

**NEUTRAL CITATION NUMBER: [2024] EWFC 34 (B)**

**THE FAMILY COURT**

**SITTING AT OXFORD**

**HEARD ON 23<sup>RD</sup> TO 25<sup>TH</sup> JANUARY 2024**

**BEFORE HER HONOUR JUDGE OWENS**

**M**

**And**

**F**

**And**

**A, through their Children's Guardian**

**The parties and representation:**

**The Applicant, M, represented by: Ms Lavis, Counsel**

**The First Respondent, F, represented by: Miss Henry, Counsel**

**The Second Respondent, A, acting through their Children's Guardian, represented by:  
Ms Davies, Counsel**

This judgment is being handed down in private on 14<sup>th</sup> February 2024. It consists of 26 pages and has been signed and dated by the judge. The Judge has given permission for the judgment (and any of the facts and matters contained in it) to be published on condition that in any report, no person other than the advocates or the solicitors instructing them (and other persons identified by name in the judgment itself) may be identified by name, current address or location [including school or work place]. In particular the anonymity of the child and the adult members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that these conditions are strictly complied with. Failure to do so will be a contempt of court. For the avoidance of doubt, the strict prohibition on publishing the names and current addresses of the parties and the child will continue to

apply where that information has been obtained by using the contents of this judgment to discover information already in the public domain.

## **Introduction**

1. This is a fact-finding hearing to deal with allegations made in the context of Children Act proceedings. The parties are the two parents, M and F, and their child, A, who was born in 2016. The parents separated in 2019.

## **Background**

2. This is the second set of private law Children Act proceedings in relation to A. The previous proceedings concluded at the end of February 2019 with a consent order for A to live with both M and F under a form of shared care. It seems to be common ground between the parents that there have been issues with those arrangements almost from the outset. Allegations have been made by each parent against the other which have led to this fact-finding hearing being directed by the court.
3. Despite the way in which all parties have **listed** themselves in relation to this case, the current proceedings commenced on 3<sup>rd</sup> May 2022 when F made an application for “urgent hearing” and for the joinder of the child and appointment of a Guardian pursuant to rule 16.4.
4. On 5<sup>th</sup> May 2022 M applied for urgent variation of the 2019 child arrangements order. She also applied for a prohibited steps order.
5. On 24<sup>th</sup> June 2022 Recorder Hocking heard the applications at an urgent Directions Hearing. The outcome of this hearing was that A was joined as a party, a CAFCASS Guardian was appointed for her, the order of 2019 was suspended, A was to live with M, and, pending the next hearing, the Local Authority were to organise supervised contact between A and F at a frequency of not less than once a week but to be determined by the Local Authority. The applications were adjourned to the first open date after 15<sup>th</sup> August 2022, which turned out to be 14<sup>th</sup> September 2022.

6. Correspondence from the parties led to a District Judge considering the matter on the papers on 14<sup>th</sup> September 2022 and the matter being re-listed on the 11<sup>th</sup> November 2022. At that hearing, further directions to file evidence were made to enable the court to consider whether a fact-finding hearing was required, though the decision to approve the instruction of a psychologist pursuant to Part 25 of the FPR seems to have been taken despite the absence of clear agreement or findings about the factual background. The case was listed for a further direction hearing on 21<sup>st</sup> December 2022.
7. At court on 21<sup>st</sup> December 2022 the District Judge heard submissions from all parties and determined that a separate fact-finding hearing was required. Directions were given to list a contested interim hearing about contact on 23<sup>rd</sup> January 2023, with a separate pre-hearing review listed on 19<sup>th</sup> April 2023 and 3-day fact-finding hearing to commence on 9<sup>th</sup> May 2023. The hearing due to commence on 9<sup>th</sup> May 2023 did not proceed due to lack of judicial availability. The case was re-listed to commence on 6<sup>th</sup> September 2023 before a Circuit Judge. Very unfortunately, that hearing then had to be adjourned when the Circuit Judge in question retired, and this led to the matter being listed before me for this fact-finding hearing. I don't think anyone disputes that this case has suffered from protracted delay and a lack of judicial continuity at points.
8. I have a Bundle which contains, in addition to other documentary evidence, the statements of the two parties, the statements of the paternal and maternal grandmothers, and have heard evidence from each of those during this hearing. It is worth pointing out that the Bundle contains 961 pages, and there is a supplemental bundle containing contact notes which is 208 pages. An earlier order permitted the Bundle to exceed 350 pages, though did not specify an upper page limit, and permitted the contact notes to be separately available in a supplemental bundle. The combination of the sheer volume of written evidence, the period covered by the allegations and the parties' evidence, as well as a time estimate which seems to have been reached without a witness template, led to my having to reserve judgment.

## Parties' positions

9. M seeks findings which can be summarised as follows:
  - a) F has caused physical harm to, emotional harm to, neglect of and risk of sexual abuse to A;
  - b) Verbal abuse towards M and others;
  - c) Coaching A to behave in a way that causes a risk of emotional harm to her.
  
10. F seeks findings which can be summarised as follows:
  - a) M has engaged in behaviours to alienate A from F;
  - b) M has caused emotional and psychological harm to A;
  - c) M has exposed A to a risk of harm by failing to prioritise A's welfare.
  
