



Neutral Citation Number: [2022] EWFC 146

Case No: ZW20P01551

IN THE FAMILY COURT
SITTING AT THE ROYAL COURTS OF JUSTICE

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 05/04/2022

Before :

MR JUSTICE KEEHAN

Re CS & DS (Children)

Between:

AS

Applicant

- and -

BS

Respondent

- and -

CS & DS

(by their Children’s Guardian)

Ms A Grief QC (instructed by **Payne Hicks Beach LLP**) for the **Applicant**
Ms J Kavanagh (instructed by **Thomas Mansfield Solicitors**) for the **First Respondent**
Mr K Pugh (instructed by **Creighton & Partners**) for the **Second and Third Respondents**

Hearing dates: 28th February, 1st, 2nd, 7th, 9th, 11th, 18th March & 1st April 2022

Approved Judgment

This judgment was handed down remotely at 10.30am on 5 April 2022 by circulation to the parties or their representatives by e-mail.

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MR JUSTICE KEEHAN

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

Mr Justice Keehan:

Introduction

1. I am concerned with two children CS, a young teenager, and DS, a pre-teenager. Their father is the applicant, AS, and their mother is the respondent, BS.
2. On 7th November 2020 the father made an application for a child arrangements order that both of the children should live with him. The mother then opposed this application and sought an order that both of the children should remain living with her.
3. By the conclusion of the evidence at this hearing the children's guardian was of the very firm view that it was in the welfare best interests of the children to live with their father.

Law

Welfare

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

Lies

7. The rule of *R v Lucas* [1981] QB 720 was adopted in the family courts in *A County Council v K, D and L*. The principle is that if the court concludes that a witness has lied about one matter it does not follow that he has lied about everything. A witness may lie for many reasons, for example out of shame, humiliation, misplaced loyalty, panic, fear, distress, confusion and emotional pressure.
8. In the criminal courts a lie can only be used to bolster evidence against a defendant if the factfinder is satisfied that the lie is deliberate, relates to a material issue and there is no innocent explanation for the lie.
9. In the case of *Re: H-C (Children)* [2016] EWCA Civ 136 at paragraphs 98 to 100 McFarlane LJ, as he then was, said:

“98. The decision in *R v Lucas* has been the subject of a number of further decisions of the Court of Appeal Criminal Division over the years, however the core conditions set out by Lord Lane remain authoritative. The approach in *R v Lucas* is not confined, as it was on the facts of *Lucas* itself, to a statement made out of

court and can apply to a "lie" made in the course of the court proceedings and the approach is not limited solely to evidence concerning accomplices.

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

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

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

10. In the case of *Re A, B and C (Children) (Rev 1)* [2021] EWCA Civ 451 the Court of Appeal gave the following further guidance in respect of a witness' lies. Macur LJ said at paragraph 58:

“That a tribunal's *Lucas* self-direction is formulaic, and incomplete is unlikely to determine an appeal, but the danger lies in its potential to distract from the proper application of its principles. In these circumstances, I venture to suggest that it would be good practice when the tribunal is invited to proceed on the basis , or itself determines, that such a direction is called for, to seek Counsel's submissions to identify: (i) the deliberate lie(s) upon which they seek to rely; (ii) the significant issue to which it/they relate(s), and (iii) on what basis it can be determined that the only explanation for the lie(s) is guilt. The principles of the direction will remain the same, but they must be tailored to the facts and circumstances of the witness before the court.”

11. I, respectfully, agree.

Background

12. In 1962 the father was born in country Z. In 1970 the mother was born in country Z.
13. The parents disagree on when their relationship commenced. In 2005 the father was divorced from his previous wife. In 2007 the parents married in country Z.
14. CS was born in country Z and DS was also born there.
15. The family moved to this jurisdiction in 2011 living in England. In September 2018 the mother and children moved to live in country Y.
16. On 12th October 2019, the mother claimed she asked the father for a divorce and that he had responded by threatening to reduce her financial support. The father denied this occurred.
17. The father was personally served with the English divorce petition on 17th February 2020.
18. In March 2020 country Y's first lockdown began. Shortly thereafter the UK went into lockdown.
19. Between March and June 2020, CS began to self-harm.
20. In May 2020 country Y's first lockdown ended. In the UK, the first lockdown ended in June 2020.
21. The father said that on 7th June 2020 the mother informed him that she intended to relocate to live in England.
22. In August 2020 the mother moved back to the UK with the children.
23. On 2nd October 2020 the father filed an application for a child arrangements order.
24. On 18th December 2020 the father alleged that the children had made new allegations that the mother was verbally abusing both children and physically reprimanding DS;
 - i) called CS "a demon" for apparently threatening her mother;
 - ii) threatened to send CS to boarding school (against her wishes);
 - iii) threatened to force CS to attend a course for bullies at her school (without basis);
 - iv) constantly referred to CS as being "a criminal" for not listening to her mother;
 - v) pulled at DS's ears (bringing him to tears) as a punishment, for example when his room was not tidied;
 - vi) removed CS's phone and iPad despite the latter being needed for CS's school work.

