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Case No: FD23P00154

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 03/02/2025

Before :

**MS JUSTICE HENKE**

**Re: Z (A Child) (Inherent Jurisdiction: Stranding: Significant Harm)**

**Anita Guha KC and Lubeya Ramadhan** (instructed by **Dawson Cornwell LLP**) for the  
**Applicant**  
The **First Respondent** had a **Litigation Friend** but was **Unrepresented**  
**Michael Edwards** (instructed by **Cafcass Legal**) for the **Second Respondent**

Hearing dates: 16-20 December 2024

**Approved Judgment**

This judgment was handed down remotely at 12pm on 10 February 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....  
MS JUSTICE HENKE

This judgment was delivered in private subject to a transparency order dated 10 January 2025. 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.

## **Ms Justice Henke :**

### **Introduction**

1. The application before me is made under the Inherent Jurisdiction. It is dated 16 March 2023. The child who is the subject of the application is Z. She is now nearly 11 years old. Z was born in Pakistan in 2014.
2. The application is made by Z's mother, A. She is now in her 50s. At the time the application was made A was in Pakistan. The first respondent to the application is Z's father, D. At the time the application was made Z was living with her father in England. D is in his early 70s.
3. Z's mother and father were married in 2010 in Pakistan. Theirs was an arranged marriage. The father has been married before and has eight children from his first marriage. At the time the marriage was arranged the father and his children from his first marriage were living in England. The mother asserts that it was obvious to her that upon marriage, she would move to England to be with her husband. However, she says that the father's children from his previous marriage resented her, looked down on her humble origins and were suspicious of her, regarding her as a gold-digger.
4. In 2019, Z's parents applied for her to have a British passport. That application was granted in 2021. Z has both British and Pakistani nationality.
5. In January 2020, the home the mother and father shared in Pakistan was burgled. In March 2020, the father returned to England where he has remained.
6. The mother made the application now before me because she alleges that in July 2022, she agreed that Z could travel with her half-sister YA to England to join her father. The mother says that agreement was conditional; the condition being that the applicant would join them a few months later once her own visa application had been approved. However, it is asserted that contrary to that agreement, on 26 January 2023 the respondent cut off all contact between the mother and Z. On the face of the application before me, the mother has expressed concern that Z was suffering abuse from her father and half-sisters, particularly K who was said to be violent to her. Z was said to be not registered at school and to be only going to a local mosque where there is no access to authorities or safe-guarding checks.
7. The purpose of the application was for Z to be made a ward of court and to be reunited with her mother. Within the application the applicant sought a passport order and port alert order to prevent Z being moved outside of the jurisdiction of this court by her father.

### **Chronology of these Proceedings**

8. The application first came before Leslie Samuels KC sitting as Deputy High Court Judge on a without notice basis on 20 March 2023. He was satisfied on an interim basis that Z had dual British and Pakistani nationality and that she was currently present in England and Wales. Accordingly, the court had jurisdiction and passport and port alert orders were made.

9. The application returned to court on notice on 29 March 2023. This time it was heard by David Rees KC sitting as a Deputy High Court Judge. The father attended court representing himself. He brought Z with him. Having heard from both parties, the court decided that Z was to remain a ward of court. The passport and port alert orders were continued. Both parents were warned against discussing the proceedings with Z and the father was advised not to bring Z to court in the future. The court ordered the father to make Z available for video contact with her mother who remained in Pakistan because she did not have the necessary travel documents. The court permitted the applicant's solicitors to disclose the case papers to the relevant social services to enable them to make a s.47 referral.
10. The application was next heard on 20 April 2023 before Mr Justice Poole. Both parties were represented. The continuation of the wardship and the passport and port alert orders were not opposed. By a series of subsequent orders, they have been continued to date. The issues delineated on the face of the order as being in dispute were:
  - a. whether the mother agreed for Z to be brought up in England and apart from her or whether her agreement was conditional on being able to live in England with her;
  - b. whether her mother mistreated Z in the manner alleged by the father;
  - c. whether the father and his family have mistreated Z in the manner alleged by the mother;
  - d. whether the father has mistreated the mother in the manner alleged by her; and
  - e. whether the mother has mistreated the father in the manner alleged by him.
11. Mr Justice Poole determined that the matter should proceed as a composite hearing (a combined fact-find and welfare hearing) given the applicant sought Z's summary return to Pakistan, and joined Z as the Second Respondent to be represented by her Children's Guardian instructing CAFCASS Legal. That view was subject to the view of the trial judge at the pre-trial review at which it was acknowledged that the child's Guardian may express a different view. Mr Justice Poole's order also included a recital inviting the Secretary of State as a matter of urgency to consider the applicant's application to enter the UK for the purposes of participating in the final hearing and a respectful request to the British High Commission in Pakistan to afford all reasonable assistance to the applicant to enable her to secure the necessary travel documents to do so. The order provided for the continuation of video contact. Z was to have someone present on the basis that that person was not to engage in or take part in the contact. Mr Justice Poole also gave directions to enable the intimate and explicit video of Z known as exhibit MB7 to be held securely and to be viewed by the professionals in a safe and secure way.
12. On 22 June 2023 the Guardian appointed to act for Z filed a position statement indicating her view that a fact-finding was necessary in this case before any welfare determination could be made. The Guardian's stance has been accepted by each member of the judiciary who has subsequently heard this case.

13. The application returned to court before Ms Justice Russell on 28 June 2023. All three parties were represented. D was represented by the same direct access counsel who had acted for him before Mr Justice Poole. Directions were given to compel AM to file a statement setting out how and why she discovered Exhibit MB7 on D's mobile telephone on 24 January 2023 and why she sent it to SA.
14. The application came before Ms Justice Russell again on 17 July 2023 when an order was made by consent which permitted the orders in these proceedings to be disclosed to the Secretary of State for the Home Office, to the Home Office, to any Immigration Tribunal and any immigration lawyer to support any visa application the applicant may make.
15. The next hearing was before Mr Justice Williams on 11 September 2023. The father was not legally represented at this hearing and was assisted by his son M who acted as an Urdu interpreter. On this occasion the father informed the court that Z had been offered an induction date at a school. Mr Justice Williams declined to direct a s.37 report in response to the Guardian's request. The Court was informed that exhibit MB7 is currently held securely by the applicant's Solicitors and access is only available to her. The other holder of the intimate image is SA, and it is agreed by the applicant that steps should be taken to ensure that this image is extracted from the device which holds it, that it is held securely and that no copies are retained by anyone else. Accordingly, a third-party order was made against SA to enable her phone to be examined and information relevant to MB7 to be extracted. The view of the Court was that the intimate images captured on MB7 and as described by the father in his statement dated 14 April 2023 suggests that a criminal offence may have been committed. The view of the Court was that given the issues identified, this matter should be heard by a full-time judge of the Family Division and that the matter should be listed before the Judge hearing the fact-finding hearing at the adjourned Pre-Hearing Review.
16. Nevertheless, the case was next listed before Miss Gollop KC sitting as a Deputy High Court Judge on 11 October 2023. The father attended this hearing in person and represented himself. At the time of the hearing the police had still not viewed MB7. Previous orders in relation to the wardship and the passport/port alert orders were continued, and the case was listed before me on 9 November 2023 and then again on 18 December 2023 for a Pre-Trial Review.
17. The application came before me on 16 November 2023. At the hearing the father, who was assisted by an interpreter, attended remotely. He told me that he continues to suffer from ill-health, that he will not be able to attend the fact-finding hearing in person and is suffering from memory loss and difficulty with his brain functioning. I therefore gave directions for a report to be obtained from a jointly instructed psychiatrist upon the father's cognitive functioning and whether he had litigation capacity. Further, I directed an intermediary assessment from Communicourt. I also gave directions to compel SA to deliver up her phone upon which MB7 was stored to enable CYFOR to provide a report on amongst other matters the origin and date of the video. In addition, given the nature of the allegations, I appointed a QLR to cross-examine the mother on behalf of the father. At the time I made the order, the hope was that the fact-finding hearing dates in January 2024 could be held.

18. On 28 November 2023, SA appeared before me to set aside the third-party order for delivery up and inspection of her telephone. She informed the court that she had either lost it, or it had been stolen and she does not know which. In the circumstances, I discharged the direction for a report from CYFOR and directed that SA shall by no later than 12 December 2023 file and serve a statement setting out all relevant information pertaining to the mobile phone which contained the exhibit MB7. The statement was to address in as much detail as possible:
- a. how she came to be in possession of the video MB7;
  - b. where and how the video was stored on her mobile phone;
  - c. if she sent the video to anyone else and if so when;
  - d. what has happened the mobile phone in question; and
  - e. any other relevant information relating to the phone and/or the video MB7.
19. The father attended the hearing before me remotely. He was assisted by his daughter NP. It is noted on the face of my order of that date that the father appeared unwell on the link, and I raised concern about his health and who was caring for Z. I directed a medical report from his GP or consultant in charge of his care, detailing his current medical prognosis and diagnosis. The report was to be filed by 12 December 2023.
20. The Pre-Trial Review was heard by me on 18 December 2023. It was a hybrid hearing with the lay parties attending remotely. No court appointed interpreters attended this hearing, but it was enabled to proceed by the solicitor for the applicant, who speaks Urdu, interpreting for the mother and NP interpreting for the father. The Court was provided with photographs of medical notes for the father and a letter from his GP which sets out that the father suffers from:
- a. mild memory disturbance;
  - b. urinary incontinence;
  - c. type 2 diabetes;
  - d. hypertension; and
  - e. chronic kidney disease stage 3 (2019).

The court again made directions for the assessment of the father's cognitive functioning and his litigation capacity. Given the father's presentation on the link was supine and apparently dissociated, I also made a direction for the assessment of his competency to give evidence.

21. Given a number of strands of the evidence were outstanding, I adjourned the Pre-Trial Review until 12 January 2024. Dr Chawla's capacity assessment report dated 2 January 2024 was before the court on the later occasion. It confirmed that D lacks capacity (within the meaning of the Mental Capacity Act 2005) to conduct the proceedings.

Accordingly, D is a protected party within the meaning of r.2.3 Family Procedure Rules 2010. My order recorded that this is a case of last resort; and that D does not have the benefit of a legal aid certificate for representation in the proceedings. In those circumstances, the Official Solicitor was invited to act for the father. In the meanwhile, the fact-finding hearing was adjourned to await the Official Solicitor's response and the outcome of the outstanding assessment of D's competence to give evidence. I discharged the intermediary assessment in relation to the father but noted that that in relation to the mother remained necessary and was outstanding.

22. By 8 March 2024 when the application returned before me, the Official Solicitor had declined to act for D. However, a family friend had volunteered to act as his litigation friend. The family friend was invited to attend the adjourned Pre-Trial Review on 26 March 2024 and directions were made to enable the court on that occasion to consider whether or not she was suitable to be appointed as D's litigation friend. In advance of the next hearing, the family friend was invited to send to the parties and to the court a brief statement setting out her suitability to become a litigation friend. This statement was to address whether she consented to being D's litigation friend and why she considers herself to be suitable and attach the completed certificate of suitability to which she was directed to.
23. In the event, the hearing on 26 March 2024 was vacated as the family friend had not responded to the court's directions. It was re-listed on 25 April 2024. Again, the family friend did not attend. My order records that the proposed litigation friend was not in attendance and had not responded to email correspondence from CAFCASS legal querying if she was going to attend today's hearing and provide a Certificate of Suitability. The matter was therefore relisted on a date to be confirmed between 11 May 2024 and 4 June 2024 on the condition that the family friend filed a suitability certificate and provided a date when she would be available to attend a hearing at 4pm on any day between 10 May 2024 and 05 June 2024.
24. At this hearing, I again expressed concern about who was caring for Z given D's ill-health. In that context I invited NP, who was not a party to these proceedings but had been attending the hearings to assist her father, to seek legal advice with respect to her position in these proceedings. In doing so I noted that Z is currently living with her father, who is ill and cannot delegate authority, and there is a question as to who is able to exercise parental responsibility for Z in this jurisdiction given D's current state of health.
25. The application duly returned before me on 24 May 2024. It had been listed to deal with the issue of appointing a Litigation Friend for the father who lacks capacity. The family friend, upon producing a signed Certificate of Suitability, attended the hearing and confirmed that she is content to act as the father's litigation friend, The other parties did not object. Consequently, she was so appointed. Upon her appointment, I made it clear to her that she is not acting as a lawyer and suggested that she should take legal advice with respect to her participation in these proceedings.
26. At the same hearing I noted that the relevant social services had filed a s.37 report on 10 May 2024. The court order records that at this hearing I stated that I considered that the s.37 report was superficial and did not display an adequate understanding of the facts of the case. The position statement by CAFCASS sets out several questions that

articulated the shortcomings of the report. The court, therefore, required the report to be completed again and to address the questions posed by CAFCASS on behalf of the child. The court specifically set out the questions to be answered in the second report upon the face of its order.