11. The Guardian is, as usual, neutral in relation to the findings sought.

## Relevant legal considerations

12. Whoever makes an allegation has the burden of proving that it is true. They must do so to the civil standard, i.e. on balance of probabilities (*Miller v Ministry of Pensions* [1947] 2 ALL ER 372, and also considering *Re B (Care Proceedings: Standard of Proof)* [2008] UKHL 35, [2008] 2 FLR 141. An allegation will therefore be proved if the person making it establishes that it is more likely than not that it happened. The seriousness of the allegation or the seriousness of the consequences make no difference to the standard of proof to be applied in determining the facts. Findings of fact must be based on evidence and not on suspicion or speculation (*Re A (A child) (Fact finding hearing: Speculation)* [2011] ECWA Civ 12). Evidence is also not evaluated and assessed separately: "A Judge in these difficult cases must have regard to the relevant of each piece of evidence to the other evidence and to exercise an overview of the totality of the evidence in order to come to the conclusion whether the case put forward by the local authority has been made out to the appropriate standard of proof"

(Butler Sloss P in *Re T [2004] ECWA (Civ) 556*). The court looks at the ‘*broad canvas of the evidence*’ and “*the range of facts which may properly be taken into account is infinite*” (*H and R (child sexual abuse: standard of proof) [1996] 1 FLR 80*). It is, however, not necessary to determine every subsidiary date-specific factual allegation (*K v K [2022] EWCA Civ 468*).

13. I have taken into consideration the principles outlined in *Re H-N and others (children) (domestic abuse: finding of fact hearings) [2021] EWCA Civ 448* with regard to domestic abuse allegations. **Practice Direction 12J Child Arrangements and Contact Order: Domestic Violence and Harm** is also relevant which provides key definitions of domestic abuse.
14. A Court can take into account the demeanour of a witness or the way in which they gave evidence, but needs to be careful in approaching this, noting that in the case of emotive evidence a truthful witness may stumble and struggle whilst giving their evidence, whilst an untruthful witness may give their evidence in a composed manner. The Court may be assisted by internal consistency of evidence and considering how it fits with other parts of the evidence.
15. The principles outlined in *R v Lucas [1981] QB 720* may be relevant. Where it is alleged that a witness may be lying that there can be many reasons why someone may lie including shame, humiliation, misplaced loyalty, panic, fear, distress, confusion or emotional pressure, and that just because a witness may lie about one aspect of their evidence it does not necessarily mean that they may be lying about other aspects.
16. I have borne in mind that a Court has to draw a distinction between abusive behaviour or actions that either cause or risk causing harm, and poor behaviour which falls short of being abusive or causing or risking causing harm. Hence the need for the Court to focus upon those findings which will have a material impact on child arrangements if proved.

17. The case of **Re S (Parental Alienation: Cult) [2020] EWCA Civ 568** is relevant given some of the issues in this case. As was noted in that case, it is not uncommon for there to be difficulties in a parent-child relationship that cannot fairly be laid at the door of the other parent. That case emphasised the importance of early fact-finding and noted (drawing on comments by the President of the Family Division in 2018) *“that where behaviour is abusive, protective action must be considered whether or not the behaviour arises from a syndrome or diagnosed condition. It is nevertheless necessary to identify in broad terms what we are speaking about. For working purposes, the CAFCASS definition of alienation is sufficient: “When a child’s resistance/hostility towards one parent is not justified and is the 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. It is the process that matters, not the motive”* (para 8). I have also had regard to the decision by Sir Andrew McFarlane P in **Re C (‘Parental Alienation’; Instruction of Expert) [2023] EWHC 345 (Fam)** which considered what needs to be established to enable a court to conclude that alienation behaviours (the preferred term) had occurred. Three elements need to be established:

- 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 upon 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.

18. The burden of proving that there have been alienating behaviours falls on the parent alleging them. Behaviour of a child is not evidence of the behaviour of an adult, and the fact of a child’s refusal to spend time with a parent does not automatically mean that the child has been exposed to alienating behaviours from the other parent. The fact that

allegations of abuse may be found not to be true is also not necessarily sufficient to prove alienating behaviours since there can be a multitude of reasons why a court may not find allegations of abuse to be proved, hence the three required elements above need to be established.

## **Analysis**

19. The first allegation made by M is that A has 'disclosed' that she has been encouraged by F to put her fingers up her bottom, then asked others to smell them, and also will drop her trousers inviting people to look at her bottom. M also says of this allegation that she *"believes that the respondent father has encouraged A to behave in this way"* (Composite schedule produced on 25<sup>th</sup> January 2024). As was pointed out by Ms Davies for A and the Guardian at the commencement of this hearing, there has been a notable failure by the parents and some professionals to understand the difference between a 'disclosure' and an 'allegation'. There has also been a failure to follow what has been best practice guidance for some time in ensuring that, prior to any findings being made by a court, the term that should be used is 'allegation'. Use of the term 'disclosure' before any findings have been made implies that what has been said is true. It is doubly unfortunate in a case where, some considerable time after the alleged events, a court is placed in the position of trying to ascertain whether allegations have been proved to the required standard, based partly on what has supposedly been said by a vulnerable child at various points. Professionals and those tasked with safeguarding should know better than to make assumptions or provide implications about the truth of allegations by the use of their language. Ms Henry pointed out in closing that, whether M believed something or not is irrelevant for the purposes of fact-finding in the context of Children Act proceedings. It is whether or not M can prove, on balance of probabilities, that F has done what is alleged that is the issue, not whether M believes it.
20. After hearing the evidence of M and F about this, it seems to be accepted by both that A has stuck her fingers up her bottom and asked others to smell them as well as saying, at

times, that F has encouraged her to do this. It is also accepted by both that she has dropped her trousers and invited people to look at her bottom. M's allegation relates to this occurring within 2022 according to her schedule of allegations pursued at this hearing.

