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Case No: FD22P00457

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23/07/2024

Before:

THE HONOURABLE MR JUSTICE MACDONALD

Between:

J
- and -
E

Applicant

Respondent

Mr Edward Devereux KC and Professor Rob George (instructed by **Field Seymour Parkes**)
for the **Applicant**

Ms Marisa Allman (instructed by **Slater Heelis**) for the **Respondent**

Hearing dates: 15, 16, 17 and 18 July 2024

Approved Judgment

This judgment was handed down remotely at 10.30am on 23 July 2024 by circulation to the parties or their representatives by e-mail.

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MR JUSTICE MACDONALD

This judgment was delivered in private. The Judge has given permission for this anonymised version of the judgment (and any of the facts and matters contained in it) to be published on condition always that the names and the addresses of the parties and the children must not be published. For the avoidance of doubt, the strict prohibition on publishing the names and addresses of the parties and the children 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. 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.

Mr Justice MacDonald:

INTRODUCTION

1. I am once again concerned with proceedings with respect to A, a girl born in 2021 and now aged 3 years old. A's mother is E (hereafter 'the mother'). The mother is represented by Ms Marisa Allman of counsel. The mother was born in Zambia. A's father, J (hereafter 'the father'), is a British Citizen. The father is represented by Mr Devereux of King's Counsel and Professor Rob George of counsel.
2. As I have noted in previous judgments, the father's application before the court is dated 23 June 2022, and was issued on 6 July 2022. Whilst by that application the father sought the return of A to the jurisdiction of England and Wales, when this matter came before the Court of Appeal that court concluded that the father also sought by his application orders relating to care and contact within the scope of section 1(1)(d) of the Family Law Act 1986 and, very probably, section 1(1)(a) of the 1986 Act. The father now pursues child arrangements orders in respect of A. The mother no longer pursues her application for permission to remove A permanently from the jurisdiction of England and Wales to the jurisdiction of Zambia at this time but does continue to pursue her application for financial provision for A under Schedule 1 of the Children Act 1989.
3. As also noted in my previous judgments, the father's original application dated 23 June 2022 was heard by Arbuthnot J in November 2022. Arbuthnot J handed down judgment on 23 December 2022 by which she dismissed the father's application for the return of A to the jurisdiction of England and Wales. On 12 June 2023, the Court of Appeal allowed the father's appeal and remitted the case to the High Court for re-hearing. On 8 February 2024, I determined that A was habitually resident in this jurisdiction at the date of the father's application and that the jurisdiction of England and Wales was the appropriate forum for determining the dispute as to A's welfare. I further concluded that it was in A's best interests to be returned to this jurisdiction whilst the issues with respect to her welfare were determined and ordered the mother to return A (see *J v E (Habitual Residence)* [2024] EWHC 196 (Fam)). The mother returned A to this jurisdiction on 21 February 2024.
4. Within the foregoing context, the case now comes before the court for a fact finding hearing to determine whether the following findings sought by the father are proven on the balance of probabilities, the majority of which the mother now admits:
 - i) The mother was physically abusive towards the father throughout their relationship, including whilst she was pregnant and whilst holding A in her arms. Specifically:
 - a) On 6 April 2017, the mother attacked the father in the street, hitting and clawing his face with her nails, resulting in the father requiring medical treatment from paramedics.
 - b) On or around 10 September 2017, the mother attacked the father in a hotel room in Dubai, hitting him several times around the head, causing him pain but no visible injuries.

- c) On or around 1 January 2018, the mother physically assaulted the father by hitting him hard around the head a number of times during an argument.
- d) On 9 March 2018, in Zambia the mother lunged at the father to strike him whilst holding a wine glass. The glass smashed, resulting in a deep cut to the father's hand requiring 5-6 stiches and a puncture to his shoulder that required treatment.
- e) On or around 8 April 2018, at the father's flat in Hackney the mother hit the father several times and clawed his face, causing him visible injuries. The following day the mother applied her make up to the father's face in an attempt to lessen the visibility of the injuries.
- f) On 15 August 2018, the mother attacked the father at his houseboat by slapping him open handed around the head and face causing cuts to his nose and giving him a bloody nose. The mother threw the father's wallet into the Thames.
- g) On 13 April 2020, the mother threatened to kill the father with a large kitchen knife she was holding during an argument, resulting in a stand-off that lasted 90 minutes. A re-occurrence occurred later in the same week on 15 April 2020, resulting in the mother being arrested.
- h) In February 2021, whilst the parties were residing in Soho shortly before A was born, the mother hit the father hard around the head after he made a suggestion she disagreed with. There was no visible injury.
- i) In or around May 2021, following an argument at the family home, the mother followed the father and punched him to the head whilst he was holding A in his arms.
- ii) The mother has previously threatened to harm and kill herself and these threats have been made in the presence of A. Specifically:
 - a) In late 2017, the mother took a large knife out of the kitchen drawer and brandished at the father whilst shouting at him. The father retreated outside and the mother repeatedly threatened to harm herself before going to bed and taking the knife with her.
 - b) On 16 January 2022, the mother took a knife from the drawer in the kitchen and held it against herself whilst threatening to end her life whilst the father was present holding A, who was crying uncontrollably.
- iii) The mother has unduly interfered in the police investigation into the allegations which have been made against the father in Zambia, thereby undermining the impartiality and fairness of the process conducted there. Specifically:
 - a) The mother met with police officers in Zambia up to forty times and gained full access to the police investigation file;

- b) The mother inappropriately involved herself in the police investigation by seeking to gain (and gaining) access to police documents and/or asking, encouraging or otherwise pressing police officers to change their approach to the investigation of the father;
 - c) The mother accessed and read legal advice received by the police which stated that the evidence in the case was insufficient to justify prosecution;
 - d) The mother told the police that the advice in that document was wrong and pressed them to continue their investigation and / or take action against the father despite that legal advice;
 - e) The mother sought and was provided with sensitive documents from the investigation, including correspondence between Interpol Lusaka and Interpol Manchester.
- iv) The allegation of sexual abuse made against the father has been made in bad faith by the mother to support her case within these proceedings not to return to England with A.
- v) The mother has repeatedly lied on oath and within sworn affidavits in these proceedings and within the proceedings in Zambia.
5. The court is also required at this hearing to determine whether the following findings sought by the mother are proved on the balance of probabilities (the mother has now withdrawn an allegation that the father engaged in a pattern of emotionally abusive behaviour towards the respondent which has negatively impacted on her mental health). The father denies each of the allegations:
- i) A sustained the injuries particularised by Dr G in her report of 14 September 2022, and the father caused those injuries.
 - ii) The father sexually abused A in such a way as to result in a positive swab for spermatozoa on 14 September 2022.
 - iii) The applicant has engaged in bribery of officials in Zambia for the purposes of seeking to prevent the case against him for defilement or sexual abuse proceeding.
 - iv) The applicant was sexually aroused during the changing of A's nappy.
 - v) The applicant lacks appropriate sexual boundaries and has exploitative sexual interests, which present a risk of harm to A. Specifically:
 - a) The father met the mother using an escort agency and throughout their relationship continued to treat the mother in a transactional manner which expected her to submit to his sexual needs;
 - b) The father has an addiction to pornographic material and admitted this to the mother;

- c) The father's sexual behaviour included masturbating to Instagram videos posted by young women who appeared to be in their late teens or early twenties;
 - d) The father paid young women to perform sexual acts via escort agency websites.
6. In determining this matter, I have had the benefit of reading the court bundle, including a bundle of documents from criminal and civil proceedings in Zambia. I heard oral evidence from the father and the mother and (by video link from the jurisdiction of Zambia) the maternal aunt and the maternal grandmother. I have had the benefit of written and oral submissions from Mr Devereux and Professor George and from Ms Allman.

