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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.

Neutral Citation Number: [2024] EWFC 171 (B)

Case Nos. SD23P20142
& SD23P20151

IN THE FAMILY COURT SITTING AT WORTHING

The Law Courts
Worthing
Christchurch Road
Worthing BN11 1JD

Before:

RECORDER WORTHLEY

Re. Annie (A Child) (Finding of Fact: Allegations of Sexual Abuse).

BETWEEN:

MGM

First Applicant

M

Second Applicant

-and-

F

Respondent

John Asaad (counsel) appeared for the first applicant maternal grandmother

Piers Wauchope (counsel) appeared for the second applicant mother

Trina Little (counsel) appeared for the respondent father

Hearing dates 17,18,19 & 20 June 2024

This judgment was given orally on 20 June 2024 and later anonymised and circulated to the parties' legal representatives by email.

JUDGMENT

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Introduction

1. This case concerns a 6-year-old girl who I will refer to by the pseudonym ‘Annie’. She was born in 2018 to her mother (“M”) who was then 19 and her father (“F”) who was then 17. They are now 25 and 23 respectively. Sadly during her short life, Annie has been the subject of legal proceedings twice previously. This case marks the third set of private legal proceedings concerning her welfare.
2. M has autism and is close to her family. She was legally assisted through the previous two sets of proceedings and at the start of this third set of proceedings by her sister (“S”) who is a qualified non-practising solicitor. She also remains very close to her mother, Annie’s maternal grandmother (“MGM”). F is likewise close to his mother, Annie’s paternal grandmother (“PGM”).
3. For reasons that will become clear as articulated later in this judgment, Annie lives under the care of MGM with her extended maternal family in a house owned by S and her husband, but spends time with M and F. She has done so since 2020. However, there is no formal child arrangements order for Annie to live with MGM. Neither does MGM currently have parental responsibility for Annie. Annie’s older maternal half sister Brie (also a pseudonym) who is 7 also lives in that same house and likewise only spends time with M.

The Applications

4. These fresh proceedings have arisen subject to two applications made on 30 March 2023; (i) an application from M to vary the extant Child Arrangements Order so that Annie no longer spends time with F, and, (ii) an application from MGM for a parental responsibility order. These were precipitated by allegations of abuse made against F that were purportedly disclosed on the 4 February 2023, only 3 days after District Judge Spanton had concluded the second set of proceedings on 1 February 2023. In that second set of proceedings the court had ordered that Annie continue to live with M and spend substantial time with F on a fortnightly basis (“the CAO”).
5. These applications were initially heard by District Judge Spanton on 26 April 2023 who made an order for the local authority to report into court as to whether there were any ongoing investigations into the allegations made against F.

6. The matter was then heard by HHJ Farquhar on 5 May 2023 who determined that a fact finding hearing was necessary, that the CAO couldn't be enforced until then, but that Annie should attend weekly supervised contact at a contact centre until the next hearing. It was also ordered that M be assessed for an intermediary. Perhaps optimistically, HHJ Farquhar also set the matter down for a combined 2-day fact-find/final hearing on 22-23 August 2023, no doubt in the hope that the applications could be promptly addressed and resolved without delay.
7. As matters transpired, there was not an effective final hearing in August 2023. Instead, because of various matters not having been resolved within such a tight timescale, including the necessary Communicourt intermediary assessment, police disclosure, video disclosure, and M's application for legal aid, the hearing was adjourned to the first available date after 24 October 2023 but still with a time estimate of 2 days. Critically the PTR was vacated but not relisted.
8. In the meantime, the supervised contact ordered in May was not complied with by the maternal family owing to MGM's obstruction of the same.
9. That meant that a 2-day hearing was re-timetabled to take place on 17-18 January 2024. On the 17 January 2024 at a hearing before me, it was plain that the matter was still not properly prepared and needed again to be adjourned because of significant failings from M's solicitors to obtain all the necessary evidence and disclosure for an effective hearing. The matter was therefore relisted to a 4-day hearing from 17-20 June 2024 before me sitting as a Recorder where I had time set aside that would not ordinarily be available to the District Bench.
10. I subsequently made a wasted costs order against M's solicitors for their inexcusable failings in properly preparing the case for that aborted hearing. The adjournment had caused significant expense for F who is privately paying for representation via the generosity of, and loans secured by, his extended family. His legal spend as of today for all 3 sets of proceedings has been in the region of £40,000. I also attached a penal notice to the order for supervised contact which was subsequently complied with by the maternal family.
11. The fact find has finally been effective at a four day hearing before me from 17-20 June 2024, some 15 months after the applications were made. Unfortunately, even the start

of this hearing was plagued by further procedural difficulty because of M's intermediary falling unwell and therefore being unable to attend, meaning that M could not give evidence on the first day as originally timetabled. M's intermediary has however been able to attend for Days 2-4 of the hearing. As such, the amended timetable was largely retained, meaning that I spent the entirety of Day 1 hearing MGM's evidence. Day 2 was concerned with the evidence of M, the maternal aunt S and the Social Worker from the Local Authority who I shall refer to by the pseudonym "Ms Jackson". Day 3 was used for the evidence of F and PGM, with submissions from counsel in the afternoon. Today (Day 4) has been used for deliberation, judgment and matters arising.

The Allegations

12. There are two principal allegations I am asked to determine as set out in the C1A at **p.52**, namely:
 - a. Allegation 1 "Annie disclosed to her grandmother after blood was found that Daddy had put a toy in her." At the hearing on 17 January 2024, it was clarified that this constituted an allegation that the father had sexually abused Annie by penetrating her with a piece of Lego on or around the 4th February 2023." As such it has been referred to during this hearing as "the Lego Allegation".
 - b. Allegation 2, "F told my mother and sister that he had to look for chicken pox in her vagina." This has been referred to as "the Chickenpox Allegation". This incident has been taken to encompass not only the verbal relating of the examination by F to the maternal family, but also the allegedly inappropriate physical nature of the examination itself. Both will therefore be subject to this court's determination.
13. Although there have historically also been allegations made by F in respect of Annie's care from her M, no formal cross-allegations had been drafted for determination at this hearing. However, Ms Little for F invites me in submissions not only to dismiss the allegations made against F, but to make positive findings that the maternal family have wilfully sought to remove F from Annie's life by the inappropriate pursuit of these allegations. As such, I have invited all counsel to address me as to the same during closing.

14. In what has been a difficult and - at times - an emotional hearing, I am grateful to all counsel for their sensitive and calm approach to the matters in issue. I am grateful also to M's intermediary, who has assisted in ensuring that M has had the ability to meaningfully engage with these proceedings.
15. References in bold are to the relatively modest 403 page electronic bundle provided. A small amount of additional documentation arose during the course of the hearing which was not in the bundle, as well as previous reports and orders from the first and second sets of proceedings which are referenced where necessary. I have also viewed three videos, all of which are referenced in some detail during this judgment.

The Agreed History

16. The contested allegations aside, there is a surprisingly comprehensive agreed set of facts which I now set out in some detail, before turning to the individual oral and written evidence of the parties and their witnesses. This is particularly important, because this is a case where the established agreed facts provide the essential lens through which to view the more narrowly drawn allegations.
17. In 2018, M was diagnosed with Autistic Spectrum Disorder. Annie was born some six months later. M has not been in a relationship with F for the vast majority of Annie's life, their relationship having broken down during the early stages of Annie's infancy.
18. The first set of proceedings between the parents concluded with a Child Arrangements Order made on 27 November 2019 whereby Annie lived with M and spent regular time with F every weekend, either from Friday at 10am to Sunday at 12 noon or from Thursday at 10am until Saturday at 12 noon. She also spent alternating Christmases, Fathers' Day and extra holidays time with F.
19. In April 2020, Annie was placed on a Child Protection Plan under the category of neglect from the care of M. Annie and Brie were thereafter moved into the care of the MGM under an informal arrangement that persists to this date.
20. The Child Protection Plan came to an end in November 2021, but both children continued to live with the MGM and spend time with the M and the F, despite the

wording of the Child Arrangement Order proper still being a 'lives with' order for M, and despite MGM having no parental responsibility.