21. The evidence within the Bundle shows that A had significantly dysregulated behaviour for a lengthy period prior to 2022. The information from A's previous school and the Local Authority shows that A had been consistently displaying dysregulated behaviour not within the normal range for her age (C19). A started at the school in question in September 2020, by which point Early Help were already involved with the family (D17). The school noted that A was "unsettled" in Spring term 2021: "*there were reports from teachers of A urinating in the classroom, running and hiding, screeching and laughing in their faces, throwing resources around the classroom, hitting and spitting. Also during this time, we started to see A pulling her pants down in class, which has become very prominent in A's current behaviour, 18 months later*" (D18). School staff noted that it was transitions that A seemed to be finding particularly challenging. The school began to log behaviour in November 2021 (D18), and A's "*behaviour intensified in the last weeks of the Summer term and consisted mostly of dropping her trousers and underwear and inviting everyone to look at her bottom, sometimes accompanied by offers to smell the finger that she was going to put in her bottom. This is stressful for staff and children alike and there seems to be no effective means of preventing this. Lots of hitting and kicking of everyone and knocking things over*" (D19). The school acknowledged that A was struggling as a result of her circumstances: "*in her school week she lives in two houses, and is taught by 4 different adults, with 2 curriculums in 2 languages, one of which she is struggling to engage with*" (D19).
22. M's first statement dated 6<sup>th</sup> October 2022 mentions that this behaviour happened since the consent order was made on 26<sup>th</sup> April 2019 (which appears to be an error since the order was in fact made on 26<sup>th</sup> February 2019), but gives no dates beyond this at this point (C65 para 2). It also doesn't refer to A saying that F told her do this, which forms



part of the allegation I am considering. Her first reference to that aspect is at C66 para 5 which seems to relate to what M has understood A to say to professionals rather than to her. At para 22 C70 M gave a bit more detail as follows: *“in recent months, A has been displaying more very concerning behaviour, whereby she has put a finger up her bottom and then asked, me and my mother to smell it. When asked why she was doing this she stated that her father told her to do it to me”*.

23. F’s evidence and that of the paternal grandmother is also that they first observed A putting her fingers up her bottom etc from April and May 2022 (C275 and C365). F produced a text message dated 20<sup>th</sup> April 2022 to M about this, which M accepted she had seen. The text message refers to A saying that she had done this to M several times before. M’s evidence to me about this was not convincing, saying that she couldn’t remember if she responded to this message but thought she usually responded by email. No emails have been produced by her and, despite trying to say that F’s evidence was in his final statement so she had had no opportunity to respond to it, that final statement was dated 3<sup>rd</sup> May 2023 and thus there had been ample time for either party to seek leave to file any further evidence in response.

24. A has displayed this behaviour to various people including professionals and this is not disputed by either party. At C70 M produced a letter from A’s school nurse, which is undated but seems to be accepted to have been as a result of A being seen by the nurse on 18<sup>th</sup> May 2022 as M told me. That letter noted that A had become tired and dysregulated towards the end of the appointment: *“A began kicking me and laughing. I asked her why she would do this, and she stated that she kicks at Mummy Lumps door to get in. She was not able to expand here on why she does this. She continued to kick me and asked her not to do this as it as not a kind behaviour. She was able to stop this action however this was more so because I asked her to continue her colouring which distracted her from kicking me. When I said we were nearly finished as the picture was completely, she began to spit at me. Again, I asked her why she was doing this, and she referenced that she spits at Mummy for attention...The final behaviour that occurred*

*at the very end point of our time together was the A put her fingers to my face and asked me to smell her fingers. I asked her why she would want me to do this and she stated that she had 'stuck her fingers up her bottom'. I asked her why she would do this, and she stated her Daddy had told her to. There was no context to why Daddy had said this".* The nurse concluded that these behaviours were prompted by the session ending and A wanting to get attention and as a way of communicating.

25. The evidence from the maternal grandmother about this allegation, both in her statement and orally to me was troubling: *"On Weds 20 April 2022 I collected A directly from F's house, and cared for her whilst M was working. I took A to the park and whilst we were there, on a few occasions she put her hands into her knickers and then ask (sic) me to smell her finger. I had never witnessed such behaviour from her before and I was incredibly shocked by this, although I was careful not to let A see this. I explained why she should not do this and she told me that her daddy had done the same to her and she now thought it was funny and that he thought she should do this to Mummy and Granny".* (C313 para 6). The same statement goes on to allege that on 11<sup>th</sup> May 2022 *"A was trying to put her bottom in my face. She said daddy told her to do it"*, and that *"on 8<sup>th</sup> November 2022 A pointed to the front of her bottom and said 'daddy touched my bottom lots of times'. She said she had asked him to stop 'but he still did it'"* (C313 para 8). However, it does not form part of the schedule of M's allegations that F has touched A in this way 'lots of times'. M when questioned about this by Miss Henry said initially it was on her schedule of allegations, but it is not on her C1A at B59 dated 5<sup>th</sup> May 2022, nor the version of the schedule that has F's responses dated 14<sup>th</sup> December 2022 at C140-141.

26. It was accepted by M that there is no medical evidence of any kind in relation to this allegation of sexual abuse, though I do note that, as the Police disclosure recorded, intimate examination of a child can itself be abusive.

