

IN THE BIRMINGHAM FAMILY COURT

Neutral Citation Number: [2023] EWFC 293 (B)
Case No. BM21P70503

Priory Courts
33 Bull Street
Birmingham
B4 6DS

Wednesday, 15th November 2023

Before:
DISTRICT JUDGE PARKER

B E T W E E N:

C

and

B

THE APPLICANTS appeared In Person
MR M BLUNDELL appeared on behalf of the Respondent
MS E BERNEY-DALE (instructed by Wace Morgan Solicitors) appeared on behalf of the Child
through the Guardian

JUDGMENT

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

INTRODUCTION

1. This is my judgment in a fact-finding hearing. I am concerned with AB who is aged seven. The initial application was in relation to an application for a special guardianship order made by her maternal uncle and aunt. The mother is, sadly, deceased and it was her wish for the child to live with her uncle and aunt, which she has done so since 2018. The father lives in Ireland and, initially, supported that application. The aunt and uncle were also happy to promote contact.
2. At the outset, the special guardianship assessment was negative. This was because there were concerns as to the uncle and aunt's ability to safeguard their own children. The child was made subject to a child protection plan on 2 March 2021 which was stepped down to a child in need plan on 5 April 2022.
3. Sadly, the relationship between the uncle and aunt and the father, broke down due to the father no longer supporting the special guardianship application.
4. On 18 October 2022 a live with order was made in favour of the applicants.
5. On 6 February 2023, an order records that the father now sought a live with order and relocation of the child to Ireland. Indirect contact was directed with regard to the father by way of video calls with direct contact once a month for two hours. At that time, the Local Authority was happy for that contact to be unsupervised.
6. A connected person's assessment undertaken of the uncle and aunt on 21 May 2021 was also negative, reiterating safeguarding concerns in relation to the care of their own children.
7. A special guardianship addendum report on 7 September 2022 which although expressed reservations as to the minimisation of historical concerns, nevertheless supported the placement by way of a special guardianship order.
8. At a hearing on 13 March 2023 before me, in a position statement filed by the aunt on the morning of that hearing, she made a number of serious allegations against the father including sexualised behaviour towards the child.
9. At that hearing, I expressed my concerns as to how the allegations had been raised given that this was the first time the allocated social worker had heard of them and moreover they had not been raised at the previous hearing despite the alleged behaviours having occurred in September 2022 and prior to the previous hearing on 6 February 2023.
10. On that occasion I decided that a finding-of-fact hearing should not be directed but that the matter should be addressed in a section 7 report (and if felt appropriate an addendum special

guardianship report) and that interim contact should continue, supervised, and to be reviewed by the Local Authority.

11. The subsequent addendum section 7 report records that the child subsequently made a disclosure to her school on 10 May 2023 in relation to the alleged incident as well as to the social worker.
12. The police also investigated the matter. However, no concerns were shared by the child to them and, therefore, no ABE interview took place and the incident was closed. It was recorded in the police investigation that the child had appeared to have made disclosures concerning the father that could not possibly have been remembered and in adult language. Reference was made to the fact that she may have been told about the incidents.
13. The addendum section 7 report highlights a number of concerns as to the ability of the applicants to meet the child's emotional needs. It recorded that they were extremely negative towards the father, were not promoting unsupervised contact and appeared to be sharing inappropriate information with the child.
14. The Uncle and Aunt were also unable to explain why the allegations were not shared earlier. The recommendations were that there should be no change of residence and supervised contact should continue.
15. In my view, that report lacked analysis in relation to an either/or recommendation based upon whether the allegations made were true or indeed false and the implications of the same.
16. The addendum special guardianship report records that the difficult relationship between the maternal uncle and aunt and the father has intensified, and that they no longer feel comfortable in promoting contact.
17. The report notes that the child was anxious in relation to contact and was picking up on the maternal uncle and aunt's negative views, and recommended ongoing supervised contact. It highlights that there appears to be no positive encouragement from the uncle and aunt in relation to the promotion of father's contact.
18. The father disagreed with the recommendations, and maintained his position as to seeking a live with order. The father felt that the child, in view of the false allegations and the failure to promote contact, was at risk of significant emotional harm.
19. This matter came before me on 27 June 2023. I noted the recital to the order as to the allegations being raised for the first time at the hearing on 30 March within the position statements and my comments previously made that there needed to be a further proper

analysis by the Local Authority in light of the seriousness of the implications, on the basis as to whether those allegations were either true or, indeed, false.

20. Due to the concerns that were highlighted both in the special guardianship assessment and the addendum section 7 report I was not content to make any special guardianship order at that stage and there needed to be, potentially, a determination of the inappropriate sexual conduct allegation of the father.
21. In the meantime, the Local Authority should continue to supervise the father's contact. I invited the Local Authority to undertake work with the applicants and the child alongside ongoing contact and to provide a holistic risk analysis in relation to the allegations on an either/or basis.
22. On 31 July 2023, the child was made a party to the proceedings.
23. The Guardian's initial position statement makes clear that the child had aligned herself with the uncle and aunt in relation to the negative views of the father.
24. Following on from that hearing, the maternal aunt filed a detailed statement as to a number of allegations.
25. She maintains that she told her neighbour and reported it to Social Services, but no action was taken. She also explained that she did not call the police due to her mistrust of them emanating from a previous incident involving them.
26. Father denies the allegations raised and maintains that the relationship between him and the maternal uncle and aunt broke down due to him not supporting their special guardianship application.
27. The police disclosure records that the social worker's opinion is that some of the things being said were adult lead. It was noted that there was no evidence of the child feeling uncomfortable around the father although it was noticed that she did not address him as "Dad". Indeed, she says that he is not her dad. She alleges that her father caused her mother's death and he wants her to be his servant and that he does not care about her. He will get her passport take her somewhere and leave her there, and he just wants her as a plaything and that he does not pay money to help the aunt.
28. The social worker comments that it appeared that she was reading from a script, that there are adult influences at play and that what the child is now saying, or has been told, she now believes to be true.
29. It is the father's case that the child has been exposed to alienating behaviours.
30. This matter came before me on 13 September 2023.

31. I directed that the applicants should provide a joint response to the father's allegation as to alienation as recorded in the recitals to that order in relation to the specifics of the various alienating behaviours the father alleges.
32. A finding-of-fact hearing was listed before me for 14 and 15 November 2023 (to determine the allegations as to the applicants' alienating behaviours and the inappropriate sexual conduct by the father)
33. Consideration was also given as to whether or not the child, herself, should be called to give evidence.
34. The detailed schedule in relation to the various allegations that the father makes against the applicants and their responses are as follows:
 - a. The applicants have told the child that if she was to live with her father, she would be married to a seven-year-old Bangladeshi boy. *The applicants contend that the father said this to her directly which was repeated during video calls with the father's family which the child subsequently confided in them about.*
 - b. The Applicants have told the child that her father has not wanted to care for her or spend any time with her. *The applicant's maintain that when the father left to go to Ireland following the mother's death, he showed no interest in his daughter and he made enquiries of other family members as to whether they could care for her.*
 - c. The applicants have told the child that he slapped or smacked her when she was small. *The applicants say that they were told this by the mother and deny telling the child this.*
 - d. The applicants told her that the father grabbed her by the arm when she was small and threw her off a counter. *The applicants maintain that they were told this by the mother and the child can recall it happening.*
 - e. The applicants have made false and malicious allegations with regard to inappropriate sexualised behaviour which purportedly took place on 10 September 2022. *The applicants say that this was witnessed by the maternal aunt and recalled by the child.*
 - f. The malicious falsehood extends to telling the child that the father wanted to see her private parts. *Although there is no formal response to this allegation, I believe that this is something which the applicants deny.*
 - g. That the child has been told that the father was responsible for causing the mother's death through lack of support. *The applicants say that this was reported by the*

child's mother and the child was made aware of this, possibly by her own mother or, indeed, other family members.

