would not be able to comply with the order. He was particularly concerned about supervision by the godmother and insisted that any supervision should be undertaken by an independent social worker. The father then said he intended to return A to the care of the mother saying that he did not intend to seek contact as "*the continual warfare is the exact thing I'm trying to avoid. It is not in [A]'s best interests for this to continue (non-negotiable)*".

- 120) The matter was listed for a further hearing on 25 January 2017. At that hearing the father's position was unchanged. Unsurprisingly, the mother agreed that A should return to her care. The guardian was unable to attend that hearing but had expressed concern that neither outcome was satisfactory for A and would cause her significant harm. HHJ Meston invited the parties to discuss arrangements for A's move to the mother and suggested that the Cafcass manager be asked whether a duty Cafcass officer could assist in those discussions in the absence of the guardian.
- 121) In fact the Cafcass manager indicated that, because of the concerns expressed in the reports of Mr Stringer and others, she could not support a move of A to her mother and if such a move took place a referral would be made by Cafcass to children's services. It was apparent that matters could not be resolved and a further three-day hearing was listed starting on 13 March 2017.

*The hearing on 13 March 2017*

- 122) By the time of this hearing the father and stepmother had reverted to their primary position of A remaining in their care with indirect contact only with her mother and B "*until she is old enough to be informed of the truth*". Their secondary position was that any direct contact, up to once every four weeks, should be supervised by an independent social worker. The mother recognised that, in face of opposition from Cafcass, it was unrealistic to pursue the return of A to her care and she focussed her efforts on seeking regular unsupervised contact.
- 123) There was a short report from A's school describing her as having settled into school really well and being "*always happy*", with wholly favourable comments about her performance, presentation and progress.
- 124) Both parents gave evidence. The mother maintained that she would never say anything to A about abuse and she did not think B would do so either. She denied influencing B to make allegations. She said that they had "*moved on*".
- 125) The father talked of the risk of "*continued warfare*" with A being emotionally abused through contact with the mother coercing her and undermining him with the risk that she would end up like B. He repeated he could not accept an order as proposed by the mother or the guardian and if an order was made which he didn't like he was only going to say again that A should return to her mother.
- 126) On the third day of the hearing the father made significant concessions and, following two days of discussion outside the court, a compromise was reached that A should remain living with the father and the stepmother and spend supported time with the mother and B. The family assistance order was renewed and a section 91(14) order made for 12 months.

*May 2017 – back to court*

- 127) Sadly, these agreed arrangements were short lived. Only two months later, on 22 May 2017, the father applied for leave to apply for prohibited steps orders and to vary the March contact order by stopping direct contact between A and the mother or B and seeking a non-molestation order against B.
- 128) The immediate trigger for this application was a visit by B to A's school on 19 May 2017 demanding to see A's teacher. When the receptionist refused A said the father was a danger to A and something should be done about it. B was

asked to leave the school grounds. The father believed the mother had influenced B to do this.

- 129) In addition, the father said that the order of 15 March 2017 had not worked smoothly. A returned from contact distressed or hyperactive. The school had noticed a significant change in her behaviour and demeanour since the new arrangements and had referred her for counselling. A was reported by the father to have become secretive and defiant and using adult words relating to contact.
- 130) In support of his application for a non-molestation order against B, the father said she would “*never let this go*”:

*“The allegations have already destroyed our lives for years, almost cost me my marriage and career and have lifelong consequences. [B] has shown that there are clearly no bounds to her actions and that she will blatantly disobey a court’s request ... I understand that [B] may be in the misguided belief that she is acting in [A]’s best interests and that her sister needs protecting. The reality is that she herself needs protecting as unfortunately she still resides with her mother and is still under that influence of hatred and brainwashed, coached allegations.”*

- 131) In response the mother sought variation of the order of 15 March 2017 to allow for more contact, including overnight.
- 132) At a hearing on 2 June 2017 HHJ Meston gave leave to both parents to bring their applications.
- 133) In July 2017 the father applied to enforce the child arrangements order, alleging some 24 breaches by the mother of her undertaking and prohibited steps order including by discussing the case in detail with the chaplain of B’s school and a friend of the mother (and B’s godmother), T, both of whom had written letters to Cafcass.
- 134) At a hearing on 6 October 2017 before HHJ Meston a number of matters were dealt with:
- a) a new guardian was appointed, the previous guardian having retired from Cafcass;
  - b) it was recorded that B was not seeking to re-open the findings from April 2015;
  - c) the mother’s godmother had become ill and was no longer able to supervise contact; despite opposition from the father, the maternal grandfather was substituted as supervisor;
  - d) consideration was given to whether B should give oral evidence and be cross-examined by the father; directions were given for written questions to B and a note of her answers produced;
  - e) directions were given for the parents to serve schedules of facts they relied on or allegations they sought to prove; the mother’s schedule included some matters covered at the fact-finding hearing and in relation to the circumstances of the ending of the father’s employment; the father’s schedule focussed on the mother influencing B’s actions, including going to A’s school on 19 May;

f) a final hearing was listed for 20 November 2017 with a time estimate of five days.

135) On 8 November 2017 the new guardian reported. She recommended that A should continue to live with the father and stepmother and that direct contact with the mother and B should cease. In response to that the mother issued an application for permission to instruct a child and adolescent psychologist to advise on the issue of contact with the mother and B.

*The hearing on 20 November 2017*

136) At the start of the hearing on 20 November 2017 the mother's counsel pursued the application for permission to instruct a psychologist. It was suggested that the court should not proceed without an expert opinion as to the effect on A of the profound loss that would be involved if the guardian's recommendation was accepted. To have given permission would inevitably have resulted in an adjournment and yet further delay. HHJ Meston decided that consideration of the application should be left until conclusion of the evidence. On appeal, Cohen J considered that was entirely the right course to have taken.

137) The father provided a list of the recent actions of the mother, B and others to show that the child arrangements order made on 15 March 2017 had been destabilised and become unworkable. At paragraph 76 of his judgment HHJ Meston set out this list. They were summarised by Cohen J at paragraphs 15 to 18 of his judgment as being some 19 events that took place between 29 March and 6 June 2017, five of which Cohen J described as the more serious:

- a) on 31 March 2017, B telephoned children's services saying she was concerned about A who was living with her father who had sexually and physically abused her, B, when she was younger and that during supervised contact A was distressed and saying she wanted to live with B and the mother and B did not believe the guardian and the court had made the right decisions;
- b) on 13 April, B called the police and expressed her concerns for A who she said was living with her father who had physically and sexually abused B;
- c) on 9 May, a similar allegation by B to children's services;
- d) on 16 May, B called the police with concerns about A and what the father might do; during this call the police spoke to the mother who was broadly supportive of what B was saying, saying that B had seen evidence that something was not right, that this was down to the fear of the father that A was displaying and making disparaging comments about the reasons why the father had left his employment;
- e) on 19 May, B's visit to A's school already described.

138) Cohen J (at paragraph 43) described these events, which distressed the father and which, to his credit, he shielded A from, as disgraceful but noted they were all outside contact. Stopping contact, he observed, would not on its own ensure that those events do not recur.

139) The hearing before HHJ Meston took the full five days estimated. The father and stepmother were, as before me, unrepresented. The mother was then represented by Mr Ward-Prowse (led before me by Ms Branigan QC). A was

represented then as now by Mr Hand and B then by Mr Merry. B attended some of the hearing but did not give oral evidence. She appeared at times to be distressed. HHJ Meston had little doubt that she remained desperate to be believed.

- 140) HHJ Meston heard oral evidence from the father and stepmother, the mother, the school chaplain, the mother's friend, T, the maternal grandfather and the guardian. B had made two statements but was not called to give oral evidence, she having provided written answers to written questions. I propose extracting from HHJ Meston's detailed narrative of the evidence he read and heard the key points as I see them.
- 141) The father's evidence:
- a) The godmother who supervised contact had been biased and used contact to gather evidence. She did not understand the risks the mother posed to A. He could not afford to fund professional supervision, saying he was £30,000 in debt.
  - b) He was fully aware that his position was an extreme one that would cause A to suffer in the short term. He was saddened that B would be devastated by their position but it was one they had been forced into by years of giving the mother and B repeated chances to be civil and to stop harassing him. The lies and manipulation had to stop before the damage to A became permanent.
  - c) Direct contact should stop until A was old enough to be informed of the "*whole scenario*" which he thought would be when she was about 15.
  - d) He and the stepmother were planning to move home and they did not want the address to be disclosed to the mother. This would not involve a change of school for A.
  - e) If A returned to the mother he would end all contact with her; otherwise the warfare wouldn't stop and A would be used as a weapon. The existing arrangements would set a bomb to go off in the future. If he was ordered to continue the existing contact arrangements he would not do so, despite the consequences. A was becoming incredibly distressed by handovers. The warfare had destroyed his family and career. He talked about ending the toxicity. He said he was well past breaking point.
  - f) When A moved to them the then guardian had seen her at school and, as he understood it, she told A that she was moved to keep her safe. This gave rise to further questions and A was told her mother and B had said things about her father which were not true and it was to stop that happening again.
  - g) He and the stepmother had bent over backwards to make things work in March 2017 and had supported contact although that had been "*contrary to every bone in our body*" and that had been "*stuffed in our face*". He described the mother as a troubled individual, hellbent on destroying his life, motivated by revenge and not caring who was in the firing line. He was resentful of B who he described as damaged and spiralling out of control. He assumed she was influenced and brainwashed by the mother.

He thought the mother had fed B the idea of going to A's school on 19 May.

- h) Although A was doing well she was struggling with contact. Recently she had come back crying and in hysterics. A said B had repeatedly told her she was going to miss her and that everything would be ok. A repeatedly said she missed her mother or B – either genuinely or because something had been said to her in contact to produce an emotional response.

142) The stepmother's evidence:

- a) The family should not have to go through "*this continuous nightmare*". The court should protect A and them from the emotional harm and turmoil they were going through.
- b) "[The mother] and [B] and the people they surround themselves with don't appear capable of stopping themselves despite the numerous warnings and court orders ... They were made fully aware that if their behaviour continued it would directly affect their contact. Even when faced with this, they have not been able to stop themselves. For as long as both parties have direct contact with [A] I am in no doubt that [the mother] and B will continue their case building and spreading lies. They will always be monitoring [A] and looking for the negative in everything she says and does."
- c) Their position was a horrible outcome for A but it would make the best of a bad situation for her. She accepted (as did the father) that in the short term there would be consequences and they could not avoid the risk of resentment by A in the long term. The stress of the current situation affected their ability to parent A. They had discussed the possibility of prison if they refused to comply with court orders.
- d) If there was an order for direct contact she would have to leave the family: "*I can't continue like this. I am desperate. I do not have the energy and emotional capacity to cope with this any longer.*" She said she had been on the verge of walking away.

143) The mother's evidence:

- a) She was concerned about A appearing sad and troubled at contact. At the end of contact she became upset about leaving.
- b) She was unaware of B going to A's school on 19 May 2017 until B told her on 22 May as they were driving to an appointment with CAMHS. She understood B had gone to the school because the day before A had told B she sometimes cried late at night and B was worried about her. She firmly denied suggesting to B that she should go to the school.
- c) She wanted A to live with her and B and would agree unsupervised contact between A and her father every other weekend.
- d) If A was to remain living with the father, she sought unsupervised contact every other weekend and half the school holidays. If there had to be supervision, her father couldn't do it as he was returning to the Channel Islands. Her godmother, who had supervised contact, was recovering from ill health and would be able to do it.



- e) She was deeply concerned about the effect of there being no direct contact which she thought would be deeply damaging and a further bereavement, causing anxiety and depression in A.
- f) She had seen B struggle as she and A were very close and B missed her terribly. B said she didn't want to be alive any more and sat inconsolably in A's room.
- g) On 16 May 2017 she had been downstairs when B telephoned the police from her room upstairs. She was unaware of the call until B came down saying there was a police officer on the phone who wanted to speak to her.
- h) She said she had for over a year come to accept the findings that there had not been abuse. Questioned by the father, she said the only people who knew what had happened were him and B. She repeated several times that the words of the district judge, that he was not able to say nothing had happened, still rang in her ears. She said B "*has her own beliefs, her own worries and her own memories*" but would never share them with A, knowing how important it was that A had a relationship with her father. She suggested A might be scared of her father, although did not know why that might be.
- i) She denied prior knowledge of letters written by the chaplain and her friend T to Cafcass and children's services expressing concern.

144) B's evidence (from her written statements):

- a) In her first statement of June 2017, B maintained her mother did not know she was going to A's school on 19 May and she had not been encouraged by her to go. She went, with a friend, because she was worried about A because of the way she was behaving and wanted to make sure she was safe. A would start saying something to her and then stop herself, saying she couldn't say that. A stopped herself crying, saying she was being brave. She seemed anxious and panicky, saying "*sorry, sorry, sorry*". A reminded B of her when she used to live with the father.
- b) In a second statement made in September 2017, B said she continued to see A every other Thursday after school and weekly for an entire day during the summer holidays. She remained very worried about her. A was asking what she should do if she couldn't sleep at night. She was still stopping herself crying and said the father must not see her crying.
- c) On one occasion A and B had been talking (in the car driven by the godmother who was supervising contact) about how the mother and father had gone their separate ways when A said, "*It's because mummy taught you to be mean to him which is why he doesn't like you ... Yes you did. That's what daddy said, he told me.*"
- d) A Cafcass officer (not the guardian) saw B at school on 22 June 2017 to understand why B had gone to A's school. B made allegations that she had been physically, verbally and sexually abused by the father, saying he had touched her inappropriately. B talked about being worried for A's safety and how the court system was biased against her mother.

145) B's school chaplain gave evidence from behind a screen:

- a) She said B came regularly for support in school as she was finding it difficult to cope without having regular contact with her sister.
- b) She had written to Cafcass on 29 March 2017 saying B was struggling with the decision that she could only see A once a week and B could not understand why her mother was deemed fit for her but not A.
- c) Further letters from the chaplain were written in support of the mother's application for 'custody' of A. The chaplain said the mother loved both children unconditionally and she (the chaplain) could not understand why she had been denied contact with A.
- d) She described B's visit to A's school as "*adolescent spontaneity*" which B understood through the "*gentle counsel*" of her mother was ill-advised.
- e) B had come to the chaplain when she was 11 or 12 and made her "*initial disclosure*" and continued to come to her for counselling frequently. She had encouraged B to go to CAMHS, see her GP and have counselling to equip her with what she needed to deal with the situation. She felt B needed more contact with her sister to reassure her all was well rather than just imagining what was happening.
- f) She said she had not been asked to write the letters; she did so at a time when B was very unsettled and unhappy at her separation from A.
- g) She did not agree with the courts findings in April 2015. She continued to believe B who she believed was truthful.
- h) She did not believe the mother had coached B.
- i) She felt the (first) guardian was totally biased against the mother, saying derogatory things about her.

146) The evidence of T:

- a) T was an old schoolfriend of the mother and B's godmother. She remained close to the mother and they discussed things around contact. B had spoken to her more over the years as she was upset about what had happened.
- b) Against that background T had written a lengthy letter to Cafcass on 23 May 2017 expressing concern about the safety and well-being of A and asking that her situation be looked into. The mother had not asked her to write the letter and was unaware she was doing so until she told the mother afterwards, at which point the mother was worried it would rebound on her.
- c) She was shocked and appalled at how the mother's family had been treated and so badly let down. She felt the authorities had not sufficiently investigated from a safeguarding point of view.
- d) She referred to the father not being honest about the reasons he had left his previous employment, including about his conduct towards vulnerable women and a 16 year old girl.
- e) She too accused the first guardian of not reviewing the case in a balanced or fair way or listening to the child.
- f) T wrote in similar terms to the local authority on 6 June 2017.

- g) She said she had no reason to disbelieve B who she regarded as very honest. She did not think A was safe in the father's care.

147) The guardian's evidence:

- a) The guardian described B as having a maturity and familiarity with work that professionals may undertake with her that was not in line with her chronological age.
- b) A's needs had been obscured by the ongoing adult conflict and B's behaviour.
- c) There had now been nine different arrangements for A without an agreed way forward.
- d) The options were:
- i) To move back to live with her mother and B. This would involve:
    - a change of school;
    - loss of relationship with the father and stepmother and paternal family (if the father disengaged);
    - if there was to be contact with the father, difficulty with B supporting it with ongoing referrals to professional services;
    - the mother would also struggle to support the children regarding the allegations that had been made;
    - *"Inevitably [A] will be exposed to negative, damaging messages about her father that will significantly impact upon her identity and emotional health"*;
    - if A were to be moved to her mother, the guardian would need to contact children's services;
  - ii) To continue living with her father and stepmother and for direct contact with the mother and B:
    - the father and stepmother might choose not to comply with a contact order leading to repeat returns to court;
    - B would continue to experience the same level of anxiety and stress regarding A's placement, which might increase as her concern was that she was not being listened to;
    - *"B has informed me that she will kill herself if [A] is not returned. She had not given any indication of planning and has discussed these thoughts with CAMHS, her mother, school staff and family. However, such a comment from a young person of [B's] age and presentation cannot be dismissed."*;
    - nothing would reassure B that A was safe and she might never be reassured.
  - iii) For A to continue living with her father and stepmother with indirect contact only with her mother and B:

- *“I am, however, mindful, that a move away from direct contact would be a change for [A] that would disrupt her relationship with her mother, sister and extended maternal family. [A] would be likely to experience a sense of profound loss and need support to manage her feelings about this.”;*
  - the guardian was confident the father and step-mother would sensitively support A to process and understand the situation;
  - it was likely B would continue to make referrals and, without direct contact with A, her anxiety may be greater and her risk of self-harm might increase; this would need to be robustly managed;
  - without direct contact the father and stepmother might be better able to deal with stresses caused by B and the risk of A being exposed to conflict would be reduced;
  - consideration could be given to reintroducing direct contact at a future point if this was in A’s best interests and was assessed to be safe.
- e) The guardian wrote, largely reflecting the views of the current guardian,
- “There is now no ‘best’ outcome to these proceedings, only a ‘least worst’. Whatever conclusion the court reaches, [A] and [B] will be significantly impacted by it. These two children are victims of circumstances that are not of their making, and they will be forever affected by these proceedings and the decisions made therein.”*
- f) The guardian identified that the contact between A and her mother and B was observably warm and affectionate and supported her identity as a member of her maternal family. These benefits, the guardian considered, did not fully counterbalance the risk of undermining the stability of her placement. A’s need was to be safeguarded from harm and for a safe, stable home and carers who could predictably and consistently meet those needs. The father and stepmother, while not beyond criticism regarding their relationship with the mother and B, had continued to promote relationships and were committed to doing so indirectly. There was a need to maintain A’s primary placement over and above the need to maintain contact. The main concern was destabilising that placement.
- g) The guardian recommended that A remain with her father and stepmother with indirect contact with the mother and B. She was concerned about the impact of that on B (then aged 16) but said she could not make recommendations in B’s best interests if they contradicted A’s. She described this as an *“incredibly finely balanced decision”* and was all too aware of the implications. The lack of movement in the parents’ evidence and their deep entrenchment had, if anything, reinforced her view.
- h) The guardian described A as a delightful, charming, happy little girl who was doing well at school and thriving in the care of her father and stepmother. She had been largely protected from much of the animosity, but it would trickle down and impact on her. The guardian had considered whether it was necessary for the local authority to become involved again.

- i) While the father could present as difficult, when with A he showed warmth, perception, appropriate boundaries and affection.
  - j) The guardian said, correctly in HHJ Meston’s judgement, that although the mother presented as wanting to draw a line under past accusations and disputes she struggled to do so. She feared the cycle would continue. She thought the mother was still looking for evidence of risk, judging by the schedule she had produced for that hearing.
  - k) She agreed that in evidence the parents had presented very differently – the father as frustrated and angry, the mother as calm. She did not accept that the father’s position was one of petulance or that he and the stepmother were trying to call anyone’s bluff. She doubted the extent to which the mother had challenged B or reassured her that A was safe.
  - l) The guardian acknowledged that the court’s findings were helpful to professionals, but to a child a decision by the court does not ‘flick a switch’. She accepted that the mother was in a very difficult position, wanting to support B but also to find a way forward to see A.
  - m) The guardian could not see the point in a family assistance order. It had not worked. She thought a section 91(14) order should remain in force. She did not consider the instruction of a psychologist was necessary. Everyone knew the outcome of the case would have a significant effect on both children. Further delay was not justified.
  - n) Importantly, the guardian said that A would need life story work to help with her distress and incomprehension about the outcome. Her understanding and questioning would fluctuate and messages given to her should be consistent.
- 148) In his judgment of 23 February 2018, HHJ Meston, having addressed the welfare checklist, agreed with the guardian, who he accepted had considered all options, that there was no strategy that would achieve safe, workable and beneficial direct contact between A and her mother and B. He acknowledged that this outcome would in the short-term at least cause A distress, anxiety and further confusion and she would need explanation, support and reassurance. He also noted A’s need for the legal process to be resolved – *“the longer the proceedings last the more pressing the need for finality and certainty”*.
- 149) HHJ Meston found that B had been unable to control her strong, pervading belief that the father was a risk to A and had found it difficult to contain her sense of injustice. There was no evidence that B had actually communicated her allegations to A, but there was a continuing risk that she might do so.
- 150) The mother, he found, had not been capable of reconciling her wish to support B with her wish to see A and, ideally, resume her care. It was not clear that the mother had reached the point of reconciling her loyalty to B with her claimed acceptance of the district judge’s findings. He was not convinced by the mother’s assurances that she had *“moved on”*. However, he went on to say:
- “The fact that the mother has not moved on is not, in itself, indicative that she would disrupt contact or A’s stability with her father by expressing her views.”*

- 151) HHJ Meston observed that, although the court should not yield to threats to disobey its orders, the wider consequences of such disobedience for the child could not be disregarded. It would be particularly harmful if new arrangements for contact were put in place only to be suspended once again with further mutual recriminations. He regarded as certain that, if A moved to live with her mother, the father would carry out his threat to have nothing more to do with A and it was probable that the guardian would make a referral to the local authority.
- 152) HHJ Meston said he had to consider whether the father's opposition to direct contact was justified and his fears reasonable. He concluded that, whatever the motives of the mother and her supporters, the father was bound to interpret their actions and communications as part of a conspiracy with the mother to question the court's decision and to undermine the placement of A with him. He accepted that the father was at the end of his tether and he was genuinely concerned to do what he considered necessary to protect A, his wife and himself. The judge also accepted that the father was fully aware of the likely impact on A of ending direct contact for the foreseeable future, something which the father described as "*horrible for her*", and that the main responsibility for helping A make sense of such a decision and deal with would fall on him and his wife.
- 153) HHJ Meston did not consider the instruction of an expert necessary. Prolongation of the proceedings would not be justified.
- 154) An order for indirect contact was made with a section 91(14) restriction on applications by either parent for 3 years. There was also a prohibited steps order preventing the mother from (amongst other things) going to A's school, befriending any member of staff or child or parent of any child at the school or encouraging B to attend any event, club or activity that A attended.

*The appeal to Cohen J*

- 155) On 30 April 2018 Newton J gave the mother permission to appeal HHJ Meston's order. As Cohen J acknowledged, there was a regrettable delay before the appeal was heard by him on 5 February 2019. That said, he thought the delay might have been to the benefit of the parties having given them some respite from the litigation.
- 156) Cohen J noted that no further incidents of the type relied on by the father had happened since June 2017 notwithstanding that contact had continued from then until HHJ Meston's order of 23 February 2018. Further, indirect contact had continued since then with monthly communications from the mother and her family members to A which, the father told Cohen J, A had been pleased to receive and to which answers had been given.
- 157) Cohen J observed that the contacts between A and her mother and B had been enjoyable occasions in themselves and nothing transpired in the contact periods themselves that create difficulties. What went on to cause the father hesitation happened outside contact.
- 158) The criticisms of the judgment by the mother were set out by Cohen J at paragraph 36 of his judgment:

- a) it could not be right to go from an agreed order for direct contact to no contact whatsoever; the events of March to June 2017 did not justify a complete cessation of contact;
- b) failure to look at contact as between A and her mother and A and B separately; however unrestrained B might be, the position was different so far as the mother was concerned;
- c) if there was to be a complete cessation of contact, a psychiatric or psychological assessment of the effect on A of that loss of these crucial relationships was needed; only then could the relative damage of the various options be properly considered;
- d) lack of analysis of the medium to long-term loss that A would suffer by the decision, in particular loss of identity, self-esteem and worth which could only be partially compensated for by letters;
- e) lack of consideration to the three alternative propositions of the guardian.