27. There are two aspects to this allegation, namely that F has encouraged A to behave in this way towards others, and that he has sexually abused A. This latter aspect links to

the (now) fourth allegation M makes in relation to A's fear of objects, in particular the evidence from the maternal grandmother that A allegedly told her on 20<sup>th</sup> April 2020 that F had "*put an object in her bottom*" (C313 para 5). However, this aspect of an object being placed in her bottom by F does not form part of M's first allegation and she has provided no clear explanation why.

28. M was asked both in cross examination by Ms Henry, and then in clarification by me, why it was that she believes that what A has said about her bottom and F when she accepts that there are numerous instances of A clearly either lying when she has said something happened or where M says she is lying about something that A has said that M has done to her. M's evidence was that A has always been consistent about these allegations, including to professionals and others, and has repeated what she has said multiple times. When I asked her if it was possible that A being challenged about the behaviour prompted the repetition, M accepted that A was told not to do it but said that M believed that what she alleged had happened because of the repetition, which had been to lots of different people at different times, including professionals, and those professionals had explored alternative explanations and what M was alleging had been the consistent thing. This is not my reading of the evidence before me, though. A has said that F encouraged her to do it to some professionals, though this was not noted at all by the school in 2020 or 2021, and it seems that A has not repeated to anyone what the maternal grandmother alleged about F touching her inappropriately repeatedly. A, as was noted by the school nurse and by the early help worker, gave no context to her comments about F encouraging her to do it. She was inconsistent about where F supposedly touched her with the object in relation to the allegation by maternal grandmother that F put an object up her bottom, referring to variously her neck or tummy when questioned by her then nursery (D57), and describing having an object in her bottom at the time she was talking to the nursery manager.

29. Curiously, the report about this from the nursery notes that, having heard the recording which M and the maternal grandmother was made of what A allegedly said to the

maternal grandmother on 22<sup>nd</sup> April 2020, although a child can be heard saying “daddy put objects up my bum” (D56), Social Services were not certain it was A talking “*or there were any leading questions*”. Both M and the maternal grandmother seem to have told various professionals that they did ask A some questions about this (see for example what M told the social worker when reporting this on 22<sup>nd</sup> April 2020 at F12; G9 and G10 in the police disclosure), but they have not provided much detail in their evidence to me about what questions were asked. The maternal grandmother told me that she was trained in safeguarding because she was a nurse, and she used that training when A told her this, including hiding her shock at what A said. I am not convinced that a grandmother would be able to hide such shock completely, and she accepted that she did not note in her statement anything about the apparent distress that she told me A exhibited when saying this. The maternal grandmother accepted when I asked her about this that her safeguarding training would have been to note any significant demeanour. She also told me, when cross examined by Miss Henry, that she had made some sort of contemporaneous note. Her evidence about this was contradictory, referring at times to a contemporaneous note and also a reflective diary in which she noted details afterwards, but no such notes have been produced. The maternal grandmother also accepted in her oral evidence to me that what she told the police (G10) about questioning A about where F put the object that “*she stated in the bottom the wee and poo comes from, she did ask him to stop he didn’t listen*” is not in her statement to this court at all.

30. It is also noteworthy that the report from the nursery also states that the reason given by the maternal family for recording handovers is not, as the maternal grandmother told me, about fearing false allegations about the maternal grandmother’s behaviour by F, but instead “*they feel it’s necessary to record [A] whenever she is picked up from her father as she regularly discloses incidents*” (D56). Yet M denied that she had been trying to gather evidence when questioned by Miss Henry. She was also completely unable to explain why she did not immediately stop contact at the point that this allegation was

made, accepting when questioned by Miss Henry that unsupervised contact continued for another two years after this. In light of these aspects, I do not find her denial that she was not trying to build a case against F plausible.

31. The second allegation that M makes against F is that he has exposed A to emotional harm and a risk of physical harm as a result of introducing her to her maternal grandfather. It is not disputed that the maternal grandfather has no relationship with M, that her parents' marriage ended many years ago and that orders were made to prevent him from having direct contact with M or her siblings, and to protect the maternal grandmother from him. The reasons for those orders seem to be relating to significant domestic abuse, and it doesn't appear that F disputes that either. F also accepts that in 2020 he did introduce the maternal grandfather to A without the knowledge of M, and put the maternal grandfather as an emergency contact for A at her school. This happened nearly four years ago now, and F in evidence questioned the relevance of this which is a valid point. M's case is that F was well aware of the risks that the maternal grandfather may pose to A and introduced her to him despite these and despite professional concerns. I have very little evidence from the Local Authority about this covering the period prior to when F facilitated the meeting. M and the maternal grandmother both allege that F knew about the previous history of violence from the maternal grandfather, though both also put in their evidence to me that they did not really talk about the maternal grandfather. M told me that "my mum doesn't really talk about him much", yet the maternal grandmother described a conversation with F in 2018 in which she says that she understood F to be fully aware of the violence from the maternal grandfather in the past. Both M and the maternal grandmother accepted that the maternal grandfather's half brother had attended M and F's wedding but denied that there was any conversation with him about meeting the maternal grandfather as F alleged. F's evidence to me about this was that he was unaware of the violence in the relationship, but that M did not speak about him and it was "almost as though he did not exist". He accepted with hindsight he should have liaised with M before arranging for A to meet her

