

Neutral Citation Number: [2023] EWFC 328 (B)

In the Family Court

Case No: BS21P70940

Hearing Dates: 10th, 11th, 12th July 2023

A, girl at primary school

Judgment

This is my decision following a fact finding hearing which took place on 10th 11th and 12th July 2023. The mother had raised concerns that the father's behaviour to the child represented a risk to her and sought my findings on those alleged facts. I have made none of those findings. The father was entitled to seek findings of fact in relation to his own case: whilst recognising that there is a degree of overlap between some of them, I found all of his allegations proved. In the course of the evidence I have been able to see recordings of A and I have been presented with recordings made by a social worker of supervised contact as well as hearing the evidence of Father's previous partner who supported contact more recently, and there is no doubt that A enjoys her contact with her father and benefits from it. In my judgment, the mother is determined to limit the father's involvement in the child's life and is prepared to engage all agencies in her dispute with him. The father's concern about this causes him to express himself intensely, sometimes to his own disadvantage. It is inevitable that the child's interests will be overlooked by her parents if this continues.

1. A is at primary school. She lives with her mother, and she spends time with her father. This is the seventh or eighth set of proceedings brought to try to resolve the arrangements for her to share her time between her parents. It is not unusual that when a couple separate on bad terms their disappointment at the end of the relationship or their dislike for each other obstruct their child's relationship with one or both of them, but this is a particularly acute case. The Father's perception is that whenever there is a step forward in the court's directions for A to spend time with him the Mother finds another problem that requires the court's determination and slows down the development of A's relationship with her father. The Mother thinks that whenever A spends more time with her father more problems emerge which show that she is at the very least unhappy spending time with him and at the very worst at risk.
2. The Mother has been represented in these proceedings by Counsel. The Father has appeared in person, assisted by his McKenzieFriend, Ms D. There is a bundle of 814 pages and there are a number of other records and documents which are accessible via hyperlinks in that bundle, including

transcripts of WhatsApp conversations and video recordings. The evidence is therefore more extensive than the page count suggests, and even so I was told that there is other material which might have been relevant and has in fact been considered in other proceedings.

3. There is a Section 7 report prepared by A's social worker, dated 1.2.23 which recommends that A has contact with her father every three weeks, Father to collect her from and returning her to Bath railway station, with the opportunity to take her away on holiday as previously provided in the last child arrangements order, that there should continue to be FaceTime on Wednesdays and that the parents would benefit from Family Plus intervention to deal with their conflict.
4. As the Father was not represented he cross examined The Mother himself. That was not prohibited by section 85 F, G or H of the Courts Act 2003. An injunction made by Mr Recorder Swift on 26.2.20 expired on 26.2.21 and was not made in circumstances that would ordinarily be described as domestic abuse.
5. The parents separated when A was just ten weeks old: they had been together for 8 or 9 years but had not lived together and when the father was preparing his home for the mother to move in it emerged that she expected a bedroom to be made available for her own mother and this was not the relationship that the father had anticipated.
6. There are extensive summaries at the front of the bundle and I have been told that there have been seven sets of proceedings. These were: ZE16P01607 concluding with a consent order before lay magistrates at Croydon on 2nd February 2017, with contact on Wednesdays and Saturdays each week, and staying contact starting before A's second birthday, envisaging progress to shared care; this order records mother's assurance that she would notify the father if she were to change her address and her understanding that she would need permission to relocate within the United Kingdom; six months later, before District Judge Hay, ZE17P00757, permitting Mother to relocate to the countryside, ending the prospect of real shared care and providing for alternate weekend staying contact; TA18P00290, in which District Judge Taylor made an order on 26 October 2018 concluding, on father's application to enforce contact, that Mother was in breach of the order and making a costs order against her in the amount of the issue fee, £215 (it is extremely unusual for any court to make an order for costs in cases concerning children); BS19F02187, an injunction against father which was not served on him for months after it was made and which appears to have been sought for strategic purposes relating to legal aid, arising from an incident on Boxing Day 2019 which I will consider further below and which the Mother accepts both to me and to the Cafcass officer involved her in behaviour which she now regrets;

BS19P50867, a further enforcement application by father, which was already in hand when the injunction proceedings were initiated, leading to the judgment of DJ Woodburn, discussed below, for contact every three weeks at father's home from Friday evening until Sunday afternoon and FaceTime or other video call every Tuesday and Saturday: this order spells out that the mother should ensure that A is not distracted from the contact and she should be in a quiet place where she may best engage with the father; and the current application, BS21P70940, initiated to enforce contact with a cross application by mother to vary the order. There was another without notice urgent application to a London Family Court on 6.11.19.

7. Whilst the number seven is alarming it can be seen that the first two cases were relatively standard, setting up the arrangements for A, one was an injunction, one the return application and the other three all arising from mother's unwillingness to abide by the orders and all resulting in orders or findings in Father's favour.
8. I am sure that the parents would have been told in each hearing that it is in a child's interest to have a relationship with both her parents. In DJ Woodburn's judgment dated 9.10.20, he quotes Jon Veasey, the author of the Section 7 Cafcass report saying that there are no safeguarding reasons to prevent contact between A and her father, and that the key issue is the distance between the homes of the parents and the emotional distance between them in their parenting of A. It is DJ Woodburn's order which should still be governing the arrangements for contact between A and her father, ie: staying contact every 3rd weekend, two whole weeks in the summer, a week at Easter and a week at Christmas, plus video contact on Wednesday and Saturday each week. Nothing has changed relating to risk from father and there is no reason to reduce or restrict his contact. The issue of distance has less significance now that A is older and has been enthusiastic about spending time with her maternal cousins, who live near to her father.
9. The purpose of this hearing has been to establish whether or not there is a factual basis on which the court should restrict or impose conditions on the arrangements for A to spend time with her father or whether the contact that has always been ordered should be enforced. The Mother has had the benefit of public funding and so has had access to advice and representation throughout. The Father has not had that opportunity and has not had formal representation in the proceedings. The need for the hearing derives from what is either mother's genuine anxiety or her determination to obstruct the contact.
10. The mother has set out seven instances on which she seeks my decision. She could not be reassured by her representative or the social worker about the likelihood of these events having taken place or the significance in terms of

risk to A and I took the view that, because the proceedings had been so prolonged and without testing the evidence I could not determine whether there was inappropriate behaviour by the father or whether the mother was simply entrenched in her opposition to him, the time had come to hear evidence and decide facts. This inevitably led to my giving the father permission to seek findings on the issues which concern him.