27. I next heard this case on 5 June 2024. I made directions to facilitate a contested hearing including a fresh direction for the assessment of the father's competence to give evidence, an intermediary assessment in relation to the father to facilitate him giving evidence if he were competent to do so and a QLR appointment to enable the mother, a vulnerable party to be cross-examined on behalf of the father in the absence of the family friend being able to obtain legal representation. I again urged the family friend to seek legal advice and representation. My order specifically records the steps taken to ensure the family friend had a list of suitable solicitors who conduct this type of work and the contact details for Advocate.
28. On 26 July 2024, I heard yet another adjourned Pre-Trial Review. There were a number of issues the court identified which needed to be addressed to ensure that any future fact-finding hearing is effective. They were:
- a. the assessment of D by Communicourt, both to inform the timetable for the fact-finding hearing and to set out assessment of D's competency as a witness;
  - b. whether D was competent/ had capacity at the time that the witness statements provided in these proceedings were drafted and the need for witness statements from NP to address this issue and the manner and/or mechanism by which D was able to provide the statements he had to this court;
  - c. the nature and relevance of the digital files retrieved from D's mobile phone, which are included in the list in the children guardian's position statement; and
  - d. a witness template.
29. At this hearing, the father's family friend informed the Court that on behalf of D she contends that it is not in Z's welfare interests to be returned to her mother's care, but that she should be cared for by the paternal family. She informed the Court that D is not able to care for Z given his medical condition. She intends to actively pursue the findings set out in D's schedule of allegations at the fact-finding hearing and will call witnesses on his behalf. My order records that I urged her and D's family to seek legal advice given the complexity of this case, particularly given that D did not have litigation capacity and had been assessed as not being competent to give evidence.
30. On 28 September 2024, the case was restored to court on the mother's application. She had been able to secure a visa to travel to the UK for the purposes of participating in these proceedings and had arrived in England on 5 September 2024. The hearing was on notice, but the father's family friend did not appear because of work commitments. The court heard submissions from the applicant's counsel and those on behalf of the child's Guardian. Mr Justice Poole directed supervised contact between Z and her mother. Social Services were to arrange two one-hour sessions of supervised contact which were to be supervised by them and to take place before 16 October 2024. The

author of the s.37 report was to meet with the mother in person and an addendum s.37 report was to be filed and served by 22 October 2024.

31. The case returned to me for what was intended to be the final Pre-Trial Review on 29 October 2024. Ground rules were given by me to enable the mother to participate in the proceedings effectively. The Pre-Trial Review was adjourned to 7 November 2024 to ensure that all outstanding evidence was before the court and that the fact-finding in this case could proceed on the listed dates in December 2024.
32. The final Pre-Trial Review was heard on 7 November 2024. NP had assisted her father with his statements of written evidence, and which had been filed only in English when his first language is Urdu. In the circumstances, I had previously directed she should provide the certificate of translation from an interpreter in relation to his statements. NP had provided such certificates only in relation to the first of D's 4 witness statements. Therefore, I required NP to provide a written explanation as to why no certificate of translation had been obtained in relation to the others and what steps were taken to translate the statement before they were signed by D. The parties had filed a witness template indicating the case could be accommodated in 5 days. In the circumstances, I reduced the time estimate from 10 days to 5 days and listed it for a fact-finding only to begin on 16 December 2024.

### **The Findings I am asked to make**

33. On behalf of the mother, a Schedule of Allegations has been filed within which I am asked to find the following facts:
  1. *The father forcibly separated the mother and child by deception and stranding in Pakistan*
    - a) *The respondent told the mother that he would apply for her visa once Z is in England but he did not do so and permanently separated the mother from Z.*
    - b) *After a call on 26 January 2023 the respondent blocked the mother from having any contact with Z.*
  2. *Controlling and coercive behaviour :*
    - a) *The respondent hit the mother on some occasions and also threatened to kill her on one occasion.*
    - b) *The Respondent left Z and the mother destitute and falsely alleged that she had colluded in a burglary.*
  3. *Allegations that the mother has exposed*
    - a) *The respondent and his children have falsely alleged that the mother has been sexually grooming Z and have engaged her in sex work when she was 7 or 8 years old.*



*4. Alienation of the child from the mother Since January 2023 the respondent and his children have been alienating Z from the mother. They have also been exposing her to a narrative that the mother has been abusive to her and asked her to make indecent videos/images.*

*5. The Respondent and his children have been physically and emotionally abusive to Z.*

34. A Schedule of allegations has also been filed on behalf of the father. Within that Schedule I am asked to make the following findings against the mother:

*1. The Applicant has been physically abusive towards the Father. In January 2020, the Mother was part of a preplanned attack to rob the Father of approximately £2000. The Father was robbed beaten and held hostage for approximately The Mother fled the home and abandoned the Father. She has since evaded police detection and police bail and is wanted by the police. The Mother has an outstanding warrant in her name. Should she get caught, the Mother claims to have no other family, therefore the father is concerned for Z if she is to return to her.*

*2. The Applicant has been physically and emotionally abusive to Z*

*a) Applicant would on several occasions physically abuse Z such as hit a plate on her head and then fail to treat her medically.*

*b) The Mother has groomed the child into making dancing videos and uploading them on tik tok in exchange for money.*

*c) The Mother allowed the child to dance in front of men named J and M in Pakistan who were under the influence of intoxicants like alcohol and drugs.*

*d) In January 2023, the Applicant asked Z to send her images/video of her private area and to then delete them from the phone once sent to the Mother. The Mother has been sexually exploiting the child*

*e) Ongoing -the Applicant has spoken negatively of the paternal family and the child's half siblings. She has denigrated the Father and his family to her causing her emotional harm*

*3. The Mother has been emotionally abusive to the child through indirect contact on 16th and 19th April 2023 The Mother inappropriately questioned the child on the allegations made in the Father's statement and questioned why the child is lying. The Mother denigrated the paternal family and shouts at the child*

*4. Breach of Undertaking On the 1st and 4th of May 2023, the Mother uploaded images of the child on Tiktok in breach of the undertaking given on 20.4.23. The applicant secretly obtains images when having indirect contact with the child (most recently she has Zs image on WhatsApp display May 23)*

35. Both parties deny the allegations made by the other.

### **The Evidence**

36. I have before me a bundle of papers which runs to 822 pages. In addition, during the hearing, I received the full set of papers returned when the Court of Protection granted LPA to NP and K and the up-to-date medical records of the father. I received into evidence medical records relating to Z from Pakistan. I have accessed all the digital files set out at pages 27-30 of the bundle. They include Exhibit MB7 which I have viewed and listened to more than once. On behalf of the mother, I was asked to watch a YouTube video of Doda – *I don't Wanna Hide*. I have done so. I have heard oral evidence from most of those who have filed statements within these proceedings. Where I have heard their oral evidence, I have said so.

### The Mother

37. The Mother has had little formal education. She speaks Urdu. She can barely read and write in Urdu. She has little understanding of English although does accept she can read a little English. The mother's statements have been read to her in Urdu by her solicitor before she has signed them. She has been able to respond to the statements of the father and his witnesses in support because her solicitor has read them to her in Urdu. She has been assessed by an Intermediary within these proceedings and has had the assistance of an intermediary during the proceedings. For this hearing she has also had a court appointed interpreter.

38. The mother has provided seven statements to the court. Within her first statement she detailed how she was Z's sole carer until she consented to Z travelling to England with her half-sister YA. She states that she gave her consent on the basis that she would be joining Z and the father in England. Initially Z had daily telephone calls with her mother, often multiple calls each day. Over time the mother says the frequency of the calls dwindled and she noticed Z became more guarded and quieter. However, the last time the mother spoke to Z before making her application was on 26 January 2023. On that date the father and his children called the mother on a video call and confronted her with a photograph she had asked Z to take of her vaginal area. The mother says she had requested this photograph as Z has a history of UTIs and she had a rash that she was embarrassed to show to her father and his family members. The mother wanted a photograph so the mother could explain to the father the nature of the rash and request he obtain the necessary medical treatment. The mother details how the father and the family berated her and accused her of causing Z to take intimate photographs which they alleged she distributed to others. The father blocked the mother from the telephone and did not let Z speak to her again. The mother, by this time, was homeless and destitute. She obtained help from a women's aid charity in Pakistan who through a local shelter put her in touch with her solicitor within these proceedings. The mother claims that since she issued the wardship proceedings, she has been pressurised by the father to withdraw them. She has exhibited a transcript of a telephone conversation she had with the father on 21 July 2023 in which she claims she was pressurised to withdraw this case. She claims that he has threatened her with consequences, and she believes one such consequence is that the father orchestrated one of her brother's arrests in 2023 for the burglary of their home in Pakistan in January 2020.

39. The mother has had the assistance of an intermediary throughout this hearing. The intermediary supported and facilitated the mother to give evidence before me. The mother gave evidence in Urdu which was interpreted for me by a court appointed interpreter. Breaks during the proceedings and during her evidence enabled the mother to process the proceedings. Given the nature of the allegations, she was cross-examined by the court appointed QLR who adhered to the Ground Rules I had set. I am grateful to the QLR for the sensitive and skilful manner in which he cross-examined the mother. Thus, the mother was able to give her best evidence before me.
40. During her evidence in chief the mother gave a free narrative of her life in Pakistan with Z. It was a convincing account provided by an obviously caring mother who had been Z's sole carer in Pakistan. She adamantly denied that she had told Z to make the video Exhibit MB7 but admitted that she had told her to take a photograph of her private area because Z had told her that she had a rash and a burning sensation about which she was unable to tell her father or one of her half-sisters. During her evidence and within the course of the trial, the mother became visibly distressed at the allegations that she was a sex-worker- *I am not that*. The mother described to me how the father's children from his first wife resented her. In essence she told me that they resented her as she was younger, could have children and that threatened their inheritance. The mother explained to me how she had asked YA to keep her daughter safe. She denied signing the permission letter but accepted she had signed the affidavit, one of the two documents which permitted Z to travel to England with YA. The mother told me that when Z travelled to England, she had been told that when the mother wanted Z back, they would return her. The mother had not been expecting to be parted from her daughter. She was convincing when she gave evidence that she did not agree to Z living in England without her. Within her evidence the mother told me about an accident Z had had with a plate when in her mother's care. She accepted this had caused the injury to Z's forehead which can be seen in the photographs she sent the father. She denied deliberately harming her daughter.
41. In cross-examination on behalf of the father by the QLR, the mother recounted how the father would get angry when they were together if she gave the neighbours something small. She told me he would hit her. He beat her more than once. She told me of one occasion when he was beating her a lot and she stepped in, and he got a mark as well. When the father returned to England, the mother accepted that he had provided for her financially. The father returned close to Z's birth and was present at the birth. She had been the main carer. When the father went back to England after Z's birth, he left her studs and a ring and gifts for Z. The mother vehemently denied being involved in the burglary of the home she shared with the father. She was adamant that she had not arranged it. They had beaten her and tied the father up. They beat her because she spoke out. After the burglary, she fled with Z because the father's other children said she was behind it, and she feared for her safety. She told me she had overheard a conversation in which the father had told the police, he would give her up. She went and stayed with her own family. The mother denied beating or hitting Z. She believed the reason Z had travelled to England, but she had not followed, as she thought the father had originally intended, was because his children from the first marriage told him – *you can bring your daughter but not your wife*. The mother told me under cross-examination that when Z travelled to England, she had made a mistake - *I had trusted them*. The mother described the conversation she had had with the father on 26 January 2023 when Z had told her that she was a liar and that she had told Z to take the video. The mother

described the paternal family shouting and calling her a *bitch* and a *whore*. The family had told the mother that her contact with her daughter had been *finished for [her] whole life*. Losing contact with Z caused her to bring the application before me. The father then said he did not know why she had brought a case and that they could have had a conversation.

42. Mr Edwards cross-examined the mother on behalf of Zs guardian. She explained to me in answer to his questions that her relationship with the father had been good initially, but it had deteriorated - *slowly, slowly*. He used to come and go. His family did not want him to be with her. She had slapped him once when she feared for her safety. He had strangled her- *just the once*. She denied Z ever suffered any abuse in Pakistan and recounted again the accident with the plate. She had not deliberately hit Z with a plate and had never hit her with a stick. The plan had been to get Z and her father together in England and then he would support her entry. He had said when her own passport comes, Z and her mother would return to England to live. She thought it would take 10-15 days to get it sorted but he said 5-6 weeks.
43. Taking the mother's evidence overall, I formed the view that she was essentially truthful. Some of her evidence was a little confusing, but I take into account the barriers of language, capability and culture at play. I find her admission about the accident with the plate was truthful. It was corroborated by photographs of the injury she had sent to the father. Rhetorically I have asked myself - why would she send him such photographs if she had assaulted Z? I further accept the mother's admission that she had asked Z to take a photograph of her vaginal area and the reason she had done that. It was an admission against self-interest. In making that admission she was owning up to making a mistake, I accept her admission. I was struck by the mother's free narrative in chief which was unrehearsed and obviously truthful. I found the mother's distress at being labelled a sex-worker was genuine and visceral.