- h. That the applicants have told the child that the father only wanted her to live with him so that she could be his servant or plaything. The applicants contend that this possibly came from the father's family members who said she would be able to help around the house if she was to live in Bangladesh. (I note the emotive response in relation to this particular allegation in the uncle and aunt's response document that she was likely to be treated as "trash" by the father's family)*
 - i. That the applicants have told the child that her father is rich and tells lies, that he hit her mother and made her cry, that the father had dumped her when she was young and that if the child enjoyed contact or accepted gifts from the father she would be shouted at by them. There is no formal response in relation to these allegations.*
 - j. That the applicants had caused the child to believe, or told her, that she would be removed from the country. The applicants maintain that this was told to her by the father and his family which the child confided in them about.*
 - k. The applicants had caused the child to avoid referring to the father as "Father" or "Dad". There is no formal response in relation to this.*
 - l. The applicants have spoken negatively in front of the child using swearwords. There is no formal response in relation to this.*
35. I have read the statement from the Children's Guardian. In it the child says that she does not want to see her father and that he abandoned her. Her Mum died because of him as he did not take her to the doctors. That her father does not care about her. She remembers him doing bad things such as slapping her when she was two. She has no good memories of him. She is aware that her aunt thinks badly about her dad and that she hit him with a slipper "because he took my dress off". She says "He's trying to spoil my life". She indicates that she had no memories of her mother. The Guardian is of the view that the child is unlikely to remember some of these incidents.
36. In her determination of the issue of whether the child should give evidence, the Guardian is of the view that the balance is against this due to the emotional harm it would cause in addition to the limited evidential value it would have due to her young age.
37. The father endorsed the Guardian's views that the child should not give evidence.

38. The matter came before me on 23 October 2023 for a pre-trial review. I made directions as to the filing of additional information from the Local Authority and a composite schedule, additional statements and a witness template.
39. The Local Authority maintains that they only became aware of the most recent allegation against the father as to inappropriate sexualised behaviour at the hearing on 13 March 2023 when presented with the applicants' position statement. They note that the child made similar disclosures during a joint visit on 16 May 2023 at school.
40. The following from the chronology of social services involvement is of note:
41. At a child in need meeting on 13 December 2022, no concerns were raised at school. The child was settled in the uncle and aunt's care and refers to them as "Mum" and "Dad".
42. At a visit to the child at school which took place on 14 February 2023 it is recorded that she reports that the father is trying to take her away from her family and that the uncle and aunt are trying to help her and are going to court. She reports that her father slapped her when she was young and said that her uncle had told her this as she was too young to remember. Concerns are expressed that the uncle and aunt are having non-age appropriate conversations with her.
43. At a child in need meeting on 8 March 2023 the uncle and aunt raise concerns with regard to the father's contact saying that they believe that he will take her to Bangladesh.
44. At a child in need meeting on 6 June 2023 the child is reported as saying that her father is a "rubbish man". He will take her to Ireland and be nasty to her and he wants her to marry a little boy. He did not want her in the past. He put her on a counter and smacked her when she was a baby. She says she remembers this. She says he is rich and tells lies. He kisses her on the body which she does not like and pointed to her chest.
45. Concerns are expressed that the incident on 7 September 2022 was not shared in a timely manner and that these disclosures are made in adult language and that the child has been exposed to adult conversations.
46. The father seeks a finding that the allegations made against him are false and that the applicants have engaged in alienating behaviours to an extent that they can be classified as "emotionally abusive". That there is a causal link as to his daughter's reluctance to engage in a relationship with him through exposure to negative beliefs and attitudes and providing her with a false narrative in relation to him.

EVIDENCE

SOCIAL WORKER – KB

CROSS EXAMINATION BY THE FATHER

47. In a conversation on 9 June 2023 with the police the social worker referred to the child as appearing to be reading from a script. She was asked why that was the case. She said it was because she was repeating the same words and phrases over and over again.
48. She was asked about the exposure to inappropriate adult comments in relation to the father and the sharing of inappropriate information. She said there was lots of information suggesting exposure to inappropriate adult language, for example, the discussion on 9 May 2023 as to the child being married to a Bangladeshi child and the uncle repeating the same thing at school in close proximity to that disclosure.
49. It was put to her that the child's first disclosure in relation to the Father's alleged behaviour in September 2022 was to the school in the afternoon on 10 May 2023 at 1.33pm. It was put to her that at 4.00pm on that same day, contact took place between the child and her father. She was asked whether that behaviour was consistent with such an allegation. She said, "No", her demeanour did not change in relation to other contacts and after a little reluctance she was happy and chatty with her father. She would have expected her to be more reserved. It was put to her that the uncle displays negative views towards the father. She says she believed that this was the reason for the child's negativity.
50. She believes that the child is hearing so much information that she now believes it. There are lots of patterns emerging and scripted conversations, plus, at the time that the allegations occurred, she would have been small and would have been told about the incidents. In her own words, "She had a small brain at the time". She also disclosed, subsequently, that the uncle had told her about these incidents. She believed this heightened the child's anxiety in relation to contact with the father. She said that the child took about 20 to 30 minutes to settle for contact but then relaxed. However, at the end, she would get anxious again and worry about taking gifts back, particularly showing the applicants a trampoline wristband. She had no issue with regard to the father's presentation at contact.

CROSS EXAMINATION BY THE UNCLE

51. It was put to her that the child displayed apprehension at contact. She said, “Yes, children do react in different ways”. She was asked whether this was indicative of abuse and she said she could not really say. She was concerned about the comments the child was making during the contact sessions in relation to the consequences if she enjoyed it.
52. She was asked if her behaviour was indicative of the father’s lack of previous involvement and what she had been told by the father and his family. She said she could not say.

CROSS EXAMINATION BY THE GUARDIAN

53. She was asked whether she was concerned at the delay in reporting by the uncle and aunt and the delay in reporting by the child eight months following on from the initial incident. She was unable to comment upon that.
54. It was put to her that there would have been opportunities for her to do so on occasions during work with the Local Authority.
55. She said that if the applicants knew that the child had been trampolining, she would be shouted at. Therefore, she had removed her wristband. Also, the videos provided by the father, she did not want to take them due to the repercussions it would have. She felt uncomfortable about it.

SOCIAL WORKER – CB

CROSS EXAMINATION BY THE FATHER

56. She confirmed that the relationship between the father and the uncle and aunt deteriorated following the father’s application for a live with order. Prior to then, there was not much of a relationship as father was not visiting due to the Covid-19 pandemic. However, she was unaware of the animosity to the degree that it has now become. She felt the turning point was when the father did not support the special guardianship application of the uncle and aunt.

57. She said that there appeared to be no significant safeguarding concerns raised prior to then.

CROSS EXAMINATION BY THE UNCLE

58. She was asked whether she was aware of an email that was sent shortly following the alleged abusive incident. She said there was no email received, nor a report from KB as to the sharing of information. The allegation was only disclosed post-hearing in March 2023. She was emphatic as to having no prior knowledge at all and that this was only raised during the first home visit following the March 2023 hearing.