11. I set out below my findings in relation to the evidence that has been available to me and I have not found any reason to restrict or reduce father's contact. In answer, father says that the point has now been reached at which the court should change the arrangements for A so that she comes to live with him, where she will be able to have a contact relationship with her mother whereas whilst she lives with her mother her relationship with her father is constantly interrupted and frustrated and she is exposed to her mother's anxieties.
12. The Court must consider all options on a s8 application. The court must strive to conclude proceedings as soon as may be fair and to make final orders which avoid the need for any further reference to the court. It has to be said that this family has had a very large share of the court's resources over A's lifetime and in each of the proceedings summarised above, apart from the injunction and the 6.11.19 application, the reason for recourse to the court has been the mother's failure to support and respect A's relationship with her father. In each of those two applications, both of which took place without proper or any input from the father, it appears that the court has either been misled by the mother or has not been given full information.
13. It is very unfortunate that the parents have not been able to separate their relationships with their daughter from their suspicion of each other and their ability to deflect their own and each other's attention from A's needs onto the litigation. A is now subject to a child protection plan with South Gloucestershire Council under the category of emotional harm due to ongoing parental conflict.
14. The parties have summarised their concerns about each other's role in A's life in the form of schedules. The Mother raises issues which, if found, would need to be taken into account in setting the arrangements for A to spend time with her father. The Father denies all of them. The Father's schedule contains fourteen items, each of which supports the general proposition that The Mother is not supportive of A having a relationship with her father. He submits that the mother is engaged in alienating A from him.
15. Alienation in the context of a child's relationships with her parents has been the subject of research and debate over a long period of time. A has had two social workers. The first applied an alienation tool to establish whether or not A had been subject to alienation which has not identified any signs of alienation, but it was the social worker's opinion that the parents are both

guilty of hostile aggressive parenting. This is to do with the way they react to each other and the way in which contact is promoted in the family home, such as when A is provided with distractions during Facetime contact. DJ Woodburn comments on this, or a very similar recording, at paragraphs five and six of his judgment, saying, “The video showed me, perhaps, that there is little by way of effective and positive co-parenting for A and I am concerned that it will be A who has to work out strategies and the means by which difficulties in her interactions with a parent are overcome.” The parents should both encourage discussion about A's other home and take an interest in it and promote it. The President of the Family Division has very recently considered parental alienation in a case called Re C 2023 EWHC 345. He says at paragraph 103, “the decision about whether or not a parent has alienated child is a question of fact for the court to resolve and is not a diagnosis that can or should be offered by a psychologist..... the identification of alienating behaviour should be the court's focus, rather than any quest to determine whether the label parental alienation can be applied.”

16. I have worked on the basis that hostile aggressive parenting is likely to alienate a child and that what I am concerned to look for is behaviour which is inappropriate and unhelpful in the context of promoting a child's relationship with her father.
17. The parties agreed a schedule of contact that has taken place since 27.11.21. In the twenty months before the hearing there had only been 10 direct contacts, despite father being available and willing to meet A or have her to stay with him. Four of these have been observed, two by the social worker and two by The Father's former partner, and the evidence is that A thoroughly enjoyed them and was not in any sense unhappy or distressed. I have also had the opportunity of viewing recordings of indirect contact which showed me that A enjoys seeing her father via FaceTime and is comfortable in his company and that he is engaged with her and responding appropriately to her. There is nothing in the quality of the contact to suggest that it should be limited. The section 37 report dated 29.6.22 and the Section 7 report dated 23.2.23 support the continuation of direct contact every three weeks and indirect contact via FaceTime at least weekly in between. This was the original recommendation in the Section 7 report prepared by Mr Veasey of Cafcass dated 20.3.20.

Mother's allegations

18. Mother asked the court to rule on seven allegations, of which the first three are broadly dated. The allegations which concerned the mother so much that she wanted the Court to rule on them are numbers 4,5,6 and 7 and are variations on her father staring at A's “ninny” and video recording her using

the toilet. These were reported to the police, who could not identify any crime to investigate and are taking no further action. It is understandable that the mother and perhaps the local authority would anticipate a risk to A if her father was behaving in this way.

19. The evidence available to the court includes material obtained from school recordings of what A has said to members of staff which has been prepared for the court in the form of a joint statement by two teachers. There are also a series of reports prepared by A's social worker. On The Father's side, there are statements from his sister and his former partner which deal in general terms with A's time with her father, which they describe very positively.
20. The family court is able to take into account hearsay evidence, giving it such weight as is appropriate given its source and considering it in all the circumstances and in the context of all the other evidence. The Father had quite reasonably pointed to the potential defect in the evidence from the school in that it is drawn from records compiled by a support teacher but she was not originally expected to be available to speak to her recollection of what was said or to permit of any sort of discussion about the potential meanings of what was said. The availability of hearsay evidence in this court does not override the fundamental principle that evidence must be relevant to an issue in the case. The Mother has complained that material has been omitted from the bundle which her own solicitors prepared: I am not satisfied that there is other material that would have assisted my decision making.
21. At the outset of this hearing, I was asked to consider admitting a late statement from The Mother's step-father, dated 7.7.23. I refused to admit because it did not contain any allegation of fact but only conveyed his support for the Mother and his dislike of the Father.
22. It is the Mother who advances a case for restricting the Father's contact and who makes the allegations about his conduct which would be relevant. It is therefore up to her to prove the issues which she relies on: the Father does not have to prove anything in respect of those allegations. The standard of proof is the balance of probabilities, which means that the court has to be satisfied that it is more likely than not that what is alleged occurred. It is appropriate to look at all the allegations together and to consider the evidence as a whole rather than in short compartments. The evidence of a child, usually delivered to the court in hearsay form, will be very important but may also have been subject to misunderstanding because of the child's age and ability or misinterpretation because of the bias or viewpoint of the person recording what the child is supposed to have said and may be tainted by inappropriate questioning. The evidence of the parents will be very important, and the court will bear in mind that two people can have different views of the same events

both literally as witnesses of observation and subjectively where there is a question of evaluation or opinion. The court has to be very cautious where a witness has told a lie or given an inaccurate version: people have many different motives for misleading courts, including embarrassment, pride and mistake.