25. At a hearing before HHJ Willans on 8th January 2021 the mother raised allegations of sexual impropriety between the father and CS. An order was made for Mr. John Power to prepare a s.7 report.
26. On 9th January 2021 an incident between the mother and CS took place, which was videoed by DS:
 - i) CS trying to leave to be with the father;
 - ii) the mother refuses to let CS leave and blocks the door;
 - iii) video of CS holding a large knife;
 - iv) DS sobbing while the mother keeps asking him to film;
 - v) later videos are recorded on the other side of a door listening to CS in conversation with the father.
27. On 15th January 2021 a Cafcass adviser spoke to the mother and the mother referred to the allegations of sexual impropriety of father towards CS.
28. On 29th January 2021 the father's solicitors wrote to the mother's then solicitors asking them to set out her allegations, including those of sexual impropriety.
29. On 5th February 2021 a Social Worker ("Y") visited CS and DS at the mother's house. She spoke to CS alone in her room, she was lying in a dark room with the curtains closed. CS disclosed that the mother had been physical with her when they lived in country Y. One incident when the mother dragged CS out of the bathtub for taking too long, pulling her over the side which hurt. There was another incident when the mother had shouted at her. DS apologised to CS and the mother overheard and hit her on the back throughout the rest of the evening. CS said that she curled up on the floor and the mother had said "move your hands or I'll hit you". The physical abuse had stopped since their return to the UK. CS also reported emotional abuse; the mother called CS and the father "abusers" and told CS's friends' parents that she was a bad influence.
30. Y spoke to DS alone in the mother's room. He was watching TV, in a dark room and looked tired. DS was worried that the court would not allow one week with the mother and one with the father. DS confirmed that the mother was physical with CS in country Y and since their return to the UK, CS is physical with the mother.
31. On 19th February 2021 Y and Mr Power visited CS and DS at the father's home. They both spoke to CS alone in the kitchen. CS said that the mother took her phone while she was doing Online School. The mother did not believe her and there was an altercation for the phone. CS said that the mother deliberately scratched her wrist.
32. They both spoke to DS alone in the kitchen. DS said that the mother had been explaining his homework to him and when he did not understand/got it wrong, she twisted his ear and pulled him across the room. He said this really hurt and he could feel her nails dig into his ear.

33. On 23rd February 2021 Y visited CS and DS at the father's home and spoke to both of the children together in the kitchen. CS said that the mother had made disparaging comments about her makeup calling her a freak. The mother called CS a bitch and spoilt brat. She also confirmed previous reports.
34. DS confirmed the ear twisting incident possibly three weeks to one month previously. He reported that this had happened once or twice a month since they had returned from country Y. There was one incident where the mother pulled his ear and shut him in his bedroom, not letting him leave for 1 hour. DS confirmed that the mother hit him before; open hand on his leg or wherever. He also confirmed that the father hit him before, around early 2018, open hand on his leg.
35. On 11th March 2021 the initial Child Protection Conference took place in light of:
 - Children are reporting physical and emotional abuse from mother
 - Concern about how children are presenting
 - Children experiencing harm due to ongoing parental conflict
36. On 22nd March 2021 Dr A visited DS at home at the mother's request, unbeknown to the father. Toxicology testing was undertaken including a hair strand sample to test for Class A, Class B and prescription opioids.
37. On 5th April 2021 an incident took place between CS and the mother, with ES, one of the father's children from his first marriage, on the phone. This was in the kitchen and was videoed by the mother. The mother refused to let CS leave to spend time with ES, CS repeatedly hit the mother. The mother calls CS an "abusive child". The mother stood on the stairwell outside of CS's bedroom and covertly recorded CS speaking on the phone to ES. This is the subject of applications before the court.
38. On 2nd May 2021 CS went to live with the father.
39. On 4th May 2021 the mother made a C2 application for the removal of Mr Power as the independent social worker and made allegations, for the first time, of emotional abuse, coercion and control, and aggression by the father.
40. On 5th May Mr Power was removed as an expert and the report was ordered to be removed from the court bundle.
41. On 7th May 2021 a social worker, Z, visited CS at the father's home.
42. Around 9th May 2021 CS and the mother agreed an extension of CS staying with the father until 14th May 2021.
43. At midday on 9th May 2021 the mother said that DS had returned to her from his father's, he had reported feeling dizzy and immediately went to bed. On 10th May Dr A made a patient referral to a Hospital Eye unit. The father was unaware of this at the time until other records came to light referring to this.

44. On 12th May 2021, the Police were called to the mother's home by the mother. She stated that DS was "not himself". The police who attended "deemed no concerns". DS was woken up to be seen by a police officer.
45. On 14th May 2021 CS refused to return to the mother and has remained living with the father since this date.
46. On 7th June 2021 the Guardian saw CS and DS at the Cafcass Office, England, brought by the mother. This visit was summarised on the Guardian's position statement dated 8th July 2021:

"Re CS

CS is clear that she wanted to live with her father and that she was comfortable at her father's. CS then spoke about 'last year' and when she was at her mother's.

CS stated that her mother did not treat her well and that her mother would "get physical" and would say 'nasty' things like how CS, her father, grandfather and older brothers were 'bad, super arrogant and bullies'.

...

CS also spoke about her time in country Y during the first lockdown (Spring 2020), describing it to be the 'worst time'

...

CS then began to describe the 'physical incidents' with her mother

...

CS also expressed concerns about her relationship with food and her weight and that she tried to take her anger out on her food and feels as though her weight and spots are a result of her anger towards her mother. CS also confirmed that whilst in country Y, she self-harmed by cutting her arms. CS presented, in lay terms, as depressed.

CS has stated that she "does not want anything to do with her mother" – including contact. CS would like to live with her dad. CS also commented that her relationship with DS has become difficult and that

when he is at their mother's and she is at their father's, CS does not miss him.