159) Cohen J raised the question of identity contact in this way:

*“37. When I read the papers, I wondered what consideration there had been given to the possibility of what in olden days was sometimes called identity contact. That is contact two or three times a year so that the child can assure herself that all is well with her mother, or sister, that they are not forgotten, and that she does not have to worry about what might have happened to the absent family member. I am told that that possibility was not canvassed or considered during the course of the hearing.*

*38. I have great sympathy with the father saying that he cannot take any more as he did to Judge Meston but that sort of very infrequent contact, which serves a discrete purpose, is a far call from the extended monthly contact that had been taking place before and it needed consideration which no one gave it.”*

160) Cohen J went on to say that he was anxious about the following points (paragraph 39ff):

- a) First, there had been no expressed consideration of the option of a very limited level of contact. The court must grapple with all alternatives before abandoning contact.
- b) Secondly, no separate consideration had been given to the position of the mother and B. The father himself accepted there was a difference in their positions and was far more wary of what B might do than what the mother might do. As the guardian accepted, there was no real evidence that B had actually communicated her allegations to A, but there remained a risk that because B feels strongly that nothing would keep A safe, and there was therefore a continuing risk that B would feel she must tell A so as to protect her. As to the mother the judge had been more qualified. While she had not moved on he had noted that did not of itself indicate that she would disrupt A’s contact or stability by expressing her views.
- c) Thirdly, although the father expressed his strong views against any form of contact, he did not have the opportunity to reflect on the possibility to

contact on a very limited basis. He might (quite rightly in Cohen J's judgement) insist that to be safe such contact would have to be independently supervised. That would require exploration and consideration as to how that might be managed, who would pay for it, who would undertake it and what facilities Cafcass or a local authority might be able to make available.

- d) Fourthly, while the events between March and June 2017 were disgraceful, they were all outside contact and stopping contact would not of itself mean those events do not recur. They impacted on the father's view of contact but that was an emotional rather than a logical connection. The fact that there had not been any recurrence since the start of June 2017, even though contact continued, was not referred to in the judgment.
- e) Fifthly, to remove the mother from the child's physical presence for three years, a child then aged 6, so half her life time, is a very long time and it was not an answer, as Mr Hand put on behalf of the guardian, "*Well, if there is good reason, she can always apply earlier.*"

- 161) Cohen J agreed that greater thought needed to be given to the instruction of a child psychiatrist but that was not a criticism of the judge. The application was late and would have derailed the hearing. It was not then renewed. Cohen J said (paragraph 46):

*"To terminate a child's relationship with the mother and sister is very draconian and it seems to me that this was a case where all available alternatives had not been fully explored."*

- 162) And so Cohen J allowed the appeal "*to that limited extent*" and remitted the matter to me (as HHJ Meston's successor as Designated Family Judge) for further directions. He concluded his judgment with the following observation:

*"49. I do not know what the outcome of this case will be, but I make it clear that I find it hard to envisage contact for the foreseeable future occurring, if it does at all, with anything like the frequency that it has in the past. The mother and B have to prove themselves. Further complaints to the Social Services or police, whether done personally or through the agency of others, are, if unjustified, likely to lead to a longer cessation of any contact at all. Likewise, if the contact is used to further the case against the father.*

*50. I hope the father will give serious thought to accepting the benefit of occasional independent supervised contact to the mother at least but that is not a matter for me today. I make it clear that the mother no longer seeks in any way to pursue her claim for residence of A or against the prohibited steps order. She is correct to abandon that part of her appeal and I hope the father is able to draw some comfort from that."*

### **The current proceedings**

- 163) For reasons I do not understand, I was not made aware that the case had been remitted until the end of April 2019. I listed a directions hearing for 8 May 2019.
- 164) The second children's guardian for A had moved on to other duties in Cafcass and a third guardian was appointed in her place.



- 165) The father and stepmother did not attend the hearing on 8 May. They sent emails to the court indicating that the father was too unwell to attend. I directed a transcript of the hearing on 8 May so that they could be clear what had happened at that hearing. At that point it looked as though the father's inability to attend court for health reasons was temporary.
- 166) I gave directions that, before any hearing, position statements should be sent to the court and to the father and stepmother so they were clear the issues to be dealt with at each hearing and what the parties were asking for. It was made clear to the father and stepmother that, if they did not attend hearings, orders may be made in their absence.

*B renews her allegations to the police 28 June 2019*

- 167) On 28 June 2019 B renewed her allegations to the police. I will deal with what the police disclosure said about that later in this judgment.

*The father and stepmother's position statements of 3 July 2019*

- 168) The father and stepmother each filed position statements on 3 July 2019 in the clearest possible terms.
- 169) In his position statement the father said:
- a) that for the last 7 years he and his family had suffered from the mother's "pure venom" towards him which was unlikely to stop, with false sexual abuse allegations by B;
  - b) despite the 2015 findings, he had suffered continued suggestions to her friends, social services, Cafcass and the court that the findings were not justified;
  - c) the effect of this non-stop litigation, vile accusations and character assassination is unbearable, as he and his wife had told the court for years; it is affecting his marriage and mental and physical health but is allowed to continue;
  - d) his physical health had declined dramatically and cluster headaches had returned;
  - e) in May he broke down and attempted suicide twice by suffocation on the first occasion and cutting his wrists on the second (he subsequently filed a letter from his psychiatrist attributing his current mental health state to the stress of continuing litigation);
  - f) he could not carry on, to do so would quite literally kill him;
  - g) the constant stress and fight had destroyed him and almost completely destroyed his marriage and family.

- 170) The father summarised his position as follows:

- a) he did not agree to disclosure of his medical records or services used by him as it would violate his rights (presumably his right to respect for privacy) and would act as a block on using the services in the future;
- b) A should remain in his and his wife's care;

- c) he would “*never again step foot in a court room, nor will I communicate with solicitors or any other court instigated professionals. Any attempt to do so will be blocked permanently*”;
  - d) he would completely ignore any future applications;
  - e) he would not communicate with the mother, her family or anyone else on her behalf;
  - f) he would not comply with any order for direct contact, only the current order for indirect contact;
  - g) if A were to be removed from his care, he would not communicate or try to have a relationship with her until she is adult; to do so would be “*detrimental to all parties and devastating for [A] who has had so much inconsistency in her life*”.
- 171) The father asked the court to rule in A’s best interests, saying that, since being with them, she had been a different child - social, excelling in school and happy.
- 172) The stepmother also filed a position statement. She said they had told HHJ Meston in November 2017 that they couldn’t carry on with the stress of the litigation. Direct contact with A, she said, had resulted in her coming home stressed having been quizzed during contact and manipulated into making false statements. Contact sessions became the focus for the mother and B phoning the police saying they believed the father had sexually and physically abused A.
- 173) Since the order for indirect contact in March 2018 A had settled emotionally, felt stable and secure and no longer showed signs of distress or anxiety.
- 174) The stepmother described the overwhelming stress and sheer disbelief since the appeal had been allowed as devastating on the family. She had nearly lost her husband and A had nearly lost her father. She pointed out that they had, for the last three years, been litigants in person and had to prepare themselves for hearings and conduct the litigation. The father had undergone major surgery and was managing a chronic health condition. All of this while trying to shield A from it all and trying to support her through the changes in her life.
- 175) The stepmother said they could not continue and made a plea that the litigation be brought to an end. If the court decided that assessments had to continue, she asked that her parental responsibility be removed as she could not be involved in putting A through any more professional assessments.
- 176) The stepmother said “*If this hearing continues, you will destroy [A]’s stable and loving family unit where she has lived for half of her life. This is not some threat to blackmail the court. This is the desperate situation the courts have put our family in...Enough is enough*”.
- 177) The stepmother took the same position as the father regarding compliance with the existing order for direct contact. She concluded “*I cannot survive through this never-ending nightmare anymore but more importantly, [A] will not survive anymore of it*”.
- 178) On 26 July (when I saw the father and stepmother’s position statements for the first time) I was concerned to read about the potential risks for A of the father’s

suicide attempts and general mental health state. I directed Cafcass to refer to Children's Services for the purpose of a section 47<sup>5</sup> investigation. As the father and stepmother were not engaging in the proceedings there seemed to me no other way for the court, seized with her welfare interests, to ensure that all was well with her.

179) In the event, the local authority filed a very brief section 47 report from which it appeared they had accepted from a 5 minute telephone conversation with the father that there were no welfare concerns about A.

*Hearing on 5 September 2019*

180) At a hearing on 5 September 2019 (again not attended by the father or stepmother) a number of issues arose:

- a) I had directed that Cohen J be asked whether, in remitting the matter for further hearing, it was his intention to limit the scope of that re-hearing to the question whether there should be identity contact or whether contact was at large. Cohen J confirmed that the question of contact was at large.
- b) I was not satisfied that the brief report from the local authority following its section 47 investigation addressed what it needed to and I directed a further report from the local authority, this time under section 7, to ascertain how A's welfare needs were being met, where she was living (the court did not at that point have a clear address), where she was at school and that she was attending regularly and to make enquiries regarding her welfare generally given the father's mental health difficulties and attempted suicide in May.
- c) it was recorded in the order that the mother was not seeking to re-open the 2015 findings (and that remains her clear position);
- d) however, B's solicitor was to obtain records from B's school about allegations made to school staff since 1 January 2018 that she had been sexually abused by the father;
- e) I gave permission to A's guardian to instruct Dr Paul Jefferis, psychologist, to undertake a psychological assessment of A and the family and to report by 19 November 2019;
- f) I timetabled statements by the mother, B and the father and stepmother of any evidence they intended to give and I directed the father to send to the court a report from his treating psychiatrist;

---

<sup>5</sup> Section 47 of the Children Act 1989:

(1) Where a local authority—

- a. ...
- b. have reasonable cause to suspect that a child who lives ... in their area is suffering, or is likely to suffer, significant harm

the authority shall make, or cause to be made, such enquiries as they consider necessary to enable them to decide whether they should take any action to safeguard or promote the child's welfare

- g) I listed for a case management hearing on 9 October 2019 to consider the section 7 report, a dispute resolution appointment on 6 December 2019 and a final hearing for 5 days starting on 13 January 2020.

181) I was concerned to try to adjust the proceedings in a way that would enable the father and stepmother to engage with them. In the order of 5 September I urged them to re-consider their engagement so that their evidence could be heard and taken into account by the court when deciding what orders to make in A's best interests.

*The hearing on 9 October 2019*

*Section 7 report*

182) The authors of the section 7 report (dated 2 October 2019), Kirsty Penny, social worker, and practice manager, Laura Pearson, attended the hearing on 9 October, along with local authority solicitor Nicola Preston.

183) The important points from the report were:

- a) The father would not disclose his home address because of past issues of domestic abuse and concern that this information might, in certain circumstances, have to be shared, as the local authority were bound to explain to him.
- b) Consequently, BCP Council had been unable to complete agency checks or ascertain where A lived, visit her at her home address or establish who else is living there save A, her father and stepmother (there was no reason to believe anybody else is living there).
- c) The father said his treating psychiatrist had visited the family home and could give an account.
- d) The father also offered a video call and 'tour' of the family home.
- e) Information from reports provided by the father from his Community Mental Health Team (CMHT), GP and Consultant Neurologist (attached to the section 7 report) highlighted the impact the proceedings have had on the father's physical and emotional/mental health. There had been a diagnosis of adjustment disorder relating to the ongoing proceedings. Although this was an ongoing concern, there was no indication this impacted on the father's parenting capacity.
- f) The MASH Team (Multi-Agency Safeguarding Hub) contacted CMHT who advised that the father was open to them but did not have an allocated worker and would be supported by duty if required. It was the view of the MASH team that there was no evidence to suggest A was at risk of harm due to her father's mental health.
- g) Ms Penny met with A at school. She told me that the father and stepmother were distressed by the visit and concerned about what might be discussed with A.
- h) Ms Penny did three worksheets with A:
  - i) on a family tree, A wrote the names of her immediate and extended paternal family but not the maternal family, including her mother and B;

on 'Who lives in my house', A wrote [the cat], [stepmother], Daddy and A;

- ii) using the Three Islands A wrote on:
  - the Always Island: [the cat], A, [stepmother] and Daddy
  - the Sometimes Island: the names of three friends
  - the Never Island: Mum and Sister.
- iii) Asked why she had placed her Mum and Sister on the Never Island, A said "*they are rude* [to Mum and Dad] *so why would I want to see them*". Asked how she knew they were rude, she responded "*that's what* [stepmother] *and Daddy told me*". A was concerned this would be shared with the father and stepmother.
- iv) A's ELSA worker confirmed these views were consistent with those shared with her previously.
- i) A is receiving ELSA support at school, requested by the father and stepmother, to enable her to discuss past events with a safe adult outside the family. A has told her ELSA worker she doesn't think talking about her feelings helps and she came across as reserved and finding it difficult to discuss her feelings. However, she was keen to attend her ELSA sessions.
- j) The father was not willing to discuss his suicide attempts with Ms Penny, preferring to discuss this with medical professionals supporting him. He said the proceedings were causing him a great deal of stress and anxiety and he was no longer engaged in the proceedings. The stepmother deals with all correspondence relating to these matters.
- k) Unhelpfully, it was felt, although borne out of years of frustration and anxiety, the father had made emotive statements such as "*I cannot go on like this for much longer and if it continues then [A] will have to be taken off me because I cannot continue with the stress*".
- l) Comments like this raised professional concerns, however the impact of the father's suicide attempts were reported by the father and stepmother as minimal. A was at school during the incident and the injuries were described as a gardening accident.
- m) Although Ms Penny had not been able to meet A with the father and stepmother or see her home environment, it appeared from speaking to the school and meeting A that the father and stepmother could meet her needs. A's presentation at school was positive with excellent attendance, physical presentation, friendships and a positive relationship with staff. The father and stepmother worked well with the school and were supportive of A's education, homework and school events.
- n) A's mental health had not been fully assessed. However, she appeared a happy 8 year old girl who attends school regularly and was doing well academically. There were no immediate concerns for her welfare.
- o) The local authority considered that further enquiries into the father's physical and emotional health would impact on his parenting capacity

such that further orders, hearings and interventions were unlikely to be in A's best interests where professional concerns were not being raised about her welfare.

*Disclosure of A's address*

- 184) Ms Branigan said it was quite wrong for the court dealing with a child not to know where she is living. Indeed, she could not recall a case where the court had not known where the child subject of the proceedings was living. She asked me to give a clear direction to the father to provide the court with the address of the family home. She made clear that neither she nor the mother need have that information. Apart from anything else, for the mother to know the address could lay her open to further allegations in relation to her behaviour. That said, Ms Branigan makes the point that knew where A was at school yet had made no attempt to breach the prohibited steps order made in February 2018
- 185) Although of course addresses disclosed to the court confidentially may in certain circumstances be disclosed, with the court's permission, to other parties or their legal representatives, Ms Branigan was clear that she could not envisage a situation in which the address would need to be disclosed to the mother. The only example she gave related to any possible move away from the area by the father and stepmother with A and the possible need to trace them, in which case knowing where they had been living could be important.
- 186) Both Ms Branigan and Mr Hand could see that it is difficult for the guardian to carry out her duties in the case without knowing where the child (effectively her client) is living.
- 187) Mr Hand sought to put before the court the competing arguments from both angles and referred to the additional pressure on the father and stepmother of an order for disclosure, the outside risk that the address may become known to the mother and B and the perception, subjectively, of the father and stepmother that disclosure could be the start of a slippery slope.
- 188) I directed the father and stepmother to disclose A's address to the court on the basis it would remain confidential to the court and the guardian and was not to be disclosed to any other party without the court's permission. The basis for that direction was that a court seized with the duty of investigating and deciding a child's welfare must know where the child is living, as should the guardian if she was to fulfil her duties properly. I gave the father and stepmother an opportunity to ask the court to reconsider that direction but they did not do so and in fact complied with it.

*Police disclosure*

- 189) Because on 28 June 2019 B had renewed her allegations about the father to the police, I gave a direction for disclosure concerned the renewed allegations.

*Engagement of the father and stepmother*

- 190) I was particularly concerned to try and address what appeared to be a continued and entrenched position of non-engagement by the father and stepmother. To that end I suggested that I should prepare a written judgment setting out where we had got to, why it was important that they engaged in the proceedings and had an opportunity to be heard, and suggesting ways that might be achieved. I have used some of the history from that judgment in this one. I set out the legal

principles and the court's duty to explore all available alternatives. I wanted them to understand fully how difficult it would be to resolve this case without their input. I make no apologies for setting out here what I said in that judgment, which was dated 21 October 2019, about this.

“78) The present case presents a keen tension which can be expressed in this way:

- a) For the court to provide an effective remedy, as it must do if it is to meet the parties' Convention rights, it is essential that it is able to secure the engagement of parties to litigation. The court cannot simply stand by while a party says “*I refuse to engage. I will not comply with any court orders. If you force the issue the consequences will be dire. I demand that you stop the litigation now*”. Such an attitude may amount to a contempt of court, punishable by fine or imprisonment. To permit such a response by a party would be to allow a gun to be held to the head of the court. It would set an extraordinarily dangerous precedent, for it would be a green light to any parent bent on frustrating contact to say simply that they were not going to comply. It would, in short, undermine the rule of law.
- b) On the other hand, the welfare of the child is paramount. Almost always the question is one of enforcement of the court's order against the parent with primary care of the child. To impose a fine or imprisonment is unlikely to promote the child's welfare unless it forces compliance. It is more likely to create a martyr of the punished parent and stigmatisation of the other as responsible for “locking up my mum/dad”. Often little is achieved.
- c) And if the question is not one of implacable hostility in the sense of unjustifiable opposition (which is what implacable hostility means) but frustration and desperation impacting on physical and mental health after years of difficult litigation and accusations, how then does the court deal with the parent who says, “*enough is enough, I cannot take anymore whatever you say*”?
- d) And what if, objectively speaking, there is a real risk that the physical and/or mental health of the primary carer of the child will suffer simply through the process of the court investigating to obtain the information necessary to decide the child's welfare? How does that sit with the welfare of the child being paramount?

79) The tension is indeed stark and without easy, if any, answer. It is central to this case.

80) The other central question is about [A]'s emotional welfare. The limited enquiries that have been possible so far suggest that [A] is being well looked after by [the father and stepmother], evidenced by her progress at school. The issue which remains is the impact on

[A] of the loss of a relationship with her mother and sister. Children who appear happy, secure and stable at eight may be far from that when they reach adolescence and question why they have lost contact with a parent. They may question themselves – was it my fault? They may question their primary carers – why did you stop me seeing my mum and sister? Absent parents may grow horns or become idealised saints. Questions like this may not have easy answers for a young person going through the emotional rigours of adolescent development. This is why the court has to take a longer-term view and not be put off by short-term problems.

- 81) This is at the heart of the intended expert assessment by Dr Jefferis – weighing up the potential loss to [A] and its consequences for her emotional health and development against the risks for her of destabilising her primary carers.
- 82) Why have I gone through this discussion? Essentially, I am hoping that [the father and stepmother] will read it and have some understanding, despite their very personal and strongly held views, of the difficult process the court is embarked upon, that the court understands where they are coming from and yet the need for the court not to just ‘give up’ but to try and find a way through the tensions to ensure that it can come to a fully-informed and welfare based decision for [A].”

191) Then, under the heading ‘*Can the court provide support to the father and stepmother to help them engage in the proceedings?*’ I continued:

- “91) This question requires consideration of three rules and one practice direction within the Family Procedure Rules 2010 (FPR):
  - a. rule 1 – the Overriding Objective;
  - b. rule 3A and Practice Direction 3AA – Vulnerable persons’ participation in proceedings and giving evidence
  - c. rule 4 – General Case Management Powers.
- 91) The overriding objective of the FPR is to provide the court with a procedural code enabling it to deal with cases justly having regard to any welfare issues involved. Dealing with cases justly means ensuring they are dealt with (a) expeditiously and fairly (b) in ways which are proportionate to the nature, importance and complexity of the issues (c) ensuring the parties are on an equal footing (d) by saving expense and (e) by allotting an appropriate share of the court’s resources.
- 92) The court must have regard to the overriding objective whenever it exercises any power given by the rules or interprets any rule. The parties must help the court further the overriding objective and the court must further it by actively managing cases.
- 93) The purpose of rule 3A and PD 3AA is to ensure that parties are able to participate fully in proceedings and witnesses are able to give evidence to the best of their ability. The court has a duty to consider whether a party or witness has a vulnerability that may



diminish either and, if so, to consider whether it is necessary to make ‘participation directions’ to assist participation and/or giving evidence.

- 94) In deciding whether to make participation directions the court is required to consider a number of matters, including (so far as is potentially relevant here) the impact of actual or perceived intimidation by another party or witness or member of their family, mental disorder, physical disability, medical treatment, the nature and extent of the information before the court, the issues arising and whether the matter is contentious and any characteristic of the party or witness. Arguably all of these factors apply in this case.
- 95) Rule 3A.8 sets out the measures that can be directed, including preventing a party or witness from seeing another party or witness, participation and giving evidence by live link, the involvement of intermediaries and anything else set out in PD 3AA.
- 96) PD 3AA does not give us any more detail about the measures that can be directed to enable participation, simply referring back rather circuitously to the measures available under rule 3A.8. It does however say that the court may use its general case management powers as it considers appropriate to facilitate the party’s participation. Examples are given of directions about the structure and timing of hearings, formality of language to be used in court and the provision of separate entrances/waiting area.
- 97) Rule 4.1 sets out the court’s general case management powers which are additional to any powers given by any other rule. At the end of a long list of things the court can do, which are not relevant for present purposes, there is a catch-all ‘(o) take any other step or make any other order for the purpose of managing the case and furthering the overriding objective’.
- 98) I need to stress to [the father and stepmother] the importance of their participation. It is essential that the court hears what they have to say on the question whether there should be direct contact. It is also essential that Dr Jefferis is able to do a proper assessment and the guardian able to analyse the evidence and make recommendations to the court. If there is no participation by [the father and stepmother] the professionals and the court will be left trying to fill in gaps
- 99) I acknowledge the stress [the father and stepmother] have been under and the impact it has had. I want to explore with them whether there is anything that could be done by the court to support them and enable them to take part. There is no application before the court for participation directions and the court approaches this issue of its own initiative. I do not want to make assumptions about what might help. I invite [the father and stepmother] to tell me what they would need.
- 100) I can indicate some of the measures the court could take:

- a. if [the father and stepmother] are prepared to come to court, avoiding the need to have any contact with, or be seen by, [the mother] through separate entrances and waiting rooms and either screens in court or attendance by live link from another room in the court building;
- b. consideration of attendance during a hearing by live link from a remote location;
- c. steps to reassure that [the mother] and/or [B] cannot follow [the father and stepmother] from court;
- d. allowing [the father and stepmother] to give recorded evidence in advance of a hearing (the disadvantage would be an inability for them to put questions to witnesses);
- e. support of a McKenzie friend<sup>6</sup> who might be a professional person or somebody else known to them;
- f. support by Support Through Court (until recently the Personal Support Unit)<sup>7</sup>.

101) I have raised the question of a meeting with [the father and stepmother] to discuss participation (but not, I repeat, the merits of the case). I have indicated some of the safeguards there would be around that, designed to ensure that the right of all parties to a fair hearing under Article 6 is not compromised. I remain open to the possibility that such a meeting could be held, exceptional though it might be. This is a problem-solving court. Sometimes finding a solution to a difficult problem requires some lateral thinking and unusual responses by the court.

102) I would not want to go down the route of considering that option further without knowing from [the father and stepmother] that they would take up the offer of such a meeting. If they indicated they would then, and only then, I would give an opportunity for representations as to whether a meeting should take place.

103) Alternatively, [the father and stepmother] might be prepared to meet with the guardian and/or Mr Hand as proposed by Mr Walkington.

104) So, in the first instance, I very much hope that [the father and stepmother] will read this judgment and then let me know what support might help them to participate.”

192) I listed a further directions hearing on 29 October 2019.