CROSS EXAMINATION BY THE GUARDIAN

59. She was asked questions as to her views on potential coaching. She indicated that the language used by the child matched the language used by the uncle. The child's disclosures were matter of fact, with no emotion.

MATERNAL AUNT

CROSS EXAMINATION BY THE FATHER

60. It was put to her that her sole focus was on the child and the thought that she might not live with them in the future was painful and upsetting. She accepted that that was the case prior to her reaching adulthood.
61. It was put to her that she was two and a half years of age when her mother, sadly, died, and that she had no memories of her. She was asked whether she accepted that. She said "No".
62. It was put to her whether she was saying that the child had clear and detailed memories which she had kept until now, some four and a half years later. She said "Yes".
63. She states that the father had taken no steps to have a meaningful relationship with his daughter.

64. She was asked if she holds the father responsible for the mother's death. She said she cannot respond to that. It was asked whether she says the father is only interested in the child, to gain citizenship. She said, "Yes, he is".
65. It was put to her that she has not always been so negative about the father, that in the early days, the relationship was positive. She replied, "That was because we kept it good for the child".
66. It was put to her that the father stayed at her home in 2019 and that they visited him with the child in Ireland. The aunt's evidence was the father did not live with them after the mother died. They went to Ireland instead. She was challenged about this. It was put to her that the special guardianship assessment refers to a visit to the UK in 2019 when he stayed for a week. She said this was after the Ireland trip.
67. It was put to her that between September 2022 and January 2023, there were no safeguarding concerns raised towards the father at all. She responded that the father had told her not to mention the incident. It was put to her that that this was the first time (in her oral evidence) that this assertion had ever been mentioned.
68. It was put to her that it was only on 24 January 2023 following the father's change in position in seeking to care for the child that she felt under threat and her attitude towards him had changed. She denied this was the case. She said:
- "We tried our best to give him a relationship. I stopped it in September 2022 after the incident"
69. It was put to her that the family assessment that commenced on 6 February 2019, paragraph 12.11, indicates she told the social worker that the father had maintained a close relationship with his daughter. She said, "I tried to foster this".
70. It was put to her that the father called every day using Face Time. She denied that. She said this was a mistake. The uncle and aunt were the proactive ones. The father used to make excuses by saying he was busy.
71. She was challenged about this particularly arising from the special guardianship assessment in May 2021 whereupon she had said that the father was having almost daily video calls. She responded, however, that "The child usually holds the phone away or breaks it".
72. She was challenged about the allegation as to the father threatening to remove the child and take her to Bangladesh. She stated in 2018, her sister had told her that she heard the father had discussed removing the child to Bangladesh and that she made her promise not to let him and for the child to live with them.

73. She was asked specifically about the incident in September 2022. She said the father visited in September. The incident referred to place on approximately the fourth day of his stay, 10 September, which was a Saturday. She was asked what she can recall about that date. She said she was in the sitting room and the uncle was outside with the elder daughter. She said herself, the father and the child were in the sitting room. She had a phone call from the next-door neighbour and she went next door. She cannot remember much about the day. She said they were watching television at approximately 4.00pm to 5.00pm. It was after lunch. She was only at the neighbour's for approximately two to three minutes.
74. She came back and did some ironing when she heard the child calling out.
75. It was put to her that the father actually had gone out on that day with the child and the elder daughter to Birmingham in the afternoon. Therefore, the timeline that she provided was inconsistent with the incident happening at approximately 5.00pm. She indicated that the incident may not have happened on 10 September. It happened a few days before the father went back to Ireland which would have been on the Monday.
76. She was challenged that her statement indicates clearly that it was the fourth day of his stay at approximately 5.00pm. She said it was only an approximate. She said her solicitor told her that if she could not remember the day, to guess it. She was not sure of the date.
77. She was challenged that her October statement went into a lot more detail. She accepted that. She said she told him to get out and he cannot stay anymore. It was put to her that notwithstanding that, he did stay overnight, and why would she allow him to do that in light of such a serious allegation? She said he refused to leave. She said she told the uncle to supervise him.
78. It was put to her the father says he spent the rest of his time in the house and with the child and even took her to school on the Monday. She replied, "No, this happened before the incident".
79. She was challenged on why this matter was not reported to the police. She was reminded that when she had previously spoken to the social worker with regard to issues of sexual abuse as part of the special guardianship assessment, she indicated that she would be able to deal with future disclosures differently and that she had not.
80. It was put to her the reason she said she did not contact the police was due to a bad experience with the police involving the child following her anonymous referral. She was challenged that no such prior disclosure appeared in the police records at all. She was unable to explain this.

81. It was put to her that there was no evidence of the child being scared in the presence of the police when seen at school. She said, “The child told us afterwards and we told the social worker of her fears”.
82. It was put to her the allegations were a complete lie to undermine the father. She reiterated that she has told the truth, she is not lying and has no reason to.
83. It was put to her that she had told the child that the father intended to take her to Bangladesh. Again, she denied it. She said the father told her this himself.
84. It was put to her the uncle says the child may have overheard adult conversations when she was upstairs. She agreed with that but cannot say that she overheard her and her husband.
85. It was put to her the husband says contrary to this, including threats to be taken to Bangladesh to get married. She says, “It is not true; this was never discussed in front of the child”.
86. She was challenged that the child told the police at school that her aunt did not like the father, that she speaks about him in front of her and uses swear words. She was asked if the child is telling the truth or lying. She said “Yes”. She told the child that she does not want to speak to him on the phone, she does not like him, but that is it.
87. She was asked whether or not the other matters the child had spoken about in relation to using swear words and speaking about him in front of her were true. Her response was evasive on that point.
88. It was put to her that the child had a fear of being sent to Bangladesh due to the Father making phone calls in 2019 to family members when it was said that she could come and live with them. It was put to her that, in fact, those family members said that she could come and “visit”, not “live”. The aunt denied this.
89. She was asked how she had gone about reassuring the child about her father’s intention not to take her abroad. She responded:

“It is his intention. There was an argument about it post Covid, about him visiting there and then settling there”.

It was put to her that the child blames the Father for her mother’s death, for not taking her to hospital. She replied, “The child has overheard this from her mother in hospital”.

It was put to her that she was less than two and a half years of age at the time and, therefore, this was totally implausible. She agreed but responded that she may have also overheard it from the family after her mother’s death. She was challenged as to why she would allow the

child to be privy to such conversations. Her response was that “She should know the truth as she is her mother’s child”.

90. It was put to her that the child believes that the father is not interested in her. She responded “Yes”.
91. It was put to her that if she says that the father does not care about her, how does she respond? She says, “I say, ‘Don’t worry, we will look after you’”.
92. It was put to her that the child said the father will take her and leave her somewhere, that he is only interested in citizenship. It was put to her that this is a seven-year-old version of what she has been told. She said, “This conversation did take place in front of her at school with the head teacher”.
93. She was challenged that the child said the father only wants her to be a servant. He does not pay money. He is rich and tells lies. She responded that the child asked her if the father gave them any money and, “If she asks, I will tell her”.
94. It was put to her that “servant” is adult language, similar to the adults’ belief that she will be “treated like trash”. She said, “This is what they will do”. She was challenged that all this comes from adult conversations.