Re DS

DS commented that he is very shocked but now he is used to it. It is normal for his sister and his mother to argue and that he would go to his room or go downstairs. DS mentioned how his mother would ask him to take a picture and while DS does not want to take pictures, he would if he ‘thinks she tries to kill mum’ and he would take a video

DS recalled an incident a little after Christmas 2020 where his mother asked him to take a video. DS recalls that his father is outside, CS is hitting their mother hard and that she ‘nearly broke Mum’s leg, I heard the bones crack’. DS stated that he took a video and CS started crying and then DS started crying. When asked how he feels in himself, DS comments that he feels ‘normal’ and that the arguments between his mother and father, and his mother and sister are no longer a big deal and just the way things go.

DS wants to keep spending time with his mum and dad and in terms of the summer holidays, DS would like to spend Friday-Friday with his father and then Friday-Friday with his mother in a one-week-on and one-week-off arrangement.

47. On 8th July 2021 there was a hearing before HHJ Corbett. It was ordered that Dr Willemsen, a psychologist, would be instructed to prepare an assessment of the family. It was provided that DS would continue to live on an alternating week pattern with each parent commencing on 3rd September 2021 after shared summer holidays.
48. On 21st October 2021 the Children’s Guardian’s Final analysis and recommendation was filed and served. It contained the following:

“Recommendation/s

51. I respectfully recommend that a Child Arrangements Order is made for CS to live with her father.

52. I respectfully recommend that a Child Arrangements Order is made for DS to live with his father with a fortnightly long weekend with his mother, from Friday until Monday

53. I recommend that there is a Prohibited Steps Order granted preventing BS from removing DS from his father’s care, or from anyone he entrusts to care for DS or from school, apart from for the purpose of the spending time arrangements agreed by the Court.

54. That parents should be directed to complete the Separated Parents Information Programme (SPIP).

55. I recommend that the parents consider attending the online Freedom Programme.

56. I recommend that therapy takes place in accordance with Dr Willemsen's recommendations (173 – 176, Report dated 4.10.2021). It should take place locally to be manageable for the children after school.

57. I strongly recommend that the proceedings are concluded as soon as possible as the high conflict litigation is, in my view, having an enormous strain on all members of the family and in particular the children in having decisions made for them.”

49. On 16th December 2021 DS went to spend time with his father. The father said that DS informed him whilst in his mother's care he was told that he would receive a hiding if he messaged his father, and at other times had his phone removed to stop him from communicating with him.
50. On 6th January 2022 the father had planned trip to see a musical on the West End. The father had purchased tickets for he and the children to see a musical. The father said that the mother arrived at his house with DS and stood behind him while DS told him that his mother had organised a play-date with his friend that same day. DS did not go with the father to the musical.

Expert Evidence

51. Dr Willemsen's main report is dated 4th October 2021, he noted as follows:

“This is a complex case of two children who have suffered in the care of their parents, and CS in the care of her mother.

CS was able to describe how she felt she needed to live up to her mother's demands and expectations and how she felt her mother was aggressive when CS did not want this, more so as she became older. As a child I think CS was able to adapt and be close to her mother but as she grew older, the overclose relationship caused CS to be violent to her mother, to free herself from her mother's hold on her.

It is the level of violence, from CS to the mother, that makes me consider that CS was not set up by her father to abuse her mother. The father does not carry that level of hatred for the mother. To assume the father would have encouraged CS to attack her mother can be seen as denigration of CS's rage towards her mother.

The father's role has been one of a lack of protection, in that he did not intervene adequately between CS and her mother, to

help CS separate from her. CS is angry with her father about this lack; she also appreciates him, loves him and sees him as the parent she can trust and hold on to.

“DS suffered from the high levels of conflict between his parents but also from his mother pulling him into her difficulties with CS, as the videos provided clearly show. He may have suffered trauma.

...

CS spoke openly about her experiences. She told me she had self-harmed and had suffered from suicidal ideation. She spoke about the rage she felt her mother had towards her; of her mother hitting her and her mother shouting at her. CS’s presentation was one of a subdued adolescent; not clinically depressed but one whose emotional presentation was concerning because she spoke in detail about her experiences albeit being emotionally inexpressive.

...

The father recognises how important he is to CS describing himself as her ‘rock’. I think CS knows that her father loves her, but she is also angry with him for not fully acknowledging the harm she feels she has suffered in the care of her mother. She thinks that he does not always want to see what the mother is like. From the father’s account it is clear he has spent many hours with CS, talking to her, but also that he can find being available to her exhausting.

...

CS’s experience of her mother is one in which she felt her mother was in control. Perceptively, she says that her mother needs to make her problems someone else’s. I will make the point that of this family system of four people, CS is the one who mostly thinks about the dynamics and processes emotional distress on behalf of her family.”

...

The father’s narrative is that the mother is volatile with CS, and he relates CS’s experiences of her mother to his experiences of the mother, about which he spoke in detail in the interview and in his statement. The mother’s narrative is that CS is influenced by her father who is emotionally abusive and sets the children up to lie (DS) and to treat their mother the way CS does. In the local authority documents, which were provided, the mother is reported to have said at p.14: ‘This man is brainwashing the children. He is actively working with CS to give false testimony against me, it is a crime,’ and at p.15 she refers to him as: ‘... like an ISIS brainwasher for teenagers.’