BACKGROUND AND EVIDENCE

7. The background to this matter is set out in extensive detail in my previous judgment dated 8 February 2024 and it is not necessary to repeat or further elaborate it here, save in so far as there are new matters raised by the parties relevant to the findings that the court is required to determine at this hearing.
8. As noted in my judgment of 8 February 2024, the parents met in England in 2016 and commenced co-habitation in 2017. Whilst the mother has always to date stated that the parents met through a dating website, the mother now contends for the first time, as part of the finding she seeks that the father lacks appropriate sexual boundaries and has exploitative sexual interests, that she and the father met using an escort agency and that throughout their relationship the father continued to treat the mother in a transactional manner which expected her to submit to his sexual needs. The father maintains that the parents met on a dating website, albeit one that has a greater transactional element than other dating websites in that it seeks to match women with wealthy men. The mother further alleges that that father has paid young women to perform sexual acts via escort agency websites. The father concedes that he has continued to use the dating site through which he met the mother but denies that this constitutes paying young women to perform sexual acts via escort agency websites. In addition, and again as part of finding sought by the mother that the father lacks appropriate sexual boundaries, the mother now alleges for the first time that during the course of their relationship the father had in addition to porn and masturbated to Instagram videos posted by young women who appeared to be in their late teens or early twenties. The father concedes both that he has viewed porn and viewed Instagram but denies that this was in anyway illegal or inappropriate or that he has an addiction.
9. In circumstances where the mother now accepts the majority of the allegations of physical and verbal domestic abuse made against her by the father, it is not necessary to set out the detailed background and evidence in respect of those matters. I deal with the findings in respect of domestic abuse perpetrated by the mother in detail later in this judgment.
10. As I have noted, following the judgment of this court on 8 February 2024, mother returned A to this jurisdiction on 21 February 2024. Pursuant to an agreement reached between the parties prior to that step being taken, she and A are currently

residing in the former family home. The father currently resides in another property. Whilst the father is having direct contact with A pursuant to an agreement between the parties, the court has required that contact to be closely supervised by an independent social worker in light of the allegations made by the mother that are the subject of this finding of fact hearing.

11. In circumstances where A had been returned to this jurisdiction, on 3 May 2024 the court directed a Safeguarding Letter from Cafcass (that direction having, unfortunately, been omitted from the order resulting from the hearing on 11 March 2024). The court office did not send the order of 3 May 2024 to Cafcass until 7 June 2024. One business day before the finding of fact hearing, on 12 July 2024, Cafcass sent a FPR r.16A risk assessment to the court expressing the view of the FCA that the closely supervised contact between the father and A should not be taking place in light of the allegation of sexual abuse. That assessment makes no mention of the serious allegations of domestic abuse raised by the father against the mother and which also fall for determination at this hearing. It states that a joint investigation by the relevant local authority and the police has commenced pursuant to s.47 of the Children Act 1989.
12. The Cafcass Safeguarding Letter was received half-way through this finding of fact hearing. It recommends that the court make an order pursuant to s.37 of the Children Act 1989 directing the local authority to undertake an investigation into A's circumstances and consider whether it should commence public law proceedings under Part IV of the 1989 Act. It repeats the view of the FCA that the closely supervised contact between the father and A should not be taking place in light of the allegation of sexual abuse.
13. Again as set out in my judgment of 8 February 2024, the mother alleges that during a contact visit in Zambia on 13 September 2022, and during the course of the father's application to this court for the return of A to this jurisdiction, the father sexually abused A at his hotel. In this context, in addition to her new allegations regarding alleged inappropriate sexual boundaries of the father as set out above, the mother also now alleges for the first time in a statement dated 19 June 2024 prepared for this hearing that following A's birth the father would become sexually aroused around A:

“24. In addition, in the first few weeks of A's life, I noted that [J] would become sexually aroused around A and this happened frequently, particularly when A was undressed and having skin to skin contact with me. I noticed [J] being aroused by A when he was changing her nappy which was distressing to witness. I questioned whether I was delusional and even confronted [J] about it, to which he denied. This left me feeling even more confused, uncertain if my instincts were misleading me or if I was ignoring a serious issue.”
14. In his final statement, the father contends that the mother raised this allegation against him once in the past and deals with it in his statement as follows:

“[38] The allegation that I was sexually aroused during the changing of A's nappy is extraordinary. I have cared for A since she was born and have changed her nappy on countless occasions. [E] has a long history of making outlandish allegations against me of this kind, including historically

accusing me of being gay, and attracted to my best friend who is homosexual, having an untoward interest in her sister and work colleagues, and even that I had, at some stage, been sexually inappropriate with our dog. Despite this, I specifically recall the incident in question where [E] accused me of being sexually aroused when changing A's nappy due to the appalling nature of the suggestion. I cannot fathom why she thought this, but I very much recall we argued about it at the time. I was very angry at the suggestion and implication and also incredibly sad to realise that [E]'s history of making paranoid accusations was now going to extend to our infant daughter. I cannot understand how [E] could have allowed me to continue to spend time on my own with A if she sincerely believed I was capable of becoming aroused whilst changing her.”

15. Before dealing in detail with the background and evidence concerning the alleged events in Zambia on 13 September 2022, it is important to recognise that the nature and availability of evidence in respect of that alleged incident presents very particular and significant challenges. When dealing with the question of forum in my judgment of 8 February 2024, I recognised at [126] the potential difficulties in securing evidence with respect to the matters of fact now in dispute before this court:

“[126] I am not satisfied that the likelihood that this court will be required to hold a finding of fact hearing in respect of an event alleged to have occurred in Zambia leads to the conclusion that is clearly and distinctly the more convenient forum for the determination of question of A's welfare. Whilst the allegation arose in Zambia, the alleged event was unwitnessed. A is too young to give her own account. In the circumstances, in addition to the father's evidence, the primary evidence with respect to the allegation will comprise the medical report, which is already in mother's possession and which the father has indicated he does not dispute the authenticity of, the swab results (in the form of the letter from the Zambian Ministry of Health National Food Laboratory dated 20 September 2022), which again are already in the possession of the court, and any relevant police disclosure, including the DNA test results, any medical photography and the interview(s) of the father. I accept that that latter evidence may be more challenging to secure, although requests can be made of the Zambian authorities and this court can reasonably anticipate that the Zambian authorities will co-operate in assisting with provision of documentary evidence. This court in any event has a record of the father's evidence in respect of the allegation given to the Zambian court in the civil protection order proceedings. Whilst I accept that the father could give evidence on these issues by video-link were they to be the subject of determination in family proceedings brought in Zambia, if the issue was dealt with by this court the father could give evidence in person and on an equal footing with the mother.”

16. In that context, at a directions hearing on 11 March 2024 I made a series of respectful requests to various authorities in Zambia for disclosure of material relevant to the fact finding exercise this court is now required to undertake. In particular, I invited disclosure of material from the National Prosecution Authority of Zambia, the Zambian Police Service, the University Teaching Hospital in Lusaka and the

Pendleton Clinic in Lusaka. The respectful requests for disclosure centred on reports, transcripts of interviews, test results and the current whereabouts of any samples taken, relating to the allegation that the father sexually abused A.

17. Whilst the court had directed that service of the respectful requests be effected through the Foreign Process Section, the FPS subsequently indicated that it could not assist and, therefore, the requests were served on the relevant Zambian agencies by an independent agent. The relevant court orders were served on each of the entities between 17 and 18 May 2024 and, to date, the only response that has been received is from the National Prosecution Authority. Within their letter, the National Prosecution Authority confirms that they cannot provide the information and documentation requested, as they are no longer in possession of anything following the return of the docket to Zambia Police. They have also suggested that Dr G would be better placed to assist. No other agency in Zambia has taken the opportunity to provide further information or documentation to the court.
18. In the foregoing circumstances, I recite the background to the mother's allegation that the father sexually abused A during contact in Zambia on 13 September 2022 on the information that is currently available to the court, recognising as I do that that information is not complete. It is also important to note that the court has little or no information about standards of good practice and procedure in the investigation of sexual abuse allegations by medical professionals in Zambia and little or no information about the Zambian criminal legal system, police structure, accountability and responsibility for decision making. Generally, I have borne in mind that the court does not have access to the range and depth of material which it would have available to it if the alleged events under consideration had taken place in England and Wales.
19. Prior to 13 September 2022, the father had had unsupervised contact with A in the jurisdiction of Zambia on a number of occasions. This included unsupervised contact with A, permitted by the mother, between 31 July 2022 and 7 August 2022 whilst he was in Zambia.
20. As noted in my judgment of 8 February 2024, on 9 August 2022 the mother sent an email to the father outlining proposals with respect to the future. At the outset of the email, the mother referred to the father's contact with A and stated that "It was good seeing you and A really enjoyed father daughter time". The two options presented by the mother to the father were either for her and A to move to South Africa in February 2023 or for her and A to return "permanently to the UK" on 23 August 2022. For the first proposal, the mother set out her financial needs, including property in South Africa and Zambia, the mother and A's expenses and the sums required for her to apply for permanent residency based on financial independence. Within this context, the mother stated in respect of the option of moving to South Africa, "So, in conclusion a financial settlement of £950,000 is my request". With respect to the option of return to the United Kingdom, the mother proposed that she would return to the United Kingdom with A and that she would "make the permanent move based on a share of £1.1M". At the conclusion of the email of 9 August 2022, the mother stated the following:

"I hope that you'll seriously consider all I have said, I speak from the heart in the hope that you can empathise with and trust that either choice will not deprive you or A from that beautiful bond that you share."