maternal grandfather, that it came about “organically” as a result of discussions at the wedding with the maternal grandfather’s half brother, and that he seems to have focused on the potential material advantages for A of knowing wealthy maternal family members. He also accepted that he should not have added him as an emergency contact, explaining that he had nobody else to add at the time, and had accepted that his actions were not appropriate at the initial child protection conference. At its highest, it seems there is sufficient credible evidence for me to conclude that the maternal grandfather may have posed a risk to A but it is not clear to what extent F was aware of this given the absence of discussion about him that both M and the maternal grandmother accept was the norm. F did accept in his oral evidence to me that he was aware that there had been an acrimonious relationship between the maternal grandparents. And, as F pointed out in his evidence to me, he was present when A met him and she only met him once nearly 4 years ago now. Contrary to M's allegations that F does not accept professional advice, F did follow the advice of professionals and removed the maternal grandfather as an emergency contact and has not sought to pursue the relationship, accepting that it is a matter for the maternal family not him. It seems to me that this is an instance of poor communication between M and F (both ways), neither has produced any evidence from the maternal grandfather’s half brother about what conversations may or may have taken place and with whom, and whilst perhaps deeply unwise actions on the part of F, it does not per se provide evidence of him causing emotional harm to and a risk of physical harm to her since his account that it was only once and he was present throughout was not challenged.

32. Allegation 3 by M against F is that he has exposed A to neglect and risk of physical harm from 2020 to date in relation to her asthma. The precise wording on the schedule is *“The respondent has failed to manage A’s asthma and has not followed guidance to give prescribed medication even when A presents with symptoms, and has challenged the diagnosis and treatment. Whilst A’s Asthma is mild and manageable. When she*

*presents with symptoms and is not given the correct prescribed medication this places A at risk of her asthma escalating and puts her at risk of physical harm”.*

33. Professionals seem to have noted differing views from the parents about the requirement for asthma medication in the past as the reports and Local Authority disclosure shows. However, it is not clear from those documents precisely what F knew and when about medication. As far as I can work out from the Bundle, the first diagnosis for A was in March 2019 (GP letter July 2022 E5). In May 2022 there seems to have been an asthma plan in place as set out in that GP letter. Prior to this, the early health practitioner noted differing views from the parents about the administration of asthma medication (D16), but she doesn't give any details about this beyond that M was administering it but F felt that A did not need it. It seems from that evidence that there was a Team Around the Family held in March 2021 at which the GP explained that A did need medication and a joint appointment for the parents and A with the asthma nurse was recommended. That joint appointment took place shortly afterwards to try to resolve the issue. M accepts that after this she then took A to an asthma review without F in May 2022 at which the advice given in 2021 (ie that A did not require inhalers to be given regularly but that in date inhalers should be kept at both houses and used if symptoms were showing) changed to using a preventer inhaler twice daily with an alleviator inhaler to be used if A became wheezy or was coughing a lot (E3-E4). This updated asthma management plan was emailed to F on 11<sup>th</sup> May 2022, and he responded by email that same day. His email in response is at E4-E5. There is no evidence from the school indicating that they had concerns about A presenting with asthma symptoms at this time.

34. M's case about this allegation relies heavily on what is in the Local Authority documents, in particular an entry for a Core Group meeting on 18<sup>th</sup> July 2022 at C85 that the GP had emailed the LA *“concerned that father was not accepting A's asthma diagnosis and treatment plan consent gained from M to update him on matters so far. Advice given to GP to have a discussion with father and continue to outline her diagnosis, treatment plan and impact of not following this”*. There is also a record of a call from GP to social

services on 17<sup>th</sup> May 2022 *“She has had an asthma review w A, with her mum and has made a clinical diagnosis that she does need an inhaler on the basis of mum’s information that she wheezes and coughs if she doesn’t use her inhaler. She has emailed Dad who is not happy with the report, so she wishes to discussed further with the SW”* (F104-F105). Details of that email from F seem to be the one in the GP letter at E3-5. The detailed notes in the LA disclosure following this contact are all completely redacted until the advice given to the GP to have a discussion with father and continue to outline the diagnosis etc as per the response of 19<sup>th</sup> May 2022 (F106).

35. F’s evidence about this was slightly confused, at one point saying that A’s diagnosis had been withdrawn. However, he does not have a burden of proof in relation to M’s allegation and, having read all the evidence in this case, he does seem to have an odd combination of needing to use very precise language and using exaggerated language which may in part be due to his apparent neuro diverse traits. He is also, of course, not a medical professional.

36. What does seem clear from the evidence of M and the professionals is that the second appointment for A, which led to the change in asthma management plan, took place without F and he was only informed afterwards. Given that they had previously had a joint appointment following the advice of social services to try to avoid further confusion and conflict about this, it is odd that this was not a joint appointment and I have heard nothing from M to explain this. Having read the email from F to the GP which seems to have caused the GP to contact social services expressing concern, that actually seems to me to be a reasonable attempt on his part to understand the change in management given that he had not seen symptoms, with F stating: *“if you feel that A needs to use the inhaler I’m happy to do so. I’m just concerned that it appears that A’s mother has not provided you with accurate facts”* (E4).

37. Concerns about this are not noted in the Local Authority disclosure until April 2022 in the records of discussions with F & M in the run up to the ICPC on 27<sup>th</sup> April 2022. These record that *“F has not agreed with or complied with the asthma management agreement*



*and A does not have her inhaler when she is in F's care"* (F68). It is not clear where the primary evidence about this comes from, and I would note that the whole of the Local Authority involvement with F has been the subject of lengthy complaint by the paternal grandmother. Aspects of that complaint, including failures to ensure that they dealt with both parents equitably at times, does mean that there are some parts of the Local Authority disclosure which must be approached with caution for the purposes of this fact-finding. In any event, in her oral evidence to me M acknowledged when questioned by Miss Henry that F does now manage A's asthma appropriately and that the dates on the schedule were probably wrong. It seems as if this issue is more likely than not attributable to the acrimonious relationship between the parents, including a breakdown of trust in both directions, which led to F not being included appointment in May 2022. Although I accept that he was sent the details of the asthma management plan changes immediately after that appointment, his querying of how that came about was not unreasonable in light of the fact that he does not seem to have seen the same symptoms that M told the GP about. Ultimately there is also no evidence that A did suffer harm as a result of this, and I have no credible evidence that F placed her at risk of harm by failing to administer inhalers as required once he was aware of the changed plan and the reasons for this.