*The mother and B's statements 24 October 2019 and the stepmother's position statement 28 October 2019*

193) In her witness statement the mother said:

---

<sup>6</sup> see the link in <https://www.gov.uk/represent-yourself-in-court>

<sup>7</sup> see <https://www.supportthroughcourt.org/get-help/how-we-help/>

- a) Since the order of February 2018, she and B had sent regular monthly cards, letters and presents to A, which she had tried to make as positive and child-focused as possible and which had for the most part been acknowledged, although it was not clear whether it was A herself who was responding. (The father later produced a photograph of A writing a card to the mother to make clear it was A who was responding.)
- b) She had not received the school report and photograph (at the final hearing it seemed that the mother had been sent what was available).
- c) The life story work Cafcass were supposed to have done with A under the family assistance order to help her understand the outcome of the proceedings was not in fact done, as she had always anticipated.
- d) She had obeyed the prohibited steps orders. She had not gone to the father's home address. She had not communicated with him directly since early 2014 and had never spoken to the stepmother.
- e) She was concerned about what A had said, as reported in the section 7 report, about her family tree and why she and B were placed on the Never Island and that A worried about sharing this information with the father and stepmother. She considered that indirect contact was failing to promote their relationships. She thought A was being given a distorted view of why she was not seeing her or B, highlighting why it was necessary by Cafcass to do work with her and underlining the damage to her by failure to undertake that work.
- f) She thought that sooner or later any interest A may have in her or B would dwindle and eventually be extinguished, if that hadn't already happened.
- g) She asked for understanding of the immense difficulty in reconciling B's allegations with the court's findings. She accepted that B continued to make those allegations and, as her mother, she needed to provide emotional support which had not always been easy. B did not talk to her about the allegations as she found it so difficult. Sometimes B had panic attacks and flashbacks. She and B had talked about the need for the mother to accept the court's findings and, for A's sake, they understood the need to be positive about the father. It had been difficult for her to get past the district judge's comment that, while she had "*wholly failed*" to prove the allegations, he was "*not able to say nothing untoward happened*". With the help of her legal team she had come to understand that comment may not have been helpful to her in dealing with the judgment. She accepted that the judgment meant that when dealing with A the matters alleged by B did not happen.
- h) At the same time she could not say she disbelieved B and she did not think she would ever be able to say that. B needed to be supported as she grows up by dealing with her allegations through others rather than with her. That had helped her to think of the girls separately in order to reconcile their competing interests.
- i) B had been referred to a service supporting victims of sexual abuse by the Police and Crime Commissioner and had been supported and counselled by them since September/October 2018. This is where B takes her feelings over her situation.

- j) Sometimes B spoke to the school chaplain. The school chaplain and head of year made the decision to refer B's allegations as a safeguarding issue as a result of which a police officer had visited B in July 2019, unknown to the mother. In October B called the officer for an update and was told they were awaiting the outcome of a social services investigation.
- k) B carried significant guilt about what happened on 19 May 2017 and blamed herself for the fact that there was no direct contact. She did not think B struggled to contain what she said. She only spoke to professionals. She had gone to the school to speak to someone in safeguarding because she was worried about A from her behaviour the day before. B now realised this was the wrong thing to have done. She was only 15 at the time. It had been a salutary lesson. It was highly unlikely there would be any repetition. She maintained B had gone to the school "off her own bat" and without telling her. She acknowledged it would have caused the father upset and anxiety.
- l) They had contemplated her having contact but B not. That would not be her choice but may be necessary. It may be made easier by B moving on to university at the end of her 6<sup>th</sup> form studies.
- m) B is involved in a number of positive activities inside and outside school and has a lovely group of friends. She is doing well at school.
- n) She was at pains to stress that she understood how difficult the raising of the allegations again must have been for the father and stepmother and that she would never discuss them with A.
- o) While she did not believe A's emotional needs were being met in the care of her father and stepmother, she recognised that A loves them and looks to them for her primary care needs and that she is doing well at school. She accepted disrupting that would not be in A's interests.
- p) Eventually she would want 'normal' contact with A. She accepted it would not be possible to say how long it would take to achieve that but hoped it could be done within a reasonable period.

194) In her statement B said:

- a) She acknowledged the possibility of contact between A and her mother but not with her. That would be extremely upsetting for her but she was very much of the view that A should have a meaningful relationship with her mother, even if that was to the detriment of her own relationship with A.
- b) She talked about the closeness of her relationship with A and the long-term importance of it to A.
- c) She felt let down by the court process and professionals, particularly the police. She felt her voice has not been listened to. She carried a "*great weight*" on her shoulders as she felt guilty at the way the proceedings had developed with A no longer living with her and her mother. While she accepted and respected the findings of the court she would not be true to herself or completely honest if she were not to make clear that she stood by her allegations.

- d) She had undertaken counselling for a number of years which had made her stronger and enabled her to recall information not made known to the police previously. She was encouraged by her counsellor to talk and about and 'disclose' these matters. She had told the school who had contacted the police who interviewed her. She did not expect the police to act on the information, in which case she would have no choice but to accept that outcome.
- e) She did not see her contact with the police as a bar to supervised contact. No concerns had been raised about either her or her mother discussing the proceedings with A during supervised contact. She would not discuss these matters with A or make negative comments about the father. She recognised the importance to A of her father and stepmother as her primary carers and felt she was sufficiently mature and emotionally capable of dealing with matters.
- f) She would work with Dr Jefferis in his assessment and hoped he would be able to advise and assist.

195) In her position statement the stepmother said:

- a) A had been given only an age appropriate amount of the truth, not a 'distorted view' as the mother claimed. If the mother is concerned A thinks negatively about her, she should reflect on her past behaviour (the lies they have told and manipulation of A through contact) and not continually blame the father and her. She questioned how the situation could be explained to A with a 'positive spin'.
- b) A responded positively to the letters and cards, writing 'love' and drawing hearts and kisses. They regularly reassure A she is loved by her mother and sister.
- c) The school sent reports directly to the mother. They had yet to receive that year's school photographs.
- d) A was very distressed about seeing the social worker (Ms Penny) and she wondered whether her comment about not wanting to see her mother was due to her being afraid it would lead to more change and uncertainty in her life. A was probably worried about them finding out what she had said as they discouraged her from talking negatively about her mother and B. It seemed like they couldn't please whatever they did.
- e) She did not believe for a second that the mother had finally accepted the findings and moved on. She had said exactly that on two previous occasions. Within weeks of the March 2017 the mother was on the phone talking to the police and even as recently as the appeal hearing in February 2019 she was seeking findings until they were withdrawn. She pointed to the inconsistent positions in the mother's recent statement.
- f) She was shocked to see how the mother had prioritised her desire to see A over her emotional support for B. She interpreted the mother's statement as 'scapegoating' B (talking about B going to the school 'off her own bat' and referring to her actions), demonstrating her inability to take responsibility and parent effectively by providing appropriate emotional support to her children. She was in no doubt that the mother would be

incapable of supporting A emotionally through the severe trauma and upset of yet another change were direct contact to be restored.

- g) She took it from the section 7 report that A did not want to see her mother or sister, so attempting to restart contact after 23 months would be highly traumatic and emotionally damaging for her and would likely break their relationship down even further. Continuing the indirect contact is the only realistic way of prioritising a positive relationship. The adults could not communicate with each other and they could not afford to fund supervised contact.
- h) B had continued her vile lies. What was her desired outcome? She had been receiving support through CAMHS, Action for Children, the school chaplain and now the support service but showed no signs of acceptance, change in her behaviour or moving on. *“It is a mockery to real victims of abuse and I have simply had enough of this disgusting behaviour.”* If any further allegations were made all contact would be ceased.
- i) The destructive never-ending court case had caused irreparable damage to the father’s health. The thought of communicating with the mother, handovers, accusations, her and contact supervisors looking out for ‘worrying signs’ in A’s behaviour and the emotional anxiety and upset in the lead up to and following contact was just not a road they were able to go down again. A losing her father to suicide would be far more damaging than continuing with direct contact. A would likely grow up blaming herself and with poor mental health.
- j) She was prepared to meet with Dr Jefferis. She was also willing to meet with me.

*Hearing on 29 October 2019*

- 196) The father and stepmother did not attend this hearing either.
- 197) There was further discussion about the appropriateness of a meeting between me and the father and/or stepmother. That was not supported by Ms Branigan or Mr Langrish who were concerned about the perception it might give the mother of possible bias. In the hope that, as in fact happened, Mr Hand’s perceived neutrality and long involvement in the case might enable him to open up communications with the father and stepmother, further consideration of the course suggested in paragraph 100 of my judgment of 21 October 2019 was deferred until the dispute resolution appointment on 6 December.

*Dr Jefferis’ report 2 December 2019*

- 198) Dr Jefferis saw A (at school), the stepmother mother, and B for the purpose of his assessment. I set out below summaries of Dr Jefferis’ assessments of each of them.
- 199) The father would/could not meet with him. This did not impress Dr Jefferis. He noted that father was able to function to the extent that he could work and parent A, yet he was apparently unable to engage in conversation with him which would have given the father an opportunity to put his point of view across and to help him address the questions posed. He noted that the father’s statements to the court were sometimes inflexible and strident, laying down

demands and making threats, suggesting stubborn and brittle personality characteristics impairing his willingness and ability to participate constructively in the proceedings. Notwithstanding this, Dr Jefferis felt he had been able to address the questions he was asked without meeting the father.

- 200) Dr Jefferis concluded that constructive or progressive solutions to contact remained elusive. While in principle there could be some benefits for A in having direct contact with her mother and sister, the disadvantages of a resumption of contact are likely to significantly outweigh the potential advantages. He did not recommend the resumption of direct contact, rather indirect contact should continue.
- 201) For Dr Jefferis the factors that weighed against direct contact included:
- a) Having not had direct contact for nearly two years, A had accepted the current arrangements and it is likely that she would experience any change in arrangements as disruptive and unsettling.
  - b) Stability should be the priority in view of the many years of uncertainty and tension associated with the protracted proceedings about her.
  - c) B continues to claim she was sexually abused by the father and has repeated those claims to professionals in 2019. She is angry, bitter and mistrustful and shows no sign of adjusting her stance. There is a risk of further allegations and risk of threat to the family's stability and safety, for example, vigilante action.
  - d) The mother holds highly contradictory beliefs about the allegations which is likely to lead her to be unpredictable and incoherent in her approach to this issue and contact. The allegations would remain a major source of mistrust and hostility between the adults and, given the bitterly contested proceedings ongoing since A was one year old, were likely to lead to further complication, tensions, disagreement, resentment, anxiety and difficulties should direct contact be resumed.
  - e) The four adults are not capable of enabling direct contact to take place in a way that would protect A and prioritise her needs.
  - f) Risk of further manipulation or influence by the mother and B to develop negative feelings about the father and stepmother.
  - g) A high risk that the father's mental health would deteriorate, with the specific risk of further suicide attempts, which would have an adverse impact on A. Mental health professionals had drawn attention to the negative impact of the proceedings upon the father's mental health, which should be taken into account by the court.
  - h) There is the risk that failure by the father and stepmother to adhere to court orders means they could be prevented from caring for A with the likelihood that she would be placed in foster care and facing a highly uncertain future regarding her attachments and family relationships.
  - i) Loss of relationship with the father and stepmother would have a catastrophic effect upon A in the short, medium and long-term and could cause profound lifelong psychological damage.

- j) The risk of further proceedings, which would be abusive to A (as a previous guardian had observed).
- k) Assessment of A showed evidence of the adverse impact of her experiences (including family conflict and tension). The factors above indicate that the resumption of direct contact would compound this and place A at increased risk of long-term psychological problems including emotional disorders and relationship problems. Dr Jefferis regarded the likelihood of resumed direct contact running smoothly as negligible, given that these parents had been in dispute for the last seven years. There would at the least be tense handovers and complaints about the conduct of contact.

*Dr Jefferis' assessments of A, the stepmother, the mother and B*

202) A

- a) Dr Jefferis saw A for 1½ hours at school and completed the Family Relations Test (FRT), the Story Stem Assessment Profile (SSAP) and the Bag of Feelings exercise with her. He also obtained information from A's deputy head teacher and ELSA teacher.
- b) A joined Dr Jefferis willingly but with trembling hands, giving an impression of underlying anxiety, but reducing as the session went on. The ELSA teacher had similar observations and said that A sometimes seemed on guard, giving the impression that she worries about being "caught out" by saying the 'wrong' thing.
- c) Predictably A allocated the majority of positive items to her father and stepmother in the FRT while allocating the vast majority of negative items to 'Mr Nobody'. She did allocate one strong negative item to her mother and sister but was reluctant to elaborate why, save to explain that she thought they may be "not nice people". The fact that A allocated all but two or three positive items to her father and stepmother jointly suggested to Dr Jefferis a degree of defensiveness ie an inability to meaningfully differentiate between these two attachment figures.
- d) The allocation profile (and the fact that she did not automatically allocate negatives to her mother and sister) was a hopeful sign that A did not treat them as demonised figures. Her profile did not suggest she had been subjected to an active campaign of alienation by her father or stepmother.
- e) Questions about contact tended to get a "don't know" response. Sometimes she said she could say more but it was difficult to talk about. Asked whether she would like to see her mother and sister A said, in a straightforward way and without strong emotion, she does sometimes feel like this. When asked how she would feel if contact stayed as it was (indirect only) A said she would feel alright about it. There was a slightly more ambivalent response when asked if she would complain to the judge if contact stayed limited to indirect contact, saying she did not know what she felt about this.
- f) If A had questions about contact she said she would feel able to ask her father and stepmother and they would answer. When Dr Jefferis asked



her questions directly about this A became distractible and disengaged suggesting she was uncomfortable talking about such matters.

- g) A seemed surprised when she heard B was now 18 and uninterested finding out about aspects of her life and plans after leaving school. Presents from her mother and sister were “*weird but nice*”.
- h) Asked if she knew why she wasn’t having direct contact A replied, “*Of course I know*”, but then hesitated and was unwilling or unable to elaborate. She confirmed it was something difficult for her to talk about.
- i) There was a general poverty in A’s narratives in the SSAP, steering clear of imaginative, difficult or lively themes. She had a tendency to ‘neutralise’ emotive themes by frequently showing characters going to sleep or producing very short and abruptly concluded narratives. Adults were sometimes disengaged from child protagonists in the narratives, being unaware of the child’s needs at times. More positively, there was little in the way of cruel or violent behaviour by adults. The child would take over and sort out parental arguments – suggesting that the adults were incapable of sorting out the problem amongst themselves.
- j) There was very limited depiction of pleasurable everyday life and affectionate interactions in A’s narratives, themes which tend to occur more frequently in the narratives of securely attached children, contributing to a low secure construct score. However, Dr Jefferis suggested caution about this interpretation given the general poverty in A’s narrative content.
- k) Elevated defensive and low secure scores placed A on the border of the clinical range rather than firmly within it. Dr Jefferis thought nonetheless that they indicated a degree of psychological damage. A’s scores gave the impression of a child who is constrained in her ability to fully express and explore her emotions and a defensive stance which has most probably developed against the backdrop of complex and troubled family relationships. Children in such circumstances often partially shut down their emotional functioning as a coping strategy, likely to lead to psychological problems as they get older. A’s portrayal of adults as less than fully aware of, and attentive to, the child’s needs may reflect her experience of the adults in her life being preoccupied about their own concerns, including the conflicts about the proceedings which is likely to have drawn their focus away from A’s needs.
- l) A was not preoccupied in her narratives with family conflict and tensions. This supported the view from the FRT that she had not been subjected to a campaign of alienation.
- m) A’s defensiveness continued through into the Bag of Feelings.
- n) Dr Jefferis’ assessment of A was generally consistent with the stepmother’s view that she has moved on emotionally and is not preoccupied with questions about the absence of direct contact, notwithstanding that she has some complicated feelings about her family situation. She has a defensively avoidant style of emotional functioning and underlying anxiety as a result of the prolonged hostilities within her family.

- o) It may be, thought Dr Jefferis, that A did not wish to stir up trouble or cause problems for the father and stepmother by being more positive about seeing her mother and sister. But she did not give the impression of being pressurised to take a particular stance or that she had been alienated. She had largely accepted the situation and reached an emotionally stable position regarding contact. There is therefore a concern about the extent to which resumption of direct contact would be unsettling and disruptive for her.
- p) An independent social worker who had observed contact observed high levels of expressed emotion, for example comments about how much the mother was missing A. Also concerning were comments suggesting that the court situation was unresolved.
- q) The deputy head teacher and ELSA teacher reported A as settled and contented at school. She did not stand out as a child with problems. She was a bit ambivalent about the ELSA sessions, tending to clock watch and wanting to get them over with (as she had within the session with Dr Jefferis).

203) The stepmother:

- a) There is little by way of assessment of the stepmother in Dr Jefferis' report, rather the focus was on A's circumstances. Dr Jefferis found the stepmother more straightforward and open than he had anticipated from the tone of her statements.
- b) The stepmother talked about how A had become much more settled and confident since the last direct contact in January 2018. When contact was taking place she was anxious, shaky and would cry out in the night. She fixated on details and needed to know exactly what was planned and what the alternatives would be if plans didn't work out. There would be a significant period of anxiety leading up to contact and upset afterwards. A was now less troubled by conflict of loyalty and changes in her life and had a more 'normal' lifestyle. She valued routine and stability. These positive developments would be reversed if direct contact were to resume.
- c) The stepmother said they have told A that contact is limited to indirect contact because her mother and sister didn't keep to the rules about the way in which they were supposed to behave. When A asked "*Why would they do that if they want to see me*", she was told "*They love you but they don't like daddy*". Although A had asked such questions a number of times after direct contact stopped, she rarely did so now.
- d) They had provided the mother and B with Cafcass guidance about indirect contact. The content of cards tends to be limited. B refers to missing A which unsettles her, saying "*If they miss me so much they must be upset*". A did not seem strongly motivated to respond and needed encouragement.
- e) They try to create opportunities for A to talk about how she feels about missing her mother and sister but she does not tend to talk much about it. She felt A had accepted the situation and 'moved on' emotionally into a phase where she was no longer strongly troubled by the lack of direct contact.

- f) The stepmother has been in A's life since she was two. As she tends to spend weekends with A (while the father is working) she may be a little more open with her than with her father, although she is comfortable talking to him too. A calls the stepmother by her first name, but refers to her as "my mum" to others. She refers to the mother as "my other mum" or "mummy".
- g) Asked about the effect of resumption of direct contact on the father, the stepmother said it was "not an option". She strongly believed it would provide a trigger for further allegations. The father's suicide attempts were triggered by the stress caused by the successful appeal and resumption of emails about the re-opened proceedings. They both felt "trapped in a living hell" and whatever they did "we can't win". The drawn-out proceedings had "poisoned everything" for seven years. There had been no indicators the father was contemplating suicide. He had not been receiving mental health treatment. He had at some point been prescribed antidepressants and she thought there had been an episode of self-harm in 2010 due to the stress of losing his job. She said the father has a tendency to self-blame. He had got himself to the illogical persuasion that if he was not around anymore the proceedings would come to an end for her and A.
- h) The father has been offered one-to-one psychiatric sessions but had chosen not to pursue them while the proceedings were ongoing. I have subsequently seen a letter from his psychiatrist saying that treatment would not be appropriate pending the proceedings – suggesting that the trauma of the proceedings itself acts as a bar to mental health interventions.
- i) The stepmother thought "No one gives a damn what we say", and, if they did, "this ridiculous appeal would not be happening". She regarded 'identity contact' as something of a technicality not justifying the re-opening of proceedings.
- j) She talked about how much more difficult things became after 2015 when they lost their entitlement to legal aid and since when they have been litigants in person. They had had to put a huge amount of time and effort into managing their own case. The fact that the mother and B had continued to have legal aid created an enormous imbalance. This had taken an enormous toll on them.
- k) The stepmother explained that she did not wish to have her parental responsibility for A removed but she could not risk the destruction of her professional career if she felt she could not comply with the court's requirements. If she no longer had parental responsibility she could not be held legally accountable for the father's refusal to comply.
- l) She repeated that she did not believe the mother and B's behaviour had changed. If they continued with their allegations there was a risk of vigilante action.
- m) The stepmother did not present to Dr Jefferis as vengeful or malicious. She was reasonably thoughtful and reflective. She did not appear motivated to alienate A against her mother or sister. She gave a coherent

picture of A moving on emotionally after the cessation of direct contact. She conveyed a strong sense of the impact the proceedings are having on family life.

204) B:

- a) Dr Jefferis described his meeting with B as uncomfortable. There was a pervasive sense of sadness, bitterness and angry resentment about her predicament. She was tearful for much of the meeting. He described it in evidence as a very difficult tense meeting and said it was hard to establish a constructive dialogue or rapport. He felt he approached the meeting carefully and stressed a number of times that he was listening to her and tried to empathise. However, B wasn't receptive. Largely B's anger was directed towards the system, save a point when she thought Dr Jefferis was smiling. He said that B was articulate and did not shout or raise her voice but nor was her anger controlled. Dr Jefferis thought B presented as a deeply mistrustful individual who trusted no one in the legal proceedings.
- b) B did not think contact should be limited to identity contact or indirect contact because "*I haven't done anything wrong*". Such contact couldn't possibly enable a meaningful relationship with A. The theme that she and her mother were being punished was repeated during the meeting, giving rise to a strong sense of indignation and resentment.
- c) B wholly rejected the concern that she would make negative comments about the father to A in contact, saying there was no evidence to suggest this had ever occurred or would in the future. Her relationship with A had "*nothing to do with her dad*".
- d) B seemed to minimise the significance of her visit to A's school, saying she simply went to ensure A was being provided with appropriate support.
- e) Although Dr Jefferis made clear he would not ask B in detail about her allegations, he did ask about her perception of how the court and police had responded to them. She thought the matter could not be taken further because it was her word against the father's. The police officers had told her they believed her. She had returned to the police in July 2019 to repeat the allegations because she felt more confident and assertive and able to provide more detail, having felt unable to give the full story when interviewed previously. Her understanding was that the police could not take matters further as the allegations had already been investigated. Although Dr Jefferis recorded B as saying the abuse happened when she was in Year 8, B was clear she had said when she was 8 years old, as the mother also confirmed (and, as I noted, the same age A is now).
- f) She said the 2019 report to the police and children's services had resulted from what she had said at school. Asked if she intended to take the matter further, B said she was unsure and expressed a sense of pessimism about the likelihood of any meaningful action being taken. She did not trust anybody in the process. "*All I've done is to try and be honest and told the truth*", but she felt punished as a result.
- g) B said she has been attending the support service for about a year and they were "*helping me through the injustice*" and were concerned about "*what*

*I am going through*". She had attended CAMHS between ages 10 and 12 but that had not helped as she still could not see her sister.

- h) B was aware that Mr Stringer had described her as *"the most damaged person that he'd ever assessed"* but said he was wrong in that assessment. She had been emotionally damaged at the time but not to the extent described by Mr Stringer.
- i) B felt that the question of contact hadn't been taken seriously at all – *"the legal establishment had just been toying around – not taking it seriously"*. When Dr Jefferis challenged this, B responded *"They put her [A] in the hands of someone who is completely unsafe."* She said, *"I've been honest but it's been shoved back in my face"* and complained *"I have not been taken seriously"*. When Dr Jefferis pointed out she had said she had been believed by the police, B said *"I'm not the first person to make allegations"* and referred to the circumstances of inappropriate behaviour in which she says the father lost his job in 2010.
- j) B said she found writing cards to A difficult because *"It feels like I'm writing to her dad"*.
- k) While having sympathy with B's situation, Dr Jefferis considered she presented with a very narrow point of view, unwilling or unable to appreciate that other people might legitimately have different ways of viewing the situation. There was an absence of reflective thinking. Her bitter and intense feelings of resentment, anger and injustice made it difficult to step out of this emotional state in order to take a constructive approach to the situation. Thus she found it difficult to express preferences about how contact should happen if reinstated. She lacked understanding about the significance and impact of her own actions, specifically her attendance at A's school.
- l) It is likely, in Dr Jefferis' view, that B will continue to make allegations, given her presentation and recent actions.