21. On 10 September 2022, during the course of proceedings in this jurisdiction in which he was seeking the return of A to England, the father again travelled to Zambia for contact with A. He had contact with A on 11 September 2022 between 1440hrs and 1710hrs. No concerns were raised.
22. The mother asserts that A was not left unsupervised with any male person in the days leading up to contact with the father on 13 September 2022. There is little evidence before the court as to the arrangements for A's care at this time. A was at this point in the full time care of her mother in Zambia. The mother's evidence indicates A had been left with the maternal grandmother for a few hours during that week leading up to 13 September 2022 and, on 12 September 2022, A is said by the mother to also have been left in the care of a female housekeeper who had looked after her "for about an hour". It is not clear that the Zambian police ever investigated who A had been with in the days leading up to 13 September 2022.
23. The father again had contact with A on 13 September 2022 between 1544hrs and 1720hrs, a period of some 96 minutes. Beyond it being put to the father that he sexually abused A during contact, the father's wider account of the contact was not challenged. A feature of that account is a series of video recordings, which the father states were taken to send to his family in England, and CCTV footage at intervals spanning the duration of the contact and concluding with a contemporaneous video of A being returned to the care of her mother at the conclusion of contact. Whilst Ms Allman made submissions as to the probative value of the video and CCTV footage, there was no challenge with respect to the contents of that material.
24. The mother dropped A off at the father's hotel at 1544 hrs. At 1548 hrs the mother sent the father a WhatsApp message to alert him to the fact that the baby wipes had been left in her car. The first video recorded by the father is time stamped at 1553 hrs. That video, which is five seconds long, shows A laughing and playing with her father. A does not show any sign of distress, discomfort or wariness of her father, with whom she is interacting well. The father then telephoned the mother to inform her that he intended to carry A in the baby sling provided by the mother to the local shopping mall to buy baby wipes. CCTV footage timed at 1607 hrs shows the father leaving the hotel lobby with A in a sling. The walk to the mall took 10 minutes where the father bought baby wipes and returned to the hotel. Once again, there is CCTV footage showing the father re-entering the lobby of the hotel with A in the sling and carrying a bag of shopping. That footage is not time stamped but on the basis of the length of time it took the father to buy the baby wipes, would have been at about 1630hrs. With respect to the sling, the father says in his statement that the sling in question belonged to the mother and did not fit him, meaning A was in a fairly unnatural and uncomfortable position when they went to the mall, with part of the sling crossing between her legs. That description is borne out, to a degree, by the CCTV footage.
25. Once back at the hotel, the father took a further video of A playing at 1642hrs, just over half an hour before she was due to be returned to the care of her mother. That video is twenty-six seconds long and shows A offering the father a Peppa Pig book and then taking it back off him before handing it once again to her father. Again, A does not show any sign of distress, discomfort or wariness of her father, with whom she is interacting well. The father took a final video of A playing at 1706hrs, some fourteen minutes before the mother was due to collect A from contact. That video is

thirty-three seconds long and shows A playing happily at her father's knee with the telephone in the hotel room. At the conclusion of the video she happily hands the handset to her father. Once again, A looks entirely comfortable with her father and is showing no sign of discomfort, distress or wariness of him. The father states that during the course of contact, and between the video taken at 1642hrs and the video taken at 1706hrs, he changed A's nappy. This evidence was not challenged. There appears to be no change in A's demeanour or presentation between the two videos of her playing. In oral evidence, the father stated that in changing A's nappy he used the wet wipes.

26. The mother collected A from her father at 1720hrs on 13 September 2024. Once again, that handover was captured in two sets of footage. CCTV footage timed at 1720hrs shows the father and A walking through the hotel lobby shortly before being returned to the care of her mother. A is initially distracted by her reflection in a window but willingly follows the father when he signals for her to do so. A continues to follow him through the lobby walking and offers the father her hand, which he takes hold of. A appears comfortable in doing so. Thereafter, A and the father leave the lobby with the father holding A's hand. The second video of the contact handover was taken by the mother at approximately 1722hrs and shows the father walking A down the hotel ramp back to the mother at the end of contact. A is seen to be smiling and happy as she excitedly approaches her mother. She is showing no signs of distress or different behaviour to that shown in the videos taken by the father. There is no suggestion that she is upset or wary of her father or that she is in pain or discomfort.
27. The mother alleges after she picked A up from contact, and in contrast to what is shown in the video provided by the mother of the handover, she was not her usual bubbly self, was unusually quiet and refused to eat upon arriving home. This account would appear to be somewhat contradicted by the history set out in the report of Dr M the following day, to which I will come, which records that "child is otherwise well, eating and sleeping well". Thereafter, the mother asserts that she noticed injuries to A's genitalia when changing A's nappy, which she describes in detail in her evidence. The mother sought advice from the maternal aunt and the maternal grandmother. The maternal grandmother noted a similar presentation as described in her evidence.
28. In her statement prepared for this hearing, the mother says that she "immediately feared that [the father] had harmed A" and that she "suspected sexual abuse". In cross examination, the mother confirmed that she had immediately thought that the injuries were the result of sexual abuse and that she did not contemplate any other cause. The mother contends that she proceeded to take a video of A's genitalia and later produced some still frames from that video. The existence of such photographs was not raised with this court until 2 May 2024. The mother has not produced that video or the still frames at this hearing. The mother did not contact the police.
29. A visit to the local medical clinic was arranged by the mother. A was seen by a Dr K at 9.00pm. The mother told Dr K that she was concerned about sexual abuse. She further told Dr K that she had picked A up from seeing her father and that she had not spent any time alone with any other male that day. Dr K "performed no specific examinations" and advised that A be taken to a paediatrician as Dr K was not an expert at examining children's genitals. There is no record of this visit beyond the

account provided by the mother. A was taken home by the mother and put to bed. Again, the mother did not contact the police.

30. The mother contends that she again photographed A's genitals at 7.00am on 14 September 2024. Those photographs have not been produced. The mother obtained an appointment with Dr M, a paediatrician at the Pendleton Clinic, at 9.00am. In her statement the mother contends that, on examining A, Dr M also saw injuries to A's genitalia, which injuries the mother describes. However, her account does not match the records provided of Dr M examination, recording what he saw. Dr M made a referral to Dr G at the Child Sexual Abuse Department at the University Teaching Hospital. The court has a copy of what is said to be the referral note provided by Dr M. Again, the history recorded by the referral document does not match the account of the injuries identified by Dr M that is set out in the mother's statement. In a later letter of complaint to the Permanent Secretary at the Ministry of Home Affairs dated 10 May 2023, the mother contends that at this appointment Dr M stated there was a "serious concern for sexual abuse". However, the referral form states "R/O CSA" i.e. refer to rule out sexual abuse.
31. A was seen by Dr G at 2pm on 14 September 2024. The court has a photograph of the medical notes made by Dr G at the appointment. The mother confirmed in evidence that these were the totality of the notes sent to her by Dr G via WhatsApp at a later date. The notes contain a hand drawn diagram and a list of the features observed by Dr G during that examination, which concluded "Imp possible child defilement – cannot be ruled out."
32. The medical report of Dr G is date stamped by the Zambia Police Service Paediatric Centre of Excellence on 14 September 2022. The report reflects the notes and states the complaint concerned "suspected sexual abuse". A is recorded as having a small bruise to her left thigh, which the mother said had been sustained during play. The report further detailed the injuries noted by Dr G. No medical photography of the alleged injuries, which the mother contends was undertaken by Dr G, has been made available to this court. The body maps were not completed on the report indicating the location of the injuries, although as I have noted the handwritten notes contain a diagram of the genitals. There is no record of Dr G seeing certain of the features that the mother contends was seen by Dr M, although Dr G records a feature that Dr M did not.
33. Dr G's handwritten notes make no mention of swabs being taken but the report does state make reference to a vaginal swab. The medical report gives no indication of the location from which the swab or swabs were taken, nor of any steps taken to preserve the chain of custody of that evidence. The swab or swabs were taken during the examination at 1530hrs on 14 September 2022, nearly twenty four hours after the contact session. In her statement for this hearing (filed at a point subsequent to this court having noted in its judgment of 8 February 2024 that there was no indication in the papers of the location from which samples were taken), the mother states as follows:

"I witnessed Dr G swab [locations given]. She then placed the swabs in front of a fan to dry. She explained that this was protocol as the swabs needed to be completely dry before testing for the presence of sperm."