Accordingly, CS's behaviour towards her mother is the father's infliction. The mother's narrative, in my opinion, does not hold, for the simple reason that the mother's explanation does not address the level of violence CS exhibits both to herself, by self-harm and suicidal ideation (her fantasies of killing herself are of an aggressive nature, such as killing herself with a gun, or hanging), and through the attacks on her mother."

The violence is severe and demonstrates CS's wish to violently separate from a mother who has held CS too close for her own narcissistic purposes. She needed CS to be in a certain way; behaviour to which CS will largely have conformed until the onset of puberty and adolescence. The lockdown period will have been extremely difficult for CS with no possibility to escape her mother and spend time with her father.

The level of violence CS exhibits is the result of a mother who lacks insight into her behaviour; tries to control the family by making the father out to be an abuser and influencing the children; and essentially attacks CS's safe haven, that is, her father. In response, CS resists the mother's attack on the father.

The unhealthily tight relationship the mother had with CS has also led to CS being angry with her father, whom she feels has not protected her. I think the father does not fully understand the serious emotional implications of the mother's behaviour (I am not thinking about the allegations of physical harm right now but more about the emotional relationship between CS and her mother) for CS. He has underestimated the mother's grip on CS, and CS's need for him, her father.

...

The mother's pathology is one in which she needed CS to be close to her; and for CS to be the way she wanted her to be. Although the mother was able to make some links with her own mother, I think she does not understand her behaviour and is emotionally abusive by suggesting that CS has been set up by her father to behave the way she does, stating that CS is an abusive child and that she is in collusion with her father. The mother was wholly unable to attune to CS's highly distressed state when she wanted to leave the house (in the video, but also in the interviews when we spoke about CS), did not understand the reasons for her daughter's volatile behaviour, and used the video clip to vindicate her own behaviour. In this process, the mother emotionally abused her son, DS, by making him witness these distressed and violent states of mind.

...

The conflict between the parents is also fuelled by the mother's inability to separate from the father. Despite her apparent independence, she continues an argument with the father in order not to have to feel abandoned. This dynamic is precisely the behaviour that is also seen in CS, whose violence to break away from her mother can also be seen as a way of holding on to her mother, especially when she perceives herself to have power of her mother. CS, however, is a child, she is dependent on her mother and seeks to free herself from the constraints her mother puts on her. CS, too early in life, is in a position in which she wishes to remove herself from her mother. She needs to be helped with that separation and be encouraged to have contact, at this stage. It is clear that she cannot now be with her mother.

DS has also suffered a great deal but he is introvert and represses his feelings. Having spoken to many professionals, he did not repeat his allegations to me, to try to find some middle way in this very difficult situation of two warmongering parents. However, he is exposed to the mother's attack on the father when she told him to video, for example, and when his mother told him that Dr Willemsen won a Nobel prize (presumably referring to my CV), and that a chocolate medal could have been the physical reward. DS would not have understood these comments.

DS is aware of his mother's denigration of CS (calling her 'kak', which is then denied by the mother) and he can provoke his mother by suggesting his father will get married and then retract the comment. He is not as introvert as one might think he is. He is increasingly less clear he wants to stay with his mother and indicated to me he wants to be with his father. In his mother's presence, or, when she brought him, he said he was not sure.

...

It is not possible to trace the mother's behaviour back to early adulthood and I am not clear about her behaviour in various contexts, for example her work. I consider, however, that the mother makes frantic efforts to avoid real or imagined abandonment (for example the continuation of the allegations which puts her in a position of conflict with the father, a conflict she holds on to, to avoid abandonment); the relationship with the father is described as unstable. The mother has a lack of sense of self. Her internal world is based on what she perceives other people to be without being able to consider her part in complex relationships. Certainly, on account of the father and CS, the mother is impulsive, angry and has a temper. I consider the mother may have chronic feelings of emptiness. There is stress-related paranoid ideation and difficulties regulating her anger, again as reported by the father and CS.

...

DS is caught between his father and his mother. The loyalty he feels to both makes it hard for him to find a position between his parents, although he said on a few occasions that he would like to be with his father. He said he is not sure who to believe: Is his mother 'emotional' as his father says, or is his father an abuser, as his mother alleges. He suffers from the high level of conflict. I think DS may feel left out (from his father, sister and half-siblings) when he is with his mother and there is of course the sibling relationship to think about.

Concerning about DS is his introvert reaction to the volatile environment he finds himself in. It is hard to understand what is going on for him.

In my view, CS needs to begin long-term psychotherapy provided by a qualified child and adolescent psychotherapist, preferably with a frequency of twice weekly. This will be open-ended work, with no set ending date with a view to CS being helped to separate from her mother, understand the complexities of the family situation and develop a secure attachment organisation. CS has capacity to change; she is able to understand and with the appropriate support is likely to develop.

...

The mother would benefit from engagement with a psychoanalytic/psychodynamically trained psychotherapist/psychoanalyst who she sees at least, but preferably more, one session a week on an open-ended basis. The mother's ability to use psychotherapy will depend on her ability to allow herself to know that she carries responsibility for the children's – and CS in particular – adverse development. There needs to be some openness to the possibility she too may have contributed for the therapy to be helpful. It is difficult to predict the outcome of the therapy. The mother has a lack of sense of self and will need to develop this up in therapy.

...

The father is able to empathise with the children, each of them, but at times may step away when he feels overwhelmed by what is happening. I have indicated that his feelings of guilt may prevent him from listening to the children. I consider that he can meet the children's basic needs and their emotional needs. He will support the relationship with the mother, but he needs to also fully acknowledge the harm the children have suffered.