205) The mother:

- a) The mother said had she been aware of B's plan to visit A's school she would have told her not to. She too said there was no evidence she had or would talk to A about the allegations. Asked how she felt about B's repetition of the allegations in 2019 she said, *"I can't say I disbelieve [B] but I accept the court's findings"*. According to Dr Jefferis this led to a confusing conversation in which she said *"I accept that it didn't happen"* before re-iterating *"and I don't disbelieve her"*. Put that this was a contradiction the mother did not accept this, saying, *"no, they are different things"*. She said she would not want A to know about the allegations because she hoped she could be encouraged to see both parents in a positive light. She worried that she and B were not portrayed positively by the father and stepmother, referring to the recent section 7 report.
- b) Dr Jefferis asked the mother to consider the possibility that B's allegations were not true. She said the school chaplain had reassured her *"children don't make up these things"*. She was asked very specifically whether she had ever had any shadow of doubt whether B may have fabricated her

allegations, to which the mother responded “*No, never, and neither have any of the professionals who worked with her*”. She thought the ongoing proceedings may have raised a question for the police about B’s motivation in renewing her allegations.

- c) The mother talked about a volatile relationship with the father within which he frequently lost his temper to the point where she was frightened of him. She described him as controlling, for example taking her phone from her. She accepted she had said horrible things to him in the heat of argument.
- d) She described a complicated relationship between B and the father, with B complaining that the father didn’t like her. Nonetheless the father could be a fun and playful parental figure with her.
- e) The father had ended the relationship in 2013 when A was 18 months old. She was not in a good way emotionally and had to be asked by the police to stop excessively messaging the father. She thought the police were sympathetic towards her and warned her the father was building a case. She talked about him contacting authorities (GP, health visitor, school) expressing concern about her suffering postnatal depression (she said while she had some difficulties adjusting to being a young mother, there was no diagnosis of PND). She said it was the situation rather than any underlying mental health difficulties that made things difficult for her. She did not agree with Mr Stringer’s hypothesised diagnosis of borderline personality disorder. She had done some training to be a counsellor.
- f) Like B, the mother did not see indirect contact as a viable way of maintaining a meaningful relationship with A. She became tearful discussing this. Writing cards, she said, was “*not the same as being able to put your arms around her*”. A had been a very happy little girl in a close family unit when living with her and B. She worried that A might now feel abandoned and angry with her. She thought it was wrong that A had not been given a proper explanation as to why there was no direct contact. Dr Jefferis asked what kind of explanation she felt A should be given. She suggested something along the lines “*it was decided by the court that this is the most sensible decision at the moment*”.
- g) Dr Jefferis asked the mother about criticism the father had levelled at her suggesting to A in contact that the situation had not been finalised (eg, telling A that “*All the grown-ups are working out what is best*”; implying that the situation was not resolved). She did not accept this criticism as justified, saying “*We were going through appeals*”. She did not want A to think it was impossible that she might be able for example to sleep over at some point in the future. Asked about defiant behaviour by A in contact, the mother put a positive interpretation on this, saying it was a sign she felt safe enough to express her feelings.
- h) The mother said she had only taken appropriate action to support B. She had adhered to court orders about behaviours around contact. She denied sharing confidential material with friends or others and rejected the view that she had exercised strong influence over B.

- i) She accepted there had been times when A was living with her when she had just taken her when angry. She denied being obstructive with the father about passing over basic information. If she had refused to give information it was either because the father would use it to cause trouble for her or because the allegations were being investigated. There was nothing malicious in her actions, she said.
- j) The mother confirmed she had no wish to unsettle A by seeking her removal from the care of the father and stepmother, although she qualified this by saying “*but I have concerns about whether her emotional needs are being met*” – that is, that she was not being given a positive impression of both parents.
- k) Asked about potential challenges should contact be resumed, the mother said, “*I would fear more allegations from the other side*”. The father has referred to an anonymous phone call when somebody shouted “*paedo*” at him and he heard a group of girls laughing. It is clear the father believes this was B. She denied any knowledge of this. The mother raised doubts as to whether this had ever happened. She said the father had also accused B of looking at him at a food festival when B had been performing with a theatre group elsewhere at the time.
- l) Asked about B’s contact with the police in June 2019, the mother understood such developments were distressing to the father and stepmother but said B was simply acting on advice from her counsellor that she should talk with safeguarding professionals.
- m) Dr Jefferis suggested to the mother that it was difficult to imagine contact taking place without difficulty and tension given that she and B continue to strongly believe A is living with a child sexual abuser. The mother reacted with surprise to this statement rejecting the assertion that she holds such a belief. That led to what was for Dr Jefferis a puzzling conversation about the nature of her beliefs and contradictory statements she had made.
- n) The mother said B had moved on from her position in 2015 and was more understanding.
- o) The mother said she had attended parenting sessions at Relate which had helped her develop child-focused parenting skills.
- p) While the mother offered firm assurances about her conduct if direct contact were resumed, including discouraging B from any conduct which might undermine the stability of A’s placement, Dr Jefferis considered there was a major psychological fault-line revealed in the assessment, namely the mother’s utterly contradictory beliefs about B’s allegations. Dr Jefferis considered the mother’s position on this to be unresolved and incoherent giving rise to likely difficulty acting and thinking in a consistent and organised manner in relation to contact. Dr Jefferis referred to the context of allegations that the mother had coached B to make allegations and shouted at B when she would not discuss the allegations and findings (by District Judge Willis across his two judgments) that she had influenced friends and associates to believe in the allegations, that she lacked the ability to accept points of view other than

her own, had a deep-seated animosity towards the father and was determined to deprive the father of a relationship with A.

- q) In this context, Dr Jefferis view was that the mother's behaviour regarding contact, and her interactions with A, would be unpredictable and there would be times when her hostility towards the father would influence her conduct. So the risk of further complications and problems around contact would remain very high, with adverse consequences for A.
- 206) Dr Jefferis was asked to report about the impact on A of loss of a crucial relationship with her mother and sister in the short, medium and long-term. While he thought A would experience some confusion and sadness and her sense of identity may not be as complete as it might be (although he questioned whether direct contact would enable her to develop a coherent sense of identity), the disadvantages of contact outweighed any potential benefits. He considered that direct contact would be harmful. The impact could be mitigated through indirect contact.
- 207) Criticism is levelled by Ms Branigan and Mr Langrish and the lack here of consideration of the long-term impact on A. Dr Jefferis did go on to deal briefly with the impact on A's sense of identity and self-esteem but said that the resumption of direct contact was likely to be harmful to A's emotional and psychological well-being, although how long-term that damage might be was unclear from the report.
- 208) Dr Jefferis was asked specifically to comment on the possibility of identity contact. He dealt with this simply by saying that in his view the adults were not capable between them of enabling direct contact to take place. He did not recommend any form of direct contact.
- 209) Asked whether contact could be considered at a future date, Dr Jefferis thought it would be helpful to A to be reassured that the matter of contact had been settled and would not be re-opened for at least five years. It might be in her interests to re-visit the question of direct contact around that time (when she is in her teenage years and if A makes it clear she wishes to do so) but only after careful evaluation of her views and wishes by an appropriate professional. The adults would also have to come to an agreement about the version of events which A should be given about the reasons behind the decisions made about contact. He doubted that the adults would be likely to change their positions and be amenable to therapeutic work other than, perhaps, supportive counselling.
- 210) Dr Jefferis recommended that A's therapeutic needs should be kept under review, particularly given her tendency towards defensive avoidance. He did not think she would be able to engage in such work until 6-12 months after the proceedings have concluded.

*Dispute resolution appointment 6 December 2019*

- 211) The father and stepmother did not attend this hearing. Mr Ward-Prowse represented the mother who attended court but she was upset and had to leave. Mr Ward-Prowse told me there was an acceptance in the mother's mind that, in light of Dr Jefferis report, her application was over. As he described it there was "*an inevitability that stumps would be drawn on the first day*". He said the father and stepmother could be told that the matter was unlikely to proceed to a



final hearing. A conference would be arranged for the mother to consider Dr Jefferis' report with Ms Branigan.

- 212) Mr Tim Coombes represented B at that hearing. Although B had been sent a copy of Dr Jefferis' report there had been no response from her, so Mr Coombes was unable to tell me her position.
- 213) If the matter was to be resolved it seemed sensible for everyone's sake that should be done before Christmas. So I listed a further hearing for 20 December.

*The hearing on 20 December 2019*

- 214) Shortly before the hearing on 20 December position statements were filed by the mother, B and the stepmother. It was apparent from the statements of the mother and B that they did not accept Dr Jefferis' recommendations and wished to pursue the matter to final hearing. The stepmother too indicated her and the father's intention to pursue their applications for non-molestation, prohibited steps and section 91(14) orders.
- 215) The father did not attend the hearing on 6 December but the stepmother did. She told me that the father would not be able to attend the final hearing because of his mental health state. She said she would not be able to attend because of the pressing needs of her university studies which would last until June 2020. I made clear to the stepmother that the final hearing would proceed in January, if necessary in their absence. I said that if they did not attend and their statements were not tested by cross-examination, their evidence may carry less weight. I encouraged them to attend and asked them to confirm whether they would do so in order that consideration could be given to the issue of witness summonses if necessary.
- 216) I directed statements by the father and stepmother in support of their applications for non-molestation orders in respect of the mother and B with statements in response. I also directed a guardian's analysis. In the event that the father and stepmother could not attend the final hearing I made provision for written questions by them of witnesses and written questions of them by other parties. This at least would enable some level of engagement in the hearing process.
- 217) It was agreed that the mother and stepfather should attend court to give their evidence on Monday 20 January. They indicated they did not wish to put questions to the other witnesses and so would not attend the other days of the hearing.

**The final hearing 10 January 2020**

- 218) Dr Jefferis attended as scheduled to give evidence on the first day of the final hearing, a Friday. Unfortunately, while Ms Branigan attended with Mr Ward-Prowse to represent the mother, Ms Branigan learned while at court that she was suffering from pneumonia. It was obvious that she would be unable to represent the mother. Dr Jefferis indicated his willingness to come back on the afternoon of the following Tuesday, 14 January to give his evidence. I adjourned until Monday 13 January anticipating that would give Mr Ward-Prowse, who had long involvement in the case, time to prepare his cross-examination of the expert and other witnesses.

- 219) When the matter returned on Monday 13 January the mother was absent. Mr Ward-Prowse told me that she had attended her GP the week before and been diagnosed with anxiety. She had been diagnosed a low dose of Diazepam to be taken when needed. A very short letter from the GP said simply that he did not think she would be fit to give evidence for the next couple of weeks.
- 220) The mother had attended the hearing on Friday 10 January and it was hoped she would be able to attend on 13 January but did not feel able to do so.
- 221) Mr Ward-Prowse applied to adjourn the final hearing for four weeks.
- 222) The first limb of that application was the absence of the mother. Mr Ward-Prowse conceded that the GP's letter was not adequate. However the mother had the right to be present, particularly to hear Dr Jefferis' evidence. Mr Ward-Prowse described the mother as being in quite a state which, having represented her for some years, he could say was unusual for her.
- 223) The second limb was that representation by Ms Branigan was very important to the mother's case. Legal aid had been granted for leading counsel and the mother deserved to have leading counsel cross-examine the expert, whose evidence was pivotal.
- 224) Mr Langrish supported the application to adjourn saying it was important there was a fair process.
- 225) Mr Hand opposed the application saying there is no right to leading counsel. In any event, he suggested, other leading counsel could be briefed over night.
- 226) I required that the stepmother be asked her position on the application to adjourn. She sent an email opposing any delay and pointing to enforcement steps taken against the father at times when he was ill.
- 227) I refused the application to adjourn. I agreed with Mr Hand there is no right to leading counsel, whether or not authorised under a legal aid certificate. The right is to representation by competent counsel. Mr Ward-Prowse is a very experienced counsel, very familiar with the case, and was in my judgement competent to undertake the cross-examination of the witnesses including Dr Jefferis. He had told me Ms Branigan had prepared notes for cross-examination of Dr Jefferis and I was sure those could be made available to Mr Ward-Prowse to assist him. I did not consider it realistic to expect that leading counsel could be briefed at such short notice in such a complex case.
- 228) As to the mother's absence I referred to the judgment of Warby J in *Decker v Hopcraft* [2015] EWHC 1170 (QB) which summarised the principles set out in a series of cases: *Fox v Graham Group Ltd* The Times 3.8.01, *Levy v Ellis-Carr* [2012] EWHC 63, *Forrester Ketley v Brent* [2012] EWCA Civ 324 and *Bank of Ireland v Jaffery* [2012] EWHC 734 (Ch). In *Fox v Graham* Neuberger J had stressed that a court faced with an application to adjourn on medical grounds made for the first time should be hesitant to refuse the application. The authorities established a number of qualifications to that:
- a) The decision is always one for the court and not one that can be forced on it by non-attendance.

- b) The court must scrutinise carefully the evidence relied on in support of the application which should include a reasoned prognosis tendered as expert evidence.
  - c) The court should consider whether the litigant's effective participation in the hearing can be achieved by reasonable accommodations being made.
  - d) Whether effective participation is possible depends on the nature of the hearing and the issues before the court and the role the party is required to undertake. Further the court's approach should be affected by whether the hearing involves case management decisions or final determination on the merits, where Article 6 is engaged.
  - e) It may appear that in truth one or other party is bound to succeed and the closer the case appears to one of those extremes the less likely it is that proceeding will represent an injustice.
- 229) As this was a final hearing point d) militated in favour of an adjournment, point e) is not applicable (as the case is in fact finely balanced) while on point b) the evidence in support of the application was plainly inadequate. I also had regard to the no delay principle in section 1(2) of the 1989 Act and the requirements of the overriding objective in FPR r 1 (summarised already in this judgment). It seemed to me the situation for the mother was not going to improve with an adjournment; if anything further delay would simply increase the stress on her (and others) and reduce, rather than increase, the prospect of participation.
- 230) This is plainly a case that requires early resolution. The continuation of proceedings has been described by more than one professional as abusive of A. If the application to adjourn was to be renewed I said I would expect it to be supported by a detailed medical report giving a reasoned prognosis and written by medical practitioner prepared to attend court to be questioned on his or her opinion evidence.
- 231) When the hearing resumed on 14 January the mother attended. So did Ms Branigan, characteristically prioritising her duty to her client and the court as she saw it and prepared to cross-examine Dr Jefferis.
- 232) Over the next four days of the hearing I heard the oral evidence of Dr Jefferis, the father, the mother, B, and the guardian. The father and stepmother attended only on 20 January, the day they gave their evidence. Very helpfully Mr Hand's pupil, Ms Mifsud, took a careful note of the evidence which was provided by email to the father and stepmother at the end of each day. At the conclusion of the evidence I adjourned for sequential written submissions to enable the father and stepmother to respond. Their submissions were received on 7 February.

*Dr Jefferis' evidence*

- 233) These are the main points from Dr Jefferis' oral evidence:
- a) B had said in her final statement that she was prepared to draw a line under her allegations. Dr Jefferis could not say he was entirely convinced by that.

- b) For there to be proceedings over seven years is harmful for A – she has lived almost all her life in an atmosphere of tension.
- c) Given A's presentation at school and the description of her by the stepmother, any psychological harm may not be overt but there is evidence of some harm. She is certainly defensive and reluctant to talk about emotive issues. Given the poverty of content in her narratives some caution is needed when interpreting what she says. The fact that there was limited depiction of pleasurable everyday life does not mean it did not exist for her.
- d) Typically attachments are laid down in the first couple of years, in this case when A was primarily with her mother.
- e) Ms Branigan asked what happens to a child when a coping strategy is no longer effective. Dr Jefferis said, if the coping strategy stays in place, there may be general difficulty in accessing and regulating emotions, perhaps to the point where emotions are so suppressed that there is no functional way around them, coming out as anger or self-destructive behaviour. If the coping strategy breaks down this may become a lifelong habit and result in depressive breakdown if faced with sufficiently difficult circumstances.
- f) Indirect contact is not maintaining the mother in A's mind and at the moment A does not see her mother as part of the family, rather she is disconnected from it. Going into adolescence that is likely to affect A's identity formation and her ability to develop a coherent sense of how she is and where she comes from, which might impact on her sense of confidence and self-esteem. Much will depend on what else is going on in her life with her father and step-mother.
- g) He agreed that indirect contact was unlikely to heal anything that has happened up to this point and the trajectory was likely to be down rather than up. No direct contact risks low self-esteem, self-harm and emotional dysregulation and net effect is likely to be harmful.
- h) Dr Jefferis accepted it is not impossible that identity contact could mitigate those risks but he could not envisage a way of this happening which doesn't stir up tension and anxiety.
- i) He agreed that there was no example of anxiety because of experience in contact itself. There was no sense of construct about what was wrong, but bearing in mind A didn't want to discuss things.
- j) The impression was that life for A had become simpler (since the cessation of direct contact) with less tension and anxiety as a result.
- k) The contact notes did indicate a level of expressed emotion and occasions when the mother became upset. He was concerned contact could be an arena within which there are unregulated emotions and when it is suggested that matters are unresolved.
- l) Life story work is important for A to help her make sense of what has happened in her life and to help her move forward. It didn't happen in 2017. A coherent narrative is important for her. It would be a tough task, particularly at this age. Exploratory work would be needed to see where

A is at. The story may need to be elaborated or revised as she develops. She doesn't understand why contact cannot take place and that is an additional vulnerability for her. She would not understand why B is living with her mother and she can't. A lot will depend what else is going on in her life. The adults have been pre-occupied by the proceedings; that may change if they come to an end.

- m) Ms Branigan asked just how does a parent reconcile the competing elements of accepting findings and supporting her daughter? Dr Jefferis acknowledged it was very difficult. It is right that a parent should be sensitive but she needs also to be able to say (to herself) she is not sure if B is telling the truth. Instead the mother holds two parallel beliefs in an unintegrated and unresolved way. This leads to unpredictable and erratic behaviour and is a problematic position to have. If she had said she was in real turmoil, that would have been a healthier position. She was trying to ride two horses but pretending not to.
- n) The mother wanted to give the impression of compartmentalising the children so that A was not infected by the allegations. Dr Jefferis wasn't convinced the mother would be able to manage that in contact, although he accepted there is no evidence of the mother saying anything to A in contact about the allegations. There is an unhealthy element of denial in that position. He accepted this may have been the mother's way of trying to make it work.
- o) Dr Jefferis was not sure whether the situation would become easier if the mother and B's contact with A were separate. It may be more straightforward and he agreed the mother had not demonstrated the vehemence B has and had been better controlled.
- p) While Dr Jefferis agreed that understanding what is happening at school would help indirect contact, he would be cautious about the mother attending the school to talk to teachers. It is likely A would find out and her school environment is a neutral safe place for her. The mother should have A's school reports. He wondered whether having photos of her mother and B might stir up unhelpful emotions in A, but thought that was just something that has to be managed. If it was unsettling perhaps it shouldn't be continued. There is no reason why the mother shouldn't have photos of A; it helps maintain the link.
- q) Pressed on the idea of separate identity contact, Dr Jefferis maintained there is a real risk that any form of direct contact will unsettle A, with the risk of such contact being emotive. While the mother's recent statements were appreciated, there was a background of behaviour identified as consistent at least with borderline personality disorder. Her contradictory beliefs were in that territory. While he had not assessed the mother for BPD he was confident she has personality problems. He was worried that the mother's behaviour in contact would be unpredictable. It is difficult to see how contact could be conducted in a straightforward way with both the mother and B believing A is living with a paedophile.
- r) Mr Langrish challenged Dr Jefferis on what B said were some factual inaccuracies in his report (eg reporting B as saying the abuse happened in

year 8 not when she was 8). Dr Jefferis was clear he had noted carefully what she had said.

- s) It was put that B is now weary, resigned to reality and a spent force. Dr Jefferis found it hard to trust in that. There was live agitation and concern about the injustices visited upon her by professionals and the court. She minimised what happened when she went to A's school. There was not enough insight into her behaviour or acknowledgment of its impact. Dr Jefferis was not convinced that the good intentions in her statement would translate into practice (although he accepted he had not discussed this with B). If she was close to transition this would have been more evident in assessment.
  - t) Mr Langrish suggested that at the point of the assessment the police investigation had not closed. In fact, B was told on 29 October 2019 that no further action was being taken. She met with Dr Jefferis on 12 November 2019.
  - u) Dr Jefferis said that the risk of the mother or B making direct reference to the allegations was relatively low down the list of his concerns about direct contact. His greater concerns are around the tension and anxiety it would introduce and the risk of high emotions during contact itself. It is difficult to believe that their belief A is living with a paedophile isn't going to impact of the quality of their interaction.
  - v) Dr Jefferis accepted that the current family situation is unsatisfactory, although it is stable. This is a least worst option for A.
  - w) Dr Jefferis reference to 'possible benefits' from contact was challenged by Mr Langrish. Dr Jefferis said this was the use of cautious language indicating the need to weigh the benefits in the balance.
  - x) He agreed that things would become less simple for A when she is 10, 11 and 12 years old and that decisions now may prejudice her situation in the long term. The way out for a child in her situation is through strong attachments with her primary carers.
  - y) The only way of addressing B's situation would be through a long period of psychotherapy with somebody not allied to a sexual abuse service.
- 234) Dr Jefferis seemed to accept that his report did not fully articulate the long term impact on A of loss of crucial relationships, although he did refer to loss of identity and self-esteem.

*The father's evidence*

- 235) The father attended to give evidence on 20 January. B had agreed not to attend the hearing that day, although the mother did.
- 236) Mr Hand told me of his discussions with the father that morning.
- 237) First, the father asked to give evidence from behind a screen. Initially he insisted that only I should be able to see him.
- 238) Secondly, the father asked that the stepmother sit next to him while he gave his evidence from the witness box. I agreed on the basis that they would not be allowed to communicate while he was giving his evidence.

- 239) Thirdly, the father had said that he was only prepared to give evidence about the need for a non-molestation order and was not prepared to answer questions about any other topic. Mr Hand had explained to the father that Ms Branigan would want to go beyond that topic. The father had said that if she did ‘he would walk’. Having heard submissions on the point, I asked Mr Hand to tell the father that if he went into the witness box I was not prepared to confine the topics on which he would be questioned. I also stressed the importance of the lawyer questioning being able to see him, not least so that the lawyer could adjust questioning or pause if the father became distressed.
- 240) On this basis the father agreed to give evidence.
- 241) These were the main points from the father’s evidence:
- a) He was in fact a much more robust witness than expected. He answered questions confidently. He had a clear grasp of the information. Although he said he had skim read Dr Jefferis’ report, he clearly knew it in detail.
  - b) A enjoyed contact with her mother. Sometimes she had contact with her separately from B. A did not say anything suggesting the mother or B had talked about the allegations or had otherwise been influenced. But they have used the contact time to make further allegations.
  - c) Before contact A would be apprehensive and go into a routine almost like an autistic style of needing to know exactly what was happening. Afterwards she would come back distraught because of something that had happened. They had always supported A’s relationship with her mother and B and made it clear to A it was ok to have a relationship with them.
  - d) Since changing to indirect contact, A had changed into a different child, excelling at school. She is confident enough to go to friends’ houses, which she wasn’t before. She no longer had sleep disturbance (this was a major thing for her).
  - e) Asked what he would do in 4 or 5 years when A says she wants to see her mum, the father said he would refer back to professionals for advice. If she did, they would fully support her.
  - f) A knows her mother and sister said false and untrue things about him and the stepmother; that had been discussed with the first guardian.
  - g) Asked about A saying to the social worker “*they are rude to mum and dad – that’s what [the stepmother] and dad told me*”, the father said they had not told A that, it was her interpretation. They had to give an explanation why there was no contact. They told her she was not seeing her mother and sister as the judge had made a decision in her best interests and the reason was they were saying untrue things about him and the stepmother. She asked what and they said they could not go into that until she was older.
  - h) In 2015 they asked for help from children’s services and Cafcass and received none. They asked the guardian to complete life story work and were told it was not in her remit. So they went to A’s school and asked for emotional support for her.