21. Over the course of 2020-2022, both parents fell into an unfortunate pattern of making allegations against the other relating to harm that Annie had purportedly suffered when in the other's care. This largely, but not always, would be with regard to physical marks on Annie said to be indicative of either neglect and/or physical abuse. No such findings have ever been made by this court against either parent, although the recited concerns within the Child Protection Plan were indicative of maternal neglect.
22. F then sought to enforce the original Child Arrangements Order by an application made on 6 May 2022.
23. That application became subsumed within the second set of proceedings commenced on 18 June 2022, whereby M sought to vary the extant arrangements so as to reduce the time that F spent with Annie from weekly to every other weekend.
24. On 9 July 2022, F reported that Annie had made an allegation to him that M had allowed Annie to vape and smoke whilst in her care. On the advice of Children's Services, F retained Annie in his care for a period of less than 1 month until Children's Services concluded that there was no substance to the allegations and that it was safe to return Annie to the care of the maternal family, after which she was returned.
25. The s.7 report prepared in the second set of proceedings was undertaken by Ms Jackson, a Social Worker engaged by the Local Authority who only became involved with the family herself during the autumn of 2022. Although not in the bundle, I have read her report dated 23 November 2022, the salient observations from which include;

"F was worried that the maternal family want to reduce his contact, and reduce the role he plays in Annie's life..."

MGM and S said they thought that Annie and her sister should be treated the same ...

MGM and S said they want the order varied to allow Annie to spend a whole weekend with her mother and her sister...

It has been noted in the case records that both the maternal and paternal sides of the family have made accusations against one another which have not been substantiated. The recent events indicate that the situation has not changed with both sides not trusting one another. There are concerns that this situation will become more problematic for Annie as she becomes older and more aware that she is in the middle of continued conflict between both sides of her family...

There is no evidence that the request to change the current arrangements are child led...

Recommend no changes are made at this time to contact arrangements for Annie with her father”

26. It is striking to note that the voice of M is largely muted and sidelined in that report, whereas the voices of MGM and S are prominent.
27. No doubt in large part because of the recommendations of that s.7 report which were not supportive of reducing the paternal contact with Annie, the maternal family chose not to pursue the application for a change to a final hearing. This resulted in the CAO being agreed at a DRA before by District Judge Spanton on 1 February 2023. This formalised the pattern to an alternating fortnightly one; Week 1 from Friday at 10am to Sunday at 12 noon and Week 2 from Thursday at 10am until Saturday at 12 noon.
28. On Saturday 4 February 2023, some 3 days after those proceedings had concluded, F returned Annie to the M's care at around 12 noon. There were no complaints about Annie's health, demeanour or presentation at this time. The maternal family were enjoying a party that afternoon, a birthday celebration for S's husband at a local village hall. Present at the party were children including Annie, her half sister Brie, and Annie's maternal cousin who was also 4 at the time. He is referred to by the pseudonym 'Caleb'. Annie herself was then 4 years and 8 months old.
29. Towards the end of that party at around 5:30pm, Annie used the toilet and apparently informed the ex-partner of MGM, that there was blood on her toilet paper. MGM's ex-partner has made no witness statement and does not give evidence in these proceedings. He is said to have called S into the toilet who subsequently called over MGM. M was not invited to attend. It is unclear why.

30. MGM is then said to have gone into the toilet and asked what was wrong, to which Annie apparently stated that her ‘bum’ was bleeding. MGM then asked to examine Annie who consented. She put Annie on the baby changing area and examined her rectal area and could not see any blood or injury. MGM witnessed no blood herself, either on the toilet paper or in Annie’s rectal or genital regions.

31. In MGMs own words what followed was, the following exchange,

“I asked if she had had a scratchy poo and she said “no”. I asked if she knew why her bum was bleeding and she said “no”. Then as I was unlocking the door she said “they” just put a toy in it. I was a little shocked and I said: “who did?” and she said Caleb did (he is her four year old cousin). I said “but you haven't seen him since last weekend”. She went quiet, put her fingers in her mouth and her head down and said ‘it was daddy’. I did not question her further, just hugged her and said you go back to playing now.”

32. It is this disclosure, and the content matter that it references, that forms the basis of “Allegation 1”.

33. It was of course incorrect that Annie had not seen Caleb since the previous weekend. She had been spending time with him that very afternoon and had indeed been socialising with him at the party for some hours immediately before using the toilet.

34. The MGM then spoke to S and M, and decided to call social services. No medical attention was sought. The out of hours social worker advised that the police be contacted and they were.

35. On that same evening, the police attended S’s house and spoke privately with Annie. Annie made no disclosures about F or about suffering any injury or abuse at all. The police notes at **p285** record the following,

“Annie was spoken to alone. When asked if she has any worries she said ‘well my bottom is bleeding’. Annie was asked why she thinks it is bleeding she said her bottom was itchy and so she scratched it and made it bleed. She said she told daddy it was bleeding and [redacted] checked it. When Annie was asked about playing with toys at daddy’s she said they were playing with blocks. They built a tower with the blocks and

it got so high it fell over. The blocks then fell on Annie and made her bleed from the head. She also mentioned that the blocks made the dogs bleed and then went on to say the block fell on her leg and made that bleed. MGM said she did not return from her dad's with any of those injuries. Annie said she likes spending time at daddy's and likes playing with him and his girlfriend [redacted] She said she loves playing hide and seek with them. When the conversation returned to her bottom Annie then said 'I had a scratchy poo'."

36. Four days later on 8 February 2023, the police again interviewed Annie, this time with the Social Worker Ms Jackson present at her school. Again, Annie made no disclosures as to any injury or abuse suffered. The police log at **p314** records the following;

"We met with Annie in a mini classroom. She remembered me from Saturday.

I asked her if she remembered what we spoke about on Saturday and she said there was blood in her poo. I asked how she got blood in her bum and she said again because she was itching it. I asked if it was still bleeding and it was still itchy and she said no to both. I asked if it was sore and she said no.

We then spoke about the toy she had mentioned at the weekend (toy in bum). Again she repeated the account to me that she had been building a tower with blocks with her daddy and [redacted] and the blocks had fallen and hit her and the dogs on her head. She said her head was bleeding (no injury seen) and her bum was bleeding.

She described her dad and [redacted] as keeping her safe and she likes going there.

I then asked if there was anyone who ever hurt her or did things to make her uncomfortable. She said [redacted] at school wouldn't play with her. She presented as a very happy child and willing to talk.

We let Annie go back to her classroom and I then discussed with the social worker how we will be progressing.

I explained that I don't think police could take it any further. Annie has been consistent with the account she has given police and there is no real disclosure. She has stated her bum was itchy and nan saw no injuries when she looked at Annie's bottom.

It was decided that [X] would take the lead and inform dad of the JV (he has PR) and explain that Annie had a sore bottom. [X] also updated Nan.

Within 30 minutes of informing Nan myself and the social worker received a call from Nan saying Annie has again told her that dad put a toy in her bum. She has recorded it on her phone.

We requested these videos and viewed them.

There are two videos. One is approximately 1 minute 30 seconds and is the first video. Nan is asking Annie why she didn't tell us what she has said to her. She states she did and she told her truths, when Nan asks if she had told her the truth Annie hesitates and clearly not not [sic] want to answer. Annie is consistent that she told police the truth. Nan is quite pushy and clearly a little concerned.

The recording stops and there is a short video of Nan, who appears calmer and asks what happens to Annie. She says briefly, daddy put a toy in my bum, her demeanour has changed and she does not say this with confidence. Once she has said this Nan is calming and comforting to her."

37. The court has had the opportunity to view these videos. A transcript of the conversation reads as follows, with Annie as A, MGM as MGM and S as S;

"MGM: ...[Ms Jackson] today and [Police Officer]

MGM: Did you tell them what you told me?