34. The Mother relates in her most recent statement that, at the examination, Dr G stated that she could not be entirely sure of a diagnosis of sexual abuse as most sexual abuse patients she had seen did not present with very obvious injuries. The mother further states that Dr G emphasised that receiving the swab results would be a crucial part of her determination. Even though the opinion section of Dr G's report certifies that the findings set out in report are correct in respect of the examination carried out on 14 September 2022, the opinion section of the report in fact appears to have been completed on 26 September 2022 as it refers to the results of the swab test, which were not available until 20 September 2022, and makes reference to both clinical and laboratory evidence. Dr G has not given evidence at this hearing (the Zambian Ministry of Health advising that guidance was needed from the Zambian Director of Public Prosecutions and no such guidance was forthcoming). A timeline of events provided by the mother states that she was made aware by a police officer of the results of the swabs six days before the report of Dr G was finalised. The father asserts that his Zambian solicitor was informed by Dr G that she had found no evidence of bruising, damage or any indication of sexual assault. The father has not, however, taken the opportunity to file and serve a statement dealing with that assertion.
35. The results of the swab analysis are contained in a letter from the Zambian Ministry of Health National Food Laboratory dated 20 September 2022. The letter from the National Food Laboratory comprises a single sentence. That letter records that the swab was received by that lab on 16 September 2022 and states the result in bare terms. It gives no details of the technique applied to determine that the swab taken was positive for spermatozoa, no indication of circumstances under which the testing was performed, no details of the data comprising the positive result and no account of the chain of custody in respect of the swab sample or samples. Again, the father asserts that his Zambian solicitor was informed by the lab team at the hospital, after meeting with them on the condition that she left her phone outside, that the test has been faked, reportedly by switching the sample for a sample known to be positive for spermatozoa, and that individuals had been bribed to do so. Again, the father has not taken the opportunity to file and serve a statement dealing with that allegation.
36. The mother had not, up to the point of Dr G's examination, made any attempt to contact the police. In her statement the mother contends that it was Dr G who insisted she make a complaint to the police. In a letter from the mother's solicitors dated 26 September 2022, it was asserted that the mother was not accusing the father of sexually abusing A. Notwithstanding that indication it is, however, plain from subsequent events that the mother made an allegation of sexual abuse against the father to the police in Lusaka. The mother states that her allegation of sexual abuse was referred to the Lusaka Central Police on 15 September 2022.
37. The father was woken by two police officers, one armed, at 0545hrs on 17 September 2022 and taken to the police station and questioned. His passport was confiscated. The father was thereafter released and permitted to return to his hotel. On 27 September 2022 the father was re-arrested by police in Zambia for the offence of "defilement of a child" and charged contrary to s. 138(1) of the Laws of Zambia. The father asserts that prior to charge the police did not prepare a timeline, did not request a DNA sample from him and did not check CCTV footage covering the 96 minutes he had contact with A, including from the hotel and videos on his phone.

38. The picture with respect to DNA testing is somewhat unclear. The letter from the mother's solicitors of 26 September 2022, to which I have referred, states that DNA test results would be available in three weeks from that date. The account of the criminal investigation provided by the mother states that on 30 September 2022 "an order for DNA" was applied for and approved by the Zambian court. However, it appears to be common ground that DNA testing of the samples taken during Dr G's examination was not undertaken initially as there was, at the time, no provision for DNA testing in Zambia. It further appears now to be conceded that no court ever made an order requiring the father to submit to DNA testing. The mother now relies on the assertion that the father failed to comply with a request from the police on 23 September 2022 to attend the police station and provide a DNA sample. It is clear from her own correspondence that the mother was heavily involved in seeking to obtain DNA testing of the samples. On 7 November 2022 the mother wrote to the police to "formally express my intention to privately fund the DNA testing through a reputable South African based laboratory". The mother contends that this was offered following a conversation with one of the investigating police officers, but this is not reflected in her letter. It would appear that the swab samples taken by Dr G have now been the subject of DNA sequencing, but the court has not been provided with a report confirming that. In any event, without a sequence to compare to the sequence undertaken in Zambia, the report would be of no assistance to the court. I will deal with the parties' competing positions regarding the father's refusal to undergo DNA testing when dealing with the individual findings below.
39. Both parties now allege corruption on the part of the Zambian Police service and each accuses the other of interfering with the police investigation in that jurisdiction to further their own ends. I do not intend to overburden this judgment with a detailed account of the complex competing assertions of meetings with officials and alleged inappropriate interference relied on by each of the parent with respect to the other, about which the court has read and heard extensive evidence. Rather, I will deal with such evidence as is relevant when considering below the allegation made by the mother that the father engaged in bribery of officials in Zambia for the purposes of seeking to prevent the case against him for defilement or sexual abuse proceeding, and the allegation made by the father that the mother has unduly interfered in the police investigation into the allegations which have been made against the father in Zambia, thereby undermining the impartiality and fairness of the process conducted there.
40. The father was released on bond following being charged on 27 September 2022, based on two sureties, but not prohibited from leaving the jurisdiction of Zambia. The father states that, fearing for his safety and having witnessed police corruption first hand, he left Zambia on 1 October 2022 having secured the return of his passport and having been told that the police intended to open a second investigation into alleged incest. The mother suggests the father's ability to secure his passport is evidence that the father had bribed officers. The father asserts his passport was returned to him after his solicitor had pointed out the police that they could not hold it without a court order. The father has not returned to the jurisdiction of Zambia since that date.
41. As set out in my judgment of 8 February 2024, no family proceedings were commenced in Zambia. However, on 15 November 2022, the mother applied to the Zambian court for a civil protection order against the father under the Anti-Gender

Based Violence Act 2011, relying on the allegation that the father had “defiled” A. The written submissions on behalf of the mother in the Zambian civil proceedings state that she is certain that the father abused A in circumstances where A did not spend time with anyone else on the day in question and there was no explanation for the positive findings of spermatozoa. In evidence in the Zambian proceedings the mother alleged the father had failed to show concern for A’s wellbeing following the incident. It is, however, plain from the evidence that the mother did not inform the father of her concerns and, indeed, provided the father with a false excuse to cancel the next contact he was due to have. As I will come to, it would not appear that in these civil proceedings in Zambia, centring on the need for a protection order in the context of the allegation of sexual abuse, the mother made any reference to the father having become sexually aroused when changing A’s nappy or to the matters on which she now relies to demonstrate that the father had inappropriate sexual boundaries.

42. The father denied the allegation of sexual abuse in his response to the application for a protection order dated 9 December 2022 and relied on allegations of domestic abuse by the mother in England. The father contended that he was not aware of any concern in respect of A until he was arrested and testified that he had no knowledge of how the injuries in question were inflicted on A. It would appear from the documentation available from the civil proceedings in Zambia that the father did not challenge the authenticity of the medical report of Dr G.
43. The judgment of the Subordinate Court of the First Class Holden at Lusaka concluded that the medical report showed A had suffered some form of trauma which in Zambia may constitute an offence, and that A “is under some form of threat to her life”. The court acknowledged that the allegation of sexual abuse arose in the context of a dispute between the parents but, referring to its duty to safeguard and protect children, was satisfied that a protection order should be made. The protection order obtained by the mother in Zambia expired at the end of October 2023.
44. The Zambian civil court also made an order for supervised contact between the father and A, to be supervised by a social worker, and assigned a Child Welfare Inspector to see A. The Child Welfare Inspector was appointed on 9 May 2023. On 25 October 2022 Arbuthnot J had continued the order for indirect contact made by Peel J, that order providing that the mother shall make A available for video contact on three occasions each week for 30 minutes on each occasion to be agreed between the parties. The father alleges that the mother facilitated only very limited contact and sent no pictures or updates at all between December 2022 and September 2023. On 16 May 2023 the father applied to the Zambian court to for permission to apply to commit the mother for failing to comply with the Zambian contact order, which permission was granted on 14 July 2023. On 18 August 2023 the court approved a consent order providing for contact to the father by way of video calls every Wednesday a 3.00pm for 30 minutes.
45. Finally by way of background, a particular and peculiar feature of this case is an “open offer” made by the mother in these proceedings dated 25 June 2024. On that date, and following discussions between the parties without their lawyers, the mother’s solicitors wrote to the solicitors to the father. The letter is titled “Financial Matter – Open Correspondence.” The opening paragraph includes the following passage concerning the position of the parties:

“We note what your client says in his statement, the crux of which seems to be his understanding that the nature of the allegations means that the court will require determination come what may, but there is clearly a strong desire by both of the parents (who the only people with parental responsibility in relation to A) to reach an agreement on all of this issues in this case, and not just the findings.”