### The Father

44. The Father is the subject of an uncontested report that I have before me from his GP. That report is dated 1 December 2023. It tells me that *there have been concerns on recent assessment regarding his mental health and mental capacity. This has been declining over the past year so. His family report that he is having episodes of confusion, blank unresponsive episodes and also mood swings, He can start shouting for no reason, is having possible hallucinations and neglecting his personal hygiene unless prompted. He needs help to take his medication and self-care. When assessed by my colleague during a consultation recently, he did not seem aware of where he was. We suspect dementia and he has been referred to the memory assessment service [...]* Due to the onset of this cognitive decline, I do not feel he has the ability or mental capacity to make sensible informed decisions for himself.
45. In his initial assessment of the father dated 2 January 2024, Dr Chawla, consultant psychiatrist, gave an opinion that the father could give evidence provided he was supported to do so and adaptations were made to facilitate the process and ensure he achieved his best evidence.
46. On 24 June 2024 the father was assessed again by Dr Chawla. The assessment was conducted remotely. In Dr Chwala's opinion the father has moderate to severe dementia

and is unable to comprehend the necessary information or understand it, He states that during the assessment the father showed *significant memory impairment*. *He could not recall basic personal details, including his date of birth, his home address or aspects of his daily routine, He could not retain information pertinent to the legal proceedings.* He concluded that even with the support of NP who was present during the assessment, the father could not be supported to comprehend and understand the proceedings. In his opinion the father lacked litigation capacity and given the diagnosis of severe dementia it was *challenging for* him to regain the capacity to conduct the proceedings.

47. I have considered the evidence as a whole. I have reminded myself that there is a presumption of capacity under the MCA 2005. I have previously found that the father lacks litigation capacity and appointed a litigation friend to act for him in these proceedings. During this hearing I have heard the evidence from his adult daughters which has confirmed and emphasised their father's lack of capacity and his deteriorating state- mental and physical. I accept those descriptions which accord with that which I have been able to view myself as the father joined the proceedings remotely by link from his bed always attended by one of his grand-daughters. I have however weighed the expert opinion evidence and that lay evidence against the oral evidence of NP that the father was able to give consent to the LPAs in July 2024 and that he has moments of lucidity. I was told that he had had been assessed by the GP as having capacity to give that consent. I therefore asked for his recent GP records. They contain a brief note in a record about a physical medical ailment that the father had capacity. There is no specific note which records any assessment of capacity for the purposes of giving LPA. Furthermore, there is nothing within the records to suggest that the GP was and is aware of the assessment of Dr Chawla. The preponderance of the evidence thus remains that the father has moderate to severe dementia and that he does not have litigation capacity. I accept that evidence and consider that it displaces the presumption of capacity. Accordingly, I find that he continues to lack litigation capacity.
48. An intermediary report from Communicourt dated 21 August 2024 was obtained to enable the father to be facilitated to give evidence. However, it was terminated prematurely because of the difficulty the father had in understanding, processing and answering the questions posed of him. A second intermediary's report was obtained. It is dated 4 September 2024. It was carried out in Urdu with the assistance of an interpreter. The second intermediary came to the conclusion that even a highly experienced intermediary could not facilitate the father to participate in the proceedings or to give evidence. That assessment has been accepted by all the parties before me. I too accept the two assessments. Accordingly, the father has not given oral evidence before me, and his written evidence has not been challenged through cross-examination.
49. I note that on behalf of the father, no Civil Evidence Act application was made to enable his written evidence to be admitted. However, as I have set out in the section of this judgment headed Law, hearsay is admissible within these proceedings. Accordingly, I have allowed his evidence to be admitted before me. The issue for me is what weight can I give his evidence in the absence of seeing him being challenged in cross-examination and in the light of the manner in which his written statements before the court came to be written.
50. The father's first written statement to this court was written after receiving urgent legal advice. It is signed and dated 14 April 2023. It is accompanied by a certificate of

translation by an Urdu and Punjabi interpreter. Within that statement the father says that after the marriage he became aware that the mother had been a sex worker and had been the subject of human trafficking. He says he determined to provide her with a better quality of life but that *no false hope of ever coming to the UK was promised to her*. He denies ever beating the mother and claims that when he was not present in the home in Pakistan, he noticed that Z would get injured or cry for food and drink. He asserts he would send money for medical treatment for Z but that the mother would keep it for herself. Within this statement he sets out why he says the mother was behind the burglary in January 2020. After the burglary he asserts the mother fled (because she was implicated in the burglary) with Z and rendered herself destitute. He returned to England in March 2020. In July 2022 Z travelled to England to live with her father. He says the intention was that he and Z would travel back to Pakistan frequently to see the mother and experience Pakistani culture. There was, he says, never any agreement that the father would sponsor the mother's application for a visa or expectation that the mother would join them in England. However, at paragraph 68 of his statement he says this: *Z came to the UK to visit me on a return ticket. Once here, she refused to go back to Pakistan and I had to keep extending the return date on the ticket. Initially there was intention of a short visit only, therefore she was not enrolled in school.*

51. At paragraph 45 of his first statement, the father begins to detail how he became aware of Exhibit MB7. He asserts the video was made by Z on the phone she used to contact her mother (a Motorola e20), and that Z had deleted it. It had been found in the bin on the phone by AM who alerted SA who was in the home at the time and who had told him about it:

*50. We realised that we were dealing with a complex situation. We did not want to question Z directly about this and this was a very sensitive situation. Z had by this time realised that we had seen the video. When my daughter asked her why she made this video, Z told me that her Mother had been requesting such kind of material and she was told by her Mother that no one was ever to be made aware. I was so shocked and mortified and felt sick.*

*51. Z told me that 'mama said send me pictures of your vagina because you have a burning sensation.' What was impossible for me to comprehend was how on earth can any human being confirm a burning sensation through a picture or video.*

*. 60. Z disclosed to me that her Mother taught her how to make and delete videos from a phone whilst she was still in Pakistan. I believe that she groomed Z at an earlier age by making dancing videos to upload on tik tok by herself and other males Z has claimed that her mother would collect money from unknown men to Z for such videos whilst in Pakistan. Naturally this made me want to protect my daughter and stop such communication where I felt my daughter was being exploited by her mother.*

52. The father states that he telephoned the mother. *As always, she started shouting to confuse the matter. I tried to shield Z from this conversation, but she overheard the commotion and came by the video camera on my phone and said 'stop lying mama, you told me to make the video and after sending delete it from the chat and the gallery of the phone.'* Z was very scared that she might get in a lot of trouble. I reassured her I will keep her safe and she would never have to be exploited like this ever again. Z said she had sent other videos of similar nature, prior to getting caught on this occasion. I

*feel my daughter was being emotionally blackmailed and sexually exploited by her own mother.* The father asserts in his witness statement that Z further disclosed that her mother used these videos as a means of revenue. Me and her mother personally have no relationship as husband and wife it was only for my daughter's sake.

53. The father's second statement is dated 5 August 2023. It is written in English. It has been signed by the father but has no certificate of translation. The father's third statement (probably, actually, his second but misfiled in the bundle) is dated 6 July 2023. Again, it is written in English and is signed by him. Again, there is no certificate of translation. Attached to this statement at MB2 is a FIR report in relation to 187/20 dated 2 March 2020 and headed - *Application for Insurance Proclamation*. It is dated 30 June 2020 and alleged that the mother amongst others have absconded to *save their skin from arrest*. The document is certified by an advocate of the High Court in Pakistan. It appears that the allegations are based on a complaint made by the father. The father's fourth statement is undated. Again, it is written in English and signed by him. It does not include a certificate of translation. It sets out the father's belief that AM has deleted the video from the Motorola phone. It is asserted in this statement that only SA has a copy of the video MB7 on her phone.

54. Having heard the evidence of NP (set out below), I have formed the view that none of the father's statements can be regarded as his unadulterated direct evidence. The father's first statement is the most reliable, given that it was written before he lacked litigation capacity, it has a certification of translation and was written at a time when Direct Counsel was engaged and considered him to understand the issues in the case. However, even that statement was constructed with the aid of NP and thus it too is likely to have been subject to some degree of contamination. As I have found (for the reasons set out below), NP coordinated and placed before this court the family's narrative. Further, I have reminded myself that reliability and credibility are two different concepts. Thus, if his evidence is reliable, I still need to go on and consider whether or not it is credible. If it is unreliable, it cannot be rendered reliable even if it is credible.

## SA

55. SA is one of the father's daughters from his first marriage. She has provided a statement in support of her father's case. SA was living in the same household as the father when Z came to England. SA is married and has three children of her own. In her statement she describes how she says on the evening of 24 January 2023 she was asleep when AM shook her vigorously and woke her up exclaiming - *You won't believe what I just saw*. She calmed AM and AM told her that she was trying to reach the father on his phone but because she could not. She rang the Motorola number and discovered that phone in the home. AM, somehow, not properly explained by SA, went on to find exhibit MB7 on that phone. SA says she discussed the exhibit with the father the next morning. Z walked into the room where the adults were discussing the video. SA and Z talked:

*[...] I said to her 'Z you are not in trouble, and no one will ask or say anything to you. I promise all this will remain between you, me and dad, I just want you to be honest and tell me the truth. What we saw on abbas (dads) phone is very serious, and you need to tell me why you did what you did and why you deleted it?'*

14. *The conversation between me and Z was calm, I reassured her plenty and told her it would remain a secret. She still remained quiet and continued to listen to me. I asked again if she understood everything I was asking from her and she again nodded in agreement. Z then replied, 'aapi I will tell you but please don't tell anyone as I feel bad'. I told her not to feel bad and just to be honest. I wanted her to not feel embarrassed and to be at ease with me.*

15. *Z admitted to making the video. She said, 'Aapi, at one stage I told my mom that I didn't have a good day today because I had some burning sensation when I went to the toilet. My mom told me it's ok darling, just make me a video of your private parts while dancing and send it to me I will tell your dad'. I thought I was going to pass out hearing this claim by Z.*

16. *I repeated, 'Z you can't tell lies, please be honest and tell the truth. Did you really make this video because your mom said or did you make it on your own accord?' she replied 'no aapi, I only make them upon mamas say so'. I questioned, 'Z what do you mean by them? Have you made other videos of a similar nature?'*

17. *Z went quiet, took a long pause, and said, 'I have made others before, but I used to delete them from the chat on WhatsApp, the gallery, and the trash bin after sending them to Mama'. I did question Z if she ever felt uncomfortable making such videos Z replied 'No aapi, because she's my mama'.*

According to SA's statement she then told the father everything because Z could not bring herself to do so.

56. Within her statement, SA also details other subsequent conversations Z has had with her. SA describes these conversations as random and that they were lighthearted. However, she recalls the content of some of the conversations because they were concerning, namely:

- a. when ladies from the neighbourhood would come to the house to dance with A to entertain men who were under the influence of drugs and alcohol;
- b. another time, she told me that men would touch her, and she did not like it. This touching was not of a sexual nature according to Z. She disliked all forms of touch by men who would visit their home in Pakistan; and
- c. her mother taught her how to make and delete videos from a phone whilst she was still in Pakistan. Z has claimed that her mother would collect money from unknown men to Z for such videos whilst in Pakistan.

57. According to her statement dated 5 August 2023, SA believed that Z had been genuinely exploited by *her own mother and robbed of her innocence at a very young age.*

58. SA responded to a witness summons and gave evidence before me on 28 November 2023. On that occasion, the father joined the hearing half-way through and spoke to me.



NP was also present and told me that she was in attendance because her father is *totally illiterate*.

59. SA filed and served a second statement dated 8 December 2023. Within that statement she states:

*26. Between 27th -29th June 2023, the court issued an order to extract Z's video from my phone. Due to Eid celebration, I was away that weekend and I returned from Manchester on Monday 3rd July with my children. The following day I travelled to London as it was the earliest possible time to comply with court order*

*27. On the 4th July, 2023. I attended Dawson Cornwall office. An IT personnel extracted the video from my phone securely.*

*28. Late September / Early October 2023, Date, time and place unknown I misplaced / lost my phone.*

*29. This second-hand phone, purchased by my husband, was water damaged previously and had technical issues, I did not contact the police as I was unsure where to direct them to find the phone. Thus, I did not obtain a crime reference number. Furthermore, there was no insurance claim to be made.*

*30. This faulty phone, if found by anyone, will be of no use to them as it had face id and a passcode to unlock. Even the IT person at Dawson Cornwall, was only able to access the video after I unlocked the phone.*

*31. Due to the sensitive material saved on the lost phone in question, I believe no one viewed Z's video. It was not shared or forwarded to anyone after it was sent to me from my dad's phone.*

*32. I am not a technical person. I merely use a phone to contact my clients via text and to make and receive calls. I am not social media active. The IT person from Dawson Cornwall was able to extract the video sent to me originally by AM from an album or folder using the date and time.*

60. SA gave oral evidence before me on the second day of this hearing. I had travelled to Birmingham to take evidence from family members. SA was called by the father's litigation friend. Given she was conducting the questioning herself, I allowed a degree of latitude in chief. SA denied a poor relationship with the mother and told me it was more a hello/goodbye type of relationship. She denied knowing that Z had a history of UTI when Z came to England. Under cross-examination on behalf of the mother, SA explained to me that when Z came to England, she did not know Z would be living here. Z had travelled on a return ticket. She thought she would be staying about 4 weeks. Her father kept saying Z wants to stay longer. In August 2022 he told her Z does not want to go back. She told me that she lived in the same house with the father, but she did not know about her father's relationship with the mother. Z had not been enrolled in school because she was not intended to stay. SA told me that the video was *very, very true*. It was made by Z. She was alone when it was made, and you can see in the video it is as if she stops when someone comes. It was discovered accidentally. Z told her that her

mother requested it. SA denied saying that the mother was a sex-worker and denied accusing the mother of sexually grooming Z. She had heard that the mother was involved in the burglary but did not know the truth of it. Something was not right, her father got robbed repeatedly. Z always had a phone in their home with no parental controls on it. SA denied deliberately recording video contact between Z and her mother when Z is said to have been speaking to a script prepared for her on 19 April 2023. She accepted the telephone contact with the mother had however been recorded beginning to end. SA denied that her phone, containing the exhibit MB7, had been conveniently lost or stolen and denied the implication put that it had been lost/stolen because they (the paternal family) had a vested interest in it being unavailable to the court. SA could not really explain why the video had been transferred to her phone in the first place. SA conceded that it is possible that Z had been playing around video herself dancing and copying a dance associated with a pop song sung by Dada. SA's daughters and Z would dance along to music, the genre of which she said she was unaware, and would video themselves. SA had told the social worker (1) what Z told her. She did not know whether what Z said was the truth or not. She had simply repeated what Z had told her. SA was affronted at the suggestion that she had concocted a story that the mother had incited the video and exposed Z to sexual activity. She had not taken the video MB7 to the police or shown it to social services because she was not the parent. SA told me Z needs help mentally.