23. As a general rule, the Court will not reconsider decisions on fact that have been made by another judge. There are two instances in the history of this case where I have been referred to other decisions which require some comment. Mr Recorder Swift made a non-molestation order against The Father and DJ Coffey made an order for return of A. I will refer to those decisions at a later stage.
24. At one point in her evidence, The Mother suggested to me that there could not be a certain form of evidence because if there were it would have been produced on an appeal. The general rule on appeals in the family court is that the appeal court will not receive new evidence if it could have been available for the original hearing and the basis for an appeal is that a decision was plainly wrong. Both parents have previously sought to appeal decisions with which they disagreed. Neither appeal helps me in this hearing.
25. In addition to the parents, there were three short witnesses whose evidence went to the quality of contact whom I allowed to give their evidence remotely since they were distant from the court or, in the case of the social worker, because she had other commitments.
26. This included additional evidence about the quality of contact supplied by the father's two witnesses, his sister, and his former partner. His sister spoke in her evidence about A's personality and her strong relationship with her father. She describes an extended family who are very fond of A and gives her view that the Mother has not been able to trust The Father and therefore arrangements have become increasingly difficult. Importantly, she told me that A loved to take photos and to be videoed and always wanted to see how recordings looked and have them retaken if necessary. The family make recordings for the purposes of memories and A is there posing, smiling and laughing in them. I found this evidence helpful and I had a very favourable impression of the sister. She has severe arthritis in her knees and would find it very difficult to come to the area in which the Mother lives to see A or to support contact there. She was confident that A would let her father know if she was unhappy and she had herself had FaceTime contact with A when she saw her father near her Mother's home.
27. Similarly, Father's former partner, who has supervised the two most recent contacts, described a child who was enthusiastic about seeing her father, who loved to be photographed and videoed: she said, in answer to the Father about the second contact which took place after her statement was filed, "She ran

straight into your arms, I might as well not have been there...she was constantly like a little show girl, she'd ask for pictures to be taken and sit and watch them played back, she adores it, she's a little poser ... she wanted a video of you dancing together at the end...she wanted to show Mum ...I could see Mum wasn't interested." Separately, she told me A was quite honest telling her father when she didn't like the clothes he chose for her (they went shopping for her birthday presents) or the food he suggested.

28. This witness is the mother of the Father's adult sons and was in a relationship with him for more than twenty years. She works in a school as an exclusions manager and her safeguarding training led her to observe to me that it was unusual for an girl of this age to have suntan with no strap marks as A did when they went shopping together just after A had been on holiday. She was not aware of the particular issues in the case. She was able to confirm to me that she had never had any concerns about the Father of a sexual nature.
29. I interposed the evidence of the current social worker, in the middle of the first day of the hearing. She had not provided a statement, but she is the allocated social worker and had previously kindly attended a hearing and made herself available to update me about the work that she is doing with A. She was allocated to be A's social worker on 24th March 2023, to work with her and her parents whilst she remains on a child protection plan and to see her every 10 working days. On 14th June 2023, after a session of contact that had taken place near the Mother's home, she did some work at school with A to examine her feelings about contact. She produced for me in PDF form a storyboard which A had prepared with her. She described A as happy, excitable, and positive about contact with the father, and happy to do the piece of work, including in it small details, all of which were positive. After she had finished this exercise, the social worker was shown a piece of paper which A had completed at school the previous day with the support teacher which was very different. She said that she was sad, worried, and presented her contact with her father as something which wasn't very nice. The social worker had also carried out a visit in the family home where she had seen that A had a family tree on her windowsill which was different from one which she had made with her father, which she said she had put in the bin because the colours were so dark she couldn't see the names. Father's name was not on it and she said she did not want him there because he made her sad. When asked how this was presented, the social worker said but A did not present it as if she had any answer to the question about why her dad wasn't on the tree – there was no explanation as to how or why he made her sad. The social worker was not aware of the context for the work being done by the school which she understood to be to provide a trusted adult and to engage A in play therapy or sand therapy rather than to do words and pictures work. She has not herself

observed contact and A has not said anything to her about being recorded by her father. The work she has done with A is positive and she hasn't demonstrated any upset or difficulty to do with contact with her father to her. A is easily distracted when she talks about her father. Her thoughts about the difference in the pieces of work that she described were that A 's relationship with the school is much longer than with her, who is “new in her life,” and she wondered if it arose from some form of loyalty or was due to some links that are maybe made in A’s mind between the school and her mother. She had started her work with A on a positive note and A is a child who likes to make people feel happy. Nothing in her work indicated that A was aware of her mother's attitude although she accepted that it would be quite likely that A would make a direct link between her mother and the school.

30. At the very least, this evidence shows that A is experiencing conflicting feelings about spending time with her father: he, not surprisingly, thinks that A is responding to the negative influences of the school which he considers to be aligned with the mother. The Mother had no explanation to propose. Having now heard and read all the evidence, I consider it most likely that A knows that her school expects her to have a negative reaction to her contact because that is the message which her mother has been giving the school all the time that she has been a pupil there. A therefore presents an impression to the school that confirms their expectations.
31. I had the opportunity of observing A in videos which the father had submitted as examples of occasions when his contact was interrupted or otherwise frustrated by the mother as well as successful contacts. She is a little girl who engages happily with her father and he talks to her lightly and sympathetically. In one video, she asks him to take the camera into her bedroom in his house so that she can see it, and they have a joke about needing to tidy it up, and in another she is playing a game in which she is drinking tea and dancing around her bedroom. In this one, dated 23.4.23, she says, without prompting, “I love you a million trillion, lots.”
32. I was told by both Father’s sister and his former partner, and could tell from the video recordings that I watched, that A is able to speak her mind. Having now heard all the evidence I am sure that A’s description of her contact to the social worker represented her own views and that the work that she did with the support teacher was, consciously or not, done to fit in with the support teacher’s expectations and align with her mother’s fears.
33. A’s social worker until recently, and the author of the s37 report, is now team leader and has handed over to the current social worker. The first is the author of the s7 report dated 1.2.23 as well as the 2022 s37 report. She told me that both parents had been appropriate with her, and that Father is very particular about what he wants recorded. A told her during the course