CROSS EXAMINATION BY THE GUARDIAN

95. The Aunt was asked whether she felt that she has engaged positively with the Local Authority and she said “Yes”. Her attention was drawn to a child in need meeting on 11 October 2023 where she refused to engage with the Local Authority in undertaking any more training. She accepted this. She said she had had enough.
96. She stated that arranged marriages in Bangladesh happened because of their culture. The Guardian challenged her whether the child had asked her about this. She said:

“Yes, once or twice. I said ‘Don’t worry, we won’t be going to Bangladesh’”.
97. She asked about the child’s recollection generally; that she had talked about being slapped when she was two and a half. She said, “Yes, she told me this”. She asked if she had witnessed any of this. She said “No”, the mother told her what had happened. She asked whether the child had given her the same detail that the mother had in relation this. She said:

“No, only the mother told me that. The child can only recall being slapped”.

It was put to her that the Guardian felt that as she was so little, it was unlikely that she would have remembered such an incident. She was asked whether she, herself, disclosed what the mother had told her. She said “No”. She clarified, “I heard it from the mother or her friend talking about it”.

98. She was asked about an incident in September 2022 and that the child talked about her father wanting to see her private parts. She asked, “What did she mean when she said this?”. She was unsure, but was probably referring to her genitalia. It was put to her that she has previously told the social worker that she had a better understanding of sexual assault but was challenged that, notwithstanding that, she had failed to report it. She indicated that she did text the social worker and the social worker visited her. She was asked whether the social worker was, therefore, lying. She said, “Yes”.
99. It was put to her that at the hearings in October 2022 and February 2023, no mention of this was made at all despite the applicants being represented. She was asked why the Court was not informed. She said she felt that the social worker would inform the Court of this.
100. She was challenged that in her oral evidence she alleged that the father called her and said not to tell anyone and not to report it. She was asked when was the last time that she spoke to him about this. She was unable to recall this.
101. It was put to her that the first time the child disclosed the alleged incident in relation to the father was in May 2023. She responded the allegation is true as she had witnessed it.
102. She was challenged as to when the child last referred to her father as “Dad”. She said September 2022. She says she does encourage the child to call him “Dad”.
103. She was asked whether she had told the child that her father was seeking to care for her. She said “No”.
104. She was asked about the child saying that her uncle and aunt are trying to keep her safe and what was meant by this. She said she did not know.
105. She was challenged as to whether she felt that the child that she doesn’t like her father would upset her. There was no response to this question but she denied saying that her father was not interested in her.

JUDGES QUESTIONS

106. I asked her whether, since the incident in September 2022 involving the father, she had allowed contact. She said, “No, it was only phone contact”.

RE-EXAMINATION - FATHER

107. Her attention was drawn to her position statement for the last hearing where she recorded that contact took place in February 2023 at her home. She accepted that but she said it was as per the recommendations of the Local Authority.

UNCLE

CROSS EXAMINATION BY THE FATHER

108. In relation to the allegation of sexual abuse he accepts that he was not at the house at the time and did not witness it but he accepts the aunt’s version of events as she told him of this. He was asked when and he said, “Later that evening, I believe through a telephone call, or, perhaps she told me to come home or possibly the following day”. He was unsure. He said he was shocked.

109. The aunt asked the father to leave but they allowed him to stay. He said, “He’s the father; we have no power”. If he called the police, he had legal custody, so, he told his wife to tell the social worker but no action was taken by them.

110. It was put to him the Local Authority say that no such report had been made. He seemed to be shocked at that. He also said that it was mentioned at court at a hearing before lay justices on 18 October 2022. *(However, I note no mention of this is made in that order, either in the body of the order or in the recitals and, of course, the applicants were represented at that time)*

111. He was asked if the social worker, therefore, was lying. He said, “Maybe”. He said he told her on two occasions and in no uncertain terms and, therefore, “They would be unlikely to be unaware of our allegations”.

112. It was put to him that if this incident did occur, he would recognise that she needed safeguarding yet he did not do that and that he left his wife do it. He stated that he did tell the child's solicitors. It was put to him that the reason that it was not reported was because it did not happen. He refuted that.
113. In the alternative it was put to him that he did not believe the aunt. He disagreed with that.
114. His attention was drawn to a child protection conference that took place on 2 March 2021. It was a remote conference due to Covid. It was noted that the uncle and aunt were not in attendance but, in fact, they were present as they listened to the meeting. There were concerns raised as to the child being privy to adult conversations in pre-conference discussions. The uncle indicated that he was unaware it was a meeting. When he was challenged, he indicated that if a child protection plan was put in place, he would send the child to the father who would send her to Bangladesh. He said he did not say it like that. It was put to him that this is, in fact, where the child gets this from. He denied this.
115. It was put to him that the child believed the father had slapped her. His attention was drawn to the section 7 report. Initially, it says she remembered the incident referred to and then, after says, that she does not remember, "My uncle told me". The uncle denied telling her this. He was asked whether, therefore, the child was lying. He said she was making it up.
116. It was put to him that no one is saying that the child witnessed domestic abuse but she believes that Mother was abused so, therefore, it must have come from the adults.
117. He was asked whether he believes she may have overheard adult conversations when upstairs, and negative beliefs about the father. It was put to him that the child says that the uncle and aunt speak about the father and swear. He responded, "I've no idea where that comes from".
118. It was put to him that the child has reported to professional's matters that she hears from the uncle and aunt. He denies it was from them; but possibly, from other family members. He has no idea where she gets these comments from.

CROSS EXAMINATION BY THE GUARDIAN

119. He accepted that he no longer wished to engage with the Local Authority. He still believes that the child is at risk of an arranged marriage but has not discussed it with the child. He

has not told her what he actually thinks of the father. However, in his evidence, he said that the father has done the dirty on them in relation to the special guardianship application. He accepted that the aunt has reasons for not liking the father after what she witnessed him do. He believes the father is only interested in the child for immigration purposes.

120. He was asked who told him about the abuse that the child suffered in relation to being slapped by the father. He said it was the child's mother. It was put to him that the child was only two and a half at the time and that it would be unusual for her to recall this. He said, "It depends upon the child".
121. He was asked whether or not the child should know information concerning Father's inactions in relation to the mother's death. He says he agrees with his wife's view in relation to that. He cannot comment about when the child last called her father "Dad". He, himself, does not mention it.
122. He was asked how the child knows that he does not like the father buying her presents. He said "Via Social Services". He was asked, "Why is buying presents such a negative?". He says, "She has been taught not to accept gifts from strangers". It was put to him that the father is not a stranger. He said:

"He's a virtual stranger. He's never bothered with her previously".

He reiterated he has never mentioned the court proceedings to her but she is aware of the court process as it has been ongoing for two years.

THE FATHER

EXAMINATION IN CHIEF

123. The father stated that, prior to these proceedings, he had never received the first special guardianship assessment of the uncle and aunt. It was put to him that the uncle and aunt's position statement in March 2023 alleges that he requested that the child travel to Bangladesh and that he threatened to remove her from school. He said that this was not true.
124. It was also put to him that it is alleged that at contact in February 2023, he brought two unknown males in cars and tried to remove the child from the home. He said that this also did not happen.
125. He was asked, since the mother's death, when did face-to-face contact take place? He said twice in 2019, once in 2020, once in 2021, once in 2022 and multiple times in 2023. He

was asked if he could have attended more frequently, would he have done so. He said, “Yes, it was prohibited due to travel restrictions”.