61. During the course of SA's evidence, it became clear that SA and her family had moved out of the home they shared with the father and Z the Saturday before the hearing began. She did not know who had looked after Z that night. NP was taking Z to and from school and whoever was looking after their father was also looking after Z. The sisters and sisters-in-law were seeing to his care. The father had recently come out of hospital where he had been admitted for pneumonia. The father cannot be left alone. Z is not her responsibility, and the father cannot care for her. She had not spoken to a number of her siblings for over a year. She speaks to NP about their father. She did not know if Z had lied but it was a possibility. She may have seen an age-inappropriate video.
62. I listened carefully to SA's evidence. I formed the view that she was frustrated with the process and fed up with it. Z was not her responsibility and she wanted out of the case and nothing to do with Z.

#### Cyfor

63. Cyfor have provided a report to the court dated 1 August 2023. They examined the Motorola phone for exhibit MB7. It was not found on that phone. Their report has not been challenged and their evidence before the court is accepted.

#### AM

64. AM has provided a statement dated 23 July 2023. AM is the father's granddaughter. AM discovered the video exhibit MB7.
65. AM gave oral evidence before me in Birmingham. She was an anxious witness. She was reluctant to give evidence and not receptive to challenge. In cross-examination on behalf of the mother, she accepted that NP had typed her statement but said the contents were hers. She could not explain why having found the video on the Motorola phone,

she had sent it to SA and deleted it from the Motorola phone. She had found the video in the father's bin and put I back there from whence it had been deleted automatically after 30 days. AM described Z as a good girl who likes dancing and making vlogs. AM did not want to put herself forward to care for Z. She accepted that the father could not care for Z and that his daughters were caring for him.

66. As I listened to Am's evidence I was concerned that she was a reluctant witness and that on occasion, her evidence just did not make sense. I formed the impression that she had been dragged into something by her family and she no longer wanted any part in it.

#### YA

67. YA also provided a statement in support of the father's case. YA is one of the father's daughters from his first marriage. Within her statement she described how the mother nagged YA to accompany Z to England. She says that at the airport the mother begged her to take Z to her father in the UK for a better future. YA details how she considered this strange as Z was travelling on a return ticket. Attached to this statement is a Letter of Permission which YA says was handed to her together with the affidavit the mother had signed to enable Z to travel.
68. YA gave evidence before me. She was clear that her only role had been to accompany Z to England in July 2022 and that she had been reluctant to do that. She had thought Z would stay about 6 weeks. The wording of Permission Letter exhibited to her statement came from her father. She told me that the mother can speak English and she had spoken to her in English. The Permission Letter she had was in English, but her father said he had given it to the mother in Urdu. The mother signed it on the day Z was travelling.
69. It was very clear from the way the witness gave her evidence that she wanted no involvement in the case or with Z.

#### Mother's Solicitor

70. I have a statement from the mother's solicitor. It is dated 20 May 2024. I have read it. It concerns the extraction of Exhibit MB7 from the phone SA brought to their offices. The statement was not challenged, and the solicitor was not required to give evidence.

#### MAJ

71. MAJ filed a statement in support of the mother. It has a certificate of translation and is dated 7 October 2024. He is her brother-in-law. He describes two videos which are of him and Z dancing and lip-syncing. They are the videos which the father in his first statement says are of Z being groomed by unknown males. He gave evidence by link from Pakistan with the assistance of an interpreter. He was called on behalf of the mother. His evidence was short and factual. I accept it.

#### NP

72. NP has recently provided a statement to the court explaining how the father's statements, responses to allegations and his schedule of allegations were prepared.

Within that statement she details how she has been a joint account holder with her father since 2010/11 and has accompanied her father to medical appointments. She tells the court he has been suffering from depression since 2008 and has *for many years shown* signs of forgetfulness. She tells the court that *by 2021/2022, he exhibited mild dementia, hallucinations, and forgetfulness, though he remained mostly lucid. His symptoms have worsened, likely due to stress from these proceedings. We raised concerns with his GP and mental health team. In addition, the family assumed his forgetfulness was caused by his medication.* In relation to her father's statements, NP explains she discussed the paperwork left by the Tipstaff with SA and explained details to her father when he was lucid. NP describes how she helped him appoint direct access counsel. *To keep costs down, I helped draft his statements, responses to allegations, and the allegation schedule based on his instructions. I structured the information chronologically, as my father could not always recall the dates in order. I do not have a legal background and relied on the court's format of documents as a guide.* NP told the court in her statement she completed her father's statements with his full consent.

73. NP gave evidence before me on the third day of the hearing. She was called on behalf of the father. She told me that Z had travelled to England to visit family, but it had been intended she would return to Pakistan in September 2022. NP gave evidence explaining why the stay kept being extended. In chief, she recalled seeing her father over a video link after the burglary - he was bruised and had obviously been beaten. She said he told me he had been held hostage. Z had been there during the burglary. NP told me she had had a very limited relationship with the mother. NP explained how she had helped with the statements before the court. She had typed her father's statements for him and translated them. NP had read all the statements from the father, SA, AM and YK as she had seen them in the bundle. She said she had been involved in her father's statements but not in the making of the others. She could not explain in cross-examination why her father's statement and SA's statement resembled each other's.
74. NP told me that her father's forgetfulness had started in about 2019/2020. It had deteriorated and last year it became more prominent. She tried to explain how she got him to recall the evidence he has given in his statements. She told me she had asked prompting questions and that she had recorded precisely what he told her but had placed it in his statements in order. She accepted that she had been a joint account holder with her father since 2010 and that she was aware of his finances, NP denied disliking the mother and considering her a thief stealing his money.
75. In cross-examination it became clear that she had applied for LPA (welfare and property) in July 2024 and that the family friend, now acting as the father's litigation friend, had signed the form certifying that as of that date he had mental capacity to make a LPA.
76. NP told the court that she did not believe that the mother made the sexually explicit videos of Z as alleged. Z is said to have lied and to be mischievous. The allegations of sex trafficking and sexual grooming all come from Z. Z was just lying and has got caught. NP denied making any allegations.
77. I got the impression from NP that she had co-ordinated the father's case and had overseen the preparation of his statements. The reason SA's statement resembled the father's statement was because NP was presenting a family narrative, the story the

paternal family wanted the court to accept. I accept NP is not a trained lawyer and that she may have been trying to assist the court, however, I find that the way she has acted has meant that the statements of the father and of his witnesses in support have been cross-fertilised. That reduces their reliability. What I have is the family's narrative rather than direct uncontaminated evidence from witnesses and that dilutes the weight I can put upon them.

#### Father's Earlier Direct Access Counsel

78. I also have a statement from the Direct Access Counsel who was retained to act for the father in the earlier hearings. Within it they state:

*6. In terms of the witness statement dated 14.4.23, a draft form of the father's witness statement dated 14.4.23 was sent to me on 13.4.23 by NP on behalf of her father seeking a review of the statement. A review of the statement was conducted with a follow up call to the father on 13.4.23. In that call I made clear to him that a certified translator would need to read the statement to him in Urdu so he could confirm the truth of the statement to the best of his belief and knowledge and he was to provide a certificate of translation with his statement which was done.*

*7. In terms of the statement dated 8 th May 2023, I was not instructed by the father to prepare or draft his witness statement. On 3.5.23, NP sent me a witness statement that had been drafted for the father requiring for review. Feedback and advice was provided by me on 5.5.23 both in writing and on the phone directly to the father who had NP present. Amendments were made to the statement and the statement was then filed and served on 8 th May 2023 by the father.*

*8. In terms of the statement dated 7th June 2023 to the best of my recollection and records, I was not instructed to prepare or draft his witness statement. The same process applied where I was sent the scott schedule and statement to review. Advice was provided to the father r on amendments that were required. To my knowledge, those amendment were made by NP on behalf of the father and the statement and scott schedule were submitted by the father*

Within their statement Direct Access Counsel states:

*I can confirm during my telephone discussion with him between April -June and at my in person court appearances with him, it did not appear to me that he did was not competent to provide instructions to me or that he did not have litigation capacity. We spoke in Urdu and he was a very pleasant, respectful client and we got on very well. My last contact with him was on 28th June 2023 at court where I explained the order to him in Urdu and we said our goodbyes..*

#### Social Workers

79. I heard oral evidence from social workers. The first was the author of the s.47 assessment conducted on 31 March 2023 after the Guardian on behalf of Z had made a referral to social services, they are also the author of a subsequent letter to the court

dated 12 April 2023. Until that referral, Z was not known to social services. The assessment was made without speaking to the mother. The assessment sets out the paternal family's account of Z visiting the GP's surgery and having had a rash which had been treated. It records a conversation with the father in which he stated:

*D reported that around 2020 there was a burglary at his home. D's children reported that the burglary was orchestrated by A and her brothers who stole their father's gold and other belongings. D was also physically assaulted in the robbery and was admitted in hospital for weeks. A was reported to have fled when the matter was reported to the Police. D said he felt that the marriage was based on material things and the opportunity for A to come to the UK. D went on to state that he did not foresee bringing A to the UK because of she has ill-treated him and his daughter. D and his older children have disputed that Z was forcible separated from her mother. As stated in this assessment, Z came into the country accompanied by her older half-sister. D went on to state that all these allegations emanated from his withdrawal of the financial assistance he willingly provided to A. D clearly stated that he did not want his daughter to return to Pakistan as she was going to be exposed to poverty and mother's chaotic lifestyle. D stated that Z's needs are sufficiently met by him and his children and that she is not subjected to abuse or maltreatment.*

80. According to the s.47 report, *Z has been observed to be happy and contented in her environment. Z when spoken to alone, she did not raise any concerns about her current home life. Z said she feels safe and happy at home with her father and sisters. The extended family is supportive, they regularly see Z and her father at home. The family has also denied that Z is being subjected to physical harm whilst in the care of her father.*
81. Z shared with this social worker that her mother illtreated her and that she used to make her clean and cook. She also shared that her mother used to allow her male friends to the house and would touch her inappropriately but did not disclose any sexual assault. Z is also privy to the animosity her parents share and want this to end. Z said if she is worried, she talks to her sisters or to her dad. Z said she does not want to see her mum or to talk to her. Z said her mother made her clean the house alone, here no one makes her clean or cook. Z said she likes to do it because she likes it. Z said her sisters were nice to her and did not make her do anything she did not want to do. Z said her mum was lying about the things she said to the court. Z was asked about the videos she made. Z said she made the videos on her own and did not send them to anyone. Z was asked if her mother asked her to send the videos to her. She said no, she made the videos and deleted them. Z was asked if anyone has ever touched her private parts or any parts of her body. Z said in Pakistani her mum's friends used to touch her and private parts. She was asked if they did anything else, she stated no. Z was spoken to about the good and bad touch and was told to talk to her sisters and father if anyone ever touched her inappropriately.
82. The social worker had little independent recollection but recalled that Z had been in the room when Exhibit MB7 had been made. Within these proceedings, the social worker's contemporaneous notes have been disclosed. They were out of order when filed but the witness rectified that in the witness box. They record that Z told her that her mother used to slap her and make her do work around the home. In relation to the video, she

said it was made when her father was in the room. She recalled her mother used to make her dance for males. It was a form of revenue.