A: Err no

MGM: Why not?

A: Because I didn't

MGM: But why?

A: I did tell the truth

MGM: So does that mean you didn't tell me the truth?

A: I said all of my truths

MGM: Do you remember in the toilet at the party you told me?

MGM: Do you remember what you told me?

A: Errm I had blood in my bum

MGM: Yeah Wait, wait, wait, wait but do you remember what you told me about that?

A: Yeah

MGM: Why didn't you tell them?

A: Because I did, I did

MGM: You didn't tell them

A: I did

MGM: You didn't tell them what you told me

MGM: Do you remember what you told me?

A: Yeah

MGM: What did you tell me?

A: Uh, I had blood in my bum

MGM: Why?

A: Because I did

MGM: But why did you have it?

A: Because I did

MGM: But remember you told me why?

A: yeah

MGM: But you didn't tell them why?

A: I did

MGM: What did you tell them?

A: I had blood in my bum [frustrated]

MGM: And how did it get there?

A: Err

****VIDEO PAUSED****

A: I did

MGM: What did you tell them sweetheart?

A: Err the toy that went in my bum

MGM: And you told [Ms Jackson] that today did you?

A: yeah

MGM: And did you tell her who done it?

A: yeah

MGM: And who done it?

A: Daddy

MGM: Okay. Okay darling

S: And did froggy tell them that or did you tell them that?

A: Yeah

S: It was froggy?

A: Yeah"

38. There is a notably different tone across the two videos. In the first, MGM's tone is hectoring and stressed and could fairly be termed interrogatory. Likewise, Annie begins cheerfully but becomes increasingly distressed, to the point of becoming defensive and insistent that she has told the truth. The second video, which appears to resume 9 seconds later, presents MGM with a far calmer tone and Annie speaking in a quiet, soft and more uncertain tone. No explanation has been offered as to who or what 'froggy' is and why there was no follow up on it being 'froggy' who "told them that".
39. Children's Services then consulted with Swift Sexual Risk Services on 9 February 2023 where no action was taken.
40. On 10 February 2023, there was a further police interview, this at Annie's school at 1:30pm, but Annie gave an inconsistent and incoherent account to the police. The police log at p315 reads as follows;

"In summary Annie told us that her sore bottom had gone away. When asked if daddy put a toy in her bottom Annie nodded. When more questions were asked Annie explained that it was a grumpy care bear that was in [redacted] bed at Nanny's house. This grumpy care bear crawled like a cat from [redacted] bed into Annie's bed and went into her vagina. She was asked if daddy has ever hurt her and she replied "no he takes care of me and he saw the grumpy care bear in my bottom and took it out" " it came to life and went into my bottom". It was established that the grumpy care bear is at Nanny's house.

She described the care bear as about 30cm tall and then said she was dreaming about it.

She said she wants to see daddy, mummy, nanny and daddy's nanny.

We confirmed that on Saturday blood was coming from her vagina and not her bottom, she said it is where wee comes from. She said [redacted] (dad's girlfriend) had told her the word vagina.

When asked about [redacted] Annie got very defensive and said, "no no he's a kid no one did it I think I dreamt it."

41. At a multi-agency strategy meeting on 10 February 2023, Annie's contact with F was cancelled for the upcoming weekend. The record of strategy discussion at **p.327** includes the following observations;

“[Ms Jackson] The grandparents don't seem to want F to have contact with Annie. F very much wants to be part of her life. He thinks he is working well with the grandparents and can't understand why this is happening...

[DS from Police] There is no clear disclosure, we were going to leave it like that. We then received videos from MGM questioning Annie, almost an interrogation, the demeanour of MGM was quite aggressive. She said why didn't you tell the police what you told me? Annie said I told my truth. It then stopped recording and then we received another 30 second video, where MGM said was a lot calmer and she said to Annie, "tell me what happened," Annie then murmured "daddy put a toy up my bum." A phone call from MGM today who had probed Annie some more and it has now turned into 'it was put in her vagina.' I said that MGM now has to stop talking about this as it is undermining the investigation... Annie describes daddy and his partner as her adults that keep her safe. She seemed like a really happy little girl and the only problem she said she had was that one of her friends would not play with her in the playground.”

42. On 14 February 2023, Annie underwent a specialist medical examination at a SARC unit. The medical was inconclusive as to her having suffered any injury at all. Pertinent observations at **p.341** included,

“Annie was treated for worms when she was noted to be itchy in the past and last week on the suggestion of the police. Annie has no history of other health problems...

There is no explanation found from the history and examination for the report on the 4th February of blood on the toilet paper. The source of blood on the toilet paper can be from the anus, vagina, urethra or skin. It can be due to medical causes such as constipation or due to injury. The examination on 14th February 2023 shows no evidence of recent or previous genital or anal injury...

The recognition of child sexual abuse has been likened to completing a jigsaw whereby the individual pieces of information need to be put together before a full picture can emerge. It is important to consider all physical findings together with other important

clinical information including the history, the context, the child's behaviour and demeanour, and statements made by the child to professionals, in order to make a diagnosis."

43. Children's Services therefore concluded there was no basis to prevent F from having contact and so contact was reinstated. For approximately the following 5 weeks there were no documented concerns, allegations or symptoms reported. Contact between Annie and F continued happily as normal.
44. On the weekend of 11-12 March 2023 Annie contracted chicken pox whilst staying with F. On returning Annie to the maternal family, F alerted the maternal family to this. He also stated in a disputed form of wording, that he had examined Annie's genital area that weekend because of her complaint as to being itchy. The disputed form of this wording, along with the examination itself, forms the substance of "Allegation 2".
45. On 15 March 2023 a note of a SWIFT SFS Consultation recorded under 'requirements of consultation',

"To discuss whether a risk assessment should be undertaken of F. To seek advice regarding what further work should be done with Annie and the rest of the family, taking into account the possibility this situation is being staged by the maternal side of the family..."

There are concerns that MGM has been asking Annie questions about the alleged behaviour as well as coaching her on what to say...

Caleb is MGM's grandson... Caleb lives with [his father] in a cabin on MGM's property. There are no known concerns regarding Caleb previously exhibiting sexualised behaviour. [Ms Jackson] explained that when Annie first made the allegation, she said it was Caleb who had put a toy inside her bottom but MGM told her this was not possible. If Caleb, at age 4, has engaged in sexualised behaviour including penetrating Annie's anus, this is extremely concerning and indicates a likelihood he may have experienced sexual harm himself...

Ms Jackson has concerns Annie may have been encouraged by MGM to make false allegations of experiencing sexual harm by F. The timing of the allegation may be

relevant, being made shortly after the unsuccessful application to reduce F's level of contact with Annie, with MGM possibly seeking to ensure contact will no longer go ahead. It is very rare for children to make false allegations and they are more likely to minimise and deny, rather than embellish. There is concern regarding the nature of the recordings made by MGM though it is possible that MGM has encouraged / coerced / coached Annie's comments following receiving a genuine disclosure from Annie.

46. Annie's chicken pox passed without further complication. However, on 22 March 2023, MGM and S took Annie to her GP. The GP surgery notes at **p.253** record the following at 09:24:

"seen with Nan and (Auntie)

disclosed 6/52 ago potential sexual abuse - been for checks

Nan noticed discharge in underwear yesterday and thought should get checked with swabs

Examination Annie ok to be examined with S and Nan behind screen. No discharge seen but swabs taken."

47. Both MGM and S give evidence that the disclosures re. the alleged sexual abuse were made by them to the GP in front of Annie.
48. On that same day Annie was then taken to school after the medical appointment. Approximately 5 hours later at c.14:50, Annie had a conversation at school with 'Debbie' (a pseudonym), a long term work student placement. The log of that account was entered into the school's incident reporting software CPOMS as follows:

"Annie then said, "I miss my Granddad and my Daddy".