38. M's fourth allegation (which was formerly her fifth as I noted earlier), relates to A's fear of objects. I have already covered the aspects of this that relate to the allegation of F putting an object up A's bottom. The other aspects of this relate to M alleging that F has inappropriately used objects as a threat and placed A at risk of emotional harm as a result. There is no dispute now that A was fearful of 'objects, quite how bad that fear was and how long it persisted is not agreed though. M and the maternal grandmother described it as an extreme phobia. F and the paternal grandmother accept it was a phobia but dispute that they knew the extent and severity.

39. The date of this allegation is from 2019 to date and F has accepted that, at times, he did use objects inappropriately as a discipline technique (as a form of threat, not physically)

in early 2020. M's evidence to me was that she relies on what A has said repeatedly about F threatening her with objects. The contact notes do not show evidence of this being an ongoing and severe fear on the part of A, nor that F downplays any fear or misuses objects. M's case is that supervision of contact has prevented this, as she put in the allegation and told me in evidence. F's evidence was that he has taken on board the advice of Dr Haden on 10<sup>th</sup> August 2020 about how to respond when A mentions objects and the contact notes at CN29 and CN33, for example, show him responding appropriately. M accepted in her oral evidence that A's fear has lessened since she made her 2022 statement, which is consistent with what F and paternal grandmother also told me about A's fear having abated. There were no concerns voiced by A directly to the early help worker about this (D16). It is also notable that A accepted making something up about this in a contact session on 2<sup>nd</sup> April 2023 where she said that F had pretended to be an object once and when F said that he didn't she said she made it up. M also accepted in her evidence to me that A has also referred to her as 'the object-ster' to professionals. It is hard to see what M relies upon to support her fear that F will revert to using objects inappropriately if contact were no longer to be supervised – he has completed parenting courses and clearly taken on board the advice of Dr Haden, and there is no evidence from the contact notes of him doing anything other than accidentally failing to remove an object (which could happen to any parent, frankly) and acting appropriately once he realised. Significantly, there is no evidence of A reacting with undue distress or anxiety at that point or since if she brings up objects. It seems more likely at this point that A's fears about objects have abated, can be managed by appropriate parental responses and there is no credible evidence to show that F will revert to using inappropriate parenting techniques.

40. The penultimate allegation by M, number 5 (formerly number 9), is that F has subjected M and the maternal family to verbal abuse. Her main evidence about this seems to relate to a psychological assessment of F undertaken as part of the Local Authority Child Protection processes. I have remarkably little clear evidence about this from any source.

The report is in the Bundle at E6-E17. At E7 the psychologist noted that during group sessions involving the family *“the focus of the sessions often returned to unresolved events and difficulties from the past. This made it difficult to focus on the present difficulties and ways in which everyone could move forward. More specifically, F found it difficult to respect other’s views and he used emotive and denigrating language, particularly towards [maternal grandmother]. He appeared unable to consider his own role with the expressed difficulties, placing the onus on M and [maternal grandmother] to change”*. This led to the psychologist moving to individual sessions, and then F withdrew from the assessment. On any reading, that report is concerning because it is not clear to me quite what the Local Authority thought would be achieved by an assessment in 2022 focused on concerns around high level parental conflict, but where allegations of sexual and physical harm against F had been made by M and the maternal grandmother. F’s evidence to me was that he thought this was about therapeutic support for him and the psychologist seems to have noted that he told her he was not aware of the nature of the assessment (E8). Unlike a court appointed psychologist, instructed after the factual context has been determined by the court, this psychologist was faced with competing allegations which were denied, and there is no letter of instruction provided to all to clearly set the parameters of the assessment. The psychologist, as she herself noted at E9, was instructed by the Local Authority in the context of an escalation in child protective measures where F was clearly feeling that his views were not being properly taken into account and that M’s allegations were being taken at face value. With the benefit of hindsight, this attempt by the Local Authority to resolve matters with input from a psychologist was doomed to failure whilst the allegations being made by each parent about the other remained unresolved. And I am not impressed that the chosen psychologist referred repeatedly to ‘disclosures’ made by A, a point I covered in relation to various of the witnesses and professionals at the outset of this judgment.

41. Apart from the maternal grandmother saying that she was called names such as liar and narcissist during the group sessions noted above, I have no details about the supposed

derogatory language that M alleges F used. What is in the psychologist's report is of limited value given that she also gives no details, it is not clear if all parties and not just F kept returning to past issues, and overall, I have no credible evidence from M to support this allegation.