83. I have read the contemporaneous notes of the social worker with care. They do not record the questions asked which elicited the answers. What is recorded is indicative of a child recounting an event which is intermingled with what an adult has told her or what she has heard adults say. It also appears to me that the social worker has recorded what the child has said amongst what the adults have told her, the social worker. For instances, it is recorded that *she said her mother used to make her dance for the males. It was a form of revenue. she said there is a girl in Pakistan doing it now, SA spoke to dad ...etc.*
84. A second s.47 report was carried out by another social worker in response to another referral made by the Guardian this time on 12 September 2023 made after she had viewed exhibit MB7. This referral prompted a joint investigation. I have before me the second report which is brief and superficial. I also have the computer record kept by the police of the joint visit to Z. It states:

*DISCUSSION WITH CHILD:*

*When speaking with the child she stated that:*

- \*she understood the difference between truth/lies*
- \*she can't remember when she made the video*
- \*she made the video in the room we were sitting in - this is the child's bedroom - the room holds two single beds - she shares the room with her father*
- \*she made the video because her mother told her to - mom said to her 'make the video - take your pyjamas off' - mom also told her to take her underwear off*
- \*(Z) sent the video to her mom - she did not send it to anyone else - in total, her mother told her to make 3 videos - (Z) sent all three to her mom - (Z) sent them using her dad's phone (this has been handed to the court)*
- \*she was talking to herself when she spoke in the video*
- \*when asked if she'd ever seen something similar to the video she made, elsewhere, (Z) replied - she'd seen a girl do it on the phone - when questioned further about where she'd seen the girl do it, (Z) said that she'd never seen anything like it before - she'd not seen a girl do it*
- \*no family members in England had ever asked her to make a video or anything similar*
- \*when she arrived in England (Z) had her own phone or I-Pad - this was for her to keep in touch with her mother in Pakistan - she doesn't have her own personal device any longer*
- \*(Z) has never been asked by anyone to send still images of herself without clothing - no one in England has ever asked her to send videos/images*
- \*(Z) likes living with her dad in England - things are 'good' here - she enjoys eating - her favourite food is pizza*
- \*she wants to stay in England with her dad and family*
- \*(Z) enjoys going out with her dad - they go to the park and the shops - she also goes out with her sisters and their children - places such as the safari park and the cinema*
- \*no one in England harms her*

*PAKISTAN*

*\*when she lived in Pakistan, (Z) lived with her mother - there was just the two of them*

*\*she wasn't happy there - mom's 'not good' (couldn't explain what she meant by this)*

*\*she does not want to live with mom in the future*

*\*in Pakistan, mom, on 2 occasions, hit her head with a plate (just above her eyebrow)*

85. I also heard evidence from the social worker responsible for the s.37 report dated 1 April 2024. The report is not informed by a conversation with the father who was in too poor physical health to participate and was also said to have a hearing impairment and to be unable to process information by reason of dementia. The social worker did not speak to the mother. The report is thus based on the views of SA, NP and SP (another sister). SA also shared her concerns whether Z must have been sexually exploited by men whilst she was in A's care in Pakistan as Z has described male genitalia to her on one occasion. SA shared that it is unusual for a child who was 9 years old at the time to dance in a seductive manner and expose her private parts while filming herself. However, she is unsure if Z had been asked to do such acts before by her mother or if she has been exposed to sexual acts while she was living with her. SA also said that Z told her that she was inappropriately touched by a man who used to visit A whilst she was staying with her. She said that A had shared with her sister YA that she used to give sleeping pills to Z so that she could be with men. SA stated that she does not know whether these allegations are true or not. She shared that it is A's right to live with her daughter and they have no objections in A having custody of Z and said that even D is also okay with this if he is convinced that A did not ask Z to make the video. SA said that Z is likely to have lied that her mother made her make the video to escape the consequences of being caught, however, even in that case she would not be able to film herself in a sexual manner if she hasn't viewed anything of that sort and it is still unclear about the reasons, she made the video. SA stated that there could be chances that Z could be at risk of harm or even be exploited if these allegations made against her mother are true and worries that she would not be safe if she is sent back to Pakistan.
86. The same social worker spoke to Z at her home that she shares with her father. Z described her house in Pakistan as a big house with two/three rooms and said that she lived in one room with her mother. It was a rented house and they had to share the kitchen and toilet with others. She said that she used to meet her mother's friend who used to come every day at night and that he was not nice to her. She said that her mother was close to him. Z said that this person had inappropriately touched her once. When I asked her if she had shared this with her mother, she said that she did not as she was scared. Z said that she stayed away from him whenever he came home after that. When I asked her about the video she had filmed while in the UK, she said she does not know anything about the video and that she does not remember. When I asked her if she was attending school in Pakistan, she nodded. However, when I asked her if she knew the name of the school, she said she did not remember. Z did not have any recollection of the school in Pakistan or even if she said she attended school in Pakistan.



87. This same social worker is also the author of the second s.37 report which was required by the court given the superficiality of the first. It is dated 4 July 2024. For this second report she was able to speak to the father who was having a lucid moment and the mother. She also spoke to SA, NP and AM. NP gave the social worker an account, which I consider is different from NP's written evidence. She stated that NP told her that Z shared with her, when her mother had sent her to the UK, she was asked to stay in the UK, start school and then she should request for her mother to join her and that Z told her that when she came to the UK, she realised that her siblings were nothing like how her mother described them to be. Therefore, Z had a change of mind and she stopped talking to A and said she did not want to go back to Pakistan. NP also stated that A was okay about this until the contact was stopped by D following the allegation concerning the video. NP stated that Z was still communicating with her mother's male friend at first whilst in the UK. This male friend used to contact D and Z used to talk to this person through D's Facebook messenger app. The family had seen the communication between Z and this person alleging that her mother had prepped her to be in the UK which made Z feel uneasy, using her father as an excuse to end the communication.
88. The social worker gave evidence before me. She did not seem to understand that by accepting the paternal family's account she had entered the factual fray and had not considered the case from the perspective that this may be a stranded spouse case in which the child had lost contact with her mother, her primary carer and in which the allegations made by the mother may be true. The mother says, the child has been exposed to alienating behaviours which of themselves are harmful. The social worker seemed to me to have put her faith in the paternal aunts and that combined with Z's stated wish to remain in England with her father and half-sisters appeared to hold sway against all other evidence and arguments. I had permitted the local authority to have legal representation present to hear her evidence and at the conclusion of this social worker's evidence and after allowing them time to take instructions, it was accepted that there were reasonable grounds to believe the threshold condition was met in this case whichever way you looked at the evidence. Between 20 December 2024 when the evidence concluded in this case and the next hearing which will take place on 8 January 2025, the local authority accepted through counsel the making of an interim supervision order in relation to Z. That was to sit alongside a contract of expectation that Z would have her base with NP during that period and that the social services would make weekly visits to Z and promote her contact with her mother which was to remain supervised. The wardship continued.

### **The Parties' Positions in Closing**

89. On behalf of the mother in closing I was asked to make the findings sought. It was submitted that it does not matter whether Z came for a visit or to live with her father in England. The fact is that it was never intended she should be parted from her mother, and she was either because Z was not returned or because her mother was never brought to the UK to be with Z. On either version the mother never agreed to relinquish care of Z. I am asked to say the signature on the Permission Letter is not the mother's. It is asserted that it is inclosing unexplained why the father and the paternal aunts, SA, and NP, prosecuted the video so vigorously within these proceedings only now to say Z should be with the mother and to blame Z for *mischievous*. On behalf of the mother, it is said that the original allegation had no substance and was deliberately fabricated to frame the mother. It was used to cut the mother off from Z and to cut her off financially

from the family. That SA is now said to have lost/ had stolen the phone upon which video MB7 was stored is said to be an obstruction of the forensic process. It is asked rhetorically- what are they trying to hide? The submission is that the father and the paternal aunts have subjected Z to alienating behaviours and their beliefs that the mother is beneath them.

90. As to the next steps, which are possibly an issue for the next hearing, on behalf of the mother, the local authority is asked to provide and/or support the mother to find a place to live close to Z. If the findings are made as asked, the mother will seek reunification. In the short term, a public law order is sought given the lack of clarity around where Z is to stay that emerged during this hearing when it became apparent that SA and her family had moved out of the home they had shared with Z and the father. I was asked to make an interim care order under s.38 CA 1989.
91. On behalf of the Father, the litigation friend submitted written submissions in closing which included the following:

***Acknowledgement of Allegations***

*D acknowledges the serious nature of the allegations and places full trust in the Court's careful consideration of all evidence presented. He is confident that the Court will make a determination that aligns with Z's welfare and best interests.*

***Proposed Care Arrangements for Z***

*Given his health limitations, D believes that the most suitable resolution for Z's welfare is her reunification with her mother. This arrangement ensures Z's daily needs are met while preserving her connection to her extended family.*

***D's Relationship with Z***

*Despite his health challenges, D cherishes his close bond with Z. He respectfully requests that arrangements allow for regular contact with Z to nurture and maintain their relationship. This ongoing connection is vital to Z's emotional security and her sense of belonging within the family. D is committed to cooperating fully with the Court and other parties to ensure a swift resolution that serves Z's best interests and provides her with the stability and care she needs. He has demonstrated his willingness to prioritise Z's needs above his own, showing his deep commitment to her welfare.*

92. In oral closing on behalf of the father, it was submitted that Z only came to be with her father on a temporary basis and the only reason she had not been returned was the explicit video MB7 which had come to light on 24 January 2023. The police and social services were made aware of it and did nothing.
93. On behalf of Z's Guardian, it was submitted that Z is in an unenviable position. She has been detached from her mother for a significant period. The social services department after consulting with her paternal aunts, now propose she be placed with YK who is just a name to her. The Guardian is grappling with a balance of harm – in the short term the options are foster care or maintaining the status quo with Z having a base with NP. On balance the Guardian favoured wardship continuing with an interim care and control to NP and an interim supervision order.

## The Law

94. In respect of the task of determining whether the 'facts' have been proven I have borne in mind the guidance given by Baker J (as he then was) in Re L and M (Children) [2013] EWHC 1569 (Fam) confirmed by the President of the Family Division in In the Matter of X (Children) (No 3) [2015] EWHC 3651 at paragraphs 20 – 24. I have also reminded myself the judgment of Lord Justice Aikens in Re J and Re A (A Child) (No 2) [2011] EWCA Civ 12, [2011] 1 FCR 141, para 26.
95. The standard of proof to which facts must be proven is the simple balance of probabilities. Lord Hoffman observed in Re B (Care Proceedings: Standard of Proof) [2008] UKHL 35 that “If a legal rule requires facts to be proved, a judge must decide whether or not it happened. There is no room for a finding by the court that something might have happened. The law operates a binary system in which the only values are nought and none”. The test remains the same regardless of the seriousness of the allegations.
96. The burden of proof rests on the shoulders of the party that seeks the finding. It is for them to satisfy the court, on the balance of probabilities that it has made out its case in relation to disputed facts. A respondent to an allegation has nothing to prove, and the court must be careful to ensure that it does not reverse the burden of proof. As Mostyn J said in Lancashire v R [2013] EWHC 3064 (Fam), there is no pseudo-burden to come up with alternative explanations.
97. There is no reversal of the burden of proof in cases where sexual abuse is alleged. An allegation is only an allegation, and the burden remains on the shoulders of the party who seeks the finding to prove that the allegations are established to the requisite standard of proof. The court must proceed cautiously and avoid the “the child protection imperative”-see Oldham MBC v GW and PW [2007] 2 FLR 597 at [97]). Such a need for caution was recognised by Hughes LJ (as he then was) in Re B (Allegation of Sexual Abuse: Child’s Evidence) [2006] 2 FLR 1071 at [43] when he observed that:
- ...the fact that one is in a family case sailing under the comforting colours of child protection is not a reason to afford to unsatisfactory evidence a weight greater than it can properly bear. That is in nobody's interests, least of all the children.*
98. I acknowledge and factor in that allegations of sexual abuse raise high emotions. However, notwithstanding the emotive subject matter, the task of this court is to take an entirely dispassionate approach to the process of determining whether on the relevant and admissible evidence available to the court the facts alleged are established on the balance of probability - Re A (A Child) (Vulnerable Witness: Fact Finding) at [77].
99. Having heard and considered the evidence it is open to the court to conclude that the evidence leaves it unsure whether it is more probable than not that the event occurred and, accordingly, that the party who has the burden of proving that the event occurred has failed to discharge that burden - The Popi M, Rhesa Shipping Co SA v Edmunds, Rhesa Shipping Co SA v Fenton Insurance Co Ltd [1985] 1 WLR 948. The Supreme Court has made it clear that, whilst not routine, this outcome is permissible in cases

relating to children- Re B (Care Proceedings: Standard of Proof) [2008] 2 FLR 141 at [32].