The mother is not able to empathise with CS. She portrayed CS as an abuser. The mother does not understand CS's psychological dilemmas and CS, in her relationship with her mother, experiences that her emotional needs are met with aggression, which, in turn,

may cause the development of a disorganised attachment organisation.

I am concerned about the mother's empathy for DS too. She mentioned that he lies on behalf of his father. Either the father emotionally abused DS by making him lie, or the mother abused him by not being able to see that DS has mind of his own, as has CS. The mother is not in a position to support contact between the children and their father.

...

The relationship between CS and her mother cannot now be repaired. CS needs to begin her therapeutic work in which she is helped to separate from her mother and work through the traumas she has suffered. She needs to begin to understand the reasons for the violence towards her mother and the mother's aggression to CS. The mother too needs to begin her therapeutic work. In time, there may be an opportunity to begin contact.

DS has a complex relationship with each of his parents. He appears more at ease with his father, but he had fun with his mother while waiting for the session to begin. I have not been asked to give a recommendation regarding contact, but the parents and the Guardian shall need to keep in mind the need for stability for DS. He needs to develop secure attachments."

52. In Dr Willemsen's addendum report of 12th October 2021, he commented:

"DS has indicated that he wants to live with his father. When he was with his mother, he indicated he did not know if he wanted to live in between his parents, or whether he wanted to live with his father. At school, seen by himself, he said he wanted to be with his father, unprompted. DS is eleven years and six months old; his wishes and feelings are important to keep in mind.

DS has found himself in difficult and complex family interactions, in which he was exposed to the volatility between BS and CS, and between the conflict between his father and his mother. DS spoke about his mother denigrating his sister, calling her 'kak', which the mother denied she had said. CS has spoken about her mother speaking about her father, and her, being abusers. DS made allegations he was physically harmed by his mother (see social services' documents).

One of the consequences of a recommendation that CS lives with her father is that DS spends less time with his sister. He may feel more excluded from his father's life. I raised concerns about the parents' inability to co-parent in light of the continued conflict between them but also about the very different understandings the parents have of the children's behaviour. There are, however,

concerning examples of the mother pulling DS into her conflict with CS, from which DS, at this stage, cannot be adequately protected.

It is with these considerations in mind that I suggest DS lives with his father with a fortnightly long weekend with his mother, from Friday until Monday.

...

I am not without concern about the mother's behaviour and her need to pull the children into her conflict with the father, and the mother's view that the father is the abuser without the mother being able to address her behaviour. I thought a great deal about there not being any contact at all, between DS and his mother, but that option appears to be harmful too, in that there are also good aspects of his relationship with her. I consider that once the financial and child proceedings come to an end, there might be less conflict, at least overtly, between the parents.

...

The current prognostic indicators are poor due to mother largely seeing others as responsible for some of the difficulties she is facing.

If the mother does not change, it may be difficult for CS to renew her relationship with her mother, which may then not take place until CS more fully understands her mother and is able to see clearly her mother's difficulties as separate from hers.

I have earlier set out my thoughts about DS's contact with his mother. If the mother does not (sufficiently) change, there is a risk that DS will remain subjected to the mother's behaviours which could cause him further emotional harm, by speaking to him about her thoughts about the father and CS, for example. Or by seeking information from him. DS might remain exposed to the mother's conflict with the father but also to the mother's demands of him, as DS alleged.

Although the father does not need to sit in when DS has indirect contact, he needs to have access to DS's phone, and at times may listen in to contact (FaceTime or similar) between DS and his mother."

53. In Dr Willemsen's second addendum report he observed that:

"I told [DS] I thought things had changed over the last few weeks; could he tell me about it. He said from October until the end of December 2021 he decided to live one week with dad and one week with mum. Then he decided to stay with his mother.

‘My dad is not very capable of learning [teaching] with me, he does not understand.’ In the weekends and in the holidays, he told DS not to do work, according to DS.

DS said his father always lies about stuff. I asked him to give me an example. ‘If he took the last chocolate, he would lie about that.’ He said his father accuses him of things he did not know, like stealing money from his father’s credit card even when DS was not at his father’s house. DS thought his father said DS stole two hundred pounds and then he changed this to three hundred pounds. Then his father said, to his mother, that it was five hundred pounds. I asked him what DS had used the money for. DS was not sure, he said.

He said he decided to stay with his mother because he can learn there; his father was also giving him pills which he was not supposed to give DS. They were green. DS had a migraine after his father gave him medication, or a day or two after his father gave him the medication. His father said it helped him digest better; it was a Wellkid tablet. DS never saw the box; he only saw the tablet. He did not see the box. It felt like the medication was making him dizzy. He had opened one, cracked it open and there was some white dusty powder inside; it tasted disgusting.

...

In the meanwhile, DS now lives with his mother. He has not seen his father or his sister and there are no new arrangements for contact. In my view the way in which matters developed reflects and exposes the pathology that was identified in relation to CS. It seems very difficult to introduce a limit to the mother. There are no boundaries.

...

The mother’s need to have CS close, something CS began to fight and resist, now repeats itself with DS. He, however, has an entirely different character from CS. He is more accepting, loves his mother, wants to appease her and seeks the route of the least resistance, not to be exposed to the high conflict between his parents. The mother’s pathology, as described in the first report, is once more exposed.

...