126. He denied that the Local Authority had told him he had to show more commitment to his child. He said he tried to speak to her every day, including [whenever there was a need] but this frequency reduced over time. From September 2022, it was reduced to once a week. However, the first time he heard of the aunt’s allegation was in March 2023.

CROSS-EXAMINATION BY THE GUARDIAN

127. He was asked questions as to why he thought contact stopped in September 2022. He said, “Because the aunt did not like me because I re-married and we argued over the child’s name change”. He said;

“If you agree with the aunt, everything’s fine. The issue is when you disagree. She forced me to sign a paper with regard to a change of name which is when the problems started”.

This occurred when he was staying with her in September 2022.

It was put to him that he left for Ireland in November 2018 following the mother’s death. He was asked why he had left the child with the uncle and aunt. He said that this was his dying wife’s wish and he respected it but things had now changed.

128. He said he saw her again in March 2019 when they went to Ireland. The father would speak to her every day by video calls. He denied the uncle and aunt had encouraged him to have contact or to take an interest in her. He initially supported the special guardianship application in 2022. He first became aware of concerns in March 2021. Prior to then, he had very little background knowledge of the uncle and aunt until he actually had read the full report in these proceedings. He confirmed he had never made a police referral in relation to the uncle and aunt and it was only latterly that he decided not to support the special guardianship application.
129. With regard to the alleged incident on 10 September 2022, he described the events of the day and the following day. He indicated that the aunt, when he returned from Birmingham was angry that he had taken pictures of the children. He said he had lunch when he got back and watched TV. Also, there was the uncle, his daughter and the son-in-law in the property. He stayed up until 10.30pm. He was never on his own with the child. The incident never

happened. It was a complete fabrication. He denied ever asking to see his daughter's private parts. He dropped the child to school on the Monday and was driven to the airport by the son-in-law on that same day. He denied that this was the cause of the breakdown between the family. He said the issue was over the change of name. He denied ever calling the aunt about the court proceedings; he only called to talk to his daughter. He certainly did not ask her not to disclose the incident because they simply did not talk to one another.

130. He denied ever telling the child that he would send or take her to Bangladesh. He stated that the child had asked if he would send her to Bangladesh and he said it was not true; he would not. He said, "My family may encourage her to visit but not to stay". He said, "I accept that arranged marriages are common in Bangladesh". He had never talked to the child about arranged marriages and his nephews are only two. The allegation about her being treated like a servant is also not true. He was asked why she would say this. "Is it because of her own misconception?". He said, "Possibly".
131. The allegation of him assaulting the child when she was young is also false. He was asked whether this came from the mother's friend. He said, "No, she is a schoolteacher". He denied ever hitting his wife. He was asked whether it is the lack of contact that makes her think that he does not care about her and does not spoil her. He said it is just that there were outside influences. He accepts missing one call on her birthday when he was in Bangladesh due to a power cut. He denied ever neglecting his wife so as to be responsible, in some way, for her death.
132. With regard to the alleged lack of financial support, he said he did offer money to the aunt but she refused it saying that she would look after the child herself. He said the child last referred to him as "Dad" in February and, last week, when she had said that he is not her dad, that it is the uncle who is her father. He asked her why and she did not answer.
133. He said there is nothing wrong with their relationship which was evidenced by the contact. He says he cannot say that she has been negatively influenced by the aunt and uncle. He has not discussed these proceedings with her but she, nevertheless, is aware of them. He was challenged about using the child to get a UK passport. He says:

"No, I have an Irish passport. There is no difference. Therefore, I have no need for one".

CROSS EXAMINATION BY THE UNCLE

134. The father was asked whether he was happy for them to have a special guardianship order. He said he was happy at the time as it was his wife's wishes.
135. He was asked whether when the child came to Ireland with them, did he try to source others to care for her. He said "No" but he did invite guests to come round to meet his daughter. It was put to him that he ignored his daughter for most of the time. He said that this was untrue. He was challenged that birthday contacts and Eid contacts never took place and he never gave her presents and cards. He said that was wrong.
136. It was put to him that his recollection of the events on 10 September 2022 was also wrong; the only person that was present was the aunt, himself and the child. He said that was not true.
137. It was put to him that his wife had pains in her throat for some time and he did not take her to the GP or hospital. He denied that. He said:
- "I attended the GP and hospital with her. They gave her painkillers and an appointment for an endoscope".
- He was asked whether he told the child that she would go to Bangladesh to be married. He said, "It is not true". It was put to him that he told the uncle and aunt that he would take her to Bangladesh with him. He denied that.
138. He was challenged as to why he had asked for the child's Irish passport to take her to Ireland. He said he could not recall if he had done so but he may have requested it so as to renew it. It was put to him that the uncle and aunt had not received it back. He indicated that that was because they had not asked for it to be returned. He was challenged about that but was emphatic that they had not demanded it back. It was put to him that the child has indicated that she has had nightmares of the father pushing her down the stairs. He was asked why she would have said that. He said, "I have no idea".

SUBMISSIONS

THE UNCLE

139. For the past two years, the father has abandoned his child with no communication, that it was they who had to instigate what limited contacts that there were, with limited success. His own wife knew of his unsuitability as a parent, that he has used the applicants for free

childcare and now wants her back. He has lied before the Court. He has never been a suitable father or a husband. He had no love or feeling for his daughter and the final straw was the incident in September 2022.

THE LAW

Finding of Fact Hearings

140. The standard of proof to be applied to all finding-of-fact hearings is the balance of probabilities test; in other words, whether the incident alleged was more likely than not to have occurred, the burden of proof lying on the person making the allegation. Neither the seriousness of the allegations nor the seriousness of the consequences makes a difference. The inherent probabilities are simply something to be taken into account in deciding where the truth lies. Any findings made must be established on the evidence available to the Court including inferences that may be properly drawn from that evidence and not on mere suspicion or speculation. The Court must take account of all the evidence taken as a whole.
141. Evidence cannot be evaluated and assessed in separate compartments. It is necessary to have regard to the relevance of each piece of evidence in relation to other pieces of evidence and to exercise an overview of the totality of the evidence in order to determine whether the appropriate standard of proof has been met. The evidence of the parties is of the utmost importance; in this case, the father, the uncle and the aunt.
142. It is common for witnesses to sometimes tell lies in the course of a fact-finding hearing. However, the Court must be astute to the fact that a witness may lie for many reasons.
143. The fact that a witness has lied about some matters does not mean that they have lied about everything.
144. On the occasion of a fact-finding hearing or, indeed, any hearing for that purpose, a judge does not necessarily have to deal with each and every inconsistency or conflict of evidence specifically or give lengthy reasons for their conclusions, as sometimes it can be difficult to articulate exactly why one witness is preferred to another. A judge simply has to do their best to put into words the impression which they have been left with at the end of the hearing. Discrepancies in the evidence of eyewitnesses after a lapse of time are to be expected and are part and parcel of litigation.

145. Discrepancies in accounts relating to harm may arise for a number of reasons such as culpability, faulty recollection or confusion at times of stress; the importance of accuracy is not fully appreciated; inaccuracy or mistake in the record-keeping or recollection of the person giving the account. Delay and repeated questioning may affect a person's memory and accounts given by others may affect a witness's own account. As memory fades, there may be a desire to iron out wrinkles which may not be indicative of bad faith. Finally, human memory has its limitations and a lie by itself can never be taken as proof of guilt.
146. The Court is also not bound by the cases put forward by the parties but may adopt an alternative solution of its own. Judges are entitled, where the evidence justifies it, to make findings of fact that have not been sought by the parties, but they should be cautious in doing so. I remind myself of *Re A (No 2) (Children: Findings of Fact)* [2019] EWCA Civ 1947, and as to witness credibility, *Re A (Fact-Finding)* [2011] EWCA Civ 12.