100. I have reminded myself that where a respondent party does seek to assert and prove an alternative explanation for a given course of conduct but does not prove that alternative explanation, that failure does not, of itself, establish the other party's case, which must still be proved to the requisite standard - The Popi M, Rhesa Shipping Co SA v Edmunds, Rhesa Shipping Co SA v Fenton Insurance Co Ltd at 955-6. The inability of a respondent to an allegation to explain an event cannot of itself be relied upon to find an event proved- Re M (A Child) [2012] EWCA Civ 1580 at §16.
101. Findings of fact must be based on evidence, and the inferences that can properly be drawn from the evidence, and not on speculation or suspicion. The dividing line between the drawing of inferences and speculation may not be a clear one; it is essentially a matter of judgment as to what is a legitimate inference and what is insupportable speculation - Re A (A child) (Fact Finding Hearing: Speculation) [2011] EWCA Civ 12 [2011] 1 FLR 1817 and Re A (Application for Care and Placement Orders: Local Authority Failings) [2015] EWFC 11 [2016] 1 FLR 1.
102. The decision on whether the facts in issue have been proved to the requisite standard of proof must be based on all of the available relevant and admissible evidence including that from the alleged perpetrator - Re I-A (Allegations of Sexual Abuse) [2012] 2 FLR 83, as well as the wider context of social, emotional, ethical and moral factors - A County Council v A Mother, A Father and X, Y and Z [2005] EWHC 31 (Fam) at [44]. The role of the court is, accordingly, to consider the evidence in its totality and to make findings on the balance of probabilities. This means that, in accordance with the foregoing general principles, when assessing whether allegations of sexual abuse are proved to the requisite standard, the court must consider each piece of evidence in the context of all of the other evidence - Re T [2004] 2 FLR 838 at [33]. Overall, as noted by Holman J in Leeds City Council v YX & ZX (Assessment of Sexual Abuse) [2008] EWHC 802 (Fam) at [143] in the context of cases of alleged sexual abuse:

*I wish only to stress ... the very great importance of including in any assessment every aspect of a case. Very important indeed is the account of the child, considered, of course, in an age-appropriate way. An express denial is no less an account than is a positive account of abuse. It is also, in my opinion, very important to take fully into account the account and demeanour of the parents, and an assessment of the family circumstances and general quality of the parenting.*

103. Within the foregoing context, with respect to the legal principles applicable to the highly complex fact-finding exercise concerning allegations of sexual abuse, in the decision of Re A (Children) [2018] EWCA Civ 1718, the Court of Appeal once again emphasised the overarching importance, when determining whether or not the case has been proved to the requisite standard, of the court standing back from the case to consider the whole picture and ask itself the ultimate question of whether that which is alleged is more likely than not to be true. In Re A, King LJ cited the following passage from the judgment of Toulson LJ (as he then was) in Nulty Deceased v Milton Keynes Borough Council [2013] 1 WLR 1183:

[34] *A case based on circumstantial evidence depends for its cogency on the combination of relevant circumstances and the likelihood or unlikelihood of coincidence. A party advancing it argues that the circumstances can only or most probably be accounted for by the explanation which it suggests. Consideration of such a case necessarily involves looking at the whole picture, including what gaps there are in the evidence, whether the individual factors relied upon are in themselves properly established, what factors may point away from the suggested explanation and what other explanation might fit the circumstances. As Lord Mance observed in Datec Electronics Holdings Limited v UPS limited [2007] UKHL 23, [2007] 1 WLR 1325, at 48 and 50, there is an inherent risk that a systematic consideration of the possibilities could become a process of elimination “leading to no more than a conclusion regarding the least unlikely cause of loss”, which was the fault identified in The Popi M. So, at the end of any such systematic analysis, the court has to stand back and ask itself the ultimate question whether it is satisfied that the suggested explanation is more likely than not to be true. The elimination of other possibilities as more implausible may well lead to that conclusion, but that will be a conclusion of fact: there is no rule of law that it must do so. I do not read any of the statements in any of the other authorities to which we were referred as intending to suggest otherwise.*

[35] *The civil “balance of probability” test means no less and no more than that the court must be satisfied on rational and objective grounds that the case for believing that the suggested means of causation occurred is stronger than the case for not so believing ...*

104. When considering the balance of probabilities, the court must also factor into its determination, the inherent probability or improbability of an event. As has been observed by the Supreme Court, common sense, not law, requires that in deciding this question regard should be had, to whatever extent appropriate, to the inherent probabilities - Re B (Care Proceedings: Standard of Proof) at [15].
105. In family proceedings, evidence given in connection with the welfare of a child is admissible notwithstanding any rule relating to the law of hearsay (see the Children (Admissibility of Hearsay Evidence) Order 1993). The weight to be attached to a piece of hearsay evidence is a question for the court to decide - Re W (Fact Finding: Hearsay Evidence) [2014] 2 FLR 703. Within this context, a serious unsworn allegation may be accepted by the court provided it is evaluated against testimony on oath - Re H (Change of Care Plan) [1998] 1 FLR 193. I have reminded myself that is very important to bear in mind at all times that I am required to treat hearsay evidence anxiously and consider carefully the extent to which it can properly be relied upon - R v B County Council Ex parte P [1991] 1 WLR 221.
106. Z has not given evidence before me. Thus, the entirety of the allegations made by Z are hearsay. That hearsay evidence is admissible but when judging the weight to give to it, I must take into account that it has not been subject to cross-examination. I have reminded myself that the American jurist John Henry Wigmore, observed “Cross-examination is the greatest legal engine ever invented for the discovery of truth”. Oral evidence given under cross-examination reflects the long-established common-law consensus that the best way of assessing the reliability of evidence is by confronting

the witness - Carmarthenshire County Council v Y & Others [2017] EWFC 36 at [8] per Mostyn J. The Court of Appeal has made it clear that where the evidence of a child stands only as hearsay, the court weighing up the evidence must consider the fact that it was not subject to cross-examination - Re W [2010] 1 FLR 1485.

107. I must be careful to bear in mind that a witness may lie for many reasons, such as shame, misplaced loyalty, panic, fear, and distress. The fact that a witness has lied about some matters does not mean that he or she has lied about everything - R v Lucas [1982] QB 720. Within the context of family proceedings, the Court of Appeal has made it clear that the application of the principle articulated in Lucas in family cases should go beyond the court merely reminding itself of the broad principle. In Re H-C (Children) [2016] 4 WLR 85 McFarlane LJ (as he then was) stated as follows:

*[100] One highly important aspect of the Lucas decision, and indeed the approach to lies generally in the criminal jurisdiction, needs to be borne fully in mind by family judges. It is this: in the criminal jurisdiction the 'lie' is never taken, of itself, as direct proof of guilt. As is plain from the passage quoted from Lord Lane's judgment in Lucas, where the relevant conditions are satisfied the lie is "capable of amounting to a corroboration". In recent times the point has been most clearly made in the Court of Appeal Criminal Division in the case of R v Middleton [2001] Crim.L.R. 251. In my view there should be no distinction between the approach taken by the criminal court on the issue of lies to that adopted in the family court. Judges should therefore take care to ensure that they do not rely upon a conclusion that an individual has lied on a material issue as direct proof of guilt.*

108. The four relevant conditions that must be satisfied before a lie is capable of amounting to corroboration are set out by Lord Lane CJ in Lucas as follows:

*To be capable of amounting to corroboration the lie told out of court must first of all be deliberate. Secondly it must relate to a material issue. Thirdly the motive for the lie must be a realisation of guilt and a fear of the truth. The jury should in appropriate cases be reminded that people sometimes lie, for example, in an attempt to bolster up a just cause, or out of shame or out of a wish to conceal disgraceful behaviour from their family. Fourthly the statement must be clearly shown to be a lie by evidence other than that of the accomplice who is to be corroborated, that is to say by admission or by evidence from an independent witness.*

109. In the family court even where the court is satisfied that a lie is capable of amounting to corroboration of an allegation having regard to the four conditions set out in Lucas, in determining whether the allegation is proved, the court must weigh that lie against any evidence that points away from the allegation being made out - H v City and Council of Swansea and Others [2011] EWCA Civ 195.

110. When making my analysis below, I have also reminded myself that The Children Act Advisory Committee Handbook of Best Practice in Children Act Cases 1997 notes that any investigation into child sexual abuse that focuses attention on the statements of the child runs the risk of producing a false result if what the child says is unreliable or if the child's primary caretaker is unreliable. It is for this reason that it is important

forensically, in a case of alleged sexual abuse, to examine the first point in time at which a child gives an account or accounts of alleged sexual abuse, the precise circumstances in which the account or accounts arose and how those were treated subsequently by those to whom they were made.

111. I have re-read MacDonald J's judgment in *AS v TH (False Allegations of Sexual Abuse)* [2016] EWHC 532 (Fam) and in particular paragraphs [33] to [52] in which he sets out the extensive relevant guidance and case law. In *Lillie and others v Newcastle CC*, Eady J observed as follows at [407]:

*It is of course elementary that one should put to one side any notion that an unwillingness to place reliance on a child's evidence of sexual abuse necessarily imputes bad faith to the child, its parents or any other interrogator. What the research has thrown into stark relief is quite simply that very young children do not appear to have the same clear boundaries between fact and fantasy as that which adults have learned to draw.*

112. In *Re B (Allegation of Sexual Abuse: Child's evidence)* Hughes LJ (as he then was), alluding to past public enquiries that have demonstrated the point both starkly and repeatedly, stated at [34] that:

*... Painful past experience has taught that the greatest care needs to be taken if the risk of obtaining unreliable evidence is to be minimised. Children are often poor historians. They are likely to view interviewers as authority figures. Many are suggestible. Many more wish to please. They do not express themselves clearly or in adult terms, so that what they say can easily be misinterpreted if the listeners are not scrupulous to avoid jumping to conclusions. They may not have understood what was said or done to them or in their presence.*

113. It is because it has been recognised that human memory is fallible that Report of the Inquiry into child abuse in Cleveland 1987 Cm 412 and Report of the Inquiry into the Removal of Children from Orkney in February 1991 among others and the contents of the current ABE Guidance have been formulated. The following matters can be drawn from that guidance: -

- a. Children, and especially young children, are suggestible.
- b. Memory is prone to error and easily influenced by the environment in which recall is invited.
- c. Memories can be confabulated from imagined experiences; it is possible to induce false memories and children can speak sincerely and emotionally about events that did not in fact occur.
- d. Allegations made by children may emerge in a piecemeal fashion, with children often not reporting events in a linear history, reporting them in a partial way and revisiting topics.
- e. The wider circumstances of the child's life may influence, explain, or colour what the child is saying.

- f. Factors affecting when a child says something will include their capacity to understand their world and their role within it, requiring caution when interpreting children's references to behaviour or parts of the body through the prism of adult learning or reading.
- g. Accounts given by children are susceptible to influence by leading or otherwise suggestive questions, repetition, pressure, threats, negative stereotyping and encouragement, reward, or praise.
- h. Accounts given by children are susceptible to influence as the result of bias or preconceived ideas on the part of the interlocutor.
- i. Accounts given by children are susceptible to contamination by the statements of others, which contamination may influence a child's responses.
- j. Children may embellish or overlay a general theme with apparently convincing detail which can appear highly credible and be very difficult to detect, even for those who are experienced in dealing with children.
- k. Delay between an event recounted and the allegation made with respect to that event may influence the accuracy of the account given.
- l. Within this context, the way, and the stage at which a child is asked questions / interviewed will have a profound effect on the accuracy of the child's testimony

114. In Re SR [2018] EWCA Civ 2738 the Court of Appeal made clear that the principles set out in the statutory guidance *Achieving Best Evidence in Criminal Proceedings* (then the March 2011) (the ABE Guidelines) are relevant to all investigations which include interviews of alleged victims of abuse, whether or not the interviews purport to have been conducted under the guidance. Within this context, and in the context of an examination of the ABE guidance, in Re S (A Child) [2013] EWCA Civ 1254 at [16] the Court of Appeal held that, with respect to initial contact with alleged victims, discussions about the facts in issue in respect of an allegation, as distinct from whether and what allegation is being made and against whom, should be rare and should not be a standard practice. When social workers are speaking to children who have made allegations they must be very careful to consider the purpose of the exchange and whether it is being conducted with a view to taking proceedings to protect the child or for separate therapeutic purposes where the restrictions upon prompting would not apply but the interview would not be for the purposes of court proceedings Re D (Child Abuse: Interviews) [1998] 2 FLR 10. In Re SR the Court of Appeal reiterated that a failure to comply with the ABE Guidance will often have a decisive effect on the weight to be attached to the evidence obtained. With respect to initial accounts, the difficulties may be exacerbated in circumstances where in any event, as the Court of Appeal has also emphasised in Re D and Others (Child Abuse: Investigation Procedure) [1995] 3 FCR 581, *an allegation which has not been videoed will inevitably carry less weight because the court cannot assess the allegation itself and that given their lack of expertise an alleged disclosure to a foster parent is less likely to carry significant weight in a court than is a statement by a child to an experienced and skilled interviewer.*