of a visit to her at her home on 19th May 2022, when she had not seen her father in person for more than six months, that, “she was happy at daddy's.” The two contacts which she observed for the purposes of her section 37 report, dated 21.6.22, showed a little girl who was thoroughly enjoying her time with her father on 1st June 2022 and 16th June 2022. There is a detailed record of these contacts at D11-14 and there is no doubt that these were successful meetings which A enjoyed and in which she was safe. Two concerns are raised: in the first contact A wanted to go to the toilet and asked to call her Mum to say she was having a good time, but the social worker was surprised to hear A say on the phone that she was scared, although after the call she told her that she was OK. After the second contact, A told the support teacher that the contact was good and daddy was pretending to be nice: “mummy had said that he was probably pretending to be nice”. These two observations indicate to me that A expects her mother to want to know that she is scared or otherwise unhappy in contact, as her mother suggested to her on 6.11.19, and that when she tells her mother that daddy is nice Mother has to explain this by telling A that he is only pretending, indicating that mother generally tells A that father is not nice.

34. Both parents gave evidence, and I had the opportunity of forming an impression of them. The Father is very anxious about his little girl and openly wept on several occasions in the course of giving his evidence. He speaks expansively and was not able to ask a short question without padding it out with all of the information which supported his argument on each point, so that his cross examination took a long time. There was a suggestion in the social services recording that his “soup of words” amounted to coercive or controlling behaviour: in my view, it is the result of his feeling that he has been ignored that forces him to express himself so fully, and it has clearly been obstructive to his forming working relationships with the school who receive what he says as criticism. I did not think that he was either attempting to control proceedings or coerce the witness. I think that he is genuine, really wants what is best for his child, and that he has worked hard to put his evidence together. Whenever he spoke of his daughter it was with warm enthusiasm. Mr Recorder Swift made a judgment about his character with which I disagree: the learned Recorder declined to view the video of what was clearly the precipitating incident on 26.12.19 and omits, presumably because he was not given it, the information about the hospital and the message about returning A on 6.11.19, and his judgment records the mother’s evidence in detail but makes no reference to the content of the father’s evidence but only to what he had to say to the court on the first listing, when the Recorder gave directions: as I understand it, the father did

not attend the full hearing because he had a hospital appointment in Kent and the Recorder refused to adjourn the case and relist it.

35. The Mother was very self-contained, but extremely defensive and so took as long to answer questions that were put to her as the Father took to ask them. She made no attempt to conceal her animosity towards the Father, even blaming him for the collapse of her relationship with her son's father. She was not willing to accept that she does not even say "hello" to the Father at contact handovers, but I find that she does not even say "hello" to him because what she told me was that she says "hello" "generally" to whoever is there. I acknowledge that she has had some difficulties, leaving the Father when A was 10 weeks old and being required to leave her son's father when her son was less than 18 months old, but I consider that she has real difficulty in being objective about her daughter or honest about herself. More concerningly, when she spoke about A in the course of her evidence, it was in tones that were cool and brisk rather than warm and appreciative. The only point at which she spoke about her, other than relaying what she says A had said to her, was about A redrawing a family tree: she wanted me to understand that A had come back from her contact with a family tree and had decided herself to copy it or repeat the exercise and that the omission of particular names was entirely as a result of A's own choice: what she told me was that she had left A to get on with it on her own in the kitchen and that when she came back she had asked A if she had cleared up because A loves glue and makes a mess. She had not engaged with A in the process, nor did she mention any sort of praise or approbation.
36. I heard from three witnesses on behalf of A's school. The safeguarding lead had prepared a statement with extracts from CPOMS on behalf of himself and the executive headteacher, and they and the support teacher, who is A's allocated trusted adult, all answered questions based on this and the records.
37. This statement was filed by solicitors acting for the mother and the court had arranged for the hearing to take place during term time so that all three witnesses were available, but had not given specific directions for the statement. It took the form of annotated extracts from the CPOMS records, which were also made available to me.
38. It was clear that the safeguarding lead had received information about the father when he joined the school which affected his attitude to him: they have had one meeting when the safeguarding lead believed he Father to be recording him on his telephone, which the Father denied. The safeguarding lead seemed to think that this was an intimidating incident, although they spoke at apparently arm's length and no detail was given. The safeguarding lead told me that mother has in the past restricted father's contact by taking A out of school early to prevent him picking her up: he accepted this was not in

her interest from an academic point of view, and it was clearly intended to frustrate a court order. Father had made a complaint in February 2022 to the effect that he felt negatively treated and was not being listened to in relation to his concerns about A. Most of his complaint was dismissed, but one part was upheld. The safeguarding lead explained that he attends the child protection conference in effect as spokesperson for the school and presents the views of all relevant staff. His reports are based on other people's input. His report at D292, ICPC notes 24.3.23) was that there had been no worries for A in Year 3 (the current school year) and at D248 Child and Family Assessment “she presents as a happy and settled little girl.”