Sexual Abuse Allegations

147. In relation to, specifically, sexual abuse allegations, I quote from *PR v JES & Another (Appeal: Sexual Abuse, Fact-Finding)* [2019] EWHC 791(Fam):
- “In relation to allegations of sexual abuse of young children, the Court must not only deploy a generic fact-finding approach but must, in particular, identify the need for special care to be taken in evaluating the reliability of the evidence of young children. The precise nature of the analysis that will need to be undertaken will, of course, vary from case to case. The more complex the background and evidence the more sophisticated will the analysis needs to be and the more obvious the demonstration that special care has been taken”.
148. I also have the summary of the principles relevant in a case involving allegations of sexual abuse that was given by MacDonald J in *AS v TH (False Allegations of Abuse)* [2016] EWHC 532.
149. Children, and, especially young children are suggestible. Memories are prone to error and are easily influenced by the environment in which recall is invited. 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. Allegations made by children may emerge in a piecemeal fashion with children often not reporting events in a linear history, reporting it in a partial way and revisiting topics. The

wide circumstances of the child's life may influence, explain or colour what the child is saying.

150. Factors affecting when a child is saying 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.
151. Accounts given by children are susceptible to influence by leading or otherwise suggestive questions, repetition, pressure, stress, negative stereotyping and encouragement, reward or praise. Accounts given by children are susceptible to an influence of a lot of bias or preconceived ideas on the part of the interviewer. Accounts given by children are susceptible to contamination by the statements of others, which contamination may influence a child's responses.
152. 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.
153. Delay between an event recounted and the allegation made with respect to that event may influence the accuracy of the account given. Within this context, the way and the stage at which the child is interviewed will have a profound effect on the accuracy of the child's testimony.
154. Thus, the specific principles relating to allegations of sexual abuse are these: no case of sexual abuse without probative, medical, direct physical evidence is to be regarded as straightforward. Children are poor historians and many are suggestible. The greatest care should be taken to minimise the risk of obtaining unreliable evidence from a child.
155. In this case, there is no ABE interview. Therefore, there is a need for careful assessment of hearsay evidence and what the child has said, particularly where this is the only evidence.
156. I remind myself of the principles elaborated in *Re K (Children)* [2019] EWCA 184.
157. I also remind myself of the best practice guidance set out in *The Handbook of Best Practice in Children Act Cases (June 1997)*, Section 4 and paragraph (k). It cautions that any investigation which focuses attention on the statements of the child runs a risk of producing a false result if what the child says is unreliable, where the child's primary caretaker is unreliable, particularly where the allegation emerges in contested section 8 proceedings.

Parental Alienation

158. In relation to parental alienation, I quote the case of *Re D (A Child: Parental Alienation)* [2018] EWHC B64:

“Most experienced Family Court judges would acknowledge that there is a category of private law Children Act disputes which present profoundly difficult challenges to the Court and which frequently cause judges near despair as they endeavour to achieve a positive and enduring outcome for the child. Descriptive language is used to highlight the complexity of these cases, for example, implacable hostility, intractable dispute, high-conflict dispute”.

159. I remind myself of *Re B (A Child)* [2016] EWCA Civ 1088:

“Implacable hostility is exactly that: a case where one parent has become (usually irrationally and for poor motives) implacably opposed to contact taking place between a child and his or her absent parent. That is...or may be very different from a case where a child has become alienated from a parent”.

It is, therefore, possible to differentiate between the two concepts using “parental alienation” to mean a child who is resistant to a relationship with the parent for no particularly valid reason, generally with the encouragement of the other parent, and using “intractable hostility” to mean a refusal to allow contact with a parent even though the child should and may welcome it.

160. Parental alienation is often nearly never a stand-alone issue and usually involves counter-allegations. In cases where it takes place, multifaceted family therapy and psychological education is needed involving the active participation of the alienated parent.
161. The term “parental alienation syndrome” was coined by a child psychiatrist in the US, Dr Richard Gardner. He believed that some children who reject their parent, in this case, their father, have been indoctrinated to make false allegations of abuse. He advocated the forceful removal of the child who suffered from this from the home of one parent or the other. His theories, however, have subsequently been criticised as having no scientific basis but they have been developed into a wider, more flexible concept of a child rejecting contact with a parent with whom they previously had a good relationship.
162. Parental alienation is not a condition identified in either of the major international indices; the *Diagnostic and Statistical Manual of Mental Disorders* and the *International Classification of Diseases* albeit it may get a mention within in ICD-11 within ‘caregiver-child relationship difficulties’

163. Furthermore, despite the apparently large literature on parental alienation, there is a dearth of robust, empirical studies. Recent literature has moved on from a test to define alienation as a syndrome. Sir Andrew McFarlane as he then was, in a speech to the Families Need Fathers conference 2018 entitled “Restoring Confidence in Family Justice” said the following:

“In times gone by, there was similar debate as to whether a diagnosis could be made of Munchausen syndrome by proxy. In such cases, the focus of the Family Court rightly moved away from any psychological or psychiatric debate in order to concentrate on a particular behaviour of the particular parent in relation to the particular child in each individual case. If that behaviour was found to be abusive, then action was taken, irrespective of whether or not a diagnosis of a particular personality or mental health condition in a parent could be made. In my view, alienation should be approached in the same way as it is likely to be emotionally harmful for the child to grow up in circumstances in which there is an unjustified and wholly negative view of the absent parent”.

164. There is no single definition of ‘parental alienation’, but the most common understanding refers to it being an unwarranted rejection of one parent and alliance with the other, characterised by the child’s extreme negativity towards the alienated parent due to either deliberate or unintentional actions of the alienating parent so as to adversely affect the relationship with the alienated parent.

165. A working definition is thus ‘the unwarranted rejection of the alienated parent and an alignment with the alienating parent characterised by the child’s extreme negativity towards the alienated parent due to deliberate or unintentional actions of the alienating parent’.

166. As set out in the case of *Re S (Parental Alienation: Cult)* [2020] EWCA Civ 568:

“When a child’s resistance/hostility towards one parent is not justified and is the result of psychological manipulation of the other parent’. To that may be added that the manipulation of the child by the other parent need not be malicious or even deliberate. It is the process that matters, not the motive...These may include portraying the other parent in an unduly negative light to the child, suggesting that the other parent does not love the child. Providing unnecessary reassurance to the child about time with the other parent, contacting the child excessively when with the other parent and making unfounded allegations or insinuations, **particularly of sexual abuse**”.

167. In the case of *Re S and T (Care Proceedings Following Private Law Dispute)* [2021] EWFC B54, it was said as follows:

“‘Parental alienation’ is a loaded term which means different things to different people. It can describe a child who is estranged from a

parent for justifiable reasons if that parent presents as a risk to them. It can describe the motivation or actions of one parent deliberately acting to manipulate and control their child so as to reject the other parent. That process can also take place deliberately or inadvertently, a parent unconsciously transferring onto their child their fears about the other parent or fears of losing control. It can describe the behaviour of a child who appears to reject a parent completely with no rational basis”.