Debbie said, "Is Granddad picking you up after school today?".

Annie said. "Maybe. But maybe it's Daddy."

Annie then pointed towards the exit door to the playground (reason unknown) and said, "He's the one who put the toy in my bum."

Debbie said, "Who?"

Annie said, "Daddy."

Debbie waited for a few minutes but Annie said nothing more."

49. This disclosure was then relayed to Children's Services who on 23 March 2023 advised that F's contact be ceased pending further investigation.

50. On 24 March 2023, the results from GP swabs diagnosed that Annie had Streptococcus (Strep A), a bacterial infection in the vulva. An SMS (at **p.253**) was sent to MGM stating;

"Dear parent/guardian of Annie, I have received Annie's swab results which show an infection (not something that she has picked up from someone else though). It needs treating with 10 days of antibiotics."

51. The GP notes from 27 March 2023 also state at **p.253**, *"I am not an expert but this is an infection seen sometimes in children and wouldn't normally alert any CP issues but an expert opinion ought to sought via police regarding this"*

52. The following day, a different GP spoke to Ms Jackson by telephone, the note of which records, *"Spoke with Ms Jackson social worker re recent swab and explained not something that is sexually transmitted and no further evidence accrued."*

53. From March 2023 until this hearing, Ms Jackson made no further attempts to directly contact F or update him as to Annie's welfare, but continued to work closely alongside the maternal family.

54. The originating applications in this case were then issued on 30 March 2023, and the hearings referenced above before District Judge Spanton and His Honour Judge Farquhar took place. At the hearing before District Judge Spanton on 26 April 2023, S represented M as a McKenzie Friend although the court recorded in a recital that this was not appropriate in circumstances where it appeared that she would be a witness in proceedings.

55. At the hearing before His Honour Judge Farquhar on 5 May 2023, the court declined to order any Swift Team Sexual Risk Assessment ahead of a fact find taking place, and also made an order for weekly supervised contact between F and Annie if F was able to

locate a contact centre. Although this was directly ordered with M having been represented at the hearing by counsel, that order was not complied with until enforced at the later hearing of 17 January 2024. This was despite F having located and made applications to two different contact centres. Indeed, it is common ground that it was because of MGM creating such hostile barriers to any contact commencing, that the first Contact Centre then refused to facilitate the same, even following a later court direction encouraging it to reconsider. The centre manager considered it ‘non negotiable’ to be able to work with MGM such was the high level of hostility encountered.

56. On 6 May 2023 F agreed to undertake a voluntary interview with the police. I have watched the entire 38 minute video of that interview. He denied having penetrated Annie’s bottom or vaginal area and denied all of the allegations, and believed that Annie’s grandparents were coaching her and her sister Brie to make the allegations as a pretext for ceasing contact.
57. On 17 May 2023, some two months since F had last seen Annie, MGM and S took Annie to the GP again where the notes at **p.252** record, “*seen with Nanny and Aunt again discharge getting worse again no bubble bath etc used Annie says stings when pu when asked but not noticed frequency etc.*” A swab was taken which later revealed no infection, and information on vulvovaginitis (inflammation or irritation of the vagina and vulva) in children was given to the family.
58. Supervised contact belatedly resumed at a third Contact Centre on 24 February 2024. I have read the notes of ten contact sessions running to 11 May 2024. The notes are unanimously positive, displaying healthy and fun engagement between Annie and F with Annie displaying no concerns, uncertainty or anxiety around spending time with F.
59. In recent months leading up to this hearing, MGM has suspended Annie’s staying contact with M, meaning that Annie and Brie now only see their mother in day times but do not stay overnight at her address.
60. The final, but very important, agreed factual element is that all three of MGM, M and S are themselves sadly victims of sexual abuse perpetrated by MGM’s father.¹ I do not know the details, save that S’s abuse was suffered when she was a child. The court

made no further enquires absent what was put forward in general oblique terms by all three women.

The Law

61. The Family Court is a civil court of law. Where a relevant allegation of abuse is made, but not admitted and the court goes on to conduct a ‘fact-finding’ hearing to determine whether the allegation is proved, it does so under civil law. The burden of establishing truth is on the parent who makes the allegation. It is for that parent or party to satisfy the court, on the balance of probabilities, that ‘the occurrence of the event was more likely than not.’ This is a binary analysis in which each allegation is either found to be ‘proved’ or ‘not proved’. *In Re B (Children) (Care Proceedings: Standard of Proof) (CAFCASS intervening)* [2008] UKHL 35, [2009] 1 AC 11 Baroness Hale confirmed;

“*In our legal system, if a judge finds it more likely than not that something did take place, then it is treated as having taken place. If he finds it more likely than not that it did not take place, then it is treated as not having taken place. He is not allowed to sit on the fence. He has to find for one side or the other.*” (§32)
62. The court must guard against reversing the burden of proof: *Re M (Fact-finding: Burden of Proof)* [2013] 2 FLR 874. Here the burden therefore falls on MGM and M as the parties making the allegations.
63. Findings of fact must be based on evidence not speculation. Evidence-based findings of fact may include inferences that can be properly drawn from the evidence and not on suspicion or speculation: *Re A (A Child) (Fact Finding Hearing: Speculation)* [2011] EWCA Civ 12 [2011] 1 FLR 1817. The decision on whether the facts in issue have been proved to the requisite standard must be based on all of the available evidence and should have regard to the wide 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).
64. In determining whether a party has discharged the burden upon it, the court looks at what has been described as “the broad canvas” of the evidence before it. The court takes account of a wide range of matters including its assessment of the credibility of the witnesses and inferences that can be properly drawn from the evidence. Within this

framework, 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].

65. The evidence of the parties is of critical importance. It is essential that the court forms a clear assessment of their credibility and reliability. The court is likely to place considerable reliability and weight on the evidence and impression it forms of them: *Lancashire County Council v M and F* [2014] EWHC 3 (Fam). I remind myself that the courts have regularly held that demeanour is an uncertain guide to the reliability of evidence; far more important is the substance of the evidence given, its internal consistency and its consistency with contemporaneous documents, and the inherent probabilities: *R (Dutta) v General Medical Council* [2020] EWHC 1974 (Admin); *R, on the application of SS (Sri Lanka) v SSHD* [2018] EWCA Civ 1391.
66. That said, I am still permitted to have regard to the demeanour of witnesses when there is little by way of other contemporaneous documents. In *Re B-M (Children: Findings of Fact)* [2021] EWCA Civ 1371 the Court of Appeal held that demeanour does have its place in the determination of findings of fact. It cited with approval the earlier observations of Macur LJ in *Re M (children) (domestic violence: supervised contact)* [2013] EWCA Civ at [12] where it was stated:
- “It is obviously a counsel of perfection but seems to me advisable that any judge appraising witnesses in the emotionally charged atmosphere of a contested family dispute should warn themselves to guard against an assessment solely by virtue of their behaviour in the witness box and to expressly indicate that they have done so.”*
67. It is not uncommon for witnesses in cases of this sort to tell lies in the course of the hearing; but a witness may lie for many reasons, such as shame, misplaced loyalty, panic, fear and distress, and the fact that a witness has lied about some matters does not mean that they have lied about everything: *R v Lucas* [1981] QB 720. Further, memories can fade or change with the passage of time particularly in respect of events which were traumatic or distressing at the time.
68. I give myself a revised *Lucas* direction, namely, I should only take account of any lies found to have been told if there is no good reason or other established reason for the person to have lied.

69. I also take into account the decision of the Court of Appeal in *Re H-C* [2016] EWCA Civ 136 where McFarlane LJ (as he then was) said at §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.’