39. He was asked about discrepancies between what is recorded and what was reported to the case conference. He answered that what he says to the case conference is on behalf of the whole school and is derived from a number of different people's views. What he has told the first social worker himself in the course of her report writing about A becoming very anxious about seeing her father is taken from records provided in year 2. (D15)
40. The executive head teacher of this school is also responsible for another school, so takes a supervisory role. He was the safeguarding lead in 2019. When he was asked to leave the court so that he would not hear the evidence of the preceding witness he shook his head. He has met the Father three times in four years but on one of those occasions had held a conversation in his office for an hour. He mistakenly thought that contact had previously been fortnightly. He knew that the complaint that had been upheld was about providing the Father with information about A not being in school and it was clear that he disagreed with the decision of the chair of governors. (The complaint is set out in the Father's e-mail of 19.1.22 at D40 responding to the head teacher's email.) He told me the staff have experienced the father as difficult and he had felt that he was being recorded in telephone calls although he gave me no indication of how he could know this. He had not contacted The Father himself, and he told me defensively that he was not the person on trial. The school did not contact the Father in relation to A's needs because they were in daily contact with her mother and they had used a parent link worker to support A: this is the support teacher and it was a new post when she was recruited. She also teaches computer studies.
41. The support teacher kindly made herself available to speak to her recordings, although no statement had been prepared for her. It quickly became clear that she was an anxious person who had found father challenging when he had asked her why he was not given more information and allowed more involvement. The first entry she made in CPOMS is dated 14.9.21, when she was appointed to A's case: it is a list of mother's concerns: it would appear from the support teacher's emails to South Gloucestershire in October 2021

that she needed support herself in her role and was asking for guidance. The support teacher had completed an application for Early Help stating that A was “very frightened and stressed about seeing her father fortnightly”: D59 e-mail 11.10.21. It is a significant overstatement of what is actually recorded that A has said. The first CPOMS record follows the events of 6.11.19: in the following two years A has regularly said that she did not want to go for contact but has actually gone and the only occasion in which she said anything was scary was on 10.1.20. There was a three month gap in contact following lockdown but whenever A was collected from school she went with her father without any intervention beyond some mild encouragement from her teachers and appeared content to see her father and sometimes very happy to see him. An example is on 15.10.21 D 57, “A was missing her mummy before the end of school, dad could see that she had been crying and asked what was wrong, and she didn't pull away from him like she has done in previous weeks. They both walked across the playground and A didn't appear to be upset as they walked away.” Several entries are the school’s response to mother’s concerns: at D48 30.11.21 “A went willingly to contact and seemed fine, (the teacher) didn't see anything that raised any concerns especially concerning filming her, although A had talked about daddy videoing her after school”. Strikingly, on Monday 29.11.21 “A came back from her visit this weekend very happy and buzzing. Before the weekend mum came in to discuss next steps and we agreed referral to involve social services.” The contact before this was 5.11.21 D57 “It was A’s weekend with dad and she was tearful towards the end of the lesson, she wasn't as bad as she has been in the past. She left the class without any tears there was a lady waiting with dad and A appeared to be happy to see her”.

42. It is unfortunate (and an indication of the way in which the school’s actions have been driven by the mother rather than in response to what A says and does) that that referral was not reconsidered in the light of A’s enjoyment of her weekend.
43. The support teacher had also recorded that she felt really uncomfortable because the Father had worked out that she was married to the chair of governors, who would have heard his complaint: they do both use the same name so it was hardly something which needed what she called “looking into.”
44. In my judgement, these witnesses exhibited bias, having adopted a narrative promoted by the Mother which appears superficially to be supported by the CPOMS records without any reasonable engagement with the Father. The school has been repeatedly misled by the Mother: D73 “7.11.19 A’s father has contested contact on at least 5 occasions,” where in fact father had applied for and been granted contact in 2017 and then had had to enforce contact in 2018 because mother was in breach of the order; D39 11.3.22 The support teacher

and another teacher agree that father should not be turning up “when he knows that contact has been stopped”, when the court had not stopped contact but mother had decided to prevent contact by removing A from school; 17.11.21 “there have been numerous attempts by the Father to regain control of the Mother, and keep A and not return her after visits”, where there has been one occasion when A was not returned, 6.11.19, in circumstances in which she had been unwell and father had indicated he would return her on the following day but mother took steps to recover A sooner: despite the duration of proceedings, the court has received no evidence and made no findings about the Father seeking to retain control of the Mother or having been controlling of her in the past or of his previous partner of 20 years; the Mother had told the school on 15.7.21 that she had a non-molestation order against the father, whereas the order made on 26.2.20 had expired on 26.2.21: on 3.3.21 she told the school nothing had changed in her own home life (which would have been relevant to understanding changes in A’s behaviour) whereas the school had been made aware on 4.2.21 by a third party that she had been chucked out by her son's dad and was in emergency accommodation - she did tell the school that she was no longer with her new partner on 15.7.21. The Mother told the support teacher on 28.9.21 that A had been hiding under the table and would not go out to dad at the end of school on the previous Friday, but the class teacher had recorded on the previous Friday that A had been crying at the end of the day but was not hiding under the table “like mum suggested” and walked across the playground with dad.

45. Individuals and families suffer from being labelled or categorised by public bodies. They respond by reacting against such labelling or by conforming with what is expected of them.
46. Unfortunately, A has developed a habit of anxious behaviour on Fridays not related to actual contact: see D33 19.4.22 when she said she was worried about her dad picking up and there was in fact no such arrangement. In my judgment, A's difficulties have been overstated and encouraged or developed by the way in which the school have approached her on the basis of what her mother has said and by singling A out as a child who needs a trusted adult other than her parents and giving her time each week one to one with the support teacher who believes what her mother has said. The support teacher had some inkling of this at D39 11.3.22 “*some of the things that A has said to us are low level and in any other child we would not have acted on but when you build up a picture of things she has said and things he has done to her over time it rings alarm bells*”. She mentions specifically the allegation that A's father has slapped her and tripped her up: this is **item two on mother’s schedule**. The support teacher says that it was mentioned in Time to Talk on 10.3.22, but she does not provide any separate recording and it comes into evidence via a telephone note made by another person at D457 who had just

visited the home (D38) which may have prompted this but she did not tell her. In the s37 report at D9 there is a longer version, but it states that A approached the support teacher as opposed to this being in Time to Talk, which is the recording at D38 on 11.3.22: this is strangely put as “A came out with Daddy slapping her in the face” as if it was new rather than something they had discussed the day before. Mother says at G30 that she did not disclose slapping to her but she had told her that her father had tripped her up and pushed her. At this stage there had been no contact since 28.11.21. Whilst it is not uncommon for a memory to come to the surface sometime after an event or for a person not to mention something until prompted by other circumstances, I consider it highly unlikely that this little girl who is able to express herself would not have mentioned being slapped twice close to the time at which it happened or that it would have been so evident that she had enjoyed her last contact before this if something of this nature had taken place.