42. M's final allegation is that F has coached A to behave inappropriately to people including professionals and M, thereby causing her emotional harm. Some of the evidence about this overlaps with the earlier allegation about her putting her fingers in her bottom etc, and M relies heavily on what A has said about this. As I have noted earlier, there are numerous instances of A saying that someone has told her to do things and then accepting when challenged that this is a lie. For example, when A pulled her pants down in contact and was told that this was wrong by F, A responded to say that M liked her doing that and M accepted this was a lie (CN164). Similarly, when A said that M had hit her in the face this turned out to be at worst accidental contact when putting her seatbelt on (CN184). F's evidence about this allegation was clear, he has never encouraged A to do this. A can clearly display some very challenging behaviour and both parents and some professionals, such as her former school, have struggled at times to manage this. She was noted by her school to clearly be *"constantly trying to gain attention by doing things that are not acceptable"* (C19). Saying and doing things that shock will clearly gain her attention, and it seems clear that she did not differentiate between negative and positive attention in the behaviours shown throughout the bundle, though the contact notes do show her stopping when appropriately parented by F. Whilst I have borne in mind that the fact that A lies at times doesn't necessarily mean she is lying about everything she says, there is no credible evidence elsewhere to show that F has coached and encouraged her as M alleges.

43. I turn next to consider the evidence in relation to F's allegations against M. These fall into three groups, but have several sub-headings under each group. I can take the first group of allegations in fairly short order because of the case law I noted earlier in this judgment. Nobody is advancing a case that A does not want to spend time with her

father, and everyone accepts that there are many instances in contact notes where A is clearly delighted to see him. There is thus no evidence of one of the three key elements that F would need to show to establish alienating behaviours. M accepts that she has covertly recorded handovers, and I have noted earlier that this appears to have been with a view to gathering evidence from what social services were told. There is considerable guidance in the Family court about covert recording which can be summarised as it is rarely in the welfare interests of the child concerned, often creates evidential difficulties and ultimately says far more about the parent who has been covertly recording than the parent who has been recorded. Sadly, that is my conclusion in this case – M and maternal grandmother (who also accepts recording handovers covertly) have recorded as a means of putting their interests first rather than A, have not obtained any reliable evidence as a result and their actions in doing this have clearly not helped a high conflict case such as this. As responsible adults they should have known better. In terms of F's allegation of coaching A to make allegations, as I have noted earlier, A clearly says many things that are just not true and it seems clear to me that this is likely to be the origin of what she has said about F putting objects up her bottom and touching her bottom. However, there is no compelling evidence adduced by F, who bears the burden of proof, that they have coached her to make the allegation and, at its highest, it seems more likely they have simply failed to respond appropriately to A saying these things. As a result of that, this may well have encouraged A to repeat things though it also seems likely that A knows what she is saying is shocking and that gains her the attention she so clearly seeks. Professionals have not detected evidence of coaching, despite clearly being alive to this as a risk, see for example the evidence from the nursery at D55.

44. It seems to be accepted by M in her response to F's allegation that she didn't allow video contact at Christmas 2022, but did so because there was no facility for it to be supervised. Her evidence about this issue also seems to be that there were communication difficulties about a request for video contact on F's birthday, which were

resolved by use of the Our Family Wizard app, something that F does not appear to dispute. Whether or not she was right to refuse video contact at Christmas 2022 (and I'm not clear why it wasn't possible for that to be supervised), at its highest it seems that communication difficulties between the parents have contributed significantly to this issue but it doesn't seem as if M has refused video contact in the way that F alleges including when face to face contact has had to be cancelled.

45. F's allegation that M has called the police to make untrue claims that he wanted to kill himself and A is unhelpfully not supported by anything in the police disclosure. M's response to this notes that she can produce witness evidence about this (though the burden of proof is not on her), but has not done so. I am left with evidence of what seems to have been indirect communication via his solicitor to the effect that A would be staying with F, no suggestion of any threat to either F or A in that communication on M's account, and overall an allegation that is of very little assistance to the court in determining what is in A's welfare interests beyond that this is yet more evidence from both parents of considerable parental acrimony which seems to lead each to think the worst of the other.

46. The penultimate aspect of this first group of allegations is that M has lied to the LA and manipulated professionals in an attempt to withhold contact. It seems apparent from my analysis of the evidence above that M has made allegations which have not been proved. She has also accepted that she has made allegations to professionals which have not been pursued and in circumstances where she did not believe them. An example of this was in April 2020 when M made an allegation to the police that F had made threats to throw A in the river (F8 and G15). Her evidence about this when questioned by Miss Henry was confused, saying that she did make that allegation but thought she was doing so because she was concerned about this being emotional harm arising from threatening behaviour, linked to the allegation about use of objects, but thought that she was very clear to the police that this was the concern rather than an actual risk of him physically throwing A in the river. She accepted that he would never

throw A in the river and had also told social services that she did not think he was a physical risk to A. It did not seem credible that she would have raised this allegation with the police solely about emotional abuse if, as she accepts, she was reporting the object up the bottom allegation. However, is this and the unproven allegations evidence of 'lying and manipulation' as F alleges? It is for him to prove it, and it seems on the evidence before me that, at its highest, what M has tended to do is to think the worst of F and to adopt a rather "shot-gun" approach of reiterating allegations when making fresh allegations to professionals at times. Ultimately this has not helped provide clarity and consistency in the evidence before me but is not the same as lying and manipulation. Equally, F accepted in his evidence to me when questioned by Ms Lavis, that he has at times made allegations that he has not pursued, for example the 'brownish stain' he and paternal grandmother said they saw on A's knickers at the end of April 2022 (D43). His evidence about this was that he did not tell the police or social services, and told the school because he was "just looking for a second opinion". The school records seem to show it was more of a reported allegation than a request for a second opinion in my view, something that was confirmed by F also saying to me that he "wanted a log kept and knew that the school was a place that would keep a formal record".