70. The mere fact of a lie being told does not prove the primary case against the party or the witness, should they have been found to have lied to the court.
71. I also bear in mind that there is no obligation on a party to prove the truth of an alternative case, and the failure by the party to establish any alternative case on the balance of probabilities does not of itself prove the other party's case: *Re X (No 3)* [2015] EWHC 3651 Fam and *Re Y (No 3)* [2016] EWHC 503 Fam.
72. Although not a binding decision from a court of record, I have also reviewed the recent judgment of HHJ Willians in *HT v ND* [2023] EWFC 44, concerning as it did similar allegations with a subject child who was then 3 and a half years old. There the judge observed at §46 that, “I make clear that there are multiple circumstances in which a child of this age may be touched in intimate areas without the same being inappropriate. Obvious examples would be cleaning during bathing and after toileting. Such touching has no sexual motivation and is appropriate and necessary for purposes of hygiene. On other occasions topical medication may need to be applied to intimate areas.”
73. I also have regard to Family Proceedings Rule 2010: Practice Direction 12J- Child Arrangements and Contact Orders: Domestic Abuse and Harm (‘PD12J’) which has been followed in this case.

The Evidence and Discussion

74. It is against the agreed factual backdrop, and in applying the above legal framework, that I weigh the evidence of the parties and the two additional witnesses, S and PGM.
75. The first party to give evidence was MGM who was cross-examined at some length by Ms Little. She came across as a witness who was rigid in her perspective, with remarkably little, if any, critical insight into the events that have taken place over these past 16 months. She remained fixed of the view that F should have no contact with Annie, and was wholeheartedly of the view that F has sexually abused Annie.
76. When pointed towards documented behavioural failings of her own, MGM was unfortunately unable to properly take responsibility for the same. She was questioned as to why she filled out an application form for a GP Surgery for Annie in which she had listed herself both as next of kin and Annie's legal guardian, neither of which were true. Rather than reflect on the impropriety of this action, a step which has led to F being effectively 'cut out of the loop' of knowing about his own daughter's medical needs and health, she considered it an oversight, before somewhat improbably asserting, "*I've filled out a form for every individual person in my house.*" Which would of course mean her having filled out GP forms not only for the three minor children in her house, but for her adult son, her adult daughters, and also her adult son in law who is a legal professional. This was a completely fanciful assertion.
77. At times her answers to questions were cagey and defensive. Even when asked about as straight-forward a matter as to why she had recently made the decision to stop Brie and Annie staying overnight with M, she was unable to give a plain response without equivocation. She said that she *thought* one of them may have seen a scary video, but was unable to honestly articulate what should have been a very simple answer to a simple question. She was similarly evasive when asked about how S had or had not helped her with preparing her witness statement. She even initially denied that S was a solicitor, before qualifying her response with, "*well not a practising solicitor.*"
78. When it came to the critical point of cross examination as to what Annie did or did not say in the toilet on 4 February 2023, her responses were hesitant and uncertain. She quite fairly observed that she could not be 100% certain about what was said, but was clear that she herself saw no blood and nothing wrong with Annie on examination. She

was however clear, that Annie seemed to be referencing her ‘bum’ by which she meant anus, and not her vulva. She was also unable to satisfactorily explain why she had immediately told Annie that she had not seen Caleb since ‘last weekend’ when she had in fact seen him only minutes ago.

79. Perhaps the most telling part of her evidence was her response to seeing the two videos of 8 February 2023. These immediately falsified her previous assertion that she would only reactively ever listen to Annie, but not herself ‘bring up’ the allegation of abuse. Although purporting to be upset at times in reflecting on the videos, in my assessment her presentation did not appear genuine but rather manufactured. She could not even give any satisfactory explanation as to how the conversation with Annie came to be recorded. She stated, *“I cant remember how it came about”*, distancing herself from the video. I found this to be dishonest and wilfully evasive.
80. Her frustration was related almost entirely to these proceedings and betrayed not even the slightest insight into how damaging her interrogation of Annie had been, and how potentially profound the ongoing repercussions have been to this day. When she stated *“I will regret it for the rest of my life”* she was unable to articulate what precisely it was she regretted. Her concern appeared to be more for herself than for Annie. She stated, *“now it looks like I’ve coached her, of course it’s never going to go away. I’m always going to have that with me.”*
81. This was, in my evaluation, in marked contrast to the altogether genuine and truly saddening short testimony reflecting on her own status as a victim of sexual abuse. When briefly reflecting on this, the immediacy and rawness of her evidence was compelling and devastating. When asked as to whether she had heightened sensitivity to this allegation because of her own past, she very honestly reflected that, *“I think I would more likely have dismissed it if I didn’t have my history. I’m still affected by the man who abused me. I haven’t seen him since I was 11. If I bumped into him now it would destroy me... I am aware you can put your own crap on something.”*
82. However, when then cross examined about the patently inappropriate decision on 22 March 2023 to speak to Annie’s GP about the Lego Allegation in front of Annie, MGM again showed incredibly little insight into both how damaging this was for Annie. There was no reflection on what a poor judgment error it was to entrench either an

implied or explicit link of the disputed allegation to Annie's discharge and swabbing in a formal medical setting. She was snappy and impatient in replying to questioning, saying it was "*not the best of ideas*" but also "*I don't think it would have been harmful.*"

83. When it came to the Chickenpox Allegation, her evidence betrayed an attitude that she didn't think that F was capable or even deserving of looking after his own daughter's personal hygiene, or to even talk about the same. She somewhat grudgingly said, "*I appreciate dads have rights they do of course, but if a female is around is it not better for her to look? It seemed inappropriate for all three to pile into a toilet to gawk at her.*" Her mischaracterisation of PGM, a medically trained grandmother, as someone who would 'pile into' a toilet and 'gawk' at a child was telling.
84. M's evidence was of an entirely different tone. Sat alongside her intermediary, her presentation was somewhat flat and removed from the emotion shown by her mother. I understand that this was in large part, if not wholly, linked to her neurodiversity, and recognise that a such a presentation can often be presented by a person with ASD. I accordingly attach no detrimental weight to her credibility in light of the same.
85. She came across as a somewhat vulnerable young woman who was lacking insight both into her own current circumstances and the issues with which this court is seized. When questioned as to who was the driving force for the court applications, she appeared nonplussed, before stating "*I'm not sure whose idea it is, kind of, we all wanted this, we all wanted to get to the bottom of it.*" Likewise she was able to take very little responsibility or ownership for the decision on 4 February 2023 to call social services after the purported disclosure.
86. Many of her answers were rigidly fixed, and lacking in critical reflection. They displayed a firm loyalty her own mother, despite her then acknowledging that she didn't know why the contact centre in Hastings had refused to accommodate MGM, saying instead "*I think she [MGM] just asked a question*". She seemed content that the everyday detail of Annie's life was variously being handled by her mother, sister and Ms Jackson rather than herself. She did seem however to find it important that Annie be able to speak to a professional who was not MGM or S. This revealed an important flicker of safeguarding wisdom.

87. Ultimately she gave the impression of a mother very sadly removed from the immediate care of her own daughter's life, not even understanding the true reasons for Annie having been living with MGM these past years and instead weaving a strange story relating to supposedly protecting her daughters from Brie's father who has long been absent from the family's life. It was therefore not particularly surprising to discover at the point of submissions from her counsel Mr Wauchope, that she was no longer even pursuing Allegation 1 against F given how dislocated her own evidential understanding was from the same.
88. S's evidence was of a markedly different tenor to her sister's. She underwent a very firm line of cross examination from Ms Little, and was perhaps understandably defensive about criticisms levied at her for having previously acted as a quasi-legal representative under the guise of acting as a McKenzie Friend. This was in the knowledge that she was a direct witness to the aftermath of the initial purported disclosure on 4 February 2023 and the actions taken in respect of Annie thereafter. She was certainly and deliberately vague as to what extent she had assisted MGM in 'putting together' her witness statement, and was similarly elusive about how and why she had read at least some of the confidential court documentation in this case. So it was that she equivocated that she may have 'seen' a statement but not read it.
89. She also displayed an understandable loyalty to MGM. A revealing comment when asked as to why MGM was sought on 4 February 2023 rather than Annie's own mother, was that, "*we often get our mum because she has had 5 children, we sort of think that she has all this medical knowledge, so would show her. I'm an adult but if I could take mum to the doctors with me I would.*" This was a revealing comment as to the matriarchal power that MGM still has over not just M but some of her other adult children as well.
90. Her evidence as to the videos taken on 8 February 2023 was particularly unsatisfying and evasive. When directly asked whose idea it was to film Annie she somewhat lamely stated "*I don't really remember to be honest, in the moment we were so stressed...I don't remember if mum told me to record.*" Much like MGM, S was wholly unable to take responsibility for what transpired in the footage, giving the impression that this was somehow something that had simply happened to both her and MGM, rather than a

conscious decision wilfully taken by two adults for a vulnerable child to be covertly interrogated and recorded.