115. The second key component of good practice with respect to accounts of sexual abuse given by children is effective record keeping. The Cleveland Report makes clear at paragraph 13.11 that: *We would emphasise the importance of listening carefully to the initial presentation of information and taking careful notes.* Within this context, the requirement that all professionals responsible for child protection make a clear and comprehensive record of what the child says as soon as possible after it has been said, and in the terms used by the child has been well established good practice for many years. Where the person to whom the initial account is given is not a professional, there remain obvious advantages if the account is recorded having regard to this principle. Once again, the ABE Guidelines are relevant to all investigations which include interviews of alleged victims of abuse, whether the exchanges purport to have been conducted under the guidance or not - *Re SR*. The ABE Guidance re-emphasises the statement of good practice contained in the Cleveland Report.
116. The need for those working with children to record, as contemporaneously as possible, what the child has said has been recognised and endorsed by the courts as vital in circumstances where, in determining allegations of sexual abuse, it is necessary for the court to examine in detail and with particular care what the child has said (sometimes on a number of different occasions) and the circumstances in which they said it - *D v B and Others (Flawed Sexual Abuse Enquiry)* [2007] 1 FLR 1295. Within this context, it is also important that, when recording an allegation, the child's own words are used and that those speaking with the child should avoid summarising the account in the interests of neatness or comprehensibility or recording their interpretation of the account. Further, and in particular, the courts have emphasised the need for records of conversations with the alleged victim of sexual abuse to include a full note of the questions as well as the answers. In *Re B (Allegation of Sexual Abuse: Child's evidence)* at [37] Hughes LJ (as he then was) observed as follows when commenting on an interview undertaken of a child by a police officer and social worker who were not properly prepared notwithstanding the likelihood of allegations, which allegations should have been anticipated and during which only what the child was said was noted down:
- 37. None of this should have happened. In the case of S, unlike her siblings, there was clear reason to think that she might well have something to say and certainly there might be questions which needed to be asked of her. It would have been much more sensible to record all conversations with her. To proceed without recording was to court the risk that what would happen was what did; that is to say that S would produce information, that it would be undesirable to stop her, but that the professionals were not ready to deal with it. If there was to be any possibility of such an unrecorded discussion ensuing, the absolute irreducible minimum was that a full note be taken of questions as well as answers. There were also other lesser, but important, respects in which this discussion failed to comply with the ABE guidelines. There was, for example, no truth and lies discussion.*
117. As MacDonald J noted in *AS v TH (False Allegations of Abuse)*, the Cleveland Report provides extensive guidance on proper social work practice in the context of allegations of sexual abuse. When undertaking an Initial discussion in accordance with the ABE Guidance its purpose should be to elicit a brief account of what is alleged (where and when the alleged incident took place and who was involved or otherwise

present). A more detailed account should not be pursued and should be left to the ABE interview. As soon as possible thereafter the adult or adults who has spoken to the child must make a comprehensive record of the conversation, which record should detail:

- (a) the timing, setting and people present;
- (b) a full note of what the child said in the words used by the child (avoiding summaries of the account in the interests of neatness or comprehensibility and recordings of the adult's interpretation of the account);
- (c) a full note of the actual questions asked (if any);
- (d) what was said by anybody else present; and
- (e) the record should also record the demeanour of the child and anything else that might be relevant.

118. I have also re-read and reminded myself of the further decision of MacDonald J in Re P (Sexual Abuse: Finding of Fact Hearing) [2019] EWFC 27, cited with approval by Underhill LJ in JB (A Child) (Sexual Abuse Allegations) [2021] EWCA Civ 46. In JB Underhill LJ summarised the importance of adherence to the ABE guidance at paragraph 11 as follows: -

*11. The importance of complying with the ABE guidance, which is directed at both criminal and family proceedings, has been reiterated by this court in a series of cases including TW v. A City Council [2011] EWCA Civ 17, Re W, Re F [2015] EWCA Civ 1300, Re E (A Child) [2016] EWCA Civ 473, Re Y and F (Children) Sexual Abuse Allegations [2019] EWCA Civ 206 and in the judgments of MacDonald J in AS v. TH and others [2016] EWHC 532 (Fam) and Re P (Sexual Abuse: Finding of Fact Hearing) [2019] EWFC 27. It is unnecessary to repeat at any length the extensive comments set out in some of those judgments. For the purpose of this appeal, the following points are of particular relevance. (Save where indicated, the paragraphs cited are from the ABE guidance.)*

*(1) "The ABE guidance is advisory rather than a legally enforceable code. However, significant departures from the good practice advocates in it will likely result in reduced (or in extreme cases no) weight being attached to the interview by the courts." (Re P (Sexual Abuse: Finding of Fact Hearing), supra, paragraph 856)*

*(2) Any initial questioning of the child prior to the interview should be intended to elicit a brief account of what is alleged to have taken place; a more detailed account should not be pursued at this stage but should be left until the formal interview takes place (paragraph 2.5).*

*(3) In these circumstances, any early discussions with the witness should, as far as possible, adhere to the following guidelines.*

*(a) Listen to the witness.*

(b) *Do not stop a witness who is freely recalling significant events.*

(c) *Where it is necessary to ask questions, they should, as far as possible in the circumstances, be open-ended or specific-closed rather than forced-choice, leading or multiple.*

(d) *Ask no more questions than are necessary in the circumstances to take immediate action.*

(e) *Make a comprehensive note of the discussion, taking care to record the timing, setting and people present as well as what was said by the witness and anybody else present (particularly the actual questions asked of the witness).*

(f) *Make a note of the demeanour of the witness and anything else that might be relevant to any subsequent formal interview or the wider investigation.*

(g) *Fully record any comments made by the witness or events that might be relevant to the legal process up to the time of the interview (paragraph 2.6, see also AS v. TH, supra, paragraph 42).*

119. Of course, failures by professionals in the investigation of allegations of abuse, and the fact that those failures must be taken into consideration when considering the weight that can be attached to the various strands of evidence, does not of itself preclude the possibility that those allegations are true. There will, in any system that relies on human agency, inevitably be occasions on which there are omissions and errors in the application of good practice. As noted by Baker LJ in *Y and E (Children) (Sexual Abuse Allegations)* [2019] EWCA Civ 206 the ABE Guidance is extremely detailed and often very challenging for police officers and social workers to follow. Within this context, it is thus important to note that, as the Court of Appeal made clear in *Re B (Allegation of Sexual Abuse: Child's evidence)* at [40] that:

*There is no question of this evidence being inadmissible for failure to comply with the ABE guidelines, and that has not been suggested in argument for either parent. In a family case evidence of this kind falls to be assessed, however unsatisfactory its origin. To hold otherwise would be to invest the guidelines with the status of the law of evidence and it would invite the question: which failures have the consequence of inadmissibility? Clearly some failures to follow the guidelines will reduce, but by no means eliminate, value of the evidence. Others may reduce the value almost to vanishing point.*

120. Within this context, as Baker J (as he then was) noted in *Re W, Re F* [2015] EWCA Civ 1300 (and reiterated in *Re SR (A Child)* [2018] EWCA Civ 2738): *I have sympathy for officers and social workers entrusted with the difficult task of speaking to children about allegations of this sort. The ABE Guidance is detailed and complex. But those details and complexities are there for a reason. Experience has demonstrated that very*

*great care is required when interviewing children about allegations of abuse. The Guidance has been formulated and refined over the years by those with particular expertise in the field, including specialists with a deep understanding of how children perceive, recall and articulate their experiences. It would be unrealistic to expect perfection in any investigation. But unless the courts require a high standard, miscarriages of justice will occur, and the courts will reach unfair and wrong decisions with profound consequences for children and families.*

121. In Re AA and 25 Others [2019] EWFC 64, Sir Mark Hedley said as follows:

*215. I want at this stage to say a further word about fact-finding. It is an art, not a technique. Like every worthwhile art, it is, of course, underpinned by technique and science. ...Reliability is and remains the lodestar of fact-finding, and that, as we have seen, is underpinned by techniques of investigation and the science of reasoning.*

*The art, however, goes further. A lack of reliability may obscure truth, but it does not altogether eliminate its perception. So long as the judge remains alert to the dangers arising from unreliability and exercises the caution due to that, it may be possible to discern flashes of truth or incidents that have about them the ring of truth. Where the judge meets that, and having exercised all due caution, is convinced of it, then the court has not only the right but the duty to act upon it. I make this comment because these allegations of sexual assault, coming uncorroborated from very damaged young people, as is the case here, are just those where what I have described may indeed occur...*

122. Finally in this regard, I have reminded myself that in Re S (A Child: Findings of Fact) [2023] EWCA Civ 346, Peter Jackson LJ said at paragraph 36:

*The ABE process is there for a reason. It is designed as a safeguard against unsound findings based on accounts that are unreliable or misunderstood. Of course, the fact that the guidance has not been followed does not mean that findings of abuse cannot be made where the evidence as a whole justifies it. But the worse the breaches of guidance the more careful the court must be.*

123. The relevant ABE Guidance in this case is Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses, and Guidance on Using Special Measures. At the time Z made her allegations the relevant guidance was the fourth edition, the 2011 version, which was updated in 2022 and 2023. The guidance sets out, just as its predecessor did, how initial contacts with alleged victims need to be handled.

124. In relation to the approach a court should take when deciding whether the allegations of sexual abuse are made out, Peter Jackson in Re S (above) stated:

*First, the evolution of K's statements needed to be charted. The judgment did not do that (so that time during the appeal hearing was spent in constructing a chronology) but instead summarised each witness's evidence in sequence. It then considered the ABE interview process and placed it against a broad account of the other evidence. It would in my view have assisted the judge if he*

*had identified and focused on the chapters of time covered by the evidence. These might conveniently have been arranged under these headings: the background, the first accounts, the ABE process, K's subsequent statements. This approach would have allowed the judge to focus on the situation K found herself in at various stages and to address F2's case effectively.*

125. Lastly, I have considered the allegations of 'domestic abuse' in this case by reference to the definition contained in paragraph 3 of Practice Direction 12J of the [FPR 2010](#), which I have re-read before proceeding to give judgment.

126. I have been reminded of paragraphs [70]-[71] of Moylan LJ's judgment in [Re A \(Children\) \[2019\] EWCA Civ 74](#) repeated below for ease:

*It is clear from the Practice Direction that the words abandonment and stranding are not terms of art and that they are not intended to be applied in a formulaic manner. This is because there are a number of ways in which a spouse might be said to have been abandoned or stranded abroad or in which the other spouse might have sought to achieve this. I would agree with Mr Gration when he submitted that cases can include many differing elements which militates against their being placed in distinct categories.*

*The core feature of the concept of stranding or abandonment is the exploitation or the attempted exploitation by one spouse of the other's vulnerability or weakness to seek to ensure that they are not able to come to or return to the UK. As Peter Jackson J (as he then was) said in *ZM v AM* [2014] EWHC 2110 (Fam), at [1], it can be the "opportunity" the secure immigration status of one spouse and the insecure immigration status of the other gives "the former to exploit the latter's weakness". However, as PD12J makes clear, it is based more generally on "controlling, coercive or threatening behaviour, violence or abuse"*

125 In addition, I have reminded myself of [Re H-N \[2021\] EWCA Civ 448](#), in particular that:

*... there are many cases in which the allegations are not of violence, but of a pattern of behaviour which it is now understood is abusive. This has led to an increasing recognition of the need in many cases for the court to focus on a pattern of behaviour and this is reflected by [PD12J] [25].*

127. I have also re-read Peter Jackson LJ's comments in [Re L \(Relocation: Second Appeal\) \[2017\] EWCA Civ 2121 \(§61\)](#), cited with approval in *Re H-N*, to the general effect that:

*... not all directive, assertive, stubborn, or selfish behaviour, will be 'abuse' in the context of proceedings concerning the welfare of a child; much will turn on the intention of the perpetrator of the alleged abuse and on the harmful impact of the behaviour.*

Finally, I have reminded myself of Judd J's judgment in *M (A Child)* [\[2021\] EWHC 3225 \(Fam\)](#):

*The reason it was so important for the judge to give very careful consideration to the question of vulnerability in this case is because a vulnerable person may not act in the same way as someone more independent or confident if they are exploited or abused in a relationship. Such an individual may be so anxious for the relationship to succeed that they accept treatment that others would not. They may be easy to exploit. They may not even realise what is happening to them, and will cling to the dream of a happy family and relationship ...*

## **My Findings on the Facts**

128. This judgment is intended to be read as a whole. When making findings in this part or any earlier section of this judgment, I have applied the law I have just set out. Within this section of the judgment, I shall determine the allegations the mother and the father made against each other in 2023. In doing so I shall settle the factual narrative in so far as I am able to enable this court to make welfare decisions in future hearings about Z's best interests.
129. I begin with the mother and father's wedding in 2010. It is an accepted fact of this case that theirs was an arranged marriage. The father had been relatively recently widowed and was looking for companionship. The age-gap between the mother and father was significant, over 20 years. There was also a disparity between their life experiences. The father lived in England. He had eight children from his first marriage and all his children were settled in England. The mother came from a village in Pakistan. She was not well educated and was barely able to read and write in Urdu. I accept her evidence that at the time of the marriage, she had an expectation that she would travel to England with him and that that expectation had been raised by the father.
130. On the basis of the evidence I have heard and read, I consider that it is likely that some, if not all of the father's children, considered that the mother had married above what they regarded as her station in life. I find that despite the oral evidence given by NP and SA, they are likely to have considered the mother as a gold digger and to have been suspicious of the mother's motive for the marriage. I accept the mother's evidence that they resented her because she was younger, was capable of bearing the father children and thus placed their potential inheritance under threat. I find that it is likely that in 2010 NP became a joint bank account holder with her father to safeguard their father's monies, at least some of which had been inherited from their mother.
131. I accept the account the mother gave of her marriage to the father. The father would come and go from Pakistan as he pleased. He was present when Z was born but went away again, visiting when it was convenient to him.
132. I found the mother's account of the father's behaviour towards her to be matter of fact and delivered without exaggeration. It was obviously true. The relationship had deteriorated - *slowly, slowly*. The father would, I find, hit or beat her if he perceived that she was giving away small items which he thought she should not. He had tried to strangle her once and she had slapped him back on one occasion because she feared for her safety.
133. In 2014, Z was born. I find that the mother was her primary carer. Her father would return from England and be part of the family in Pakistan, but he was not always there.