- i) As A gets older she asks more questions and it gets more difficult to stave off those questions. He knew A wanted to know more and understand the reasons. It is very difficult to know what it is appropriate to tell her and what is not. He thought it was appropriate to tell an 8 year old that her mother and sister are not safe if it is the truth. That had come from the first guardian too, not just them.
- j) He accepted he had last spoken to the mother in early 2014. There had been no communication since he had A in his care. He did not believe she had attended A's school.
- k) He wanted to upgrade the prohibited steps order to a non-molestation order, appreciating that would criminalise any breach. The mother had continued to defame him to organisations even outside the country. She had made further allegations to the police saying he was a risk to A, although not since February 2018 when the prohibited steps order was made. That order had been made because the mother had gone around parents and headteacher at A's school/nursery saying he was a paedophile. He did not think there had been any breach since B went to A's school in March 2017.
- l) Pending a bar on further applications contact should continue as at present. A needs to understand her identity and where she comes from. She knows her mother and sister love her and are interested in her. He had no objection to the mother receiving photographs of A (and there had been a photograph of her sent at Christmas). Although he and his wife sometimes helped A compose a response, the writing on cards was hers. He had asked the school to send reports to the mother direct and would follow up if the mother was not getting them.
- m) The mother would have an input into any change of school. There would need to be discussion with professionals about how she might be involved, given the need for the safety and security of his family. A would not be changing school for three years. They were not trying to remove the mother's parental responsibility, rather trying to find a way of encompassing it so that it was safe for A and them.
- n) He did not have to tell the mother they had moved address. She had made their lives a living hell and he did not need to tell her unless there was a law requiring him to. It had made no difference to her communication or indirect contact. If they moved again he said he would not need to tell her, although would tell her the area they moved to. There is a risk of vigilante action. B is trying to put him in prison. He would tell the court of any new address if directed to.
- o) Asked about A using social media, the father said she is far too young at the moment. If they had control over her use they may look at contact through social media in the future. It may be for A to say she was interested and professionals to say what is in her interests. Asked how the mother would know if A wanted to see her, the father said they had asked the school to have honest discussions with A and the school would contact them. If there was a five-year restriction on applications, they would say to A that she could not have contact for five years as the court



had ordered that. If A did contact the mother unsupervised, the mother should inform them and the court as it would go against the court order. He also said the mother shouldn't respond and should block A in that situation.

- p) He was against identity contact. A would go through anxiety and tension during such contacts and then there would be a process of bereavement again and again (he said from the child's viewpoint, because she would know she would not be seeing them again for some months). There was also the risk of further allegations, which is why he returned to court in May 2017 during the barring period. If identity contact was ordered he would not embrace it.
- q) He had told the social worker A would say she wanted to see her mum. In fact, when asked, she said she didn't. His view was naturally a child would want to see her mother and sister.
- r) A had seen so many professionals she pretty much knew what to answer: "*that is disgusting*".
- s) He had not slated the mother in any way. If he had it would be seen in A's cards. There was no evidence of alienation, "*despite everything they do to us*".
- t) He accepted the present contact would not be satisfactory in a normal situation but A's safety requires it. In the beginning she wanted more contact but she is quite happy with correspondence once a month now she is more happy and stable. She only gets three or four questions from them a month which would not develop a relationship – they could write more in each letter/card.
- u) As to sibling contact, they would again be guided by professionals. He thought that should not happen until A is 18 and understands the full facts of the case and can make up her own mind whether she wants to see the other side of the family.
- v) Even if direct contact could be managed safely he would not support it. This had been his position for years. It had been tried and it could not be done safely.
- w) He confirmed that if A were removed from his care he would not have a relationship with her until she was an adult. This was not washing his hands. He was saying she needed stability, not conflict, warfare, insinuations and accusations. For either of them to have contact with her in the middle would be the worst possible outcome and would have long-term consequences for her. She would have a better understanding as an adult.
- x) Regarding removal of the stepmother's parental responsibility, the father said she needed to get out of the conflict. They saw this as child-focused. She would not be deserting A. She would still be looking after her and that would not change, just her ability/requirement to make legal decisions.
- y) He could not engage with Dr Jefferis in his current mental state. It would affect his treatment. "*They have advised I should not be in court today*".

- z) He refused to answer questions about his view as to B's motivation in making the allegations. He thought B should not be going to the support service and Action for Children making allegations. She needs a holistic view. If they are getting one side that is causing more damage than help.
- aa) He said he was working on an NSPCC campaign against sexual abuse and with the same support service and her defamation was affecting this. It was preventing him getting enhanced DBS checks. Eventually it would destroy his career. This is why he wanted a non-molestation order against B. It is his legal right not to be defamed by B. It is ruining her family's life, her sister's life, he could lose his job, house, car and he could not cope with the stress any more.
- bb) He was sure B was the person on the phone shouting "paedo" at him. It could not have come from anybody else. It was around the same time she was making allegations and turning up at A's school. She is hell bent on putting him in jail. Although B had not contacted him or A directly in the last 2½ years (save presumably for the call when he says she shouted "paedo"), she has continued to harass him through her continued allegations, including to organisations he is working for.
- cc) Mr Hand said Dr Jefferis would want the four adults to pull together: *"That ain't going to happen"* was the father's response. *"The mother and sister had consistently lied to the court about getting over it. They are saying what they think the court wants to hear. There is no way I can reach out to the mother or [B] – I do not want to be in the same room or see them ever again. They have used court as a way to get to me... Even if the court concludes that they have moved on I cannot accept that... They are not going to change. They said the same thing to HHJ Meston in 2017... what had happened since has confirmed what I thought."*
- dd) The father described his mental health as at rock bottom. He had been saying to HHJ Meston in 2017 he could not cope. The court process is relentless. There had been 30 days a year spent in court. They had moved house. He was working full time. Trying to go through the complexities of the law at this level had consumed his life and he couldn't see it ending. It had sent him spiralling. He agreed he needed therapy. He had been under the guidance of CMHT, a psychologist and psychiatrist since May but they had stipulated he could not start therapy until this process had finished as it was too volatile.
- ee) In May he had looked at the scenarios. The only way he saw of releasing his wife from the constant stress was to end his life. He saw himself as the target and he was the cause of the problem. He knew now that was a distorted and illogical point of view but that was his mindset.
- ff) His wife had told HHJ Meston that she had contemplated walking away and that remains the position: *"I have asked her to leave me to stop her going through the crap"*. The stepmother looks after A more than he does and he thought she was A's primary attachment figure.
- gg) Asked by Mr Hand *"What if the court makes an order, you would comply with it wouldn't you?"*, the father responded: *"Feel free, I don't care, I'm not going through this crap anymore"*.

242) The stepmother did not give evidence herself but I asked her whether there was anything in what the father had said that she disagreed with. She aligned herself with his evidence entirely.

*The mother's evidence*

243) The guardian met with the mother on 10 January. I replicate here (anonymised) from the guardian's note the points the mother raised in that meeting:

- She is concerned that A is, "*withholding her emotions and not able to speak freely*". "*That she is holding things in.*" She informed that ELSA support have previously shared concerns that A is, "*bottling things up for later on.*"
- She is worried that no life story work has been undertaken with A. She is concerned that A may be angry towards her for the lack of direct contact.
- She described feeling that the proceedings have been, "*unjust*" and that she has "*a lot to offer [A]*". Furthermore, she feels she is "*being punished*", as is A.
- She stated she would protect A from the allegations.
- She said she understood the concern about parental conflict and that the adults are deeply mistrustful of one another and the subsequent impact on A. She described that she would be prepared to sit down with the father and stepmother.
- She described being very concerned about A being, "*alienated*" from her and that the prospect of future relationships being undermined in the absence of contact.
- Furthermore, she is concerned that, "*[the father] is trying to eliminate me from her life; to prevent me from speaking to the school, or say there was a health issue and I'm not told about it.*" She feels she is being, "*eliminated from [A]'s life*". Furthermore, she feels as though, "*[the father] is dictating things and preventing a fair trial. It doesn't feel balanced.*" She described that she would want, "*judicial mediation.*"

244) These were the main points from the mother's evidence:

- a) The mother started her evidence by saying that she was dyslexic and she struggled to understand questions and needed to take time. I wondered whether this might have impacted on her meeting with Dr Jefferis, particularly his conclusions about her inability to reconcile conflicting concepts. She apparently did not tell him she was dyslexic, nor did it appear anywhere else in the papers. She had not mentioned it because she thought she could manage.
- b) Mr Hand asked the mother about this. She said the meeting with Dr Jefferis had lasted three hours without a break save for a couple of minutes when she made a phone call. It felt like an interrogation. She felt under pressure and couldn't think clearly. She found it more difficult in stressful situations.
- c) She had last spoken to the father at the end of 2013 or early 2014 by telephone. She last went to his home address in 2013. She has never spoken to the stepmother or had telephone or email contact with her. She

has never accessed the father's email address. She has had no communication with A's school.

- d) A was always excited to see them in contact and they would do fun things. At the end of contact she would ask when she was going to see them next and would appear anxious to know when. Sometimes she got upset at the end of contact and then anxious that it should not get back to her father that she was upset.
- e) The impact on A of not having direct contact worried her. They had been so close for the first 4½ years. She worried reading about how A was bottling things up and seemed unable to talk freely about her feelings. She worried how her identity would be affected by having only one side of her family. A had been close to her maternal grandparents, who are in their 70s and in good health.
- f) She worried that she wouldn't be involved in decisions about senior schooling and that they might move and she wouldn't know where A was. She accepted that the father would have the final say about schooling, as A lives with him, but she would like to be consulted.
- g) She thought life story work was important whatever the outcome and she would be happy to participate in that, even if she was not having direct contact.
- h) Asked what she would do if A contacted her behind her father's back, the mother said that, as the situation is so difficult, she would ask social services or some other professional body to advise. She would be worried about responding and getting A into trouble. She wouldn't want to ignore her and thought blocking her (as the father suggested) would be really damaging.
- i) She needs to support B and be there for her (for example, by taking her to her counselling), however she would never dream of discussing the allegations with A. She needed to be protected from that. A needed to grow up seeing both the father and her in a positive light.
- j) She accepted the allegations were not proved. She was not going to say she didn't believe B. Nobody knows what happened except her and the father. Her thinking had changed slightly as time has gone on. It has been a difficult journey.
- k) She was clear she did not know anything in advance about B's visit to A's school. She told her about it a few days later. She was quite cross about what B had done and it hadn't been appropriate. She didn't think B would do anything like that again. She had seen a shift in her position. It had been a difficult lesson for a teenager to learn.
- l) Nor did she know B was going to the police in June 2019 until 19 July. She was concerned how this might affect the situation with A but also concerned that B needed moral support. B finds it difficult to talk to her about the allegations, preferring to talk to her counsellor. Doing her own work in counselling sessions has been really helpful to her. She thought B was moving on. B's relationship with A was so crucially important. B felt bad about the consequences of going to the school, triggering the

matter coming back to court in May 2017. She understood she mustn't do anything like that and must go to appropriate professionals.

- m) B's intention in going to the police was different from going to the school. It was part of her counselling, ensuring everything had been said, a cathartic experience. She had felt she had not been listened to.
- n) She thought B had drawn a line in the sand and there was an acceptance coming from being 18, maturity, learning through the process, counselling and feeling that she had said everything and could do no more.
- o) The mother had complied with the 2016 non-molestation order and was prepared for it to remain in place. She had no knowledge of the "paedo" phone call. She did not have a telephone number for the father. She had also complied with the prohibited steps orders and accepted there would need to be a framework around direct contact to keep A safe. There was no need to criminalise those restrictions however.
- p) If contact remains indirect she would like to send photos but couldn't be sure A would get them.
- q) She didn't think Dr Jefferis' report reflected who she was as a person. She felt he had made up his mind. It was a difficult meeting. She thought it was unfair to say she was an emotional person and that her emotions were likely to boil over into contact. He was asking her about traumatic things, having her child taken away, and she was naturally emotional talking about these things.
- r) She did not think Dr Jefferis' report reflected who B is either. She described B as really mature, sensitive, kind and thoughtful of others and very well liked. She had found it difficult talking to certain professionals. She was flourishing at college where she was motivated and had been accepted for university. She is a normal teenager. She disagreed with Mr Stringer's assessment of B as the most damaged young person he had ever assessed.
- s) B had never brought her beliefs into play during contact. She understood that would be damaging for A and she loves A more than anything.
- t) In response to a question I asked, it had not crossed her mind that A, at 8, was the same age as B had been at the time she said had been abused.
- u) The mother accepted that in 2015 she had, as the district judge found, been determined A should not have a relationship with her father. She was blind in the belief that something had happened. She did not think she had influenced her friends.
- v) She denied coaching B into making her allegations.
- w) She thought the judge was wrong to transfer A's care to the father, that was not in her best interests. She would have complied with contact orders; it was working, albeit not without difficulties.
- x) She agreed in 2017 she had been seeking investigation into the circumstances in which the father lost his employment and her concern he had been seeing a prostitute.

- y) She was asked by Mr Hand about letters written by the chaplain and T in 2017. She felt there was evidence that hadn't been considered and that concerned her. She felt now that she accepted the court's findings but she was not prepared to say she didn't believe B. She repeated that the only people that knew what happened were the father and B. Repeating a comment she made to HHJ Meston, she said, "*I wish I had years ago had my eyes open at that stage to know what was going on with my daughter*". She accepted she was saying the same things now as she said in 2017 but felt she had better understanding and more acceptance. The district judge saying it did not mean it did not happen had been difficult for her.
- z) She stressed she did not want to make life difficult for anybody. She just wanted contact. She did not see the need for that to be supervised.
- aa) Listening to the father give evidence, she did not think he would be able to get his head round that. She accepted on the face of it he had tried to kill himself, although did wonder whether that was genuine, and thought he should get help from professionals to try and see things from different angles. She accepted the father is struggling with his mental health. She wondered whether the suggestion that he could not get help until after the proceedings are over was coming from professionals or from him.
- bb) She thought in the past the father had done what he was told. She did not know, if there was an order for direct contact, whether she would apply to enforce it. She would do everything to try and make sure A was not caught in the middle. She would reassure A that she was safe in her father's care. If she were asked whether the allegations were true she wouldn't say yes or no but would get advice about the appropriate way to answer.
- cc) She agreed the proceedings had to come to an end and there should be no further applications unless there is a really good reason.

#### *B's evidence*

- 245) The guardian also met with B on 10 January. She said she felt nervous about giving evidence and felt that the reports didn't really say who she was: "*I don't feel like the judge will really understand me*".
- 246) In light of that I will set out in full (but anonymised) the relevant parts of the discussion with B noted by the guardian from that meeting before summarising her evidence.
- I asked for her understanding of Dr J's report and reiterated I had read her recent statement. B described, "*When I read the report I tried to read it from an outsider's perspective. Straight away; it looked as though I was reading about someone who was hostile, resistant in a negative way and not wanting to engage or cooperate. That is not how I felt at all throughout the appointment. When he asked big questions; I wanted to take the time to think about my answer. I felt disappointed. All I've been doing is being honest and truthful throughout all of this and I don't feel like that report reflected that.*" "*When I read it I felt like I was reading about an angry, immature teenager.*"

- B described, *“I don’t understand why I can’t see [A] – [A] is the closest person to me and I love her more than anyone else. Us being spilt up has been the worst thing that has ever happened.”*
- B told me, *“Last contact was two years ago today, it was the 10<sup>th</sup> January 2018. That was another kind of pain I never thought I would have to feel.”*
- B summarised, *“I just want a relationship with my sister again. Letters won’t do that. I just think back to supervised contact and [A] said the reason she wasn’t living with mummy was because [B] and mummy lied to the police and the courts. In the report, [A] said she doesn’t want to see us. I don’t know how she was told that (that no contact was happening). I haven’t lied to the police, my mum hasn’t lied to the police. I’m worried that she’s being told bad things about me. If I was told bad things, I wouldn’t want to see me. How am I meant to have a relationship with her when she is hearing bad things about me and negative things about me which aren’t true.”*
- I asked what support B has at the moment? *“Counselling at [the support service] at the moment. That started when the police commissioner referred me to them. I’ve been going for over a year now.” “Really beneficial. This one has been the most helpful.”*
- I asked what [the support service] is, B described, *“[It] is specific for sexual assault trauma and it is for trauma therapy which is a lot more specific and that’s why its been helpful because CAMHS was a lot more generalised. Weekly counselling”.*
- B told me the last contact she had with the police was in, *“October or November last year. I went to my school. I hadn’t told the police everything that I wanted to in terms of my experiences. It was a really big trauma for me. After going to [the support service] I felt like I had the confidence to speak in more detail to somebody. I went to school and said I wanted to speak up about things on my mind and they took it from there. They arranged for the police to get in contact with me. They came to see me in July. They came to the school to see me. It took a lot of time to get hold of them. There was a lot of back and forth. Eventually they came to see me. I told the lady who came to see me everything. In October they called me again to say they couldn’t take anything further because it was an historic case and my word against my sister’s dad. I’m still glad I said it. I said everything I felt they needed to know, and I’ve done everything I could. I’ve just left it now. I’ve said everything now. There is nothing more I can do.”*
- B said, *“I know [A]’s dad is concerned that I will speak to [A] about the case, but I have never done, and I never would because she’s a child. I want to have a relationship with her. I don’t have any intention of speaking negatively about anyone to her. I don’t want to cause any issues. I just want to have a relationship with my sister again.”*
- B described, *“There is no evidence to suggest I will say something to [A] and I never would. Also, just how much it’s affecting me that I’m not*

*seeing her. I'm doing really well in school and my social life but that is a pain that isn't going to go away."*

247) At the start of her evidence B told me she found it difficult to understand large generalised questions and Dr Jefferis wasn't aware of that. She did not feel Dr Jefferis' depiction of her was accurate.

248) These are the main points from B's oral evidence:

- a) About visiting A's school on May 2017, B said she was worried at the time about what A had said the day before. She went with the intention of making sure A had support but realised now it wasn't a mature decision to make. She didn't tell her mother. She didn't want to worry her and part of her realised even at the time it was not a mature thing to do.
- b) She went to the police in June 2019 because she wanted closure on what she believed happened to her. She had felt rushed by the police previously and she was at a different place at that age. She wanted them to know everything she had to say. The support service felt it was important for her to go back to the police and supported her to do that. She accepted saying to Dr Jefferis that the support service were "*helping me through the injustice*", although she thought injustice was the wrong word to use. Now she had told the police everything, she had no intention of going back or making further allegations. She did not recall saying the father was a convicted sex offender. She did not feel the police and social services are corrupt. At the time she did not think the police were doing their job properly. Over time she has come to terms with their decision.
- c) She admitted saying to Dr Jefferis that A had been put in the hands of someone unsafe with a risk of sexual abuse and that the legal establishment had been toying around with contact. She did not think it was being taken seriously. At that point she did feel A was unsafe with the father because he might sexually abuse her because he was saying negative things about them to her. She said at the point she saw the police and Dr Jefferis she was not being level headed – all she could think about was the upset and grief she had to experience without A around.
- d) If A made contact with her on social media B said she would ask a professional for advice.
- e) Being subject of a non-molestation order would worry her. The father had said things about her that were not true, for example, being at a food festival when she was at a rehearsal out of the area and suggesting she was involved in the malicious phone call.
- f) She found it really difficult not having a relationship with A and not having her around. She thought it would be really difficult for A who had looked up to her.

*The guardian's analysis and evidence*

249) At the start of her analysis the guardian said this:

*"It is fair to say that this is one of the most complex private law proceedings I have come across and one in which it is unlikely that the*



*Court will achieve a best possible outcome for [A]. In my view, we find ourselves in the position of finding the least-worst outcome for her not only now but across her minority and indeed her lifespan.”*

- 250) The guardian took the deliberate decision not to meet with A. She had met with several professionals, most recently the social worker, Ms Penny, and Dr Jefferis. Because Dr Jefferis had been appointed to report on the question of contact, she did not interview the parties for her report, although did meet with the mother and B on 10 January. She had read the parties’ position statements and understood their views. The stepmother complained that the guardian did not meet with her.
- 251) The guardian found it a source of frustration that the father did not engage with Dr Jefferis’ assessment but did not consider that his recommendations were flawed. She considered his report to be well-rounded with the benefits of contact weighed against risks. She supported the recommendation for indirect contact to continue.
- 252) The guardian underlined the essential principles – that it is almost always in the interests of a child to have contact, the expectation that all available alternatives are explored, not giving excessive weight to short-term problems all subject to the over-arching principle that the welfare of the child is paramount.
- 253) She understood that children who do not have contact can demonise or idealise the ‘absent’ parent, impacting on the child’s sense of identity, self-esteem and self-worth and risking internal conflict affecting a child’s relationship not only with herself but also those around her.
- 254) She also understood that children with a complex sense of self can develop difficulties as they mature into adolescence and experience all manner of poor self-image and negative internal dialogue, leading to potential difficulties in forming and maintaining healthy relationships, poor mental health and difficulties within their social and emotional behaviours.
- 255) Unsurprisingly, given the approach to her task, the guardian relied heavily on Dr Jefferis’ opinion as set out in his report.
- 256) The guardian could not recommend any form of direct contact, including identity contact. She said this:

*“37. Direct contact between [the mother], [B] and [A] would not occur in a ‘vacuum’ – even if it were to occur three times a year, for identity contact for example. It would not simply be a case of the risk to [A] occurring during those three contact sessions; there is the emotion that everyone would feel in the run-up to contact, prior to the contact, during the contact and then thereafter.*

*38. Sadly, direct contact occurring at this time, without the adults having undertaken any therapeutic work to address the underlying issues, is likely, in my view, to provide further opportunity for a climate of conflict to exist and continue/escalate between the adults, with allegations and counter-allegations made on both sides.”*

- 257) The guardian said it was apparent that work needed to be done with all the adults to try and move them away from the conflict in which they are entrenched. While the appeal had been rightly allowed on its merits, the process

of pursuing direct contact may have given the mother and sister a sense of vindication and but had done little to de-escalate tensions and had further impacted on the father's mental health.

- 258) While understanding concern that A may be exposed to parental conflict by the father and stepmother, the guardian noted that children who are influenced negatively by a resident carer do not go on to have positive indirect contact, as A clearly has.
- 259) The guardian thought it was great shame that a family assistance order was not made in early 2018, if only to enable life-story work. It is her view that, away from the proceedings, such work does need to be done. She encouraged the father and stepmother to seek the assistance of a professional to undertake such work within the next year. She also encouraged all the adults to undertake counselling. It would be incredibly difficult to have an agreement between the adults about what A needs to know.
- 260) The guardian recommended the continuation of indirect contact with a section 91(14) order for three years in order to protect A's emotional and developmental wellbeing.
- 261) These are the main points from the guardian's oral evidence:
- a) Nothing in the oral evidence she had heard altered the guardian's recommendation.
  - b) It was clear A misses her mother and sister and in the absence of contact the guardian would be concerned about the narrative she would receive, particularly given that A had been told they were unsafe and told lies.
  - c) If there were to be direct contact there would have to be preparation work done with A and the mother and professional supervision, given there had been no direct contact for two years. A would be confused and would ask difficult questions. Such work could be done by the guardian with the assistance of a Cafcass psychologist. I mentioned the possibility of an introductory video of the mother which the guardian thought would be a way forward.
  - d) Cafcass could not supervise contact itself save, perhaps, under a family assistance order but, even then, not in the long-term. Long-term supervision would certainly be required and it may be the local authority would need to be asked.
  - e) The guardian was to some degree impressed by the mother's evidence which she thought was very child focused. She thought the mother would be able to hold the two positions and manage herself within contact. To that extent the guardian differed somewhat from Dr Jefferis' view. The mother had demonstrated that she hadn't undermined the father. She remained implacably hostile and mistrustful but over the last two years she had been able to regulate herself. In supervised contact she would likely manage.
  - f) The guardian accepted that, at first blush, A has a need for identity contact and the mother would be able to fulfil that. She also agreed that if A did lose her father (because for example his mental health went downhill and he did commit suicide) then identity contact would be very important. If

she were not so concerned about the father's mental health, she would be recommending identity contact.