91. When asked to reflect on their appropriateness in hindsight, S was able to observe that *“I do find them uncomfortable, it is a low moment,”* but then somewhat incredibly stated, *“at that point there was nothing to lose.”* This comment was extremely revealing as to the mentality of both S and her mother. The phrase ‘nothing to lose’ wholly fails to reflect on the fact that there was absolutely something to lose, something to damage. That being the welfare and wellbeing of a confused and susceptible 4-year old girl who was being covertly filmed and interrogated by her primary carer. ‘Nothing to lose’ is the sort of phrase one expects to hear used about a game or a sport, not regarding the welfare of a young child in the most delicate and vulnerable of situations.
92. Likewise her evidence about the visit to the GP on 22 March 2023 was wholly lacking in child-centred insight. She sought to place the blame and responsibility for the situation on the GP, saying *“We just followed the doctor’s lead, we didn’t think, we just followed their lead in this situation.”* She even then stated that she considered it ‘prudent’ to disclose the information in front of Annie. This completely failed to account for the fact that of course the GP had no idea what was about to be disclosed whereas both S and MGM did. It failed to recognise that they both could and should have planned a more sensitive and discreet way to communicate the same. Her attitude became increasingly terse and defensive as to the poor decision making of her and MGM, with very little - if any - real regard for the emotional and mental welfare of Annie. This attitude mapped very closely onto her previous comment of there being ‘nothing to lose’.
93. Of final importance in S’s evidence was her candid reflection as to the Chickenpox Allegation, and her discomfort around F using the word ‘vagina’. When asked what was problematic about use of the word, she used the words ‘disturbing’ and ‘weird’ and ultimately stated, *“I went uggggghhh, I just wanted him to stop repeating it.”* This somewhat remarkable aversion to the use of the biological term vagina was a very revealing indicator as to how this case has come to be where it is today.
94. As to Ms Jackson, her evidence was particularly concerning from a professional perspective. Despite being a Social Worker with some thirty years’ experience, she

displayed an astonishing lack of procedural understanding as to what was happening in this case by way of a fact find hearing, and freely acknowledged that she had already reached conclusions as to F having sexually abused Annie. This was despite her candid admission that she had not heard all the evidence. When asked whether she would be able to professionally support a return to unsupervised contact in the event of the court determining on a binary analysis that the allegations were *not* made out, Ms Jackson was clear that she would not be able to do so and would still consider there to be a risk of sexual harm. Indeed, she has already put arrangements in place for Annie to access therapeutic psychotherapy for victims of sexual abuse, despite no findings having been made and the police having NFA'd the case in a very short period of time.

95. She had not seen the videos of the interrogation of Annie. Neither was she aware of the GP visit on 22 March 2023 or the very real possibility that this served as either a catalyst or direct cause for the school disclosure on the same day. She seemed unable to explain how her initial professional view in February and March 2023 was aligned significantly to concerns as to coaching and fabrication from the maternal family, or how that view had so drastically changed thereafter. She was also unable to consider that if such coaching/fabrication *were* still a possible reality in this case, that a wholly different set of safeguarding risks would present for Annie.
96. There was also a critical point of clarification when taken to the letter dated 20 April 2023 at **p.147**, a letter she herself had written. When cross examined about the entry from 05/04/2023 which stated, "*05/04/2023 Social worker carried out a home visit and saw Annie with her mother M. Annie told the social worker she does not want to see her dad anymore because of all the rude things he had done to her. Annie was asked what she meant by rude things. Annie said that he stuck some Lego in her bum. The social worker asked if she meant the front or back of her bum. Annie pointed to the groin area and said she did not want to talk anymore*" Ms Jackson immediately and instinctively corrected, "*I didn't say that, I wouldn't have said front or back of bum.*" This was particularly concerning, because this was, (a) evidence taken verbatim from her own letter, and (b) this exact form of wording was later literally copied and pasted into S's own witness statement as being an accurate recitation of what happened. It was particularly disappointing and revealing to hear that such a pivotal point of evidential

disclosure as to whether the alleged sexual harm was genital or anal penetration (or indeed both) was relayed with such a lack of proper care.

97. As to the Chickenpox Allegation, Ms Jackson's views were also most concerning, betraying as they did a skewed and somewhat bizarrely gendered approach to parenting roles around personal hygiene and medical care. Her view was that it was inappropriate for a father to medically care for the genital hygiene and/or health of a 4-year old daughter. When asked, 'what if F were a single father', she stated that she would "*hope there may be a female carer who could help, or might suggest taking Annie to see a doctor,*" the unspoken implication presumably being that she meant a female doctor. When pressed on this point, she remained fixed, stating "*In any case it is an intimate part of the body, it is unnecessary to look.*"
98. F's evidence, both in the recorded police interview and during cross examination came across as candid, and generally honest. He was calm in the main, occasionally displaying flashes of tired irritation and frustration about the history of proceedings generally and the allegations made against him in this case. He was particularly discouraged that Ms Jackson had not spoken to him since March 2023, during which time she had continued to work closely with the maternal family and write reports and letters with no reference to him or his point of view. He was candid in saying that he had been angry when told of the allegations in March 2023, stating, "*Who wouldn't be angry at being told they had sexually abused their own child and telling me I can't see her until resolved. That's roughly how it went. I got angry and hung up because I didn't want to hear it any more.*"
99. When cross examined about his having not returned Annie to M's care upon hearing the vaping and smoking allegation in summer 2022, he reflected that he had waited until Children's Services confirmed it was safe for her to be returned and then did so return her within days, if not a couple of weeks, being content to accept their decision and not to keep challenging it. However, he seemed unable to critically reflect that this sort of decision making was a contributing factor to the attritional 'tit for tat' type of reporting to Social Workers that has so inhibited normal parental responsibility being engaged over several years.

100. He was firm and consistent in denying the Lego Allegation, observing that he did not even have Lego in his house, the bricks that Annie played with being instead large ‘Mega Blocks’ which it is inconceivable could be used for the alleged penetrative act(s). It was not put to him during cross examination that he even did keep Lego in his house.
101. When asked about the Chickenpox Allegation, he stated quite fairly that “*I believe effective communication is key.*” When it was put to him that on returning Annie it might have been more ‘sensitive’ not to have used the word ‘vagina’ and rather he should have said “she’s a bit itchy under her knickers”, F stated that he had been taught to use proper terminology and thought it important to use what he thought was the correct wording, both for Annie’s wellbeing and also to safeguard himself against possible allegations from the maternal family.
102. When asked why he himself hadn’t sought to contact Ms Jackson after March 2023, he quite fairly observed that “*It was not my responsibility to contact a Social Worker for her to complete her work. That’s not my role. It’s hers.*” He said he had also previously been frustrated with Ms Jackson, considering her to have a sexist attitude towards him for criticising his allowing Annie to play with child’s makeup and accusing him of encouraging ‘sexualising’ behaviour. He said that no such criticisms had been made of the maternal family when Annie had used adult eyeliner at their home.
103. The final witness was PGM. She gave evidence as to how she has exhausted her own family’s finances by funding F’s £40,000 legal spend so far by use of savings, an inheritance and a further £10,000 loan.
104. She was an impressive witness. She was calm, considered and commonsensical in her reflections on the Chickenpox Allegation. Upon Annie having displayed symptoms of chickenpox when in F’s care, she displayed precisely the sort of robust medical care that one would expect of a grandparent who also has medical training, purchasing child’s antihistamine and Calpol, as well as itch relief cream and camomile lotion.
105. She was matter of fact when reflecting on what was, in her view, a wholly innocuous short attendance on Annie in the bathroom when F had been called in by his then-partner to check on Annie’s vulva, her having complained of some irritation. She said that she stood outside the bathroom whilst a quick visual examination took place to

check for no obvious soreness, and that Annie then left completely happy with no obvious distress. In fact she said her demeanour was, “*absolutely fine, no-one touched her and she was completely comfortable.*”