I considered DS’s demeanour to be very concerning. He presented without much feeling or emotion and appeared to have adjusted to what has just happened to him. There were no feelings of loss or emotions reflective of transition. He spoke of the matters raised in the mother’s fourth statement, and was

aware of his mother researching the internet to identify the medication he allegedly was given.

He criticised his father, not firmly or with any sway, but rather seemed to parrot what he had heard. His criticism did not appear to have an emotional underpinning. I was concerned about the lack of separation between the mother's concerns about the father and DS's love for each of his parents. I was concerned DS could not express his love for his father, that his father was now portrayed as somebody who stole, was not reliable and could not be trusted (with his education, for example).

I am concerned that DS is pulled into the conflict by his mother with the father once more not being sure how best to act.

...

The recommendations I made have not changed. In fact, as is clear from my understanding of the events in the recent months, the court is now aware of what I consider to be a need for firm orders, or in any event an outcome that secures the children's placement, in whatever form.

I do not consider it safe for DS to have long weekends with his mother. I am of the view that the court will need to assess the risk the mother poses to the children, based also on the assessment of the harm each of the children, and CS in particular, suffered. My thinking verges towards considering a period of supervised contact between DS and the mother.

The court should be under no illusion that I consider this case to be a very serious matter and understand that a fear for DS, even when placed with his father with unsupervised contact with his mother. The recent events have come across as a 'mini-'abduction, and I have wondered to what extremes this mother will go to keep her children with her and continue her undermining of the father who cares for her children. This case is characterised by the determination of the mother, with a pathology that is largely self-serving, and the absence of adequately intervening father."

54. Dr Willemsen confirmed his opinions and recommendations.
55. He considered the video recordings of January 2021 and April 2021 to be very distressing and that the events recorded would have been overwhelming for the children.
56. In respect of DS he emphasised the following points:
 - i) DS has had to force down his own feelings;

- ii) he has suffered emotional and psychological harm;
- iii) it is very concerning that at least since December 2021 the mother has used her relationship with DS to meet her needs;
- iv) the low self esteem of the mother is projected onto DS;
- v) the message received by DS from his mother is that you will not cope without me: without me you will fail. DS has been set up by the mother to become dependent on her; and
- vi) DS cannot say to his mother that he misses his father. It is really worrying that DS has not seen his father in recent weeks.

57. In respect of CS, Dr Willemsen observed:

- i) very considerable damage has been caused to CS by the mother;
- ii) it is of concern that the mother has a lack of insight into the harm suffered by CS which was caused by the mother; and
- iii) there is a repetition of mother's behaviour towards CS in respect of DS.

58. His view of the mother was, in short:

- i) she constantly needs to prove the father is wrong which is exhausting for the father;
- ii) there is no beginning of any insight by the mother on her role and its impact in the family;
- iii) she has used the children to meet her own needs;
- iv) this dynamic is so damaging for the children;
- v) she challenges everyone – the father and all professionals;
- vi) her view is to turn the world upside down. In other words she views everything from her skewed and false perspective.

Evidence

- 59. The father accepted the opinions and recommendations of Dr Willemsen's reports and evidence. He told me he was shocked by the contents of the doctor's second addendum report.
- 60. He said that DS was a happy boy who loves football. He has two special friends and he is a very special boy with a great sense of humour.
- 61. The father told me that he had struggled to deal with the mother especially over the last two years and with two now traumatised children. He added that he had struggled with the notion that he had failed to protect CS from her mother but acknowledged that he had failed her.

62. He said that CS now looks to him for security and stability. The children need peace and stability and that he was willing and able to take on the burden of caring for them. He was concerned that DS now believed he would fail at school and in life if he was not living with his mother.
63. Despite all that has happened in this family the father told me that:
 - i) the last thing he wanted was to keep the children from their mother; and
 - ii) he hoped that CS would be reconciled with her mother. At this point in his evidence the father was overborne by his emotions and was crying.
64. He did not doubt that if DS moved to live with him that it would cause DS deep anguish, but he could see no alternative. He said that what Dr Willemsen had recommended made sense to him. He wanted to take the pressure off DS, that the child needed to be handled appropriately and that he needed to be very gentle with DS.
65. The mother's evidence was deeply troubling which heightened as her evidence progressed. Two issues are of particular note and relevance. First, on the third day of the mother's evidence the children's guardian was so concerned about the mother's evidence and presentation and its potential adverse impact on DS, that she made a safeguarding referral to the local authority. In the whole of my judicial career I have never known a guardian take such a course of action. I say this not as a criticism – on the contrary she was entirely right to act as she did – but to illustrate the grave concern of those in court who were listening to the mother's testimony.
66. Second, prior to the mother recommencing her evidence for the third day, Ms Kavanagh, counsel for the mother, invited the court to permit her and her solicitor to speak with the mother notwithstanding that the mother was still giving evidence. Neither the father nor the children's guardian objected. When, after a short adjournment, I resumed the hearing Ms Kavanagh said that in light of the mother's 'paranoid and delusional' behaviour in the witness box, she, her solicitor and Dr C (a renowned expert in high conflict family cases who had been counselling the mother) had reached the view that the other had lost capacity to litigate. I had no alternative but to release the mother from her oath and adjourn the case for one week to enable the mother to undergo a capacity assessment.
67. It was plain to me that in his welfare best interests, DS could not remain in the care of his mother. It was agreed that he should immediately move to live with his father and CS. Detailed arrangements and orders were agreed and made to effect the transfer of DS to his father's care and to ensure his security with his father. I directed that there be no contact between the mother and DS pending the adjourned hearing, save that the father could arrange a supervised telephone or video call between DS and his mother if the father considered this was in DS's best interests.
68. DS quickly settled in his father's care.
69. The mother was assessed by a psychologist as having capacity to litigate. She concluded her evidence on the adjourned seventh day of this hearing. The children's guardian gave brief evidence and I directed the parties to file and serve written closing submissions.