- g) The guardian was less convinced about the positives B would bring to contact. Although she agreed B came across in evidence as mature and articulate and had sat in court with dignity, the guardian accepted Dr Jefferis' impression of her. She needed to do the year's worth of psychotherapy recommended by Dr Jefferis before she could show she could hold A's needs in mind in contact. She had been talking about lines in sand in 2017. She was as recently as November 2019 continuing allegations of abuse. A could be left confused and anxious by direct contact with B.
- h) Even if the court was reassured that B would not repeat her allegations, the father's perception is that she would continue and that has an impact on his mental health.
- i) As to the father, the guardian thought he struggled to put A's emotional need for a relationship with her mother and sister first and his evidence wasn't always child-focused. The question was whether he won't or can't put A's needs first.
- j) Accepting the father's psychiatric diagnosis of adjustment disorder and a suicide risk, the guardian could not think of a way he would make contact work. If ordered there would have to be further proceedings and A would risk losing her father. A could end up being removed into foster care.
- k) It was, said the guardian, absolutely right that A should be able to have a relationship with her mother and sister. Was she at risk of harm if that didn't happen? – yes. Is she currently emotionally harmed? – yes. It was a question of balancing those risks of harm against the risk of losing her father.
- l) The guardian had considered the possibility that the father is manipulating the court and whether the court should make a 'depth charge' order. But the psychiatric evidence independent from the father seemed clear that his mental health state and suicide risk are genuine and that they are directly related to the continuing proceedings. That evidence could not, said the guardian, be ignored. For a child who has had nothing but loss and separation the *"impact throughout her life would be incredible and her outcomes would be significantly impaired"*.
- m) A could not be moved to her mother's care. There was evidence of emotional harm while in her care and there had been no contact for 2 years. A move would mean no contact with the father (because he says he couldn't have contact in that situation).
- n) The guardian had considered foster care. A has had enough instability in her life this far. It would involve separation from her primary carers and it is not clear whether contact could happen with them in that situation.
- o) The father has hugely underestimated the problem and should anticipate difficulties in his own relationship with A. A's difficult questions were like hot water bubbling in a saucepan; the father is just putting the lid

down on them. The bubbling pan scenario is likely to happen sooner if A is confined in her relationships.

- p) She stressed the importance of life story work which she could do under a family assistance order with the advice of a Cafcass psychologist. She saw a need for six sessions over six months, perhaps longer. She hoped the outcome would be a better understanding and balanced perspective by A of the position she is in. That would have to include work around the fact that there had been allegations and what happened to them. This judgment should be the launchpad for life story work and clear findings would help.
- q) She stressed also the critical importance of the proceedings coming to an end.
- r) Ms Branigan put it that A would, as she got older, seek out her mother on her own and wondered whether identity contact would reduce that risk. The guardian thought the risks were the same. If A had identity contact four times a year that would be unlikely to satisfy her need for a relationship with her mother and she would be as likely to seek her out.
- s) The mother blocking A was likely to make her feel rejected.
- t) Contact with the mother but not B would be confusing for A – she would worry about her sister and find it exceptionally hard to make sense of. Contact with the mother would provide a link to her sister which would have benefits in that the A would be able to ask questions but it could also heighten her unfulfilled desire to see her sister.

#### *Police disclosure*

##### *May 2017*

- 262) Recently received police disclosure gives a window into what B was doing and saying and the mother's involvement, both at the time of B's visit to A's school in May 2017 and when making further allegations to the police in June/July 2019.
- 263) The first police referral following B's visit to the school on 19 May 2017 was in fact a complaint by the father that he was being harassed by B, influenced by the mother, culminating in a phone call on 23 May 2017 when someone said "paedo" followed by the sound of girls giggling. The father had traced the number. He did not know B's voice as he had not spoken to her for a long time, but assumed it was her.
- 264) In follow up interview with B she was asked whether her mother had taken her to the school and she said she had not. She was asked whether her mum had given her the words to say as the school felt these were not the words a teenager would use and, according to the record, she said that she did.
- 265) The chaplain was present as B's appropriate adult and clarified that the word 'safeguarding' was used a lot at B's school and the children were used to using that word. Later in the interview B denied that her mother had put her up to going to the school and said she had done it "off her own back". It may be that B's response as recorded (that her mother had given her the words) was a typographical error.

- 266) B denied any knowledge of the “*paedo*” phone call. The police found no evidence to link B with the phone used. They traced it back to a phone owned by a parent of a boy who attended a different school, who did not seem to the police to be linked to B and who in turn denied any knowledge of the call.
- 267) B was given words of advice not to discuss these matters with other agencies. She told the police she would not contact A’s school again and would not discuss the matter with anyone else.

#### *August 2017*

- 268) On 27 August 2017 B phoned the police to say she had been sexually and physically abused by the father when she was 8 and she was concerned for A. She said she had spoken to her mother about this and she was aware B wanted to speak to the police and would be happy to be seen by officers.
- 269) On 28 August 2017 the police called the mother. She said things were on B’s mind which she was finding very difficult to talk about. She felt she couldn’t talk to B about things and she didn’t know B had called the police until afterwards. She said B did want to talk to the police again.
- 270) On 1 September 2017 the mother phoned the police asking for an update and updating the police that concerns had been raised by a Cafcass officer (not the guardian at the time) that something had happened to B.
- 271) On 22 September 2017 the police received voicemails from both B and the mother asking for updates on the enquiry. On that date the police spoke to the mother to say that no new information had been received and that the enquiry was being closed with no further action. The mother said she would speak to B. She said B felt she had never been supported by the police and she was now in a place where she felt able to talk about what happened to her. The mother expressed some dissatisfaction with the police investigation historically.
- 272) On 28 September 2017 the mother reported to the police that she had spoken to B and was worried about her reaction. B had been upset saying things like “*no one cares anymore ... I’m never going to see or speak to the police again .. I’m never going to talk about it again... I feel let down by the police ... I don’t trust the police.*” The mother said she wanted somebody to come and explain things to B so she could try to understand.
- 273) This resulted in a rather delayed police visit to B at school on 15 December 2017. B was upset at the outcome of the enquiry and expressed that she didn’t trust the police.

#### *June/July 2019*

- 274) On 4 June 2019 B told a teacher at her school that she had been sexually abused by the father and she wanted social care to follow this through and that it be reported to the police. On 5 June 2019 the school made a referral to the MASH. The school’s referral form noted B as saying she had told her mother.
- 275) B followed this up on 18 June, wanting to know what was happening. On 26 June the mother telephoned the school to see what was happening as B was not happy. The mother was told to call the police.
- 276) It seems that B called the police on 28 June saying that she had been told previously to call them when she was ready and she was now ready and wanted

to provide details of the abuse. She did not want to be seen at home with her mother and wanted to be seen at the police station with a teacher.

- 277) B made follow up calls on 9 and 12 July unhappy that she had not heard anything. There is a note on 15 July that B did not want her mother to know she was reporting.
- 278) The police saw B at school on 19 July. She was asked to describe what happened but “*she struggled and went silent*”. She went on to give some information but, it seems, no more detail than she had reported previously. B was hard to engage with, would stare at the table, sit in silence or just stare at the officer. She said the police were all corrupt and why would no one believe her. How could they leave her sister living with a convicted sex offender (in evidence B denied referring to the father as a convicted sex offender). According to the police there wasn’t any reasoning with her.
- 279) The police decided again to take no further action.

### **The parties’ submissions**

#### *The mother’s submissions*

- 280) The court should not overlook the toll these proceedings have taken on the mother. The case management has been tortuous and the father’s aggressive approach, his ‘machinations’ around participation, preparedness to give evidence and attempts to dictate the direction of the proceedings, have been difficult for the mother to cope with. Nonetheless the mother has acted with dignity and calmly and has made realistic litigation decisions in A’s interests. The difference was that, as was submitted to HHJ Meston in 2017, the father approaches the case on the basis of what is best for him, whereas the mother’s approach is focused on A and B.
- 281) This is realistically the last chance the mother has to re-establish a relationship with A during her minority. It is abundantly apparent that indirect contact is failing to maintain the mother and B as a reality for A. The father is unable to give A any sort of positive message about the mother and even when words are apparently positive they are undermined by the more subtle but equally important messages that A is getting.
- 282) This is a subtle form of alienation, with the mother projected as a bad person who has said wrong things about the father, who cannot obey the rules to the extent that A is not allowed to see her and who cannot be trusted to know where A is living or to attend her school. These are mixed messages A cannot reconcile and her vision of the mother is fading and is at high risk of becoming almost meaningless under a regime of tightly controlled and monitored indirect contact.
- 283) The single most important determination for the court is whether the mother’s more developed acceptance of the court’s findings means that within contact the mother is capable of conducting herself in a way that will protect A from B’s allegations and the mother’s belief system around those allegations. In respect of that the court knows there is no evidence to suggest A was made aware of B’s allegations:
- a) in the time A was living with her mother down to December 2015;

- b) whilst having contact in the immediate aftermath of the transition to the father's care, and when A was upset and asking why she was no longer living with the mother and B; or
  - c) in all the contact visits that followed.
- 284) Further, there is no evidence that, in the two years since the hearing before HHJ Meston in 2017, the mother has discussed or raised concerns outside the proceedings with professionals or others about the allegations.
- 285) Crucially, the father accepted in evidence that A had not said or done anything to suggest she had been made aware of the allegations.
- 286) The mother's approach and insight have improved over the last two years. Whereas the father sees her as motivated to continue a personal campaign against him and the stepmother, in fact her motivation is solely driven by her concerns about A and her emotional welfare if she is to grow up without knowing her mother in any meaningful way.
- 287) The task for the mother of squaring the circle of living with B maintaining her allegations and seeing the need for A to be protected is impossible. Dr Jefferis' approach to this is puzzling. The mother struggled in interview with Dr Jefferis, perhaps hampered by her dyslexia, and did not give of her best.
- 288) The guardian was right to be more reassured by what she heard of the mother's approach, of thinking of the girls in separate compartments. The court should find the mother's acceptance of the findings is genuine and demonstrates insight into how damaging it would be for A and her carers if she were to be made aware of the allegations.
- 289) Ms Branigan outlined the ways in which the father had failed to engage with the proceedings. The father had constantly expressed concern about whether the April 2015 findings were being challenged, notwithstanding the mother's consistent position, reiterated by the court, that neither she nor B seek to re-open the findings. This almost obsessive seeking reassurance demonstrates that for the father these proceedings have become all about protecting himself and the stepmother, losing sight of the global needs of the child for whom he has caring responsibilities. This may have been laid bare had the father met with Dr Jefferis. As it is the court must rely on its own assessment of the father from the witness box.
- 290) In fact when the father did attend he showed few of the vulnerabilities the court had been led to expect, engaging with questions fully and demonstrating detailed knowledge of the papers.
- 291) It became apparent that everything is viewed through the prism of the father's concerns, with the position that A is happy and settled, confirming everything he has said about contact in the past and justifying his approach now and that by removing the mother and B from A's life all will be well. This demonstrates no insight into the damage to A done by cessation of direct contact and potential damage in the future.
- 292) The father has no idea how he will manage difficult questions by A, which she is already asking. Ms Branigan refers to Dr Jefferis' assessment of A as a child who has suffered, and is at risk of suffering, emotional and psychological damage, who is 'shut down' emotionally, who is adept at keeping her emotions

- close to and not speaking about how she feels. She is worried about saying something wrong and is unable to speak freely about her past. The father is completely wrong to believe that all will be well through rigid indirect contact.
- 293) A is rapidly approaching the age where she will access social media. The father badly underestimates the challenges he will be presented with in the near future. It is not enough to say her social media use will be monitored and controlled if necessary. A may be resentful if her privacy is being compromised. To suggest the mother blocks A completely lacks insight into how damaging that could be for A. His evidence that he would not let the mother know if A asks to see her demonstrates both an intention not to allow the mother into A's life and lack of insight into her emotional and psychological needs.
- 294) Ms Branigan suggests that the father has sought to manipulate the court at every turn. He knows exactly what he has to say and do. He says that he and the stepmother have always said it was ok for A to have a relationship with the mother and B and have tried to encourage it; that is patently untrue.
- 295) Any narrative to be given to A is the father's own narrative. He does not want the mother knowing where they live. He would not tell her if they move. There is a lack of a coherent plan about consultation over schooling or any other decision-making. Any attempt to contact the school, doctors etc should be 'criminalised'.
- 296) The father has for some time been threatening to walk away from A. He has now added to that the threat of his mental health issues. Ms Branigan expressly avoids submitting that, when the father's bluff is called, he does not carry through his threats and the court should pay little heed to them, tempting though that is. It is accepted that the father's mental health, and risk of deterioration, particularly in the context of poor physical health presents a risk that cannot sensibly be ignored by the court. Those risks have to be weighed in the balance with all other checklist factors in reaching a decision which has A's welfare as the paramount consideration. The father's position should not become the trump card outweighing all other considerations.
- 297) As to B, the father relies on Mr Stringer's opinion that she was the most damaged child he had assessed, yet, when the local authority issued care proceedings and assessed her, they concluded the worst damage B had suffered was the devastating separation from her sister, coupled with the fear that she too would be removed from the care of her mother. In fact, we now hear of a young person who is working hard and doing well and see her in court conducting herself with astonishing dignity throughout – she is an impressive young woman. She has to live with the heavy burden that the current legal wrangle is largely the consequence of her actions.
- 298) There is complete agreement that A enjoys contact with her mother and B and that she would like to see them again. We have a surface picture of a lovely, happy and settled girl attached to her primary carers and without problem. Beneath that surface is the more worrying picture revealed by the section 7 report and Dr Jefferis' assessment. It is not difficult to imagine how A's suppressed emotions could so easily boil over in an uncontrolled and unpredictable way.



- 299) To endorse the status quo would be to fail A, leaving her at high risk of future emotional and psychological damage beyond that sustained already.
- 300) Ms Branigan invites me to reach findings on the basis of agreed or uncontested evidence that direct contact would:
- a) reflect that A has enjoyed contact with her mother and continues to wish to see her;
  - b) give them lifelong benefits of a unique and irreplaceable relationship;
  - c) uphold their right to respect for family life;
  - d) respect A's underlying (agreed) wish to see her mother and heal the deep sense of loss she has suffered;
  - e) mitigate the high risk of harm from being separated from a loving parent, discovering that was at the instance of her primary carers, and turning against them in the future;
  - f) remove the impact on A's sense of identity and self-worth of realisation that her mother is not worthy to act as her parent (because she has lied and doesn't keep to the rules);
  - g) reassure A about her mother's wellbeing in a way indirect contact cannot;
  - h) remove the risk that indirect contact will wither and fade away due to lack of clarity about its objectives and lack of trust and co-operation;
  - i) avoid A having an incomplete, controlled and possibly misleading experience of her mother.
- 301) I agree these are all findings which I can and do make based on the evidence I have heard.
- 302) As to the orders sought by the mother, Ms Branigan reminds me that I am dealing with an application to vary an order made by consent in March 2017 after two days debate in the court corridor.
- 303) Working from the current situation to a place where A can have safe direct contact with the mother will take time and professional input. The mother would engage with a family assistance order under which the guardian helps A start to make sense of what has happened. She hopes the father and stepmother would also consent to be named in such an order.
- 304) The mother accepts the continuation of the existing non-molestation order without limit of time. She would accept such reasonable conditions or prohibited steps orders as the court may consider necessary around a direct contact order. The court should bear in mind that the mother has not sought to communicate with the father or stepmother or attend A's school, has not breached the prohibited steps orders put in place by HHJ Meston and is not active on social media. There is no justification in converting existing prohibited steps orders into non-molestation injunctions.
- 305) As to her exercise of parental responsibility the mother should:
- a) on the basis she has no intention of going there, know where A is living (as the father points out this is in contradiction to the indication given to

- me when I was asked to direct disclosure of the father's address to the court);
- b) be informed about foreign holidays;
  - c) know which school A attends and be informed about any change of school;
  - d) be able to go to the school for pre-arranged meetings when the father is not there;
  - e) be consulted about senior school;
  - f) be informed about any health concerns, significant medical issues or accidents and outcome of any related appointments;
  - g) receive photographs of A and be able to send photographs of herself to A, particularly significant if direct contact is not frequent/regular.
- 306) The best outcome for A would be for her to remain where she is settled and have a full relationship with her mother (and sister) through regular contact. The worst outcome for A, says Ms Branigan, would be for the father's proposals to prevail. There are undoubtedly risks in seeking to re-establish direct contact but the far greater risk would be to leave A in a position where her mother plays no relevant part in her story. The father and stepmother are going to do nothing to advance the relationship between A and her mother; it is the court's obligation, it is submitted, to step into that breach.

*Submissions on behalf of B*

- 307) Mr Langrish adopts Ms Branigan's submissions. He notes a lack of case law about sibling contact, save *Re H* [2010] EWCA Civ 1200 where Thorpe LJ, in a very brief judgment, found that the court had fallen into fundamental error in elevating the father's anxiety above the importance of very real potential gains from indirect contact between a half-sister and two younger children.
- 308) As Mr Langrish points out, however, the court scarcely needs authority for the proposition that sibling relationships are typically the most enduring and deserving of the most careful consideration.
- 309) Mr Langrish is critical of Dr Jefferis' unexpectedly dismissive and unbalanced approach, referring for example to the 'possible benefits' only to A of resumption of contact and, when weighing up the pros and cons, not being sure there were any positives to weigh. Given this approach it was unsurprising that his view of direct contact was negative.
- 310) Similarly, Dr Jefferis had thought it likely the mother and B would make negative comments to A in contact, yet had to accept there was no evidence of such comments being made in many months of contact and placing concerns about this 'relatively low down the list'.
- 311) Dr Jefferis was unduly critical of the mother's approach to the parallel narratives of B's allegations and the court's findings, despite my indication to him that the mother seemed in an invidious position.
- 312) Dr Jefferis accepted his report did not address medium and long-term issues, giving undue weight to short-term risks of disruption with barely a reference to the longer-term impact on A of losing direct contact with her mother and sister.

- 313) That said, Dr Jefferis had accepted as a ‘hopeful sign’ that B was now saying her view had changed and that she now felt she had said all she could. If the court accepts that, it does not shut the door on direct contact between B and A. Had Dr Jefferis not approached the balancing exercise in such a dismissive and unbalanced way, the door might be wide open.
- 314) Addressing the guardian’s differential view of the mother and B, Mr Langrish suggests that the guardian has not considered the steps that could be put in place to restrict further referrals by B to police, social services and others if direct contact progressed. The guardian had agreed there was no reason to think B would breach a court order and she came across as a mature and sensible young lady who presented herself with dignity in the hearing and “*not what you expect from the 15 year old she is being compared with*”. The guardian agreed that, if it was believed B would stick to orders, on that basis contact could happen, subject to the impact and risks around the father’s mental health.
- 315) B had explained her different motivations in going to A’s school and the police. She had explained how when going to the police and seeing Dr Jefferis she wasn’t as level-headed as she was now – all she could think about was the upset and grief she was feeling about not having A around. She understood the impact of her actions in the past and was focused now on re-building her relationship with A rather than pursuing allegations. Her evidence, says Mr Langrish, bore the hallmarks of sincerity and honesty and was consistent with her unplanned meeting with the guardian on 10 January.
- 316) The father’s evidence was littered with examples of glaring lack of insight into A’s present and future emotional needs and hugely underestimated the potential long-term impact on her of having no meaningful relationship with her mother and sister. Essentially his position is that this can be put to one side until A is 18.
- 317) Dr Jefferis talked about the extent of damage to A (in not having direct contact) depending what else is going on for her at the time (in terms of her father and stepmother). The evidence suggests that the father and stepmother cannot be trusted to adopt a child-focused and sensitive approach. Without skilful parenting A is likely to suffer with emotional dysregulation. Neither Dr Jefferis nor the guardian had met with the father. The court has at least had the advantage of forming a clearer view of him from his evidence. Mr Langrish noted the contrast between the medical evidence submitted by the father that he would struggle to concentrate or provide ‘adequate testimony’, and his statement that his mental health was ‘rock bottom’, with his appearance as a remarkably bullish and robust witness.
- 318) While B will agree any reasonable restrictions on referrals to social services or A’s school arising from contact that should not impede counselling or therapeutic intervention. Any suggestion that a non-molestation injunction is needed is firmly refuted. The only referral she has made in the last 2½ years was to the police in June 2019 supported by her counsellor. B is concerned about false allegations being made against her by the father (abusive calls and staring at him at the food festival). There is no formal application for an injunction against B, although I have deemed such an application to have been made. The evidence relied on by the father does not, says Mr Langrish, come

close to imposing potential criminal sanctions on a young woman who has shown insight and desire to put the interests of her sister first.

- 319) The father and stepmother have not been able to demonstrate that they can be the safe custodians of what little could remain of a relationship between A and her mother and sister if direct contact is prevented. They have already distorted A's view of her mother and sister. The balance tips firmly in favour of direct contact.

*The guardian's submissions*

- 320) Mr Hand described Dr Jefferis' report as well reasoned and he held to his case in cross-examination. The guardian was impressed by the mother's evidence and her views towards the mother are somewhat softer than the expert's. The guardian thought the mother would have the ability to make contact child-focused. She did not have the same confidence about B.
- 321) To a greater or lesser extent, the mother, father and B are all at fault, or have been at some stage. The district judge had found, effectively, that A had suffered from parental alienation at the hands of the mother to the extent that justified a transfer of residence. Thereafter A became caught in the middle of the continuing litigation.
- 322) Now A's welfare remains wrapped up in the welfare of her father, perhaps more so with the passage of time. She now effectively only knows one biological parent at first hand, with the mother becoming a more distant figure for her over the last 2 years.
- 323) The father's mental health has deteriorated and, rightly or wrongly, he perceives that he and the stepmother are being harassed. His perception, which has some foundation in history (including more recently), is very important. Even if this is an "egg shell skull" case there is good evidence that the father has struggled and is struggling mentally. There is no suggestion A should be moved from his care. The risk of further deterioration of his mental health cannot be risked; it would simply be disastrous.
- 324) Further, A has spent much time with the stepmother as a primary carer who is at risk of walking out. How, asks Mr Hand, would A cope in the sole care of the father. This would again be disastrous for A.
- 325) Thus, making an order for direct contact, even identity contact, cannot be risked. HHJ Meston felt the father was telling the truth when he said he wouldn't comply. The court could test the father out, but the increased pressures on him, on the stepmother and in their home would be high risk.
- 326) Judicial strategy requires that an order should only be made if the court intends to follow it through with enforcement. That would not be in A's interests.
- 327) The facts are pretty unique – a child suffering from parental alienation, moving and now arguably suffering from parental alienation by the other parent. There is no easy fix. A has paid the heavy price of losing meaningful relationships with her mother and sister. To attempt to regain those relationships means risking the stability she has achieved, bringing it down like a house of cards and risking losing her relationships with her father and stepmother.

- 328) There is no right answer, just many wrong answers. It is about picking the less damaging option; that is the status quo A has experienced, and within which she has to some extent thrived, for the last 2 years.
- 329) This guardian's heart is as heavy as the last guardian's heart in recommending that direct contact, even identity contact, would be contrary to A's welfare and should not be attempted.
- 330) Life story work is absolutely essential and the guardian seeks a family assistance order to enable that to be completed over the next 6 months or so.
- 331) The guardian also seeks a section 91(14) order until A starts the second year of secondary school (by my calculation September 2023).

*The father's submissions*

- 332) The father stresses that it is not that they will not comply with an order, it is that they cannot. To do so would cause emotional distress to A and to him and his wife and would continue the constant warfare that had been so toxic for A. a workable safe solution is needed. Putting A through 11 more years of tension, emotive handovers and emotional manipulation is far worse than being removed from direct contact.
- 333) The father says it is clear the hostility would never end and could not be resolved. Enough is enough. A is at severe risk of becoming embroiled and emotionally damaged for the rest of her life. He and his wife are both past breaking point. Mr Stringer was right that the children risk being run over by the tanks.
- 334) The father placed some blame on the courts and professionals. Nothing has been done to stop the unfounded allegations. B had not had the correct counselling. There has been no consistency of judges, Cafcass or even representation.
- 335) I pause there to point out that over 7 years of litigation, save for the appeal, three judges have conducted this case, the first for three years until retirement, the second for two years until he moved court and now me. At each of those stages there has been continuity. Likewise, new guardians have only been appointed because of the retirement or changed roles of the previous guardian. And although not all the lawyers involved in representing parties have been able to do so there have been some, such as Mr Hand and Mr Ward-Prowse, who have had long involvement.
- 336) The father says that court seems to have been more about slandering and character assassination than trying to find solutions. The fact that the case remains open prevents him getting the treatment he needs.
- 337) In response to the suggestion that he is not child-focused, the father says he is not trying to alienate the mother or B but rather has encouraged A to write affectionate cards and drawings.
- 338) The father points to Dr Jefferis' assessment for evidence of the risks to A in contact and some of the emotive and confusing comments made by the mother in justifying the conclusion that direct contact could be an emotionally charged and disruptive experience for A rather than providing comfort, reassurance and a relatively straightforwardly enjoyable time with her mother and sister. While

the father agrees that A would want to see them and be happy to do so, she would be unaware of the dangers that have happened and would more than likely happen again.