46. The letter from the mother’s solicitors goes on to make clear that the mother no longer seeks to return to Zambia with A and makes the following proposal with respect to the findings of fact sought by the mother:

“In the event that reliable DNA evidence could be obtained from Zambia, our client would invite your client to undertake a DNA test in the UK to conclusively rule himself out. Unless and until that should be the case, our client will withdraw and will not re-open the allegations of sexual abuse, and she would sincerely hope that your client will withdraw the allegations of her acting in bad faith.”

47. The letter from the mother’s solicitor further reformulated the allegation made against the father of bribery as an assertion that “he has also used his resources where possible to defend himself and had extensive communications with various authorities in Zambia”. Within this context, the letter from the mother’s solicitors proposed that unsupervised contact recommence immediately leading, ultimately, to the parties sharing care of A whilst she and the mother remained in the jurisdiction of England and Wales.

RELEVANT LAW

48. To prove a fact asserted, that fact must be established on the balance of probabilities. Neither the seriousness of the allegations nor the seriousness of the consequences makes a difference to the standard of proof to be applied. The burden of proving a fact is on the party asserting that fact.
49. In determining whether a fact is proved on the balance of probabilities, the inherent probability or improbability of an event remains a matter to be considered when weighing the probabilities and deciding whether, on balance, the event occurred. As has been observed by the House of Lords, common sense, not law, requires that in deciding this question regard should be had, to whatever extent appropriate, to inherent probabilities (*Re B (Children)* [2008] UKHL 35 at [15]).
50. Any findings of fact must be based on admissible evidence, including those inferences that can properly be drawn from the evidence, and not on suspicion or speculation (see *Re A (A Child, Fact Finding Hearing, Speculation)* [2011] EWCA Civ 12 and *Re A* [2015] EWFC 11 at [8]). In *R v Kilbourne* [1973] AC 729 at 756 Lord Simon of Glaisdale observed that:

“Evidence is relevant if it is logically probative or disprobative of some matter which requires proof...relevant (i.e. logically probative or disprobative) evidence is evidence which makes the matter which requires proof more or less probable.”

51. In determining whether the findings are proved to the requisite standard, the court is required to consider “the wide canvas” of the evidence before the court (see *Re U (Serious Injury: Standard of Proof)* [2005] Fam 134 at [26]) including and the wider context of social, emotional, ethical and moral factors (see *A County Council v A Mother, A Father and X, Y and Z* [2005] EWHC 31 (Fam) at [44]).
52. The evidence of the parents, carers and family members is of utmost importance and 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 (see *Gestmin SGPS SA v Credit Suisse (UK) Ltd Anor* [2013] EWHC 3560 (Comm) at [15] to [21] and *Lancashire County Council v M and F* [2014] EWHC 3 (Fam)). The court must, however, guard against an assessment solely by virtue of a witness’s behaviour in the witness box (*Re M (Children)* [2013] EWCA Civ 1147 at [11] and [12]).
53. The court is not bound by the cases put forward by the parties, but may adopt an alternative solution of its own (see *Re S (A Child)* [2015] UKSC 20 at [20]). Judges are entitled, where the evidence justifies it, to make findings of fact that have not been sought by the parties, but they should be cautious when considering doing so.
54. In family proceedings, evidence given in connection with the welfare of a child is admissible notwithstanding any rule relating to the law of hearsay (see the Children (Admissibility of Hearsay Evidence) Order 1993). The weight to be attached to a piece of hearsay evidence is a question for the court to decide (*Re W (Fact Finding: Hearsay Evidence)* [2014] 2 FLR 703). Within this context, a serious unsworn allegation may be accepted by the court provided it is evaluated against testimony on oath (*Re H (Change of Care Plan)* [1998] 1 FLR 193). It is very important to bear in mind at all times that the court is required to treat hearsay evidence anxiously and consider carefully the extent to which it can properly be relied upon (see *R v B County Council ex parte P* [1991] 1 WLR 221).
55. The court must bear in mind that a witness may tell lies during an investigation and the hearing. The court must be careful to bear in mind that a witness may lie for many reasons, such as shame, misplaced loyalty, panic, fear and distress. The fact that a witness has lied about some matters does not mean that he or she has lied about everything (*R v Lucas* [1982] QB 720). It is also important, in cases where one or more of the respondents has significant cognitive difficulties, that before considering the application of the principle in *R v Lucas* the court satisfies itself that the statement that is said to be a lie is not, in fact, merely the result of confusion or misunderstanding.
56. Within the context of family proceedings, the Court of Appeal has made clear that the application of the principle articulated in *R v Lucas* in family cases should go beyond the court merely reminding itself of the broad principle. In *Re H-C (Children)* [2016] 4 WLR 85 McFarlane LJ (as he then was) stated as follows:

“[100] One highly important aspect of the Lucas decision, and indeed the approach to lies generally in the criminal jurisdiction, needs to be borne fully in mind by family judges. It is this: in the criminal jurisdiction the ‘lie’ is never taken, of itself, as direct proof of guilt. As is plain from the passage quoted from Lord Lane’s judgment in Lucas, where the relevant conditions

are satisfied the lie is "capable of amounting to a corroboration". In recent times the point has been most clearly made in the Court of Appeal Criminal Division in the case of *R v Middleton* [2001] Crim.L.R. 251. In my view there should be no distinction between the approach taken by the criminal court on the issue of lies to that adopted in the family court. Judges should therefore take care to ensure that they do not rely upon a conclusion that an individual has lied on a material issue as direct proof of guilt."

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

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

58. Where the court is satisfied that a lie is capable of amounting to corroboration of an allegation having regard to the four conditions set out in *R v Lucas*, in determining whether a given fact is proved, the court must weigh that lie against any evidence that points away from the allegation being made out (*H v City and Council of Swansea and Others* [2011] EWCA Civ 195).
59. In cases of alleged domestic abuse, the same standard and burden of proof applies. As noted by Cobb J in *Re B-B (Domestic Abuse: Fact Finding)* [2022] 2 FLR 725, in private law cases the court needs to be vigilant to the possibility that one or other parent may be seeking to gain an advantage in the battle against the other. This does not mean that allegations are false, but it does increase the risk of misinterpretation, exaggeration, or fabrication. At all times, the court must follow the principles and guidance set out in PD12J of the FPR 2010.
60. In cases of alleged sexual abuse, at the fact-finding stage the court must determine two questions of fact. First, having regard to the evidence, did sexual abuse take place? If so, having regard to the evidence, who perpetrated that sexual abuse (see *Re H (Minors)*; *Re K (Minors) (Child Abuse: Evidence)* [1989] 2 FLR 313 and *Re H and R (Child Sexual Abuse: Standard of Proof)* [1995] 1 FLR 643).
61. In this case, the alleged incident of sexual abuse is said to have occurred whilst A was alone with her father. A is too young to provide an account. In the circumstances, the primary evidence of sexual abuse in this case concerns the physical signs said to have been noted by Dr M and Dr G, albeit that the wider canvass before the court is relevant to the determination of the two questions of fact with which the court is concerned. With respect to evidence of physical signs of sexual abuse, I made the following observations in *Re P (Sexual Abuse: Finding of Fact Hearing)* [2019] EWFC 27:

“948. In the absence of semen, blood, foreign objects or, in the case of a female child, pregnancy, medical evidence with respect to the physical signs of sexual abuse is almost never diagnostic, very often non-specific, ambiguous or equivocal and, on occasion, controversial. The position is complicated further by the fact that ‘normal’ in the context of the anal and genital anatomy of children is not a single, fixed point but rather a spectrum. As McFarlane LJ (as he then was) observed in his foreword to the RCPCH guidance *The Physical Signs of Sexual Abuse 2015*:

“Clinical evaluation of the signs, which may themselves be minute or hard to detect, and the need to differentiate between variations in the range of normality, possible accidental explanations or compatibility with child sexual abuse is a professional task of a high order of both difficulty and importance.”