106. When asked why she F did not ask her to undertake the examination instead of him, she quite naturally and instinctively said, “*why would he do that? He is her dad. He is her dad and he has every right to make sure his daughter is okay.*”

General observations

107. The extensive history of this case as recited above is an extremely sad one. I am reminded of the judgment of Peter Jackson LJ in *Re L (Relocation: Second Appeal)* [2017] EWCA Civ 2121 in which he reflects at §61 that, “Few relationships lack instances of bad behaviour on the part of one or both parties at some time and it is a rare family case that does not contain complaints by one party against the other, and often complaints are made by both.” That observation certainly holds true here.
108. There are strands of contemporary discourse regarding family courts – with a particular focus on allegations of abuse in the context of child arrangements – that are unfortunately increasingly tribal and binary. Arguments are often waged in global terms, using emotive tools that very rarely map onto the far more nuanced familial sensitivities with which judges are presented on a daily basis. The messy reality in cases such as this one is more complex.
109. When adults, be they parents or other family members, become entrenched in bitter disputes that are ostensibly concerned with the welfare of a child, it is the child who always suffers. Always. The focus distorts very quickly away from the child and onto the strife of the parents. This is part of the reason why the appropriate, safe and transparent reporting of cases such as this is so powerfully effective. It demonstrates how comprehensively and carefully evidence is weighed and considered in the Family Courts on a case by case basis.
110. I make those observations because, from my evaluation of the evidence already undertaken in this case, it would be crudely simple to conclude my findings in binary terms. Such a binary might appear wholly condemning of the maternal family’s behaviour in this case and/or wholly vindicating of F’s. And although the significant

weight of the judgment of this court does indeed fall against the maternal family, it does not do so universally.

111. This is because for the first four years of Annie's short life prior to these allegations, the die had already been cast as between the father and the maternal family. It is clear that from late 2019 up until the outset of these proceedings, both the father and the maternal family had made a plethora of accusations against the other. This approach appeared - at least at face value - to weaponise bruises, scratches or scrapes as proof of purported abuse and/or neglect. I am not apportioning any blame for this as 'equal' or saying it was 'like for like'. Rather I am neutrally observing that both 'sides' to this case have engaged in behaviour that was at least partially mirrored by the other in what became a cyclical pattern. That is particularly difficult in this case because the historical reality was that Annie *did* suffer from maternal neglect, leading her to be placed on a Child Protection Plan, and being removed from M's primary care. As such, this was a sensitive position for F where some heightened safeguarding awareness on his part was appropriate.
112. But it is highly relevant that only eight months before the Lego Allegation, F chose to believe or attach weight to Annie's assertion that M was letting a then four-year-old smoke and/or vape as a reason to prevent her return to the maternal family. Ostensibly to guard against risk of harm. The default reaction for both F and the maternal family has effectively been conditioned into reporting *all* possible symptoms of harm to Children's Services, thereby abdicating their ability to maturely and carefully discuss issues with one another instead.
113. The problem therein is that childhood is an inherently risky state of being. Being a child means to be at risk. At risk of physical harm, whether by falling in a playground or running into a road. At risk of emotional harm, whether from an inability to self protect, from being teased or left out at school or from the ordinary vicissitudes of human sadness. At risk of harm from the adult failings, vulnerabilities and shortcomings of parents and carers. Even in the kindest and most loving of families, children are exposed to behaviour that is less than ideal. This Be The Verse.
114. As much as we would like to pretend otherwise, eradication of childhood risk is impossible. After all, "If the highest aim of a captain were to preserve his ship, he

would keep it in port forever.”ⁱⁱⁱ What parents must do - and what this court seeks to do - is to focus instead on the global welfare of a child; Annie. And although prioritisation of her welfare will ultimately include consideration of what risk of harm she faces, that is not the final word under statute, but rather one factor to be weighed against many. When *every* harm or risk of harm is incessantly reported, the fragile weft of a child’s life becomes quickly crushed under the hard spotlight of constant professional reporting.

115. In this case, that damaging pattern of behaviour is compounded by the fact that MGM, S and M are all themselves victims of sexual abuse. I find that this has played a significant part in skewing or warping the initial ability of MGM and S to more carefully and sensibly engage with the plethora of improbable scattered stories Annie gave in relation to the Lego Allegation. It inhibited their capacity to apply a more detached wisdom to recognise that she had not been abused at all, and was – as she insisted in the original video- telling the police the truth. Simply that she had scratched her itchy bottom. Their inability to carefully manage Annie’s own welfare apart from what has been termed a possible ‘hyper-sensitivity’ to the possible mention of abuse, presented and continues to present a real concern as to their ongoing ability to manage Annie’s welfare in the future.
116. This case also exposes the fundamental failings of a forensic approach which is so simplistically reduced to ‘believe the victim’. Annie in this case was a purported victim or complainant. Ms Jackson said on multiple occasions under cross examination that she reached her premature conclusions by ‘believing’ Annie. However, this failed to engage with both the wider evidential canvas *and* with the complex nuance that needed to be applied when a child had given maybe six or seven accounts that were fundamentally at odds with the other. After all, Annie at various times asserted differing explanations that, (a) she had an itchy bum and scratched it, (b) building blocks fell on her, causing her bum to bleed, (c) a Care Bear from MGM’s house crawled into her bottom, (d) her cousin Caleb put a toy in her bottom, (e) no-one did it, (f) she dreamt it, and (g) that ‘Daddy did it’. It is not possible to simultaneously ‘believe’ all of these accounts. No-one has invited the court to believe the account of a 30cm Care Bear crawling like a cat into Annie’s vagina. Rather, it is the role of the court to weigh the issues, to scrutinise the entire ‘broad canvas’ of the evidence in its

totality and to make findings on the balance of probabilities accordingly. When the evidence is properly and carefully weighed on that basis, the naïveté of simply cherry picking or believing one isolated statement of a 4-year-old child is exposed as being wholly unsustainable, and an unsafe basis upon which to make such profound findings.

Findings

Allegation 1

117. The allegation that the father sexually abused Annie with a piece of Lego on or around the 4th February 2023, either genitally and/or anally is not proven and did not happen.
118. There is no medical or forensic evidence that Annie suffered any injury or trauma to her anus/or vulva on or around 4 February 2023 or at all. On the balance of probabilities, if Annie had suffered any minor rectal bleeding on that day, I find that the most plausible explanation of the seven different accounts given by Annie was her having itched her bottom so as to make it bleed momentarily, whether due to her suffering from worms or simply scratching it. This is consistent with her previously having been treated for worms when presenting as itchy in the past. It is also consistent with the clear medical inspections which revealed no harm, her happy, contented and talkative demeanour, and her ongoing insistence that she felt safe and happy with F and wanted to spend time with him.
119. I find as a fact that she initially stated that Caleb placed a toy in her bum as part of normal childhood make believe, or what F has labelled something that does not make sense or is made up. It was a whimsical throw-away comment typical of a four year old. There was no consistency or credibility to her later references of Lego (which is not present in F's house) or the Care Bear (which was in any event in MGM's house). However, I find as a fact that MGM seized upon the secondary reference to Daddy, and in that moment emotionally rewarded Annie by hugging her, and not summarily dismissing her response in the same way that she had when Annie had initially stated that it was Caleb.
120. For motivations and reasons which would currently be improper to determine at this premature stage absent professional psychological reporting, I also find as a fact that MGM and S together imposed a narrative onto Annie that 'Daddy put a toy in her'.