There is no credible evidence upon which I could find, as the father alleges, that the mother was emotionally and physically abusive to Z whilst in Pakistan. I accept the mother's account of the accident with the plate. Z's forehead was cut by the plate and the mother told the father of the injury and sent him a photograph of it. Those are the actions of a concerned parent who has accidentally hurt her child. I find that over time the accident with the plate is likely to have been sensationalised by the paternal aunts, NP and SA. I find that contrary to the impression given in oral evidence by members of the paternal family, it is likely that what has happened to Z in Pakistan when with her mother is likely to have been discussed between family members in the home which Z shared with her father and SA and her family. Those discussions are likely to have occurred since Z arrived in England and are likely to have continued and been prompted by these proceedings. I find that it is likely that Z will have heard some of those conversations either directly or indirectly. I find that the account Z gave of the plate incident is likely to have been influenced by that and that an accident has taken on a sinister complex which it does not warrant.

134. I find that when in Pakistan, Z liked to dance and sing, just as many children of her age do. She would post videos to Tik-Tok of her dancing and singing. I accept the evidence of the mother's brother-in-law that two of the videos relied upon by the father and the paternal family to support an allegation of the mother grooming Z and allowing her to dance with intoxicated men are simply innocent videos of Z dancing with her uncle by marriage. They are not sinister. No physical evidence has been produced before me to support any allegation that the mother groomed Z or allowed her to dance with men who were under the influence of alcohol or drugs. I shall return later in this section of the judgment to what Z is alleged to have said about her mother.
135. I find that in January 2020 the home the mother and father shared in Pakistan was burgled. I find that both the mother and father were present when the home was burgled. Both will have been traumatised by the experience. Z was in the home and whilst not directly assaulted, is likely to have been impacted by it. I find that there is no direct evidence to implicate the mother in the burglary. I reject the father's reasoning, set out in his first statement, to justify an inference that the mother was behind the burglary. There is simply no evidence that the mother is implicated in this burglary of which she was a victim. However, I find that the father and the paternal family did blame her at the time and that fearing arrest, the mother fled with Z back to her own family. Thereafter and for an unidentified period the father ceased to support the mother and Z and they were left destitute.
136. I find that in March 2020 the father returned to England. After a while, again unidentified, the mother and father were able to speak. It appears that the father supported his wife and child financially and maintained some contact with Z remotely.
137. In July 2022 Z travelled with YA. I accept YA's evidence that she was reluctant to become involved in bringing Z to England and was only prepared to accompany Z on her journey.
138. I accept the mother's evidence that once the father had returned to England in March 2020, he wanted Z to travel to England and be with him. Z had had a British passport since 2019 but the mother had no travel documents to enable her to accompany their daughter. The mother accepts that she signed the affidavit dated 3 November 2021

permitting Z to travel to England to meet with and live with her father. I find that this document would not have been prepared in isolation and must be read in a realistic context. I accept the mother's evidence that since his return to England, the father had been asking her about Z travelling to England. I further find that there would have been conversations between the father and the mother and that during those conversations it is likely the father did say something to the effect that Z could travel first and her mother could join her once the travel documentation had been sorted. Such conversations were consistent with the expectation the mother had had since their marriage. I find that the mother therefore had a legitimate expectation that she would join Z in England. I find that the mother never agreed to Z living apart from her for any significant period of time and that the mother had been led by the father to expect her own travel documents to be with her within 5-6 weeks after Z had travelled to England. I find that had the mother known that the father had not and did not intend to apply for documents that would have enabled her to come to England and be with her daughter, she would not have agreed to be parted from Z.

139. I accept the mother's evidence that she never signed the Letter of Permission. Given she had signed the affidavit and accepts that she did so, she would have no reason to lie about signing the letter of permission if that is what she had done.
140. I find that Z travelled to England in July 2022. I find that she entered the country on a return ticket, the return date of which had been extended several times. The copy of the ticket I have runs to April 2023.
141. I find that the father had not and never did make any arrangements for the mother to travel to England to be with Z. I find that the father misled the mother about his intentions.
142. I have heard evidence from a number of the father's adult daughters. Each has told me that they believed Z had come to visit their father and would be returning to Pakistan to live with her mother. Their evidence was consistent in this regard. It is supported by the return ticket on which Z travelled.
143. There is an inconsistency between the mother's expectation that she would join Z in England and the belief of the father's adult daughter's that Z's stay was intended to be for a short visit only. I consider the inconsistency can be explained by the father, who was aware of his adult daughter's suspicions about the mother, not telling them accurately about the conversations he had had with the mother.
144. However, I find that by September 2022 Z was settling in the home she shared with her father and SA's family. I find that accordingly she should have been enrolled in school. I accept that she was being Home Schooled but that was an informal arrangement and the LEA had not been notified, Z was not enrolled in school until September 2023. Whilst out of school she was deprived of a formal education and social interaction with her peers. Her intellectual, social and psychological development was thus likely to have been impaired. The net effect of not being enrolled in school is that Z's day-to-day world became her father and his family in England. It is in that context the video MB7 came to be discovered and Z made the allegations she has made about her mother.



145. On 24 January 2023 AM says she discovered the video exhibit MB7 on a Motorola phone which Z used. Having heard the evidence, I accept that she probably did discover the video on that phone. However, her story about how she came to find it in the trash bin and why she forwarded it to SA was confused and confusing. On balance, I consider that this court has not been told the whole story about how and why the video was discovered and forwarded to SA.

146. However I find that SA did become aware of the video and did discuss the video with the father the next day.

147. Z's first account was to SA. SA is not a professional and she cannot have been expected to have taken a verbatim account or to have avoided leading questions etc. Z is reported to have said on this occasion

*Z admitted to making the video. She said, 'Aapi, at one stage I told my mom that I didn't have a good day today because I had some burning sensation when I went to the toilet. My mom told me it's ok darling, just make me a video of your private parts while dancing and send it to me I will tell your dad'*

148. Thereafter on SA's own account she continued to question Z. It is in this context that Z says she has made other videos but that she used to delete them after she had sent them to her mother. The problem with this report, is it is unclear whether Z is talking about videos which are sexually explicit or simply videos of her dancing along to music.

149. It appears that in subsequent conversations SA reports having with Z the allegations have grown over time (see paragraph 54 above) causing SA to believe that Z had been sexually exploited by her mother. Despite this stated belief, the father and the paternal family did not report the matter to the police. Z was not referred to social services until these proceedings were in train and Z had a Guardian who took the initiative.

150. The first time Z was spoke to by a professional about the video was thus on 31 March 2023. The notes of that conversation are not verbatim, and they do not capture the questions asked that prompted the answers given, nor do they capture the child's exact words. The notes do not accord with the ABE guidance or professional good practice. They render what Z is said to have said unreliable. However, from the first social worker's evidence it appears that Z had by then acquired knowledge of what her mother was saying within these proceedings. Within this conversation Z made serious allegations about the mother, including her mother's friends touching her intimately and making her dance for males for money. In relation to exhibit MB7 it appears Z said that her father was in the room when she made it. As stated at paragraph 81 above what is recorded of this conversation is indicative of a child recounting an event which is intermingled with what she has heard adults say and what adults have told her.

151. Z was not spoken to by the police until October 2023. I have set out the record of what she said on that occasion at paragraph 82 above. The record does not accord with the ABE guidance in relation to an Initial Contact and is nine months after the event when Z has been in a household in which her evidence is likely to have been contaminated by the views of the adults. The evidence is thus not reliable.

152. The police have not ABE interviewed Z and have not viewed the video known as exhibit MB7. There are no criminal proceedings pending against the mother or the father.
153. Within these proceedings, CYFOR interrogated the Motorola phone on which the video was allegedly taken. They have found no evidence of it. SA's phone has been lost and/or stolen. There is thus no forensic evidence about which phone the video was made on, whether or not it was sent to the mother and when SA received the video.
154. In the circumstances of this case and on the basis of the evidence I have before me, I make the following findings and for the reasons I give below in relation to the video Exhibit MB7.
155. I find that within the father's household in England, Z had use of a Motorola phone with unrestricted access to the internet. Further within that home, she continued to like to dance to music she accessed on the internet. She took videos and was a keen Vlogger. I find that Z is likely to be highly proficient when using the internet and video functions of a mobile telephone.
156. I find it is likely that exhibit MB7 was found on the Motorola phone Z used but how or why it was discovered by AM may never be fully understood. Similarly, I find that it was sent to SA's phone but the reason for sending it has not been truly revealed in these proceedings.
157. I have viewed the video exhibit MB7 with care. I have also viewed Doda's video on YouTube referenced above. Within exhibit MB7, I find Z is singing the lyrics and imitating Doda's dance moves which are overtly sexual. I find that it is likely Z accessed that music and video on the Motorola phone. In coming to that finding I acknowledge that it was not found on that phone but that is because Doda's video was not specifically looked for at the time of inspection. My finding is based on the striking similarity between much of exhibit MB7 and Doda's YouTube video; the fact that Z had unrestricted access to the internet in her father's household and the fact that Z had use of the Motorola phone which she could use proficiently. However, I also find that the video Z made is not simply a replication. Exhibit MB7 goes beyond the video in which Doda stars and contains an obviously indecent image. The contents of MB7 require explanation. I have thus read with care what Z has said about how and why she made the video.
158. I consider that Z's first account which I have set out at paragraph 112 above is likely to be the most reliable. Further I consider it is congruent with the evidence that about this time Z had a rash in her vaginal area and that she had told her mother she had a burning sensation when urinating. The mother admits to telling her daughter to take a photograph of the area in question so that she could tell the father about it. Having considered all the evidence I consider that it is likely that Z did take that photograph at her mother's request. The issue for me has become - why is that image part of a dance video? On balance I find that the answer is that Z probably liked making dance videos for her mother, as many a child will do when showing a parent what she can do. I find the mother did ask for a photograph of the vaginal area and that Z is likely of her own accord to have conflated the two. I find that that image was never sent by Z to her mother. If Z had sent it to her mother, I find that the father and the paternal family would

have produced proof that it was so sent to this court. I find that there is no reliable evidence before this court upon which the court could conclude that the mother has sexually groomed Z or engaged her in sex work.

159. I find that after discovery of the video the father stopped all contact between Z and her mother. I find that the father and the paternal family initiated no steps to find out what had really happened or to protect Z after the video's discovery. I find that had the mother not instituted these proceedings that contact would have been severed probably forever and the issue about the contents of the video and its purpose would not have been resolved.
160. I find that the father and his family have not taken all the steps they could and should to have facilitated court directed contact within these proceedings. I find that the recorded contact on 19 April 2023 was designed to ensure Z remained in this country and to bolster the father's case before me. I do not find that it was formally scripted, but I do find it was adult led to influence these proceedings. That of itself is a harmful act.
161. I find that the criminal proceedings in Pakistan about the 2020 burglary were re-opened in October 2023 against the mother's brother when there was no fresh evidence to justify that action. I accept the mother's case that the only reason it was resurrected was for the paternal family to have leverage in this case.
162. Within the papers it is stated that the passport and port alert orders have prevented the father making a pilgrimage. Having heard SA, NP and YA give evidence I formed a strong view that they wanted out of this litigation. I have been struck in this case by the fervour with which the allegations against the mother were initially pursued against the family's current stance. Having considered all the evidence I can well imagine the hyperbole and sensationalisation that will have occurred within the paternal family after the discovery of the video and specifically in the early months of these proceedings. I consider that what Z came to say to the social worker and the police is likely to have been influenced by Z's knowledge of the paternal family's negative view of her mother. What Z has come to say is thus likely to have become contaminated by the adult narrative. I deprecate the paternal family's current stance which is to say Z is a liar and mentally ill. She is not. They, as adults, must take the responsibility for the way they have behaved and the atmosphere in which Z is likely to have lived when in their care, all of which will have influenced her.
163. Standing back and viewing my findings as a whole, I find that Z is likely to have suffered significant harm as defined within s.31 CA 1989 by reason of the actions and inactions of the father and his family:
- a. being brought to England on a false premise with the result that her relationship with her mother was disrupted;
  - b. not being in formal education and missing a whole year of school; and
  - c. having her contact with her mother stopped on 26 January 2023 without putting into place any mechanism for resolution of the issue with the result that without

these wardship proceedings her contact with her mother would have been severed forever.

### **Welfare and Future Steps**

164. At the conclusion of the evidence on 20 December 2024, I made interim welfare orders in relation to Z. At the hearing of 8 January 2025, I will consider what further child arrangements a in Z's best interests. The parties should be aware I will consider both public law and private law orders at the next hearing. A copy of this draft judgment should be sent to the local authority in advance of the next hearing.
165. The parties should also be aware that I will expect to hear argument on 8 January 2025 as to whether or not I should send a copy of this judgment to the Office of the Public Guardian given the LPAs were applied for at a time the father is likely to have lacked capacity to make them.
166. Whether or not I do, I intend to direct a copy of the assessment of Dr Chwala and the two intermediary assessments should be disclosed.