168. Of relevance to this case, signs that alienation is present include one party portraying the other negatively, one party making unfounded allegations or insinuations against the other, one party unjustifiably limiting or restricting contact or undermining contact, one party forbidding discussion about the party, **one party creating the impression that the other party dislikes or does not love the child or has harmed them or intends them harm.**

169. The case of *Re S (Transfer of Residence)* [2010] EWHC B19 says this:

“There are children who show an extraordinary degree of animosity towards a parent with whom they once had a loving relationship. Most of these children will show some or all of a cluster of psychological responses. Within an individual child (and between children in the same family) the presence of the features can vary rapidly over time and place, but in their full manifestation are so surprising and unique as to be unforgettable. The proposed term ‘alienation’ applies only to the cluster of psychological responses in the child with no need to presume a deliberate campaign of denigration by one parent. There is now research data supporting a multifactorial aetiology for ‘alienation’ following parental separation, involving contributions from both parents and vulnerabilities within the child”.

170. In the case of *Re A (Parental Alienation)* 2019] EHC B56 it is recognised by Cafcass as arising when:

“...a child’s resistance and hostility towards one parent is not justified and is as a result of psychological manipulation by the other parent”.

To that may be added that the manipulation of the child by the other parent need not be malicious or even deliberate. Again, it is the process that matters, not the motive. In other words, the child’s wishes and feelings are tainted by a false narrative.

171. Recently, in *Re C (Parental Alienation: Instruction of Experts)* [2023] EWHC 345 Fam, it was said as follows:

“Much like an allegation of domestic abuse, the decision about whether or not a parent has alienated a child is a question of fact for the Court to resolve and not a diagnosis that can or should be offered by a psychologist... ‘parental alienation’ is not a syndrome capable of being diagnosed, but a process of manipulation of children perpetrated

by one parent against the other through, what are termed as, ‘alienating behaviours’. It is, fundamentally, a question of fact... What is important, as with domestic abuse, is the particular behaviour that is found to have taken place within the individual family before the Court and the impact that that behaviour may have had on the relationship of a child with either or both of his/her parents. In this regard, the identification of ‘alienating behaviour’ should be the Court’s focus, rather than any quest to determine whether the label ‘parental alienation’ can be applied”.

172. Reference should also be had to the *Consultation: draft guidance on responding to allegations of alienating behaviour* (August 2023) published by the Family Justice Council:

“A Court would need to be satisfied that three elements are established before it could conclude that alienating behaviours had occurred: a) the child is refusing, resisting, or reluctant to engage in, a relationship with a parent or carer; b) the refusal, resistance or reluctance is not consequent on the actions of the non-resident parent towards the child or the resident parent; and c) the resident parent has engaged in behaviours that have directly or indirectly impacted on the child, leading to the child’s refusal, resistance, or reluctance to engage in a relationship with the other parent...

Where alienating behaviours are alleged, the Court should require those making the allegation to identify the evidence upon which they rely”.

To that extent, the behaviour of a child is not evidence of the behaviour of an adult, so the behaviour of a child should not be used to evidence adult behaviours and the fact that a child is resistant to spending time with the parent does not automatically mean that the child has been exposed to alienating behaviours from the other parent:

“Alignment and attachment issues can result in resistance, reluctance and refusal without any alienating behaviours perpetrated by an adult”.

173. The following questions should therefore be addressed:

“Is there evidence the child is refusing, resistant or reluctant to engage with a parent and, if not, how can it be obtained?”.

This is the first element.

The second element:

“Is the second element evidenced? The child’s reluctance, refusal or resistance is not consequent on the actions of the non-resident parent towards the child or the resident parent. Children who show resistance or unwillingness to maintain or build a relationship with a parent who has been abusive towards them or towards the other parent may be found to have a justified response to that parent...”

And then the third element:

Is the third element evidenced? One parent has engaged in behaviours that have directly or indirectly impacted on the child, leading to the child's refusal, resistance or reluctance to engage in a relationship with the other parent".

In other words, evidence of alienation.

"The Court must be cautious when invited to agree a default finding that a parent who fails to establish allegations of domestic abuse or abuse of the child has therefore engaged in alienating behaviour. The absence of an alternative explanation does not lead automatically to an explanation in terms of alienation...

Failed or false allegations of abuse against a non-resident parent will not constitute alienating behaviour unless there is evidence that the subject child has been manipulated (on the basis of those false/failed allegations) into an unjustified resistance or reluctance to engage with the allegedly abusive parent...

Crucially, it is when there is no known justification for the hostility/rejection of a parent in combination with evidence of psychological manipulation that it may be determined that the child is in what is sometimes referred to as an 'alienated position' in the family dynamic".

JUDGEMENT

174. I now turn to my analysis of the evidence and my findings.
175. I deal, first of all, with the evidence of the social worker, KB. Her impression of the child's disclosures is that they appeared scripted; repetitive with the same words and phrases.
176. That was also reflected in the evidence of CB. There was a view that there was potential coaching. The language the child used matched that of her uncle, her demeanour being matter of fact and lacking emotion when making allegations as to being taken away, forced to marry and her father not having bothered with her before.
177. She felt that there had been a sharing of inappropriate information, for example, the child's disclosure of being married off to a boy from Bangladesh; an allegation also made by the uncle to the school, in proximity to the disclosure made by the child.

178. She was also concerned that some of the allegations were made at times when the child would have little memory of them. Reference of this is on 14 February 2023 when she indicated that her uncle had told her of them.
179. She also gave evidence of the child's anxiety over bringing gifts home and removing her trampoline wristband, and comments made as to consequences when she does get home; being shouted at if she knew she had been trampolining with her father.
180. In regard to CB, her evidence is that the uncle and aunt's relationship with the father significantly deteriorated following him not supporting their special guardianship application and applied for a live with order. Prior to then, there were no safeguarding concerns of any note that were raised.
181. Both social workers were emphatic that no prior disclosures had taken place of the allegations of inappropriate sexualised behaviour by the father until following the hearing in March 2023, despite the incident purportedly occurring during September 2022.
182. In relation to the aunt's evidence, despite a significant allegation reportedly witnessed by her in September 2022, there is no evidence of any safeguarding concerns being raised prior to January 2023 or, indeed, at the hearing in February 2023. Her explanation that the father told her not to mention it due to supporting the application for a special guardianship order runs counter to the fact that that support was subsequently, nevertheless, withdrawn. I do not accept her evidence that she reported it to the social worker both by text and two subsequent visits. It beggars belief that a professional would not only fail to record that allegation but not action a safeguarding referral in light of that and its seriousness and then lie about it to the Court. My view on this is further enhanced by the silence in relation to this most serious allegation at two subsequent court hearings at which the applicants were represented.
183. As to the incident itself, I am concerned that despite the seriousness of the incident, the uncle and aunt allowed the father to stay. The aunt's explanation of the reason for that being his refusal to leave in light of her previous discussions with the Social Services department in respect of safeguarding children from sexual risk, I am afraid, does not stack up. Similarly, in relation to not reporting the matter to the police, her explanation as to why she did not do this, being a previously adverse experience with the police is not backed up at all by the extensive police disclosure from 2015 to date in accordance with my order of 13 March 2023. She can offer no explanation for this. I believe the reason for this is because it is simply not true.