70. It was agreed that DS would remain living with his father until a further hearing in this matter when I would hand down this judgment.
71. There were two recurring themes running through the mother's evidence. First, the father had waged a campaign against her which had included
 - a) turning all the professionals in this case against her; and
 - b) he had total control over CS and was instructing or encouraging her to be violent and/or abusive to the mother.
72. Second, the mother repeatedly made reference to setting boundaries for both CS and DS and to exercising authority in her home. What she in fact meant, in my judgment, was exerting complete control over CS and DS.
73. A considerable number of topics and issues were raised with or by the mother during the course of her evidence. I intend to focus on just four of them.
74. CS and DS both, but separately, alleged that from time to time the mother was physically abusive towards them. In DS's case pulling his ear lobe, which the mother accepted she had done but only on one occasion. The mother denied doing so in respect of CS; she told me that CS had provoked her to be physical to her which was at the initiation of the father.
75. On 9th January 2021 there was an argument between CS and her mother during which CS hit her. In a distressed state CS telephoned the father who drove over to the mother's home. There then followed the most appalling and distressing scene in which CS, who was by now hysterical, was trying to leave the mother's home to see her father but her way was blocked by the mother. Not only was DS present throughout but the mother told DS to video record events on her mobile telephone. She said she did so to prove she had not hit CS. This stand off lasted for several minutes.
76. Later that day when DS was in his pyjamas and lying in his mother's bed, she video recorded him on her mobile telephone. When DS asked why she was filming him the mother replied it was to prove he was not traumatised. DS asked his mother to stop filming him.
77. On 5th April 2021 CS and DS were due to visit their half brother ES whilst their father was abroad. CS was very slow in getting herself ready, so the mother took DS. There then followed an argument between CS and the mother when she refused to take CS to see ES. The mother filmed the scene on her mobile telephone. CS was kicking and lashing out at her mother. A short time later the mother covertly recorded CS speaking to ES on her mobile telephone. The mother interpreted ES's comments as being negative about her and intended to wind up CS. I have listened to a very poor quality recording of this conversation between CS and ES and I have had the benefit of reading a transcript of it. I fail to understand how the mother could have interpreted ES's comments as she did. What I heard and read was a young man trying to calm down his desperately upset younger half sister.
78. The father said he gave multivitamin tablets to DS when he was in his care. The mother believed something far more sinister was going on. She alleged that when DS returned

from his father's care he would have headaches or feel dizzy or be comatose and sleep for considerable periods of time. In February last year rather than discussing her concerns with the father, she subjected DS to hair strand testing which was undertaken by the family's general practitioner. This was done without any reference to the father. The substances tested for included illicit drugs (eg cocaine, heroin and cannabis etc.). The test results were negative.

79. In February of this year and without any reference to the father or to any professional involved in this case, the mother subjected DS to a further hair strand test. Once again the results were negative.
80. When I asked the mother if she believed the father was poisoning DS, she gave an evasive answer which I regret to observe was a constant feature of her evidence. When I repeated the question she replied that there was enough of a pattern. As I told the mother, I interpreted this to be an affirmative answer to my question.
81. The mother was shown a schedule prepared by Ms Grief which in calendar format set out when DS was in his father's care and when DS was, according to the mother, ill or 'comatose'. With great skill Ms Grief demonstrated that when properly analysed, DS's episodes of ill health or being 'comatose' occurred several days after he had returned from staying with his father. The mother knew she had been backed into a corner.
82. When then was her response? It was the extraordinary claim that the pills the father had given to DS must be 'slow release' pills. Throughout the whole of these lengthy proceedings and after filing many voluminous witness statements the mother had never once mentioned 'slow release' pills. This was a blatant lie by the mother in a woeful attempt to make the evidence fit her distorted account of the father poisoning his son. It was the clearest demonstration of the lengths the mother would go in order to further her campaign of denigrating the father.
83. On 2nd May 2021 CS went to stay with her father but she did not return to her mother thereafter and she has remained living with him since then. She has not wanted and has not had any contact with her mother.
84. On 12th May 2021 the mother alleged that DS had been sleeping for four days. She called the police. Two officers arrived and one went upstairs to see DS. He woke DS up and was satisfied there were no safeguarding concerns. The officers offered to call the ambulance service but the mother refused.
85. When asked why she had refused the offer of an ambulance being called when she was apparently concerned about DS's physical wellbeing, she said she could not recall the officers mentioning this.
86. When asked why she had called the police rather than her GP or 111 or 999, she said she had telephoned the National Domestic Abuse helpline who gave her clarity about the pattern that was emerging in respect of DS's health and the role played by the father. She added that children's services had not helped her.
87. The mother was seeking to garner evidence against the father and sought to involve the police to assist her cause.

88. The children's guardian entirely accepted the evidence of Dr Willemsen. She was of the firm and clear view that both of the children should live with the father.
89. In the course of her evidence she changed her initial recommendation which had been there should be no contact between DS and the mother for a short period of time, then a period of supervised contact leading to unsupervised contact and then around the summer regular one night staying contact. In evidence she accepted that there could be no question of there being unsupervised contact or overnight contact until there was objective evidence that the mother had gained insight into her behaviour and had effected real change.