47. Finally in this group of allegations F asserts that M has refused the progression of contact despite the success of contact sessions. It is not entirely clear what the detail of this allegation is, beyond reference to suggestions made by a previous allocated social worker in 2022 about a contact plan (C51). The essential evidence from both M and F about this seems to be that this contact plan was never actually agreed by all concerned including social services, and M accepted when questioned by Miss Henry that she did not want contact to move beyond supervision until F had had a psychological assessment. I'm not sure that this establishes that M was 'refusing any progression of contact' and any progression of contact in the welfare stage of these proceedings will be determined in light of my findings and subsequent welfare evidence including from the Guardian so I am not sure that this adds anything at this point.

48. The second group of F's allegations relate to M causing A emotional and psychological harm. This is firstly alleged to be as a result of M using objects as a method of discipline. Again it is not clear quite what F relies upon for this nor when he alleges that it has occurred, but it seems to relate to what he says A has said and done at times. For similar reasons to my analysis in relation to M's allegations of sexual and emotional harm, A's actions and comments are not a sufficient foundation to prove this in my view. This seems to be more of a retaliatory allegation, which F accepted may be the case in his oral evidence to me when questioned by Ms Lavis, saying that these were intended to "counter" M's allegations. I would note in passing that there is no legal principle, or even common sense principle, that requires one set of allegations to be "countered" by others and this is simply evidence of the high conflict between M and F in my view. Similarly, F does not now pursue the allegation that A has been locked in her bedroom by M. He does pursue an allegation that M has sold A's toys as a form of punishment, something that M largely accepts albeit with the explanation that she thought this was what she had been advised to do as a part of A understanding there were consequences to her causing damage. Whether it is overt punishment or simply presented as a consequence of her actions, I do have some concerns about a parent thinking that telling A her toys would have to be sold in these circumstances is good enough parenting for a child with A's additional vulnerabilities. Imposing consequences for actions is entirely valid, but those are normally withdrawal of privileges or time out rather than telling a child that they will have to sacrifice a toy.

49. Finally in this group of allegations F relies upon A's poor behaviour at school escalating in May 2022 as evidence of her being emotionally and educationally harmed by M stopping contact. It seems very clear from all of the professional evidence before me, and some of the parents' evidence too, that A's challenging behaviour arises from a complex set of factors. I have no doubt that the change from seeing her F to then not seeing him will have been part of that given that everyone accepts she struggles with change, but the context is significant (as both parents kept saying at various points).



The initial child protection conference held on 27<sup>th</sup> April 2022 resulted in a recommendation for supervised contact, which F agreed to (F74). Regardless of his disputes with the Local Authority at the time or since, contact was not prevented entirely and the decision about supervision was one led by the Local Authority at that point. It seems clear from the evidence her former school has provided that they were simply not capable of meeting her needs for a variety of reasons, not least the issues around bilingual teaching and frequent changes of teachers through the week. This is bound to have been part of the complex set of factors which, for example, Dr Haden noted were at play for A. There is no clear evidence that M's actions alone prevented contact and led to the problems with her behaviour as school.

50. F's final group of allegations relate to M's inability to act in A's best interests generally.

These are an odd combination of very vague and specific. F's first part of this is that M has failed or refused *"to co-operate with professionals considering A's mental health, cognitive abilities and educational progression and pushing back against the processes for 18 months therefore resulting in considerable developmental delays for A"* (composite schedule). I think, though it is not entirely clear, that this really relates to F's concerns about A receiving a diagnosis of autism. She does now have that diagnosis, and it does seem to have taken some time for that diagnosis to be confirmed, though that is not sadly unusual at the moment. F's evidence to me referred to a previous report from Dr Haden which is not in the Bundle, I only have the one dated 29<sup>th</sup> June 2023 at E53 which concludes that she has revised her opinion and concludes that A does meet the diagnostic criteria for autism. It is not clear to me on the evidence before me that it was M's actions that led to a delay in the diagnosis.

51. F's final allegation in this group is that M has allowed A to sleep in the bed with her new partner and that this links to A displaying increasingly sexualised behaviours since 2021. M did not dispute that she has, on occasion, allowed A to get into bed with her and her partner, in particular one occasion when A had wet the bed in 2022. Again, as with some of M's allegations, F seems to largely be relying on what A has said at various

times, including in October 2022 when she told her school that she liked M's partner because he sleeps in her bed with her (F277). This prompted contact from social services to M, which resulted in the record at F212 which shows that M told them that A had wet herself, she made A have a shower whilst she stripped the bed and then let A get into bed with M and her partner. At the time everyone seems to have been wearing pyjamas and this seems to be simply another example of one parent reading something sinister into what A has said without real justification.

## **Findings**

52. In light of my analysis above, my findings by reference to the composite schedule are as follows:

53. M's allegations 1, 2, 3, 4, 5 and 6 not proved.

54. F's allegations 1, 2 and 3 not proved.

55. What I do find is that both parents have had a very high conflict relationship since separation, that both have at times focused on their acrimony rather than A, and that in so doing they have failed to prioritise A's welfare and failed to protect her from their conflict. I can see no justification for A's time with F to continue to be supervised in light of my findings and would urge M to consider if she is prepared to agree to this.

## **Conclusions**

56. This case will now need to proceed to the welfare final hearing. The Guardian will no doubt need to consider what further evidence will be required, and I am very concerned at the level of parental acrimony in this case and the need to ensure that the final welfare outcome protects A from that in future whilst allowing her to maintain a relationship with both of her parents, which is her right after all.

A handwritten signature in black ink, appearing to read 'HHJ Owens', enclosed within a circular scribble.

HHJ Owens

14<sup>th</sup> February 2024