- 339) The father says that they sought help and guidance before and after the decision to transfer residence from social services and Cafcass to help A see things and understand in an appropriate way but were ‘stonewalled’. The guardian did see A at school and explained it was to keep her safe. They also asked for life story work to be done but were told the resources were not there to do it. They arranged for A to have support at school so she could speak freely there.
- 340) Telling A that the other parties made up lies about them is the truth – is it suggested they should lie or hide this? What would that promote other than distrust?
- 341) The order in March 2017 was their last attempt to try and make things work. They spent a long time coming up with a devised plan for contact, and in fact gave the mother and sister more than they were asking for, only to have it used within weeks to renew the abuse allegations.
- 342) The father agreed with Mr Stringer and Dr Jefferis and disagreed with the guardian – the mother has a personality disorder and is incapable of change. He referred to the number of people the mother had discussed the case with (see paragraph 18 of the judgment of Cohen J, referring to paragraph 76 of the judgment of HHJ Meston, where he says it is clear from the list that a number of the mother’s friends weighed in on the mother’s behalf during the period March to June 2017 and made representations, particularly to the guardian). He refers to the mother’s involvement in the referral to the school and police in June 2019, phoning the school to find out what was happening.
- 343) The father calls on the court to put in place a robust and effective approach that will last.
- 344) He had asked for a non-molestation injunction against B in 2017 but the court was hesitant given her age. Instead B promised the court to stop her actions or risk contact ceasing. When B went to A’s school he renewed his request but B was still under 18 and it was felt inappropriate to impose a restriction on her.
- 345) The latest expert evidence and police disclosure underlines everything the father feared would happen. The court should acknowledge what two psychologists have said and understand that the mother and B are solely motivated to get revenge and will never stop. A non-molestation injunction is, the father says, the only logical and feasible option to keep his family safe from this persecution.
- 346) To the extent that it may be said B is only just 18 and herself a vulnerable young person, the father says she has shown she knows and understands the difference between right and wrong and the consequences her actions would have on him and his family, as has been made clear to her by professionals and the court many times. If she is competent enough to bring her own application, she is mature enough to be held responsible for her actions.
- 347) B’s counsellors do not have access to the full materials and act on what they are told by her. This compounds and entrenches her beliefs which, the father says, she was most likely emotionally abused into believing by her mother’s lie.

She will continue to spiral out of control until she comes under the care of a professional able to help her come to terms with the fact that she was not abused.

- 348) The father refers in his submissions to an extract from a police report in October 2014 expressing that pressure had been placed on B by her mother to the extent it was felt B was being emotionally abused by her mother. Each time B was seen she made no disclosure<sup>8</sup> and, when the mother was informed no action was being taken, B would say she had more to say but when spoken to would again make no disclosure. When the mother was again told no further action would be taken she made a complaint.
- 349) Dissemination of confidential court documents and continually making allegations breaches the father and stepmother's Article 8 rights to respect for private life. I have already indicated that the father argues he should be allowed to clear his name and reputation by a letter from the court confirming the findings were unfounded or allowing him to disclose the court's findings. He also seeks protection in respect of his Article 2 and 3 rights and reminds me of the provisions of PD 12J when seeking non-molestation injunctions and a section 91(14) order for five years.
- 350) The justification for a five year order is, he says, that it will allow A to settle into a proper routine and have the security she needs to know this will not be changed. It will give her primary carers the reassurance they need to move on from these proceedings and give A the love and support she needs.
- 351) The non-molestation injunctions sought against both the mother and B would, in summary, be in the following terms:
- a) not to contact the father and stepmother by any means save through solicitors;
  - b) not to cause them alarm, harassment or distress;
  - c) not to denigrate them and in particular not refer to or insinuate that the father is a child abuser or paedophile;
  - d) not to contact A save as allowed by court order;
  - e) not to encourage or assist any person to make a referral, complaint or accusation about the father being a child abuser or paedophile;
  - f) not, without the court's permission, to refer to these proceedings or the court's findings to any person save their legal representatives and not to communicate such information in the media, internet or social media.
- 352) The prohibited steps order sought against the mother and B are (again in summary):
- a) not to go to A's school;
  - b) not themselves or by others to contact A's GP, dentist or other medical professional except when informed of an emergency by the father or

---

<sup>8</sup> The word 'disclosure' is used in the police reports, although its use has been deprecated since Cleveland as pre-supposing there is something to disclose.

stepmother and on condition that no information relating to the father or stepmother is given to them;

- c) not without the court's permission, save in genuine emergency) to contact or communicate with staff, any other child or their parents or guardians at A's school.

- 353) The father points out that the wording sought in respect of the prohibited steps orders is similar to the existing orders, adjusted to take account of recent developments.
- 354) The father goes on to say he is happy for the mother and B to be in A's life and for the mother to be part of the decision-making process regarding schools and they will consult with her.
- 355) He notes the mother is now seeking disclosure of his address, given under an assurance she would not seek it. He sees this as underhand and undermining of the court process.

*The stepmother's submissions*

- 356) The stepmother refers to the father's vulnerable mental health state, brought about by the actions of the mother and B and confirmed by letters from mental health professionals. She regards it as unfair to characterise the father as wilfully not engaging with the court process and holding it to ransom and not being child-focused. What he needs is the protection of the court.
- 357) While there is no evidence that the mother has breached orders over the last 2 years, that does not mean she hasn't been speaking to people inappropriately. People with personality disorder are, she says, incapable of changing their behaviour. Both the mother and B have a history of saying one thing to the court and doing another. She described the illusion of B now suddenly having moved on and developing a more mature understanding as all false for the court. They have heard it all before. The only deterrent is an injunction.
- 358) The stepmother complains that the guardian met with the mother and B but not her or the father despite them asking. This is not a complaint that was put to the guardian in evidence (because the father and stepfather were not present to question her and declined to put written questions) so I do not know her position on this. It would be unfair to criticise the guardian without her having an opportunity to respond. It may be that she took the view, as she was making a recommendation in line with the father and stepmother's position, that it was more important to meet with the mother and B to make sure there was nothing in what they had to say that might affect her recommendation.
- 359) The stepmother refers to police records showing the mother shouting at B when she would not speak about the allegations and pursuing the referral to the MASH on 5 June 2019. She agrees with the police that the mother is the driving force behind the allegations.
- 360) The stepmother refers to emotionally charged cards sent by the mother to A since the 2018 order, despite being advised it causes A distress. It may be, she says, that it is B who writes "*I miss you so much*" but the mother writes in the same card.



- 361) She refutes any suggestion they are not child-focused or have sought to alienate A. She points to the fact that she turned her life upside-down and made a significant career change to become a full-time mother. The expert evidence shows no sign of alienation or manipulation of A by them. They always encourage A to talk about her feelings and promote her relationship with her mother and sister. They welcome Dr Jefferis' suggestion of therapeutic work with A once this litigation has finished.
- 362) A has accepted the situation and is settled and stable and any attempt to restart direct contact would be disruptive and unsettling. The stepmother highlights as a frightening statement Dr Jefferis' opinion that direct contact would place A at increased risk of emotional disorders such as anxiety and depression, relationship problems and educational and occupational underachievement.
- 363) Although on the surface A enjoyed her contact it was not a truly positive experience.
- 364) As A gets older and technology plays a larger part in her life, it may be suitable to move to communicating via email or messages but they would need to assess how A has developed as an individual to see if that was appropriate and safe for her.
- 365) They did not wish to control A's relationship with her mother and sister any more than is required. They appreciate the need for her to understand the other side of her family and have a relationship with them. It had never been their intention to prevent this. They want A to think of her mother and B with warmth and have made clear to A that they love her very much.
- 366) The stepmother was concerned that their reinforcement over the years of the understanding given to A by the first guardian, following move to their care at the end of 2015, is being interpreted negatively. It will be helpful through life story work for A to hear the positive aspects of her relationship with her mother and B, however they cannot airbrush the negative truths.
- 367) The stepmother thought the life story work should be undertaken by a professional with experience of such work and was concerned that the guardian does not have such experience. This was not put to the guardian who clearly felt qualified to undertake such work. Doubtless this is a matter that can be addressed when this judgment is handed down and before the order is made. The stepmother refers to social work online guidance for life book work about the importance of an age appropriate truth being given. She then refers to the mother and B's lies to social services, the police, the court and other professionals and friends as being the truth, on which it is difficult to place a positive spin.
- 368) The timing of therapeutic work (suggested by Dr Jefferis to start 6 to 12 months after the end of the litigation) should be taken into account when considering how A will benefit most from life story work.
- 369) The mother does not need their address. If they move address they will tell her the town/area they have moved to. She should not attend A's school, which is her safe place, free from anxiety and worries. They will consult her about choice of secondary school but, as the mother agreed, the final decision should rest with them.

### **Analysis of the witnesses and findings.**

- 370) In this section I will consider the witnesses and make such findings as are possible and necessary to determine the issues.
- 371) I start with some points about credibility and reliability.
- 372) First, it is common for witnesses to lie in the course of investigation and hearing. They may do so for a variety of reasons – shame, misplaced loyalty, fear and distress being examples. It does not follow that because they have lied about one matter they have lied about everything: *R v Lucas* [1981] QB 720.
- 373) Secondly, the court should bear in mind that recall of events by a witness is a process of fallible reconstruction which may be affected by external influences and supervening events, moulded by the process of litigation and the drafting of lawyers, with past beliefs being reconstructed to make them more consistent with present beliefs and motivated by a desire to give a good impression: *Gestmin SGPS SA v Credit Suisse (UK) Ltd & Anor* [2013] EWHC (Comm), Leggatt J; *Lancashire County Council v C, M & F (Children - Fact-finding)* [2014] EWFC 3.

#### *The mother*

- 374) Two judges, District Judge Willis in 2015 and HHJ Meston QC in 2018, have already made findings about the mother's part in B's allegations and her later conduct which I do not (and am not asked to) go behind.
- 375) In short, District Judge Willis found in April/December 2015:
- a) the mother was determined at any cost to ensure that A had no contact with her father;
  - b) he doubted she had a genuine belief in B's allegations (although did not make a clear finding to that effect);
  - c) she tried to get friends unquestioningly on her side and influenced them;
  - d) she was blind in her belief that something had happened (which would be inconsistent with a finding that she did not have a genuine belief in the allegations or at least that something had happened);
  - e) she had coached B into making allegations;
  - f) the mother would never accept his findings;
  - g) she had an animosity towards the father so deep-seated that she would simply be unable to foster contact with the man she believed had abused her daughter.
- 376) HHJ Meston found in February 2018:
- a) although the mother said she accepted the findings, she maintained her belief in the allegations (to the extent that District Judge Willis did not find she did not genuinely believe the allegations, this finding by HHJ Meston stands);
  - b) she had been unable to reconcile her wish to support B with her wish to see A and, ideally, to resume her care (at that point);

- c) he was not convinced by the mother's assurances that she had 'moved on' although that was not in itself indicative that she would disrupt contact or destabilise A's placement.
- 377) It is clear from the mother's evidence before me now that she maintains her unhesitating and unwavering belief in B's allegations. She accepted as much. To that extent she is unable to say she accepts the district judge's findings as reflecting the true position. The question is whether she is trying to ride those two horses or whether her position is something different.
- 378) I return to the point that parties are, almost inevitably, unlikely to accept findings that disagree with their belief system. They do not simply 'flick a switch' as it has been put. That is part of the human condition.
- 379) It is important that the district judge did not make a positive finding that the allegations were untrue. He found that they were not proved. His comment that he could not say nothing happened may be regarded as unhelpful in terms of the mother (and B) moving on and in terms of the binary consequence of his finding. However, his finding was that the allegations had not been proved on the balance of probabilities. The binary consequence – that nothing happened – is the consequence of the finding, not the finding itself.
- 380) Dr Jefferis in particular is critical of the mother's incoherent parallel position about this. I am less inclined to be so critical. Absent a finding that the mother does not actually believe the allegations herself, it is understandable that she finds herself in an irresolvable dilemma. My interpretation of her evidence is not that she genuinely accepts the court's findings, but that she accepts the court has made the findings and the binary consequence for the purpose of the court's decisions about A is that the matters alleged did not happen. That is in my view not an incoherent position to hold.
- 381) Both Mr Stringer and Dr Jefferis, more so Mr Stringer, thought the mother had traits at least of borderline personality disorder. Neither made a formal diagnosis. There may be enough in the mother's behaviour generally to justify such a conclusion (coaching B, influencing friends, shutting out the father) but I am less convinced that Dr Jefferis is right to rely on what he regarded as her incoherent position as evidence of personality difficulties. The previous findings of the court have not been that the mother has knowingly fabricated false allegations in which she had no belief in order to alienate A from her father. On the contrary two judges have found that she has maintained her belief in the allegations and that is also a conclusion I reach on the evidence now.
- 382) I was impressed by the mother's evidence. It was child-focused. If all that was "*false for the court*" the mother made a convincing job of it. She has been realistic in her expectations (not seeking A's return, to re-open findings or discharge the non-molestation order). She has demonstrated her ability to comply with court orders. She has, I accept, continued to support B to the extent of following up her referrals to the police and the school but that is not inconsistent with her stated position about the allegations.
- 383) The evidence seems to point to the mother not knowing about B going to the school in May 2017 or to the police, via the school, in June 2019 until after the event. The only evidential exception is the note about B telling the school she

had told the mother about repeating her allegations. The burden of proving that the mother did know in advance, or encouraged B on either occasion, is on the father and stepmother and they have not met that burden.

- 384) The crucial finding so far as the mother is concerned is whether she would be able to manage contact in such a way as to avoid emotional distress to A. Ms Branigan has referred to the positives which point towards the conclusion that the mother would be up to this, in particular the complete lack of evidence that the mother has at any point said anything to A. It is also the guardian's view that the mother could manage direct contact safely for A. I agree that, all other things being equal and objectively speaking, the mother would be able to meet A's emotional needs within contact safely.

## *B*

- 385) The findings that District Judge Willis reached in respect of B can be summarised as follows:

- a) when interviewed, what B said amounted to almost nothing and did not seem to be relating incidents that had actually happened;
- b) he seemed to accept Mr Stringer's assessment of B as the most damaged young person he had assessed and his comment that she was "*self-destructing*".

- 386) HHJ Meston found:

- a) that B had been unable to control her strong, pervading belief that the father was a risk to A and had found it difficult to contain her sense of injustice;
- b) there was no evidence that B had communicated her allegations to A, but there was a continuing risk she might do so.

- 387) I agree the situation regarding B is different to that of the mother. It is evident from her dealings with the police over June and July 2019 and her meeting with Dr Jefferis as recently as November 2019 that B maintains a burning sense of injustice, particularly a sense of not being listened to or taken seriously. She was still worried about the risk to A living with the father as she saw it.

- 388) I also agree with the observations of B as calm and dignified in court and when giving her evidence. She struggled with some answers but did her best.

- 389) Once again, the question is whether B would be able to manage her own emotions in contact.

- 390) I share the concerns of both Dr Jefferis and the guardian about this. I have no doubt that B has come to understand that the return to court in May 2017 was a direct consequence of her visit to A's school and that her referral in June 2019 will have exacerbated the difficulties (particularly coming on the back of the warning given by Cohen J). Her meeting with Dr Jefferis plainly did not go well.

- 391) When giving her evidence I am sure B had an acute sense of responsibility therefore for the way things are regarding contact with A. She is sensible enough to understand that if she presented in court and in evidence as she had

done to Dr Jefferis that would pretty much end any prospect of direct contact, at least for her.

- 392) I do not accept that there has been a change in circumstances since the interview with Dr Jefferis on 12 November to justify the conclusion that B has drawn ‘a line in the sand’. B had learned at least two weeks earlier that the police were taking no further action.
- 393) Given the very recent context of her further allegations to the police, her attitude with the police (which I accept was accurately recorded in the police disclosure) and her attitude in interview with Dr Jefferis, I can have little confidence that B’s apparent maturity in court and in evidence could be maintained by her away from the spotlight of these proceedings. While I accept there is no evidence that B has talked to A about her allegations, there is a very real risk that she will be unable to contain her emotions and that contact may be used by her to monitor A, to resurrect further concerns about her safety and to make further referrals.

*The father*

- 394) District Judge Willis’ impression of the father was generally favourable. There seemed to be an emerging child centred attitude and he recognised the importance of the relationship between A and her mother and sister.
- 395) HHJ Meston found:
- a) that it was certain, if A moved to live with the mother, the father would carry out his threat and have nothing more to do with A during her childhood;
  - b) the father was bound to interpret the mother and B’s actions as part of a conspiracy to question the court’s decision and undermine A’s placement with him;
  - c) the father was at the end of his tether and was genuinely concerned to protect himself, his wife and A;
  - d) he was aware of the impact on A of ending direct contact.
- 396) I agree with Mr Hand that A’s welfare is wrapped up in the father’s mental health state.
- 397) Based on the unchallenged medical evidence produced by the father, I accept (and find therefore) that he has a diagnosis of adjustment disorder and has made two attempts on his own life as a result of the stress and anxiety caused by these proceedings and the allegations made by B.
- 398) I agree that much of the father’s evidence seemed to be more about him than about A and lacked child focus. I was concerned at his lack of insight in suggesting that the mother should block any attempt by A to contact her by social media.
- 399) I was also concerned that their negativity about the mother in particular would pervade the image the father and stepmother give A and I found that difficult at times to reconcile with their assertion that they promote the mother and B and do not seek to exclude them from A’s life.

- 400) I accept Dr Jefferis found that A did not treat her mother and sister as demonised figures and her profile did not suggest she had been subjected to an active campaign of alienation.
- 401) I remain concerned however at other aspects of Dr Jefferis' findings about A, in particular her defensiveness and inability to open about her feelings. It is a reasonable conclusion that this child, as the object of litigation over the last 7 years, has been damaged by parental conflict from both parents. It is notable that despite that she seems settled and happy (superficially at least) and it should be forgotten that she spent her formative years, when attachment was laid down, with her mother. I share the concerns of others that this superficial edifice is fragile and could easily crumble as A comes to ask ever more difficult questions which I do not consider the father or stepmother are equipped to answer satisfactorily.
- 402) I accept as genuine the father's belief (supported by the stepmother) that he is too unwell to engage in these proceedings. He has convinced himself that he cannot cope with ongoing proceedings and he and his wife genuinely believe that to be forced to do so would be deleterious to his mental health state. There is however a degree of manipulation of the court and the court process. Objectively speaking it seems to me that the father is capable of more engagement than subjectively he believes. This is demonstrated by his ability to attend court and give evidence much more robustly than anyone anticipated from his state as reported to the court. His motivation in coming to court was to pursue his application for injunctions against the mother and B (hence his initial prescribed agenda of topics on which he was prepared to be questioned).
- 403) Although the father and stepmother maintain they are not seeking to hold the court to ransom there is a clear and, I believe, conscious element of that in their thinking and actions. That may be driven by circumstances as they see them but the father has allowed himself to be overwhelmed by those circumstances.
- 404) I agree, on the present evidence, that HHJ Meston's finding that the father and stepmother are bound to perceive B and the mother as part of a conspiracy holds good certainly so far as B is concerned. Given the history I can also understand why they include the mother in that conspiracy, although objectively I consider that, although the mother has continued to provide direct support to B, she has to a degree endeavoured to distance herself from the allegations over the last 2 years.
- 405) Objectively speaking, the reasonable parent at this point would conclude that direct contact with A could be safely managed for the mother but probably not for B.
- 406) I accept however that, subjectively, there is a real and serious risk that if the court does order direct contact the father may
- a) make further attempts on his life, possibly successfully;
  - b) even if not, suffer further negative impact on his mental health and ability therefore to meet A's needs;
  - c) relinquish care of A;
  - d) relinquish any current relationship with A.

*The stepmother*

- 407) I have not heard evidence from the stepmother other than to agree with the evidence of the father. I take into account her position statements.
- 408) Save that she seems to share some of the father's lack of insight into the difficulties that are likely to present to them as A gets older, the stepmother does come across as focussed on A's welfare. She has made significant adjustments to enable her to care for A. It is plain their relationship is close, to the point that the father would regard his wife as A's primary carer. I accept Dr Jefferis' assessment of the stepmother.
- 409) However, it is equally clear that the stepmother is naturally concerned to protect the father from anything that might impact on his fragile state and, therefore, the security of their marriage. So the stepmother's perspective and approach has also been wrapped up in the father's mental health state for a number of years of this litigation.
- 410) I accept that the stepmother has genuinely considered walking away from the marriage and that this remains a real risk in addition to those risks I have set out above in respect of the father.

*Is this a case of parental alienation?*

- 411) In her submissions Ms Branigan submits that, even if this is not a case of active alienation by the father there is a more subtle form of alienation in play, with the mother projected as a bad person who has said wrong things about the father.
- 412) Mr Langrish does not describe this as a case of parental alienation but Mr Hand does. He says this is undoubtedly an alienation case. The findings of the district judge were, he says, in effect that A was suffering from parental alienations in the care of the mother. Further, Mr Hand said A is now arguably suffering from parental alienation by the father.
- 413) Parental alienation is not defined. Cafcass understand it to mean "*when a child's resistance or hostility towards one parent is not justified and is the result of psychological manipulation by the other parent*"<sup>9</sup>. Implicit within the concept of parental alienation is that the child has been 'turned' against a non-resident parent.
- 414) Alienation itself exists on a spectrum, ranging from the unconscious undermining of a child's relationship with a non-resident parent (including the more subtle form described by Ms Branigan) to the out and out deliberate campaign designed to destroy the relationship. The Cafcass Positive Co-Parenting Programme is careful to distinguish alienation from justifiable rejection (because of the non-resident parent's behaviour), alignment with the resident parent and attachment issues. All of these exist on a spectrum and may overlap. It is not uncommon to see cases which feature all, or any combination of, justifiable rejection, alignment, attachment and alienation. It is essential that the court understands, through findings if necessary, what it is dealing with.

---

<sup>9</sup> <https://www.cafcass.gov.uk/grown-ups/parents-and-carers/divorce-and-separation/parental-alienation/>

- 415) In fact, the present case suggests that A was not alienated in the care of either her mother or her father. If A had been alienated from her father by her mother even at 4 I would have expected greater resistance by her to the transition of her care to the father than appears to have been the case. And now, although A expresses some ambivalent thoughts about her mother and sister (borne out of suppression of freedom of expression) she is generally positive in her responses to direct contact and says she would like to see them. Dr Jefferis did not find indications of alienation in A.
- 416) So I do not see this as a case of parental alienation. There is a case for saying it could be attempted alienation, but that would be to suggest a deliberate campaign. I prefer to see this as a case of implacable hostility or intractability, both by the mother in 2015 and the father and stepmother now.

### **The welfare checklist**

(a) *A's ascertainable wishes and feelings (considered in light of her age and understanding)*

- 417) To ascertain the wishes and feelings of a child experiencing parental conflict and divided loyalty between warring parents is no easy task. Dr Jefferis explains A's defensiveness and how she is emotionally closed down. I have no doubt that she is well aware of the hostility between her parents through bitter experience. It is unsurprising therefore that she finds it difficult to talk about issues around relationships and contact. Any positive comment she makes about her 'other family' is likely, through her eyes, to be seen as betrayal of those she is closest to. I also suspect, although this has not been canvassed in the evidence, that she is well aware that her father is unwell at the moment, mentally and physically, and is anxious about his vulnerability. She may see her defensiveness as protective of her vulnerable father.
- 418) All that said, it seems common ground, and I agree, that A has enjoyed her contact with her mother and B and would like to see them again. I regard any hesitation in this respect when speaking to the social worker or Dr Jefferis as symptomatic of the internal conflict she experiences as a result of the adult disagreement.
- 419) A is clearly happy and stable living with the father and stepmother and sees them as her primary source of care and security. I have no doubt that A would wish for that to continue.
- 420) In the longer term it is safe to assume that A would wish to have meaningful relationships with all the important adults in her life.
- (b) *A's physical, emotional and educational needs*
- 421) This is a crucial factor. Although I am concerned here particularly with A's emotional needs I also consider her psychological needs.
- 422) A has two fundamental needs. The first is for stability of placement; the second is for meaningful relationships with all the important adults in her life, including her mother and sister. The essential question in this case is whether both of those needs can be met satisfactorily and, if not, which weighs heavier in the balance.