949. Within this context, the Cleveland Report noted at [11.30] that “In considering generally physical signs on a suspicion of sexual abuse, we endorse the observation in *Some Principles of Good Practice*: ‘Abnormal physical signs are rarely unequivocally diagnostic with the exception of the presence of semen or blood of a different group to that of the child.’” In 1988 the pre-cursor to the current RCPCH Guidance, entitled *Diagnosis of Child Sexual Abuse: Guidance for Doctors*, noted at [2.3] that “The medical aspects are only one element in the diagnostic process” and at [12.20] that it cannot be emphasized too strongly that no physical sign can at the present time be regarded as being uniquely diagnostic of child sexual abuse.” In 1991 *The Physical signs of sexual abuse in children* reiterated at [2.3] that “The single most important feature is a statement by the child. Detailed medical and forensic evidence may support this statement, as may a psychological assessment of the child or the confession by a perpetrator. Physical signs alone are on rare occasions sufficient to make the diagnosis.” *The Handbook of Best Practice in Children Act Cases 1997* notes that there is often a tension between a positive clinical finding of sexual abuse, and judicial findings that sexual abuse has not occurred and that, within contested cases, clinical methods will inevitably be subjected to scrutiny.

950. The most up to date version of *The Physical Signs of Child Sexual Abuse – An evidence-based review and guidance for best practice* was published by the RCPCH in May 2015, to which this court has been referred extensively during this hearing. That publication too, emphasises the challenges that remain in establishing whether a child has been sexually abused and the significance of anogenital signs when they are found. It further emphasises at [1.1.2] that medical evidence is but one part of the evidential picture:

“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 the full picture can emerge. It is important to consider all physical findings together with other important clinical information, including the history, the context of the child’s or young person’s behaviour and demeanour, and statements made by the child to professionals, in order to make a diagnosis. The medical

assessment will contribute to the whole picture which includes the multi-agency assessment.”

And, within this context at [3.1.14] that:

“The anogenital findings must always be interpreted in the broad context of a detailed medical, social and family assessment and the child’s behaviour and demeanour.”

951. Within the foregoing context, when evaluating the medical evidence in this case, it is once again useful to recall the caution articulated by Holman J at [143] in *Leeds City Council v YX & ZX (Assessment of Sexual Abuse)* as follows:

“The medical assessment of physical signs of sexual abuse has a considerably subjective element, and unless there is clearly diagnostic evidence of abuse (e.g. the presence of semen or a foreign body internally) purely medical assessments and opinions should not be allowed to predominate. Even 20 years after the Cleveland Inquiry, I wonder whether its lessons have fully been learned.”

62. With respect to risk factors for sexual abuse, in this case alleged by the mother to be evidenced by the father having inappropriate sexual boundaries, in *Re BR* [2015] EWFC 41 Peter Jackson J (as he then was) set out at [18] a summary of those factors drawn from information from the NSPCC, the Common Assessment Framework and the Patient UK Guidance for Health Professionals prepared by counsel for the child and said to represent risk factors for child abuse and protective factors against child abuse. Those factors listed as indicating risk are said to be physical or mental disability in children that may increase caregiver burden, social isolation of families, parents' lack of understanding of children's needs and child development, parents' history of domestic abuse, history of physical or sexual abuse (as a child), past physical or sexual abuse of a child, poverty and other socioeconomic disadvantage, family disorganization, dissolution, and violence, including intimate partner violence, lack of family cohesion, substance abuse in family, parental immaturity, single or non-biological parents, poor parent-child relationships and negative interactions, parental thoughts and emotions supporting maltreatment behaviours, parental stress and distress, including depression or other mental health conditions and community violence. Those facts considered to be protective were said to be a supportive family environment, nurturing parenting skills, stable family relationships, household rules and monitoring of the child, adequate parental finances, adequate housing, access to health care and social services, caring adults who can serve as role models or mentors and community support. As Peter Jackson J made clear at [19]:

“[19] In itself, the presence or absence of a particular factor proves nothing. Children can of course be well cared for in disadvantaged homes and abused in otherwise fortunate ones. As emphasised above, each case turns on its facts. The above analysis may nonetheless provide a helpful framework within which the evidence can be assessed and the facts established.”

63. As this court observed in *Re P (Sexual Abuse: Finding of Fact Hearing)*, whilst considerable caution must be exercised where a given risk factor has not been formally quantified, if in a case of alleged sexual abuse the court finds on the evidence, to the requisite standard of proof, that a relevant risk factor is present (for example, a parent has extensive substance abuse issues and lax sexual boundaries) the court is entitled, to the extent that the court sees fit in the particular circumstances of the case, to take account of such matters when evaluating the probability that the parent committed the sexual abuse alleged.
64. The role of the court at this finding of fact hearing is, accordingly, to consider the evidence in its totality and to make such findings on the balance of probabilities as are appropriate. This means that, in accordance with the foregoing general principles, when assessing whether the allegations are proved to the requisite standard, the court must consider each piece of evidence in the context of all of the other evidence (*Re T* [2004] 2 FLR 838 at [33]). In *Re A (Children)* [2018] EWCA Civ 1718, the Court of Appeal once again emphasised the overarching importance, when determining whether or not the case has been proved to the requisite standard, of the court standing back from the case to consider the whole picture and ask itself the ultimate question of whether that which is alleged is more likely than not to be true.

DISCUSSION

65. Having considered the submissions of the parties, I am satisfied that the following findings are proved on the balance of probabilities:
- i) The mother perpetrated serious physical domestic abuse towards the father throughout the parents' relationship, including whilst she was pregnant and whilst holding A in her arms. Specifically:
 - a) On 6 April 2017 the mother attacked the father in the street, hitting and clawing his face with her nails, resulting in the father requiring medical treatment from paramedics.
 - b) On or around 10 September 2017 the mother attacked the father in a hotel room in Dubai, hitting him several times around the head, causing him pain but no visible injuries.
 - c) On or around 1 January 2018 the mother physically assaulted the father by hitting him hard around the head a number of times during an argument.
 - d) On 9 March 2018 in Zambia the mother lunged at the father to strike him whilst holding a wine glass. The glass smashed, resulting in a deep cut to the father's hand requiring 5-6 stiches and a puncture to his shoulder that required treatment.
 - e) On or around 8 April 2018 at the father's flat in Hackney the mother hit the father several times and clawed his face, causing him visible injuries. The following day the mother applied her make up to the father's face in an attempt to lessen the visibility of the injuries.

- f) On 15 August 2018 the mother attacked the father at his houseboat by slapping him open handed around the head and face causing cuts to his nose and giving him a bloody nose. The mother threw the father's wallet into the Thames.
 - g) On 13 April 2020 the mother threatened to kill the father with a large kitchen knife she was holding during an argument, resulting in a stand-off that lasted 90 minutes. A re-occurrence occurred later in the same week on 15 April 2020, resulting in the mother being arrested.
 - h) In February 2021, whilst the parties were residing in Soho shortly before A was born, the mother hit the father hard around the head after he made a suggestion she disagreed with. There was no visible injury.
 - i) In or around May 2021, following an argument at the family home, the mother followed the father and punched him to the head whilst he was holding A in his arms.
 - ii) The mother has previously threatened to harm and kill herself and these threats have been made in the presence of A:
 - a) In late 2017 the mother took a large knife out of the kitchen draw and brandished at the father whilst shouting at him. The father retreated outside and the mother repeatedly threatened to harm herself before going to bed and taking the knife with her.
 - b) On 16 January 2022 the mother took a knife from the drawer in the kitchen and held it against herself whilst threatening to end her life whilst the father was present holding A, who was crying uncontrollably.
 - iii) Both parents sought to influence the police investigation in Zambia into the allegation made against the father in Zambia in an effort to influence the outcome of that investigation.
 - iv) The mother lied in the sworn affidavit filed and served in the protection order proceedings in Zambia in denying that she had perpetrated domestic abuse against the father.
66. It follows that I am *not* satisfied on the balance of probabilities that the father sexually abused A in such a way as to leave his semen on A. I am likewise *not* satisfied that the father has engaged in bribery of officials in Zambia for the purposes of seeking to prevent the case against him for defilement or sexual abuse proceeding. I am also *not* satisfied that the father was sexually aroused during the changing of A's nappy or that the father lacks appropriate sexual boundaries and has exploitative sexual interests. Finally, whilst I have been given considerable pause, I am ultimately *not* satisfied on the balance of probabilities that the allegation of sexual abuse made against the father has been made in bad faith by the mother to support her case within these proceedings not to return to England with A. My reasons for so deciding are as follows.