I cannot make this finding.

47. The **first allegation** is that the father has locked A in her bedroom and that there is a high lock on the bedroom door. This is referred to in the mother’s application and in her statement in support at C3, but without any detail or context: the mother told the support teacher about this on 11.3.22 but there is no recording at all of A saying it to anybody else. Father has supplied a couple of pictures of A’s room dated this year and 2020 and makes the point that if asked at the time that A is supposed to have said anything he could have provided a contemporaneous picture or allowed someone to visit to see if there was evidence of a lock having been recently removed. **I am not satisfied that there has ever been a lock on her bedroom door.**
48. The **third allegation** is that the father and Ms D have told A not to talk to her teachers about her worries and only to them. This is said to be evidenced via a video recording made on 6 December 2021 exhibited as GC1. This was clearly set up by the mother and grandmother (there can be no other reason for video recording a child in her bed at bedtime), I do not know what has been said just before this (it is the second line of the recorded conversation and there is no clue about why it is being recorded) and it is too confused to have any value: the words are “she (Ms D) said don’t talk to teachers and she said don’t talk to... to erm... don’t talk to, and don’t talk to, she said [muffled] daddy and [Ms D] said don’t talk to mummy or the teachers, if you need anything, or daddy”: so that suggests she is not talk to *any* of mummy, daddy and the teachers. This is followed up by, “if there’s a problem [Ms D] said tell daddy and me not mummy or [muffled] or grandad or (mother’s son),” which is marginally clearer, but the rest of the conversation is about dreams and fantasies. This was reported to the support teacher on 8.12.21 and transcribed by mother’s solicitor for the court. **I cannot make this finding.** It was clearly

contrived, and the most that I could take from it by way of sense is that she has been told to tell daddy if she has a problem, in preference to mummy, which would be likely to be if it relates to him or something that occurs during her contact. Since this was just a week after the staying contact, I consider it likely that the mother was setting out to create reasons to stop contact.

49. Allocations 4, 5, 6 and 7 potentially raise safety issues relating to sexual abuse.

50.4 is an allegation that the father recorded A whilst she was on the toilet in some public toilets in Bath. Mother's evidence here had been that A had spoken to her some time ago, certainly some considerable time before the conversation that relates to allegation 7, and she was unable to understand the events described. She thought she could see it differently in the light of the conversation that has taken place more recently, but she had thought it most likely that A was talking about being together with her father in a family or baby changing toilet cubicle. A has been an able and articulate child throughout proceedings and if mother was unable to make sense of what she was saying **I cannot make a finding.**

51. **7 is an allegation** that Father videos A all the time, even when she is on the toilet. The mother says A told her this after a contact, on 8 January 2023 and that she told the social worker on 20th January 2023. She told the Court on 13.2.23. The s7 report includes a summary of the social worker's work with A on 31.1.23 and she was asked about the content of the discussion and told me A said she didn't like being filmed but there was no mention of the toilet. This is strange if it is something that A has been concerned about. Mother says she told the social worker about this on 20.1.23 and her barrister at court on 14.2.23. The school told the social worker on 28.2.23 that A had complained about her Daddy filming her on the toilet. This led to a further discussion with A on 3.3.23 (D241). There is a long note ending on D275 in the assessment that was started to explore this complaint which is positive about the whole contact. The summary of this conversation is at D291. A had told The support teacher (8.12.21 D47) she had been to the toilet with daddy and he had watched her going to the toilet and stared and pointed at her nunny, she said it did not make her feel nice.

52. The first difficulty with her history at D291 is that she says she locked the door when she went to the toilet and daddy unlocked the door: The father says there is no lock on the bathroom door in his house, but if there is a lock on a bathroom door that A is able to use anywhere it is unlikely that it could be unlocked from the outside. Mother's statement (C53) refers to daddy using a pin or a key, presumably used from the outside and again raising the question of how A knows. Then she says A told her there is a hole in the wall and daddy films her through that. This is all said to be in the context of staying overnight at Father's McKenzie friend's house: Nobody was able to suggest why there

- would be a hole in the bathroom wall in that house and I consider it highly unlikely. Counsel bravely suggested in closing submissions that perhaps it was the keyhole: it is hard to say which is more unlikely – that a bathroom keyhole would allow filming of a person using a toilet in the bathroom or that the person would be able to detect a light on a phone camera through a keyhole.
53. Mother's description is of a very confused conversation. The conversation relayed to the social worker by the school on 28.2.23 D247 is much briefer, but there was then a long conversation on third March. It is clearly a story that grew with the telling, giving me the impression again that A was responding to the interest shown in her with an expanded story matching the expectations shown. **I cannot make this finding.**
54. There is another reference to toilets: when talking to the support teacher (D35 17.3.22) A said that daddy let her go to the toilet on her own but when she came out she couldn't see him. Children in the early years in primary school are often interested in or concerned about using the toilet in different places, and if A has had a sense of being momentarily lost after being allowed to go to the toilet in a public place on her own she may be focusing her general anxieties on toilets.
55. Allegations five and six refer to father staring at her “ninny”, which is how she describes her genital area. Note that both of these instances are supposed to have occurred during FaceTime when A was clothed, so that it would be an exaggeration to say that the focus was on her vagina, but mother clearly thought there was something sexual about this form of attention if it had occurred. The first instance is 6th December 2021, and the second is supposed to have been on the 7th of December 2021. There are in fact two recordings, but they are at best two descriptions of the same behaviour and not necessarily separate incidents. Allegation 5 is supported by the recording at D47 of mother telling the support teacher about what A had said to her and A's grandmother in the same conversation relied on in relation to allegation 3. I have set out above my reasons for considering that this recorded conversation was set up and is unreliable. Allegation 6 relies on A's own statement to the support teacher recorded at D48 where she says that, “daddy was looking at her ninny when she was Facetiming him it made her feel funny his eyes were not on her face but looking down at her ninny. She said the phone was on the stairs when she was talking to him.” In my judgment, it would be impossible to tell that somebody on FaceTime on a phone propped on a staircase talking to a child standing in front of the phone, even if close enough for the child to see the face of the person that she was talking to, was looking at any particular part of the child's anatomy. Further, in the videos I have seen in which A is not holding the phone she is never still for long enough to see where her father is looking or for him to observe one part of her anatomy continuously. It would

be wrong to speculate about what had been happening in A's experience to make her so interested in people looking at her nunny at this stage but this does seem to be a cluster of instances of awareness of what should be private: I am not able to make either of these findings.