184. Furthermore, contact thereafter, took place, including in February 2023 on the Social Services department's recommendation. The aunt's evidence as to the extent of Father's relationship with his daughter is in direct contradiction to the evidence filed within the proceedings in what she previously informed the Local Authority, particularly the family assessment on 6 February 2019, paragraph 12.11, and the special guardianship assessment in May 2021.
185. It is clear to me that the aunt's negative views of the father have not been withheld from the child. When she was challenged about some of the things the child reportedly said of what the aunt and uncle themselves had been saying of the father within the home, she was evasive and did not provide a response.
186. The uncle and aunt's hostility is clearly demonstrated by their belief that the child should know the truth, in their eyes, about the part the father played in her mother's death. This, in itself, is emotionally harmful.
187. In my view, the aunt is unable to promote a relationship with the father, telling her that the father does not care about her and, indeed, telling her that if the father does not care about her, they will look after her. She admits that that conversation took place between the uncle and aunt and the head teacher in the presence of the child in respect of the father taking her and abandoning her somewhere, and was only interested in getting his citizenship.
188. It is clear to me that the words the child has used, such as "servant", are the language of the adults and can, in my view, only come from one source: the uncle and aunt themselves. It is reflective of their own views which they have made no attempts to hide from the child.
189. Indeed, I find that they have actively promoted these views in order to airbrush the father out of the child's life by providing a false narrative. I gained the impression that the aunt is very much the main protagonist in the alienation of the father from his daughter although the uncle, himself, plays, very much, a large supporting role.
190. In relation to the uncle, as with the aunt, the uncle's reaction to his wife's allegations in relation to what had supposedly happened in September 2022 is startling. His explanation that they had no power to order the father to leave the home simply defies belief. It was their home. The father had effectively committed a sexual assault, and to suggest in light of that the police would allow the father to leave with the child because he was their father, given their childcare responsibilities in relation to child protection, is simply not credible. As with the aunt, I find it not credible that this was not reported or made reference to within the provisions of the order of 18 October 2022 when the uncle was represented and, indeed,

the matter purportedly mentioned in court and to his solicitors at the time. Even then, the uncle, himself, took no protective steps to safeguard his niece, leaving it to the aunt to do so.

191. It is clear from the uncle's evidence that he has strongly negative feelings towards the father which, I find, he has not hidden from the child as evidenced by the notes to the child protection conference on 2 March 2021. He, too, shares the aunt's belief that the child should know the truth about the death of her mother, and Father's purported role in it.
192. He, clearly, like the aunt, is unable to promote a positive image of the father to the child, making no reference to her of him as her father; seeing him as a virtual stranger; someone who has never bothered with her and should not be allowed to spoil her with gifts; someone who has, in his own words, "done the dirty" on them in relation to their special guardianship application.
193. It appears to me that the uncle uses what the child alleges when it suits him. A clear example is when she had told professionals that her uncle told her that her father had slapped her when she was little and she could not remember it herself. His answer to this is that she has made it up. Similarly, when she states that they speak about the father in front of her and swear.
194. In contrast to the evidence of the uncle and aunt, I find the father an honest witness and measured in his responses. Of particular relevance is when he was asked if he had requested the aunt not to disclose the incident in September 2022. In denying this, he said that the aunt does not talk to him which is precisely in accordance with the aunt's own evidence.
195. Accordingly, my findings in relation to the alienation of the father in relation to his daughter by the uncle and aunt are made out are as follows:
 - a. The allegation that the applicants had told the child that if she was to live with the father that she would be married to a seven-year-old Bangladeshi boy, I find proven.
 - b. The allegation that the applicants told the child that the father has not wanted to care for her or spend time with her in the past, I find proven.
 - c. The applicants telling the child that the father slapped and smacked her when she was a baby, (or aged two or thereabouts) I find proven.
 - d. The applicants telling the child that the father grabbed her arm and threw her off the counter when she was little, I find proven.
 - e. The allegation that the applicants made false and malicious allegations against the father, namely, in September 2022 that he behaved sexually inappropriately

towards her or has otherwise told or influenced her to believe that this is the case, and further, manipulated her and created a false narrative that she now believes to be true, I find proven. As far as the uncle and Aunt's allegations in relation to the father as to this incident having taken place are concerned I find is a complete fabrication.

- f. That the applicants told the child that the father wanted to see her private parts (being linked with the allegation of inappropriate sexualised behaviour for which I have already) provided my findings on, are equally proven.
- g. The applicants told the child that the father caused her mother's death by not supporting her more or taking her to the hospital or paying money to help her is found proven.
- h. The applicants telling the child that the first respondent only wanted her to live with him so that she could be his servant and his plaything, I find proven.
- i. The applicants telling the child that the father is rich and tells lies are proven.
- j. The applicants telling the child that the father hit the mother causing her mother to cry, I find proven.
- k. The allegation that the applicants caused the child to believe that if she enjoyed time with the father and accepted gifts from him that she would be shouted at by the applicants, I find proven.
- l. The allegation that the applicants told or caused the child to believe that her father will remove her from the country and leave her there, I find proven.
- m. In relation to the applicants encouraging the child to refer to the father as by his name rather than "Dad", I find proven.
- n. Moreover, that the applicants have failed to promote the father's relationship with his daughter.
- o. Finally, that the applicants have spoken negatively about the father in the child's presence, including swear words, I find proven.

196. As I said at the outset, whatever the outcome of this case, whether the allegations are true or false, the findings will be significant.

197. In my view, these findings that I have made against the applicants are significant and, almost certainly, will need to be considered very seriously for the long-term welfare of this child.

198. I am going to invite representations in relation to what I should do next. I am minded, in this case, to consider, very seriously, making an appropriate order under section 37 of the

Children Act 1989. That provides that where, in any family proceedings in which a question arises with respect to the welfare of any child it appears to the Court that it may be appropriate for a care or supervision order to be made with respect to them, the Court may direct the appropriate authority to undertake an investigation of the child's circumstances. Those investigations will consider whether or not the Local Authority should be applying for a care order or for a supervision order with respect to the child, or provide services or assistance for the child or their family, or take any other action with respect to the child.

199. When an investigation is undertaken and the Local Authority decides not to apply for such a form of order, then, obviously, they have to set out the reasons for not so doing and any service or assistance which they intend to provide for the child and the family and other action they intend to take with respect to the child. Of course, that report has to be filed within eight weeks, unless, of course, a longer time is directed.
200. I am also seriously considering making an interim care order today, pending the results of that investigation. I am mindful of the fact that the direction I am now inviting the parties to consider is appropriate where the Court desires an investigation because it appears to the Court that it may be appropriate for a care or supervision order to be made.
201. On the basis of my findings, I cannot stress enough that it is my view that, at the present moment in time, there are reasonable grounds to believe the child is at risk of suffering significant harm justifying an interim care order based upon the findings that I have made.
202. I am aware that section 37 can be used in intractable contact disputes to remove children who are being denied contact with a parent if they are suffering significant harm because of a false and distorted belief system instilled by a parent with whom the child is living about the other parent (*Re M (Intractable Contact Dispute: Interim Care Order)* [2002] 2 FLR 636 ; *Re W (A Child)* [2014] EWCA Civ 772)
203. Of course, that is a subsequent matter for the Local Authority. However, in light of my findings, I am seriously minded to make a section 37 direction as well as an interim care order.

End of Judgment.

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Ubiquis (Acolad UK Ltd) hereby certify that the above is an accurate and complete record of
the proceedings or part thereof