67. The father presented as a frank witness and gave his evidence without any guile. He was prepared to make concessions where it was appropriate to do so, for example conceding that having employed someone in Zambia to make representations on his behalf in that jurisdiction in the context of the criminal investigation it was likely that those representations had some effect. Having heard the father give evidence, I share the view formed by Arbuthnot J (and not interfered with by the Court of Appeal) that the father presents as a kind although somewhat naïve individual. It was plain from the father's evidence that he was terrified of the consequences of being convicted and imprisoned in Zambia for an allegation that he denies. Whilst on occasion the father failed to answer the question put to him, overall I consider the father's evidence to have been reliable.
68. During her oral evidence, the mother presented as a highly complex character who is considerably lacking in insight as to the consequences of her actions and very reluctant to take responsibility for them. She was prone to blaming the father for the serious physical and verbal domestic abuse she now concedes she perpetrated on him or to excusing that domestic abuse using the modish language of 'wellness'. The mother appeared to have an extremely heightened sense of distrust of others and appeared vulnerable to misinterpreting the actions of others, particularly with respect to the father. A striking feature of the mother's evidence was what actions she considered amounted to frank infidelity, including the father looking at another woman. During her evidence, the mother was caught in a number of exaggerations and ultimately had to concede that her denial of having perpetrated domestic abuse against the father in her sworn affidavit in the civil proceedings in Zambia was a lie. Within this context, I have had to treat the mother's evidence with considerable circumspection where it is not corroborated by other evidence.

Allegations of Domestic Abuse by Mother

69. Having denied them in her affidavit in the civil proceedings in Zambia, the mother now concedes, in large part, the allegations made by the father of domestic abuse and threatened self-harm. As noted in my judgment dated 8 February 2024, during her evidence at the hearing which led to that judgment the mother conceded that she had caused injuries to the father, before confirming that the photographs of the father's injuries contained in the bundle prepared for that hearing were accurate. The mother has now made further concessions in respect of the domestic abuse she perpetrated on the father between March 2017 and January 2022, which concessions were further illuminated in the admissions contained in the schedule of allegations and during cross-examination. The incidents required the father to have medical treatment on two occasions and twice resulted in the mother being arrested by the police.
70. The mother and father gave evidence in respect to the allegations of domestic abuse and self-harm and the mother was cross-examined with respect to her admissions and denials regarding those allegations. With respect to the allegations of domestic abuse and self-harm:
- i) The mother accepts that she attacked the father in the street on 6 April 2017. The mother physically assaulted the father resulting in cuts and scratches to his face and a bleeding eye. During cross examination, the mother conceded that, whilst she could not remember the incident due to being very inebriated, she had grabbed and thrown the phone of a member of the public who had

attempted to intervene to stop her assault on the father. The mother was arrested on suspicion of assault occasioning actual bodily harm. Whilst the mother initially alleged to the police that she had been assaulted by the father and showed a broken finger nail as purported evidence, at this hearing mother confirmed that father has never been physically violent to her, suggesting this account to the police on 6 April 2017 was untrue. As I remarked during the hearing, the text from the father to the mother the following morning is of note. That text reads very much as the victim of domestic abuse seeking to assuage a perpetrator, the father being anxious to make sure that mother knew that it was not him who called the police and that it was police policy and not the father which caused the mother to be arrested.

- ii) The mother accepted that she was “a bit unstable” at the time but claimed no memory of assaulting the father in a hotel room in Dubai on 10 September 2017, hitting him several times around the head, causing him pain but no visible injuries. In her statement the mother states that she had left her antidepressants at home and was having mood swings and irritability. In cross examination the mother stated that, although she could not recall it, she assumed there had been an argument but that she “had no memory” of hitting the father. In her statement, the mother sought to suggest that a text sent by the father on 17 September 2017 demonstrated that the father too had behaved inappropriately on 10 September 2017. However, and as the mother was forced to concede, that text plainly relates to a different event, a week after the incident in Dubai. I am satisfied that by her statement the mother was seeking to mislead the court. Having regard to the evidence, and placing the allegation in the context of the totality of my findings, I am satisfied that the mother did attack the father in a hotel room in Dubai, hitting him several times around the head and causing him pain.
- iii) The mother further accepts that she assaulted the father by hitting him hard around the head a number of times during an argument. Again, the text from the father that followed this incident is of note. In it the father said as follows, “I know every time it happens you regret it, but it still happens. It’s not like you hurt me or do any serious damage, aside from the first time, but it’s so unhealthy, and makes me feel pathetic.” When cross-examined, the mother demonstrated almost no ability to accept responsibility for perpetrating this domestic abuse on the father, blaming the father for not “understanding the co-dependent relationship he had created”.
- iv) With respect to the allegation on 9 March 2018, both parties accepted that this incident occurred in the context of an argument in which the mother had accused the father of being “sexually aroused” in the presence of her sister, during a memorial service in Zambia for her late father. The mother contends that the father sustained injury accidentally when she went to pour a glass of wine on him and he instinctively raised his hand. The mother accepts that the glass smashed, resulting in a deep cut to the father’s hand requiring 5-6 stitches. She asserts that she does not recall a puncture to his shoulder that required treatment. The father contends that his hand was in a defensive position when the mother lunged at him with the glass. When cross-examined the mother conceded that there was a heated exchange in the hotel room. I

accept the father's evidence that injury occurred the when the mother lunged at him, having once again badly lost control. Once again, the mother sought during her oral evidence to place responsibility for the domestic abuse on the father, stating that he "was not being forthcoming and honest".

- v) Whilst asserting that she does not recall the incident, the mother does not deny that on 8 April 2018 at the father's flat the mother hit the father several times and clawed his face, causing him visible injuries. The mother conceded during cross examination that, following this incident, she had given the father make-up in an effort to disguise the injuries.
- vi) The mother does not recall, but does not deny, that on 15 August 2018 the mother attacked the father at his houseboat by slapping him open handed around the head and face causing cuts to his nose and giving him a bloody nose. It is significant that during cross examination, the mother conceded that she had followed the father from the property in which the parents were residing at the time and attacked him on the houseboat having followed him to that location.
- vii) The mother further admits that on 13 April 2020, during an argument about financing for her business she lashed out brandishing a 9 inch kitchen knife and threatened to end her life. The mother further concedes that on this occasion she smashed a ceramic dish, causing the father to suffer a scratch from flying debris. The mother has denied making threats to kill against the father during this incident, including during cross-examination. In his police statement PC Townsend states that "When I read the quote "I WILL KILL YOU, ONE OF US IS GOING TO DIE, DON'T FUCK WITH ME OR I'LL CUT YOU" [the mother] completely denied saying any of this and said that this hasn't happened." However, in her penultimate statement to this court, the mother accepts that she made threats to the father in the manner set out in the documents disclosed by the police. Those documents include the father's statement to the police which states "She was shouting such things as 'I WILL KILL YOU', 'ONE OF US IS GOING TO DIE', 'DON'T FUCK WITH ME OR I'LL CUT YOU'" and alleges that the mother then held the knife by the blade and put the handle in the father's hand and said "STAB ME, KILL ME". The father alleges that the mother then took a second knife and began to cut her clothing before making a number of small, superficial cuts to her arms. The mother denied in cross-examination that she had cut her clothing but conceded she had attempted a cut on her arm. I am satisfied on the balance of probabilities that the incident on 13 April 2020 occurred in the manner described by the father.
- viii) The mother accepted in cross examination that a further incident occurred on 15 April 2020, during which the mother threatened a return to violence and talked about getting the knife again and wanting to punch the father. The police disclosure reflects the father's allegation that the mother said to the father on this occasion "words to the effect that ONE OF OUR BLOOD WILL BE SHED". The mother further accepts that she was arrested for a second time on this occasion and taken into custody. The father alleges that once the police had left with the mother, he discovered the mother had also smashed two Apple computer screens. The mother received a caution for criminal

damage pursuant to s.1(1) of the Criminal Damage Act 1971. When cross examined, the mother accepted that she had deliberately smashed the computer screens.