56. I therefore reject all of the Mother's allegations.

Instances of Mother portraying father as in the wrong or undermining his relationship with A

57. The injunction granted in February 2020 is in entirely standard terms and not as the mother suggested to the child protection meeting on D251 as a result of any specific communication sent by the Father.

58. On 6.11.19 The Mother obtained an order for A to be returned to her immediately. I have seen the video taken by mother through the letterbox of the Father's home and I have read the police disclosure. In my judgment, the Mother must have misled the court by failing to provide the information that A had been suffering from gastroenteritis and had been to the local hospital on the previous evening, Tuesday, and that the father had emailed the mother early in the morning of Wednesday 6th November to say that he would bring her back on the following day. As a matter of reasonable child care, a child who has gastroenteritis and is throwing up should not be expected to travel more than 100 miles, by car or train, even if she is fit to do so. The application is hysterically phrased, describing A as being imprisoned by a lady (Father's McKenzie friend declined to open the door to the mother, whom she did not know and whose approach was very aggressive) and says the police were unable to perform a safe and well check: this is inaccurate - the police Sergeant who viewed the bodycam footage and wrote the report that is linked from father's statement says that "during the whole incident the Father has A in his arms who is laying against him with her arms around him and does not appear distressed or unhappy or under any form of duress. The Father opens the front door fully so the officers are able to see A fully although they don't enter the address as the Father tells them they do not need to come in. Although the front of the property and the hallway are clean and tidy with no cause for concern. Intel checks have been completed by the control room and entered onto the CAD for the officers which do not highlight any child welfare concerns involving either parent but do highlight previous non crime domestic incidents between both parents. There is a breakdown in relationship between the officers and the Father at the front door of the house, there is no aggression, no threats are made and the Father remains calm as he has his daughter in his arms although he is clearly upset. The officers form the judgement that the child is unsafe at the location and tell the Father this is purely based on the fact that they were unable to engage successfully with him

and were not permitted access to the address to check the rest of the house. However there is no Intel to suggest that there is any risk of harm to the child from the father, there were no signs in the hallway visible to the officers that there is any obvious risk and the child was in the Father's arms with no sign of distress or duress". The supervisor also adds to the CAD that there are no concerns that warrant removing the child from the father and the note states that the supervisor will be having a professional discussion with the officer who attended.

59. I have seen the recording that the mother made of her own conversation with A through the letter box. A (who is wearing her pyjamas as if she may have been in bed) ignores her mother calling to her, her mother asks her if she is scared, and A disappears upstairs. She is certainly not excited to see her mother and shows no sign of wanting to leave the home she is in. I have seen the WhatsApp messages in which father keeps mother informed about A's illness in detail, including her father giving her water in tiny amounts via a syringe and A bringing it up again, and being given medicine by the hospital to stop her being sick and returning from the hospital at 4:15 AM on 5.11.19. At 7:13 AM on 6.11.19 The Father sent a message saying that if all goes well on that day he will bring A home the following evening
60. In my judgment, mother created a drama that was an unwarranted reaction to the circumstances that applied and then misled the court and the police officers who attended on the first occasion. I am not asked to make findings about the police, nor is this an action against the police, but the initial recording of the incident, which was corrected on father's complaint, suggests that there was no factual basis for the police to prefer to support the mother.
61. I have also seen the recording of the contact pick up on Boxing Day 2019. This event was the basis of the injunction made by Mr Recorder Swift, who did not view the video. I consider it very unlikely that an injunction would have been made if the judge had seen that video, regardless of the statements that were presented to him. The Mother has started recording the meeting before the Father and A have reached her, and her own voice can be heard saying that the Father is recording already. She greets A but ignores the adults, apart from saying aggressively to the Father, "Don't touch me". The Father removes A from what becomes an argument started by the Mother with the McKenzie friend and the Mother then chases after him, apologising loudly to A for "her father ruining her day". She continues in loud and aggressive tones, and A clings to her father. The Mother is clearly enjoying making a fuss and is unaware of how inappropriate her behaviour is or how ridiculous she is. She has clearly come to this meeting intending to have a row and her dialogue, which is mostly with herself, is full of abuse of the father. She is the aggressor in this incident. At one point she says, "Stop pushing me," but the video does

not show that she is being pushed. The Father is calm and restrained throughout. It is testament to The Mother's lack of judgement that she took this video in the first place and much worse that she has made it available to the court.