Analysis

90. I found Dr Willemsen to be a careful and very measured witness. His assessments of the mother, the father and the children were insightful and compelling. The criticism that he was biased against the mother was baseless and without any merit.
91. I have no hesitation in accepting his opinions, recommendations and evidence.
92. I found the father to be a fair and balanced witness. He plainly deeply loves his children and wants to protect them. He is full of remorse in respect of his failure to protect CS from the mother's abusive conduct and behaviour. As he readily acknowledged he has made mistakes in the past in respect of his relationship with the mother and both of the children. I am satisfied and find that his focus is solely on providing a safe, stable and loving home for CS and for DS.
93. I accept that despite the challenges and events of the last few years he does not wish to exclude the mother from the lives of the children. He recognised that he will need professional advice, guidance and support in the years to come in his care of CS and DS and managing their contact with the mother.
94. I regret to find that the mother was not just a most unsatisfactory witness she was a deeply troubling witness. Her hatred of the father is visceral. Her campaign to blame him for all the travails of this family is unbounded. The mother's 'belief' that the father was poisoning DS is as farfetched and untrue, as it is deeply worrying.
95. The mother's actions and behaviour towards CS and DS demonstrated not the slightest regard for their emotional and psychological wellbeing. At significant times she acted in ways which were positively damaging and harmful. As Dr Willemsen observed her treatment of the children was solely to meet her needs and not the needs of the children.
96. Her view of the world is skewed to her own belief system and is almost wholly detached from reality. Subjecting DS to three hair strand tests and calling the police in May of last year are graphic examples of the extent to which she will subjugate the needs of one of her children to meet her own needs.
97. The actions above had absolutely nothing to do with the wellbeing of DS and everything to do with advancing her campaign against the father.
98. On the totality of the evidence, and most especially, the mother's own testimony, I am satisfied and find that:

- i) the mother physically abused the children as they have alleged;
 - ii) she has repeatedly, if not, consistently, used the children to meet her needs even when this was contrary to the welfare best interests of the children;
 - iii) the father did not in any way seek to poison DS. This was entirely a figment of the mother's warped imagination and a lie;
 - iv) the mother inculcated in DS a feeling that he would fail without him being with her;
 - v) she caused DS not to stay with his father after Christmas 2021;
 - vi) she caused CS and DS severe emotional and psychological harm in her treatment of them;
 - vii) the mother has not the slightest insight into the consequences of her behaviour nor into the harm she has caused both of her children;
 - viii) unless prevented from doing so she would continue to act in an abusive manner towards both of them.
99. As matters stand with the mother's lack of insight and a lack of acceptance of the harm she has caused to both of her children, she presents a real risk to CS and most particularly to DS. It is of the highest importance that both of them must be protected from her.
100. The mother's default position in her evidence was to lie and to pass responsibility onto others for her actions. So it was alleged, by way of one example only, that Dr D, DS's neurologist, had advised that he should undergo hair strand testing in February 2022. She did not: the mother was lying.
101. So deeply ingrained is the mother's maladaptive behaviour, the prospects for a sustained and meaningful change in her functioning appear to be poor if not remote. I trust for the sake of the children that the mother is enabled at some point in the future to effect this essential change in her functioning.

Conclusion

102. For the reasons given above I will make a child arrangements live with order in respect of CS and DS in favour of the father. I will not make a spent time with order in respect of CS in favour of her mother.
103. I very much hope there will come a time when CS and the mother are able to effect a reconciliation, but this is a matter for CS and any decision on future contact with the mother will be led by CS.
104. I will make a spend time with order in respect of DS in favour of the mother. For the present this will be limited to supervised contact on a regular but infrequent basis. The frequency of contact and the period for which contact should be supervised will be made by the father guided by the emotional and psychological needs of DS.

105. I would suggest there is no contact between DS and his mother for the first month save for the occasional supervised telephone or video call if it is requested by DS and is thought by the father to be in his welfare best interests. Thereafter I would suggest I would suggest there is no contact between DS and his mother for the first month save for the occasional supervised telephone or video call if it is requested by DS and is thought by the father to be in his welfare best interests. Thereafter I would suggest supervised direct contact takes place once per month for a few hours at a neutral venue. Who supervises the contact, where it will take place and for how long supervised contact should take place are matters solely for the father, perhaps with the benefit of professional advice, to decide.
106. The mother sought an immediate commencement of direct contact with DS albeit professionally supervised. She did not seek an order for contact with CS, recognising that it is a matter for CS as whether and if so when she wishes to resume seeing her mother.
107. Given the findings that I have made about the mother and the current lack of any real insight that she has in respect of her actions, I am not persuaded that an immediate commencement of direct contact, even if it is supervised, is in the welfare best interests of DS.
108. Further the mother has invited me to make a Family Assistance Order and to adjourn this matter for a review hearing. I am not going to make a Family Assistance Order because I repose my trust in the father to seek professional advice about the children and their mother as and when required.
109. Moreover I am not going to adjourn this case for a review hearing. This bitter and toxic litigation must be brought to a conclusion for the benefit of all involved not least for the inestimable benefit of the children.
110. Ms Grief QC, on behalf of the father, invited me to make a s.91(14) Children Act 1989 order. I am not persuaded that there are cogent grounds for me to make this serious order. Instead, I will order that any future applications made in respect of CS or of DS are listed before me and that any application made by the mother should be listed before me without notice to the father in the first instance.