They were unable to accept Annie's honest answers given to the police in the immediate aftermath that she had an "itchy bum" that she scratched and made bleed. From the making of the videos of 8 February 2023 onwards, I find that this behaviour of MGM and S, either subconsciously or wilfully, effectively coached Annie into repeating the disclosure in various terms. She was encouraged to repeat this and was emotionally rewarded by stating the same. A narrative was fixed by the maternal family thereafter, and given the label that Daddy did 'rude things' to Annie. This narrative was morphed from an early unambiguous disclosure of anal bleeding, into vaginal penetration only at a later stage. I also find as a fact that this change was brought about by the behaviour of MGM and S.

121. Pivotaly, I find that in the 9-second gap between the two video recordings of the 8 February 2023, that it is more likely than not that Annie was prompted by MGM to say "Daddy" in response to the answer "who done it?" In the previous 18 questions MGM presented as emotionally interrogating, demanding, and aggressive to the point of Annie obviously sounding distressed and anxious. But as soon as Annie was prompted to say 'Daddy' as a faltering answer to the question "who done it?", MGM immediately said calmly, "Okay, okay darling". This is a confirmed and unambiguous demonstration of MGM displaying emotional hostility when Annie did not name F, but conversely rewarding Annie with emotional warmth when she did name F.
122. I find as a fact that this coaching of Annie has been detrimental to her welfare. Both for the creation and entrenching of a false narrative - which in and of itself will necessitate very sensitive unpicking - but also in the damage that this has caused to her relationship with F, which was almost wholly aborted for close to 10 months. Exploration of this will be necessary by way of sensitive expert reporting so as to discern what will be best for Annie's welfare in the future.

Allegation 2

123. The allegation that F told MGM and S that "he had to look for chicken pox in her vagina" is unproven and did not happen. I find as a fact that F, in the presence of PGM and his then-partner Ellie undertook a perfectly proper and non invasive examination of Annie as part of his proper parental care of his daughter who was suffering from the symptoms of chickenpox. This encompassed a brief visual examination of her vulva

which was in no way sexual or abusive and involved no physical touching. I find as a fact that this caused Annie no distress or discomfort.

124. On returning Annie to the maternal family, F notified MGM and S that Annie had chicken pox and that he had also needed to examine her *in the area* of what he called “her vagina” or words to that effect. There was nothing improper, abusive or insensitive about the use of the word vagina despite its clumsy anatomical imprecision. I note as an aside that the current National Curriculum for PSHE encourages early years teaching of pupils from Year 1 (age 5) to use proper biological terminology of vulva and vagina relating to female genitalia, as well as penis, testicles and anus. A significant part of that rationale is indeed linked to safeguarding and Child Protection so that children and adults alike are able to speak in a straightforward and accurate way about the anatomy of genitalia. This case alone provides a significant illustration of the importance of the same.
125. Any discomfort felt by MGM and/or S on his use of the word vagina was not F’s responsibility. He bears no guilt or opprobrium for the same.

Conclusion

126. The allegations not having been proven, the case will now proceed on the basis that there has been no sexual or physical assault of Annie by F. There are very obvious and real sensitivities and difficulties that will now fall to be addressed, principally relating to how Annie has been led to believe over the past 16 months that her Father has done something ‘rude’ to her. The extent to which this has already affected her emotionally I cannot discern absent professional psychological reporting. Mercifully the contact sessions reveal that a very warm and natural and loving relationship between Annie and F has already resumed. Her cards and pictures drawn for him on the recent Father’s Day reveal on their face no anxieties but rather a simple loving attachment.
127. It may have been that His Honour Judge Farquhar had envisaged that a combined fact finding/final hearing would have been possible within a short timeframe only in the event that negative findings had been made, so that the CAO could simply continue. However, there are now at least three significant features of this case that will require further professional input which inhibit a final determination today. These are;

- a. F now applies for a change of residence, for fear that the maternal family will be unable to protect Annie from harm by the repeat of further false allegations of this sort in the future;
- b. My findings that from the making of the videos from 8 February 2023 onwards, the MGM and S have been coaching and/or enforcing a false narrative from Annie, either by conscious design or an inability to manage her own emotional needs;
- c. The fact that the current CAO does not reflect the reality of the status quo. Annie in reality lives with MGM (and S) and has done for some years, despite MGM having no PR and no legal standing to undertake the same. As has already become apparent in this case, this has meant that MGM has listed herself both as next of kin and legal guardian on Annie's GP registration form, whereas F has not even been registered and has no idea as to her current treatment. For example, there was apparently a recent concern or suspicion that Annie may be suffering from an (unrelated) medical condition, which F only discovered during the course of evidence given during this hearing. Whilst such an informal loose arrangement under advisement by the Local Authority may have been tenable for an infant or young child when the wider family were on better terms, it is plainly an unviable situation now. Annie's welfare patently requires a proper assessment of her long-term future living arrangements with a particular view to whether MGM should be given PR and/or whether it is in Annie's welfare interests to continue to live with her and S at all.

128. In the circumstances, I will invite submissions on counsel as to the most appropriate future course of action with regard to Annie's welfare with a view to;

- a. Reinstating unsupervised contact under the February 2023 CAO forthwith;
- b. Appointing a Guardian for Annie with a direction to report as to with whom she should live in the future;
- c. Ordering a global psychological assessment of the family consisting of Annie, Mother, Father, MGM and S. This is to ascertain the motivations for the wider actions of the MGM and S over these past 16 months, to ensure that any emotional

harm suffered by Annie can be treated, and to advise on how similar future exposure can be safeguarded against. That assessment will also consider the ability of all parties but in particular M, MGM and S to reflect on this judgment and demonstrate any ability either to respond appropriately to this judgment or retrench to their former narrative. Although S is not a party to these proceedings, it is clear that she - alongside MGM - has taken a quasi-parental role over Annie's life over these past years, including taking her to the doctors and even giving instructions to the Social Worker in previous proceedings. On the basis that MGM's application for PR and primary residence is predicated on this *status quo* continuing, it is fundamentally necessary to undertake such an assessment for the welfare and protection of Annie.

129. I direct that a copy of this judgment should also be provided to the Local Authority, because I consider it essential that the department ensures that training is refreshed for its social work team in light of my concerns as to the professional reporting in this case. It will also explain why Ms Jackson is being discharged from further work with this family. I trust this will ensure that future cases involving disputed allegations that are subject to future findings of fact are dealt with sensitively without pre-judging the outcome so as not to prejudice the viability of a hearing, but more importantly, so as not to damage the welfare of a child. I direct this as a constructive point of hopeful assistance, and not out of any spirit of condemnation or to lay blame at the door of a department that I am all too keenly aware faces a vast workload with dwindling resource and time available to meet it.
130. I will also hand down an anonymised version of this judgment for counsel to review to ensure that no potential jigsaw identification features remain prior to its publication.

Recorder A Worthley

8 July 2024

ⁱ I respectfully use the term ‘victim’ rather than ‘survivor’, noting the sensitivities of nomenclature, because this was the term used by all three women themselves.

ⁱⁱ This oft quoted aphorism comes from *The Morality of Law*, L.L. Fuller (New Haven: Yale University Press, 1964, 2nd ed.) at p.185. It is Fuller’s loose paraphrase of Thomas Aquinas, *Summa Theologiae* I-II Q2 a5 resp, “*Unde gubernator non intendit, sicut ultimum finem, conservationem navis sibi commissae; eo quod navis ad aliud ordinatur sicut ad finem, scilicet ad navigandum,*” or “Hence a captain does not intend as a last end, the preservation of the ship entrusted to him, since a ship is ordained to something else as its end, namely, to sail.”