62. The Father has provided a lengthy statement with links to videos and other parts of the evidence embedded in it in support of his allegations. I deal here with as many of those as I have needed to make findings on his schedule.
63. The video taken on New Year's Eve the week following the Boxing Day pick up, 31.12.19, is of A's FaceTime contact with her father. It is obvious as soon as the call is connected that A is not in a quiet or private space, because her baby brother can be heard screaming, and mother opens the conversation by saying to A, "what are you scared of?" I agree that this was designed to put the idea into A's head that there was something to be scared of in talking to her father. A tries to speak to her father, but she has to shout over the sound of the baby crying. There are other videos of calls when Mum is present and then A relaxes and becomes vocal and begins to play when her mother leaves (6.10.20) or the background noise prevents A hearing her father (16.9.20.)
64. The Father relies on the GP notes and states that mother has misled the GP on 2nd January 2020 and 5th January 2022. The references are D90 and D81. In the first of these the mother tells the GP that A is scared even to do a video call with her father. As I have said, I have seen the recording of the video call made on 31.12.19 and it is obvious that the mother was setting A up to be prevented from talking to her father and suggesting to her that she was scared when she was not. In January 2022 mother reports to the GP that father is threatening towards her, although there appears to be no evidence of this and she continues to make these assertions to the doctor in February. There is a long entry dated 12 April 2022 in which mother explains that she feels let down by the surgery and baffled by the doctors' discussion with social services. The doctor had to explain to her that they could not change notes in retrospect. By contrast, the Father is recorded as having met with the doctor on 17.12.21 and is described as "very appropriately concerned" about A. In my judgment, mother was not just bad mouthing father to the GP surgery, but she was seeking to manipulate the doctors into supporting her case without having any first hand material about father.
65. On 28.12.22 there was another video call in which A asks about taking her dolly home and Dad says, "let's talk about it" and asks why she is concerned: A goes to talk to her Mum and Mum comes into the call and is again aggressive in tone. She seems incapable of showing any respect to Father. Her manner is hostile. When mum has gone the conversation is gentle and reassuring on Father's part. The first part of this appears to be a conversation which mother has set up rather than one that A has initiated on her own account. A mother

who wants to discuss arrangements for her child with the child's father with whom she does not have a good relationship should not do it in the course of the child's contact phone call but separately and probably previously.

66. I have already recorded that mother admits she does not greet Father at contact handovers.
67. On 28.1.23 A told her father that Mummy had told her she would be missing out on a playdate when she went to see her father. This is captured by father in a recording. Fortunately, A follows this up by saying she loves him and then she can be heard talking enthusiastically about seeing her family, including her baby nephew.
68. There was a call on 15.3.23 in which A was in a darkened space without any explanation: in this call, The Father had the impression that A was distracted from her conversation with her father by the promise of ice cream after the call (pdf 755). It was plain that A knew there would be ice cream after the call, but I do not think I can go as far as to say that the ice cream had clearly been offered as an incentive to have a short call. It is right that A has no difficulty in indicating when she wants to end the call on all the recordings I have seen: the Father's point about being able to find more courteous ways of saying goodbye, rather than, "Can I go now?" is valid, and the court deprecates any child being told to tell a lie even if it is only to say that she needs the toilet to attempt to end the call as A has been told to do by her support teacher: there is no point in making such an excuse because the other person is always able to say that he or she will hold on or call back.
69. The father's evidence establishes clearly that mother is wholly negative about him and about A's relationship with him. His catalogue of her behaviour is so extensive that there can be no question of her having had a bad day or misjudged her response. It is consistent over the four years since the information made available to me started to be recorded.

Mother's schedule of allegations

1. A's father locks her in her bedroom: Not found.
2. A's father pushes slaps trips her up and shouts loudly in her ears: Not found.
3. A's father and his friend have told A not to talk to her teachers about her worries and only to them: Not found.
4. A's father has video recorded her on the toilet in bath public toilets: Not found.
5. A's father has stared at her "ninny": Not found.
6. A's father stared at her ninny during FaceTime: Not found.
7. A's father made a recording of her whilst she was using the toilet through a hole in the wall in his friend's house: Not found

Father's schedule of allegations 20.6.23

1. Mother talks negatively about Father to A Found: examples include saying that Daddy is only pretending to be nice, asking A if she is scared of him.
2. Mother is hostile towards Father in front of A: Found: examples include failing to greet him at contact handovers and her aggressive behaviour on 26.12.19.
3. Mother discourages A from spending time with Father: Found: examples include telling her she would miss a playdate, D419 A told a teacher that Mummy tells her not to say she wants to see Daddy.
4. Mother limits, disrupts and prevents contact with Father and the paternal family: Found by DJ Taylor and DJ Woodburn reinstating contact after Mother had stopped it, repeated in February 2023 after receipt of the s7 report: Mother took A out of school on Fridays to the detriment of her education to prevent her father collecting her for contact.
5. Mother does not support, interferes with and prevents video call contact: Found: Mother allowed her son' crying to drown out A's conversation with her father, failed to keep to the timing for the call on A's birthday, is present for calls so that A cannot have an uninhibited conversation.
6. Mother interrogates, coaches, indoctrinates and implants negative ideas about Father into A: Found: Mother asks A if she is scared of her Father (6.11.19 video), apologises for his allegedly disrupting her plans (opening line of 26.12.19 video), tells her Daddy is only pretending to be nice. A told her Mother in a telephone call during supervised contact in June2022 that

she was scared when she was not, indicating that A knows her Mother expects this.

7. Mother encourages A to lie and keep secrets from Father: Found: Father was not challenged on the evidence at G16 about A having been told to lie to him by concealing the information that they had been abroad in 2021 or that they had travelled to London on Boxing Day 2022.
8. Mother shares inappropriate legal and adult matters with A: Found: Mother told A they had been to court and Father had lied to the Judge.
9. Mother manipulates A's reality: Found: this is the direct effect of the findings at 1 and 6 above.
10. Mother makes false allegations, tells falsehoods, and manipulates professionals to enlist their support against father and blame A's anxiety on Father's behaviour rather than her own: Found: Mother has misled the police and the Court (6.11.19), the local authority in relation to the reason for the injunction and A's wishes and feelings, the GP practice and the school (see paragraph 44) about A's anxiety and the history of the case.
11. Mother makes false allegations and tells falsehoods to the court and in her Court statements and does not respect the Court order: Found, see 4 and 10 above
12. Mother refuses to co-parent and to communicate with father: Found: Mother will not speak to Father at contact handovers and does not provide him with any more than minimal information
13. Mother withholds medical and academic information from father and does not consult him on medical and academic matters: Found: Mother did not inform father that she had employed a tutor for A because she was behind at school or that she had tonsillitis when they came to court in January 2020, father was not named on A's medical records
14. Mother refuses to address her own anxiety, despite being aware of the professional consensus that it negatively affects A's emotional welfare and her relationship with her father: Found: there is no dispute that Mother is anxious although it is not reasonable for her to be anxious about A's wellbeing in spending time with her Father. There is no indication that Mother is seeking to overcome her anxiety.

HHJ Cronin

24.7.23