- 423) The need for a stable placement is core to A's emotional security. I have to agree with Dr Jefferis and the guardian that this need takes priority. I deal below with the risks to A if this need is not met.
- 424) The need for meaningful relationships is also very important and weighs heavily in the balancing exercise. It has, however, in my judgment, to be subject to the priority need for security of placement.
- 425) The question the appeal raised is how the need for meaningful relationships is met. Involvement of both parents within section 1(2A) expressly encompasses the possibility of indirect contact. The question is whether indirect contact can preserve meaningful relationships or whether that can only be done through some form of direct contact, whether regular contact or less frequent identity contact.
- 426) If it were the case that less frequent (identity) contact could be managed where more frequent contact could not, then the case for identity contact might be made subject to two caveats:
- a) there is force in the point made by the father that each occasion of contact would be a 'bereavement' for A with the tension of a big build up and realisation at the end that she would not be seeing her mother and/or sister again for 3 or 4 months;
  - b) there is also a risk, as the guardian recognised, that identity contact may not satisfy A's need for a more regular direct relationship and may stir up unfulfilled need.
- 427) A has a further fundamental need essential to her emotional and psychological wellbeing. That is to grow up free, so far as possible, from parental conflict. This does not just mean avoiding tensions that might arise from handovers and possibly emotive direct contact. It also means all the adults giving her the same positive, emotionally supportive and consistent message that all of them love her and want what is best for her. If any of the adults convey to A that another adult is not to be trusted, that qualifies the positive message she needs. It makes her aware of mistrust existing between the adults. It prevents her having emotional permission to express herself freely about her needs. It creates the potential for divided loyalties. This will cause lasting emotional harm.
- (c) *The likely effect on A of any change in her circumstances*
- 428) The re-introduction of direct contact after two years would be a significant change of circumstances for A, whatever its frequency. If it could be managed by the adults I would consider that to be a change of circumstances bringing immediate and long-term benefits to A.
- 429) The risk is that direct contact is not managed, resulting potentially in loss to A of her father, her stepmother or at least ongoing tension and upset surrounding contact and, likely, more litigation. Those would be changes of circumstances with immediate and long-term negative consequences, possibly catastrophic.
- (d) *A's age, sex, background and any other relevant characteristics*
- 430) At 8 A has reached the stage in her development where we can expect her to be asking more difficult abstract questions. The questions will get more difficult

as time goes on. These years, leading up to her adolescence, I would regard as critical.

- 431) A has, and I use the term advisedly, been the object of litigation for 7 of her 8 years. She has suffered the loss of relationships with her father and then with her mother and sister. There has barely been a time when she has been able to enjoy relationships with them both at the same time, and certainly not in an uncomplicated way. Her perspectives of the non-resident parent have also been complicated by the adult perspectives communicated to her directly or indirectly.
- 432) Although A presents as happy and settled I see that as a fragile carapace.
- 433) It is also highly likely, in my judgment that there will come a time, quite soon, when A will be thinking about whether to contact her mother and B herself, probably through social media. It will not be difficult for her to find them, even if the mother does not use social media. The question is how that is handled by the adults. If A thinks she is going behind her father's back and being disloyal that is likely to mean either that she doesn't make contact, probably resulting in frustration and resentment, or that she does but behind closed doors, creating feelings of guilt and disloyalty. Neither will be healthy for A.
- (e) Any harm which A has suffered or is at risk of suffering*
- 434) Unresolved and enduring parental conflict causes long-lasting emotional damage to children, affecting their mental health and life chances. This is a key message that is reflected, for example, in the DWP Reducing Parental Conflict Programme<sup>10</sup> and the research of Professor Gordon Harold and others<sup>11</sup>.
- 435) Whether or not this is a case that has involved parental alienation (and I have concluded it is not) A has been exposed to high levels of parental conflict over 7 years. It is inevitable that this experience has been harmful for her. I accept there is no evidence that the mother (or B) has discussed B's allegations with A. I accept that the father and stepmother have said to A that her mother and sister love her. I find also though that A has received very negative messages from each of her parents through their words and actions about the other parent (and B in the case of the father and stepmother).
- 436) What B is in fact told through life work will be a matter for professional advice and guidance. For her to have received a message the bottom line of which is that her mother and sister have lied and cannot be trusted, while being the truth as the father and stepmother see it, undermines A's relationships with her mother and sister.
- 437) It is unsurprising in these circumstances that Dr Jefferis found A to be defensive and concluded that she had already suffered psychological harm. Her apparent resilience is fragile.
- 438) A has also suffered the loss of relationships with her mother and sister other than through indirect contact over the last two years. Although Dr Jefferis

---

<sup>10</sup> See <https://reducingparentalconflict.eif.org.uk/>

<sup>11</sup> See <http://www.sussex.ac.uk/broadcast/read/34955>

might have expressed more clearly the longer-term impact of this on A, he did address this in his evidence, if not in his report. He identified risks to A's self-esteem and of self-harm and emotional dysregulation. These are all likely to have a long-term impact.

- 439) My own view is that for A to lose meaningful relationships with her mother and sister through direct contact and to risk such relationships as there are dwindling through indirect contact would be nothing less than a tragedy for her. It almost goes without saying that for a child to grow up into adulthood without such important relationships, relationships she would want to happen, is a huge deficit for her.
- 440) More catastrophic though would be the harm to A if, in pursuing those meaningful relationships, she lost her father, or a relationship with him and/or her stepmother. HHJ Meston said he was certain the father would walk away. I am not quite so certain, but I consider the risk of him either suffering a drastic failure of his mental health or simply walking away is very high. Either way, it is not a risk I can ignore. While the father's medical evidence may be seen as self-serving, deriving largely from what he has told his treating medical practitioners, there is an unchallenged psychiatric diagnosis of adjustment disorder and two attempts on his own life which everyone accepts must be taken seriously.
- 441) I say that outcome would be more catastrophic for two main reasons. First, it would be the loss to A of her current primary carers. That would be a more profound change of circumstances for her than continuation of the loss of relationships with her mother and sister in circumstances where she has adjusted to that change, albeit superficially. Secondly, loss of her father would not mean automatic restoration the care of her mother. It is common ground that is not possible, at least at present. The likelihood is (unless the stepmother assumes sole care of her) that A would end up in foster care, an outcome that nobody considers would be in her interests. There is also a serious risk that A may come to blame the mother (and perhaps B) for the loss of her father or relationships with him and/or the stepmother.
- 442) I regard the risks around less frequent identity contact be broadly the same.
- 443) Whatever the decision about direct contact, I regard A as being at high risk of psychological and emotional harm in particular to her sense of identity, fulfilment and in her ability to regulate her emotions as she moves forward towards adolescence.
- 444) Whether this risk can be mitigated or avoided lies in the hands of the adults, not the court.
- (f) *How capable each of the parents, and relevant others, are of meeting A's needs*
- 445) This includes of course the stepmother but also, to the extent that she is now an adult seeking direct contact, B.
- 446) It is common ground that the mother could not currently meet A's primary care needs if she were to lose her current primary carers. I have found that the mother would be able to manage direct contact. Considerable professional work would be required with the mother and with A in order to prepare both for such contact and to supervise it.

- 447) For the reasons I have given, I do not have the same confidence at this stage in B's ability to manage direct contact with A and therefore meet her needs. As I shall come to, I hope that may be possible in the future.
- 448) While I believe the father and the stepmother are well intentioned and absolutely believe that they are acting in A's best interests, I consider that the father's mental health state so overwhelms and dominates their thinking that they are unable to have full insight into A's longer-term needs.
- 449) They are right to want an end to this litigation for their own and A's benefit. They are also right to acknowledge the importance to A of a relationship with her mother and sister, to tell her that they love her and to promote that relationship through positive indirect contact, as they have done.
- 450) The problem lies in their inability to see longer-term the problems that are being stored up through lack of direct contact. They have no real plan how they will deal with difficult questions and issues other than saying they will take professional advice.
- 451) I accept that inability turns on the incredible stress brought about by these proceedings and the allegations made over a number of years. For that the mother (and B) have to share responsibility.
- 452) I am not naïve enough to think that my finding that the mother could manage contact is any more likely to 'flick a switch' and change the father and stepmother's belief systems than the district judge's findings in 2015 did for the mother. To that extent the problem for them is just as much part of the human condition as it is for the mother.
- 453) At the moment though it seems to me that the father and stepmother are quite unable to meet A's need for direct contact with her mother (and sister, were she found to be able to manage it).
- (g) *The range of powers available under the 1989 Act*
- 454) The potential range of powers under the Act (not including therefore non-molestation injunctions) seems to me to be:
- a) to order regular direct contact (supervised or otherwise);
  - b) to order less frequent identity contact (again, supervised or otherwise);
  - c) to continue indirect contact;
  - d) to regulate behaviour thought prohibited steps orders;
  - e) to impose conditions on contact under section 11;
  - f) to direct the local authority to report (again) under section 37;
  - g) to make an interim care order alongside a section 37 direction;
  - h) to make a family assistance order for up to 12 months naming those who are prepared to consent to it (principally to enable life story work);
  - i) to make an order under section 91(14) restricting further applications without leave.
- 455) Of course I need and should only consider realistic options. I mention at (f) and (g) above the possibility of a further section 37 direction with or without an

interim care order because that, theoretically at least, is within the court's powers. This is not advocated by anybody, but the experience of the appeal before Cohen J tells us that, advanced or not, the court must consider all available alternatives.

- 456) I can deal with the option of section 37 and interim care shortly. It is common ground that A is settled and apparently happy in the care of her father and stepmother, even if there are worries about her emotional and psychological wellbeing. There is no realistic prospect that a local authority will consider the threshold met at the moment for care or supervision proceedings. The grounds for interim care (the safety of the child requiring immediate separation) are plainly not engaged here.
- 457) Of course, section 37 is not just directed at the question of care or supervision for it also requires a local authority to set out the support it proposes to give the family (or, if it does not propose providing support, giving the reasons why not).
- 458) There is an argument in this case, given the identified harm, that the local authority may regard A as a child in need, requiring planned support. That is not a possibility I entirely discount but I have not heard argument on it. As this judgment is going out in draft there will be an opportunity for the parties to consider that with the local authority before it is formally handed down.
- 459) And of course, if the local authority does regard A as a child in need, that may enable support for life story work with A, and possibly professional support for and work with the adults, rather than through a family assistance order.
- 460) Otherwise it seems clear to me, as is common ground, that a family assistance order should be made directed to Cafcass to advise, befriend and assist those named in the order. I invite the father and stepmother to tell me whether they would consent to be named in such an order alongside the mother and A (and possibly B)

### **Analysis of the options and conclusion**

#### *Direct contact*

- 461) The welfare of the child requires holistic analysis of the pros and cons of the realistic options.
- 462) I have in the course of addressing the welfare checklist set out the benefits (needs) and risks (harm). All these cases require the court to consider what the risks are, what the consequences of the risk would/could be, whether the risks can be managed and then to make an order proportionate to those risks which complies with Article 8 and is in the best interests of the child.
- 463) Stripped down to the essentials I need to weigh in the balance:
- a) the long-term benefits to A of re-establishing a meaningful relationship with her mother and/or sister
  - b) the risks in doing that of destabilising her current placement and loss of her primary carers, permanently or during her childhood;
  - c) the long-term emotional damage to A of loss of relationships with her mother and sister.

- 464) Although section 1(2A) of the 1989 Act envisages parental involvement through indirect contact, I accept that is unlikely in the long term to meet A's need for meaningful relationships with her mother and sister. It is better than nothing as it serves to remind A about her mother and sister but it is no substitute for a direct relationship. I also accept that indirect contact may be more difficult to maintain and may give rise to more questions than answers as A gets older and more inquisitive and continues to ask ever more difficult questions about why she can't see her mother and sister.
- 465) I have already identified why I consider the short and long-term impact on A of losing her primary carers would be greater than continued loss of relationships with her mother and sister. The risks about the latter are certain if direct contact is not ordered. The risks of the former (if it is ordered) are not certain but sufficiently high in terms of likelihood and consequence that I am not prepared to take the chance.
- 466) Could the risks be managed? If direct contact is ordered I have little confidence that either the court or the adults would be able to manage the risks. In this I am in agreement with Dr Jefferis and the guardian. I find it difficult to see how the court could enforce an order for direct contact when the father threatens to walk away. And what would be the point of punishment for its own sake rather than to secure compliance?
- 467) The risks apply were the direct contact to be frequent or identity contact. Although the opportunities for tension and anxiety might not arise so often with identity contact, the build-up and let down for the adults around less frequent contact does risk more emotive occasions and, perhaps, heightened monitoring of signs in A that all is not well in the care of her father and stepmother. And there are added risks of A asking more questions than identity contact answers and re-kindling a need that is unfulfilled by infrequent meetings.
- 468) So I have come to the conclusion on balance that the risks for A around direct contact outweigh the immediate and long-term benefits that it would bring her. As a result the order for direct contact of March 2017 is varied and the order for indirect contact made by HHJ Meston QC in February 2018 confirmed with the adjustments indicated below.

*Prohibited steps orders/non-molestation injunctions/exercise of parental responsibility*

- 469) The mother is already subject to the prohibited steps and non-molestation orders I have summarised.
- 470) The father and stepmother have produced no evidence to show that the mother has failed to comply with those orders, certainly in the last 2 years. I accept that the mother has sought to support B. That is not a ground in my view that warrants further intervention.
- 471) So far as the mother is concerned I cannot see that it is either necessary or proportionate to enlarge the existing prohibited steps order or to step any of those orders up to non-molestation injunctions. The existing orders will continue.
- 472) As far as the mother's exercise of parental responsibility is concerned, I agree with Ms Branigan that the mother should:

- a) be notified in the event of any change of A's address within the jurisdiction and told the area of any move, but not given A's address;
  - b) be informed about foreign holidays;
  - c) know which school A attends and be informed about any change of school;
  - d) be consulted about senior school;
  - e) be informed about any health concerns, significant medical issues or accidents and the outcome of any related appointments;
  - f) receive photographs of A;
  - g) be able to send photographs of herself and B to A as part of her indirect contact.
- 473) Mostly this is the provision of information to the mother which could not impact on the security of the father and stepmother. The one point that was in issue was the provision by the mother of photographs. I am requiring this because it seems to me the minimum necessary to keep the mother and B visually alive in A's mind and to mitigate the very real risk of her memories of them dwindling on the vine. If the father and stepmother truly wish to promote the mother and sister's relationships with A I am sure they will understand the need for this. As Dr Jefferis said, this at least is something the father and stepmother should be able to manage.
- 474) I do not agree the mother should be given A's address. This would run contrary to all the indications given to the court on behalf of the mother when seeking disclosure of the address to the court and would rightly be regarded by the father and stepmother as the start of a slippery slope.
- 475) I do not agree that the mother should be able to attend A's school for the reasons given by Dr Jefferis – essentially that may be seen as threatening A's safe space. It may be said A need not know but that would mean keeping secrets and somebody would be almost bound to let slip that she had been there. For the mother to go to A's school but for A not to be able to see her could cause real problems for her.
- 476) So far as B is concerned the position seems to me from the evidence to be as follows:
- a) she went to A's school in May 2017;
  - b) she made a referral to the police in June/July 2019 via her school and followed it up;
  - c) she has continued to receive counselling, presumably on the basis that the matters alleged happened.
- 477) Apart from that I have not seen any evidence of anything said by B to third parties or to A direct about the allegations. I have found the allegation that she made the 'paedo' call not proved.
- 478) The father asks me to 'clear his name' and to stop B from defaming him. I make clear that proceedings of this sort are about the welfare of the child and never about 'clearing names'.

- 479) It would be wrong as a matter of public policy, it seems to me, to make an order that prohibits a person reporting allegations to the police or other responsible authorities or seeking counselling in respect of those allegations. I repeat that B is not bound by the 2015 findings.
- 480) There is a further point. If B is to have any chance of persuading the father and stepmother over time that she has indeed drawn a line in the sand, her chances of doing so should be improved if that has been achieved without the threat of criminal sanction hanging over her head.
- 481) In these circumstances I do not regard the making of a non-molestation order in respect of B as necessary or proportionate.
- 482) I do consider it would be sensible if any professionals working with B had access to this judgment so they can understand the family context. In this respect I note the very recent observations of Knowles J in *A City Council v A Mother, AB and Others* [2020] EWHC 217 (Fam) about the importance of professionals working with families understanding context. I understand of course that organisations specialising in counselling victims of sexual abuse approach counselling on the basis that the abuse alleged happened. As the father says, there is a danger, if it did not happen (and that is the basis on which the court proceeds), that B's position will simply be reinforced and potentially further referrals encouraged.
- 483) I am not going to trespass further into the counselling or therapeutic work that B undertakes other than to say that Dr Jefferis' recommendation for therapeutic work by professionals not involved in sexual abuse counselling and support should be considered by B (supported by the mother). If that work is not done it opens up continued argument by the father that there has been no change. Further I will give permission for this judgment to be disclosed to any professional working with A in relation to the matters raised in this judgment.
- 484) I have considered whether to require disclosure by B of the judgment to counsellors or other professionals. I am not going to do so for two reasons. First, I consider it would step too far into the counselling relationship. Secondly, that would require a condition attached to the indirect contact order (that is the only vehicle I can think of that could mandate disclosure). In my view any conditions on that order should relate to implementation or exercise of the indirect contact itself, not to wider questions.

*Section 91(14) order*

- 485) There seems to be common ground that this litigation needs to end and for an appreciable period. It has been incredibly stressful for all the adults concerned and has impacted on A. It has certainly impacted seriously on the father's mental health.
- 486) The father seeks a period of 5 years. He wants to be able to tell A that the court has said no contact for 5 years. That also was Dr Jefferis' position.
- 487) About that I say first, 5 years is a disproportionate interference with access to the court, secondly, that I would be worried about the message the father would wish to give A. While I accept A would welcome some clear outcome and certainty about her situation that needs to be done carefully and with professional advice. If A wants to see her mother and sister, and she does, to



be told the court has said you can't see them for 5 years is likely to further shut her down emotionally, potentially with consequences for the father and stepmother later.

- 488) The guardian suggests an order until A reaches the second year of senior school. I agree with the guardian's logic. When I sent this order out in draft I understood that would take us to Spring 2023 and proposed a 3 year order to allow time for any further judicial consideration to be completed if possible before A started a new academic year. The stepmother pointed out however that, as A is a 'summer baby,' she will not start senior school until a year later. Remaining faithful to the guardian's logic I will therefore make a 4 year order. That is, I consider, a necessary and proportionate interference with access to the court (by requiring a filter) to allow A a period to settle at senior school without the additional uncertainty and anxiety of further litigation hanging over her at a point of transition.
- 489) The order will provide for a process whereby any application for leave should be considered by me (if available – if not another circuit judge) without a hearing and without notice to the other parties in the first instance. That gives an opportunity for the court to consider the application on paper and to refuse leave if it is considered a need for further judicial consideration has not been demonstrated. If there is an arguable case for leave, an oral hearing can be fixed on notice to the other parties. If leave is refused on paper, an oral hearing can be requested.

### **The future**

- 490) I conclude this judgment with some observations which I very much hope will help achieve a better outcome for A in the foreseeable future. It is effectively the same plea the district judge made in December 2015.
- 491) If there is to be any hope for the re-establishment of A's fundamental relationships with her mother and sister in the future the following things, in my view, need to happen:
- a) now that the proceedings are concluding, the father needs to get the therapeutic help he so obviously needs to reduce his levels of stress and anxiety and to restore his mental health;
  - b) I give permission to the father to disclose this judgment to any treating practitioner in the hope it will be of assistance in that journey;
  - c) the mother and B need to demonstrate over the passage of time that they are able to accept that the court has made the findings it has and that A is not at risk from her father;
  - d) while I do not impose any restraint on B, she needs to understand that further referrals (and any support the mother gives) will undo any progress made to reduce the father and stepmother's anxieties and push back further any opportunity to re-establish relationships with A;
  - e) professional work with and support of the mother and B to address their approach to the allegations will not only assist them but may also, in time, persuade the father and stepmother that they really have been able to move on and no longer pose a threat;

- f) I hope that over time, with more space and less stress and anxiety, the father and stepmother will be able to reflect and consider whether the very strong feelings, emotions and worries they have now have mitigated to the point where they can meet A's need for those important relationships with her mother and sister;
  - g) if that does come to be the position I would encourage the adults to seek professional help to resolve issues out of court rather than immediately seeking leave or making application to the court;
  - h) the adults need to accept personal responsibility for the past and what happens to A in the future; attribution of blame is very easy in these high conflict cases, at the expense of personal agency;
  - i) and the father and stepmother in particular need to embrace the fact that A, as she gets older, will in all probability be thinking at least about contacting her mother and sister, probably by social media – they need to think how they will manage that if matters stay as they are;
  - j) most importantly, A needs a consistent and, so far as possible, narrative given with professional support and guidance, that gives her a more balanced perspective and she needs an environment within which she is able to express her feelings freely, whether to her father and stepmother, her school or elsewhere – no divided loyalties;
  - k) as Dr Jefferis says, how A does will largely depend what is going on in her life – and that will largely be down to the father and stepmother.
- 492) I hope that the local authority will understand from this judgment just how vulnerable and at risk emotionally A is and will actively consider the support it may be able to provide to the family, whether through Early Help support, a child in need plan or otherwise.
- 493) Finally, I hope very much that time and understanding will enable a clearer perspective by all about A's needs as she grows up. The outcome of these proceedings is, as everyone agrees, a least worst outcome for A. To achieve a best outcome for her will need all the adults in her life to accept their responsibilities and move on.

### **Postscript**

- 494) I sent this judgment out in draft on 26 February and it has been seen by the local authority. I have formally handed it down at a hearing this morning. The local authority was represented at the hearing by solicitor Nicola Preston together with an experienced social worker from the assessment team, Collette Keckes. The father and stepmother did not attend the hearing, the stepmother because of her pressing studies and the father for health reasons. Mr Ward-Prowse represented the mother, otherwise representation was as before.
- 495) Ms Preston explained that any life story work would be done by the local authority's Early Help Team whose resources are hard pressed. She questioned whether the work would be proportionate. I had hoped that the work could be done by the same social worker, Ms Penny, who had already met with A in order to avoid introduction of a new professional. Ms Preston wondered whether Cafcass would carry greater gravitas in engaging with the parents. She said if a family assistance order is made directed to the local authority that

would give the impetus for the work to be done. She also indicated that the work might be brokered to the local Adoption Agency who are experienced in life story work. If there is to be an order everybody agreed it should be for 12 months to allow time for the work to be done.

- 496) The mother and B have indicated their willingness to be named in a family assistance order. The stepmother has indicated by email that she would need to know more about the plan under that order before considering whether to consent. She says the father will not consent.
- 497) I make a family assistance order for 12 months requiring BCP Council to advise, assist and befriend A, the mother, B and, if she does consent to be named (as I hope she will), the stepmother. I have indicated that the work to be done should not exclude the father just because he is not named. The work should engage him to the extent that he is prepared to do so.
- 498) The purpose of the family assistance order will be:
- a) to undertake life story work with A;
  - b) to further the objectives set out in paragraph 491 above.
- 499) The rationale for directing the order to the local authority is as follows:
- a) they have specific experience within the Early Help Team or the Adoption Agency of life story work;
  - b) they will be better placed, as Mr Hand suggested, to follow up any issues that arise from the work to be done;
  - c) the father and stepmother made some criticism of the guardian and her recommendation was against the case run by the mother and B – arguably all four adults may have reason to prefer that any work be done by an independent authority;
  - d) in any event, sadly, the guardian is currently on long-term sick leave.
- 500) Mr Langrish expressed concern that the work should be done. The work is plainly belated, necessary and proportionate to the likely resources needed. I have directed that the local authority must file a report with the court when the work is completed or by 12 months at the latest setting out what has been done and any outcomes. That provides a mechanism by which the court can satisfy itself that the necessary work is undertaken.
- 501) I have considered whether a further hearing is necessary. Nobody wants that. I agree any further delay would be contrary to A's interests. This is therefore the final hearing.
- 502) Nobody has sought permission to appeal the order I am making.
- 503) That concludes this judgment.