- ix) The mother denies hitting the father hard around the head in February 2021 after he made a suggestion she disagreed with. The mother was pregnant at this time with A. The father maintains the allegation. Having regard to the totality of the evidence, I am satisfied on the balance of probabilities that this event occurred as described by the father.
 - x) The mother denies punching the father to the head in May 2021. The father alleges that this took place whilst A was in the mother's arms. In her statement the mother now seeks to ascribe this incident to an argument about matters to which I will come, namely her allegation that the father became sexually aroused around A (an assertion I consider to be untrue for the reasons I give below). The mother accepts that she was holding A and accepts that in the action of throwing her phone at him her hand came into contact with his face. Having regard to the totality of the evidence, I am satisfied that it is more likely than not that the mother punched the father to the head.
 - xi) The mother further accepts that in the summer of 2017 she retrieved a knife from the kitchen drawer and threatened to end her own life whilst drunk. She further accepts that she took the knife to bed with her. In cross examination, the mother conceded that following this incident the father felt compelled to hide all of the sharp knives in the property.
 - xii) Finally, the mother also accepts that on 16 January 2022 the mother took a knife from the drawer in the kitchen and held it against herself whilst threatening to end her life whilst the father was present holding A, who was crying uncontrollably.
71. The father does not limit his evidence to the foregoing incidents and alleges a pattern of domestic abuse and controlling behaviour over an extended period of time, including attempts by the mother to isolate him from his family. In circumstances where no further findings are sought in this regard, I say no more about that contention save to observe that the mother made a number of further relevant concessions in her written and oral evidence.
72. In particular, the mother conceded that she had gone through the father's Instagram and work messaging accounts on his laptop without his knowledge and read messages between the father and his own mother on the father's phone. As I have noted at points above, during the course of her evidence the mother demonstrated very little insight into the fact that she had perpetrated serial domestic abuse to the father during the course of the parents' relationship, telling the court at one point that "I am not an abuser". As I have further noted, the mother sought on repeated occasions to blame the father for her own conduct, criticising the father for being emotionally closed off and repeatedly cloaking her actions in the modish language of 'wellness' rather than taking responsibility for her conduct.

Allegations of Interference and Bribery

73. It is convenient next to deal with the father's allegation that the mother unduly interfered in the police investigation into the allegations which have been made against the father in Zambia, thereby undermining the impartiality and fairness of that process. It is further convenient at the same time to deal with the allegation made by the mother that the father engaged in bribery of officials in Zambia for the purposes of seeking to prevent the case against him for defilement or sexual abuse proceeding. I am satisfied on the extensive evidence heard by the court that *both* parents engaged in efforts to influence the course of the police investigation in Zambia.
74. During cross-examination, the mother conceded that she had almost immediately instructed her own criminal solicitors with respect to the police investigation, even though she was not the parent under investigation. As set out in my judgment of 8 February 2024, and as conceded by the mother in her response to the schedule of findings sought by the father, the mother met with police officers in Zambia up to forty times and gained full access to the police investigation file, accessed and read legal advice received by the police and contained in the police investigation file which stated that the evidence in the case was insufficient to justify prosecution, told the police that the advice in that document was wrong and pressed them to continue their investigation and take action against the father despite that legal advice and was provided with sensitive documents from the police investigation, including correspondence between Interpol Lusaka and Interpol Manchester and the medical report of Dr G. As I have noted, the mother now further concedes that she received the results of the swab testing from an investigating officer six days before the report of Dr G was finalised.
75. In her statement for this hearing, the mother has now provided a fuller account of the efforts she was making with respect to the investigation by way of meetings with officials in Zambia. That statement indicates that the mother met repeatedly with investigating police officers to discuss the case, with the District Criminal Investigations Officer for Lusaka, with the Police Secretary at the Ministry of Home Affairs and the Permanent Secretary of Home Affairs. The discussions held with these officials included discussions concerning the progress of the police investigation, the conduct of certain police officers and the DNA evidence. As I have noted, on 7 November 2022 the mother stated her intention to privately fund the DNA testing. The mother further exhibits a letter of complaint to the Permanent Secretary written in May 2023. As I will come to, the letter of complaint to the Permanent Secretary overstates the position with respect to the allegation of sexual abuse.
76. I note at this point that, notwithstanding that the police investigation in Zambia commenced on 15 September 2022, the full extent of the mother's efforts with respect to that investigation only became apparent for the first time at the hearing in November 2023, during which the mother admitted in cross-examination the matters I have recounted, and subsequently in her final statement, in which the mother provided a full account of her meetings with officials and her wider efforts with respect to the Zambian investigation.
77. Unsurprisingly, upon his arrest the father engaged solicitors in Zambia. Equally unsurprisingly, the solicitor engaged by the father sought to open a dialogue with the police to secure his release from custody. As noted in my judgment of 8 February 2024, the father alleges, in evidence that was not challenged in cross examination, that the investigating police officer "suggested twice that I 'employ' him", once at his

hotel room and once at the police station, which the father refused. The mother now contends that Office Mpala stated to her that it was the father who offered to bribe him. The father further states that following his release from police custody:

“I was then informed by my contacts in Zambia that there was ‘a lot of money’ flying around, which confirmed my fears that the investigating officers had been bribed, and that the evidence relating to the prosecution was unsafe.”

78. Within this context, and as set out in his final statement, the father’s solicitor sought to meet with the Permanent Secretary, the Inspector General of the National Zambian Police, the Deputy Director of the Community Services Directorate. The father also engaged an additional lawyer, Dr C. During his cross-examination by Ms Allman, the father agreed that Dr C was also a Member of the Zambian Parliament. In his statement, the father further concedes as follows:

“[34] It is, however, true that I have expended significant resources in Zambia dealing with both the criminal and civil matters. Essentially, I consider it a matter of life and death, being certain that if I were to be made to return to Zambia I would not face a fair process. The sentence for the crime I am accused of in Zambia is a life sentence of hard labour, in chronically overcrowded prisons with appalling conditions and a prevalence of malaria and HIV, with no meaningful protections from other prisoners. I have no doubt that if I were incarcerated in Zambia I would die in prison. I am fortunate to have significant financial resources available and have sought to deploy these resources in my defence where I can.

[35] In the time since my arrest, I have spent almost £80,000 with my Zambian solicitors, and in excess of £385,000 with a private investigation company, led by a retired senior police detective who was introduced to me by my solicitor. This activity has included:

- Making representation to the police and other bodies on my behalf.
- Seeking to understand the progress of the police activity and investigation.
- Carrying out further investigation of the underlying facts of the case to seek to unearth missed evidence (this is where the CCTV footage from the hotel included in the exhibits came from, which the police have never sought or considered despite me telling them about it).
- Investigation to identify police officers [the mother] is collaborating with and any evidence that can be obtained.
- Investigating whether any concrete information regarding undue influence or interference with the investigation from [the mother] can be found.”

79. As with the mother, the efforts made by the father with respect to the investigation in Zambia did not emerge voluntarily, but rather as the result of the father disclosing his

bank statements in the proceedings under Schedule 1 of the Children Act 1989. As originally disclosed, whilst father did not seek to disguise the fact that the payments had been made, those accounts were redacted to remove the name of the private investigator, on the grounds that the father was concerned that the private investigator's safety might be imperilled were his identity to be revealed to the mother. In the absence of any cogent evidence to support that contention, the court directed that unredacted copies of the bank statements be disclosed to the mother. The mother now contends that the private investigator hired by the father, a Mr Y, has been the subject of investigation and prosecution in Zambia. In this regards the mother relies on a press report from Zambia obtained via a Google search, which reported that Mr Y was acquitted of a charge of theft. That evidence is plainly insufficient to reach any considered view on Mr Y's probity or lack of it.

80. Having considered carefully the extensive evidence on this issue, I am satisfied that *both* parents interfered in the police investigation into the allegations which have been made against the father in Zambia in an effort to influence the outcome of that investigation.
81. Both parents employed representatives in relation to criminal investigations and both sought and secured repeated and extensive meetings with investigating police officers and high ranking officials. The evidence further indicates that each sought to influence the process in order to achieve the outcome to the investigation that they believed was the correct one. In circumstances where the mother, for the reasons I shall come to, had immediately jumped to the conclusion that the father had sexually abused A, she conducted herself in the manner I have described out of an increasing compulsion to ensure that the investigation progressed towards the only conclusion she could conceive of as being merited, namely the guilt of the father. In circumstances where the father, with considerable justification in the circumstances I shall come to, firmly believed that the police investigation would result in a miscarriage of justice based on an allegation that was untrue, he conducted himself in the manner I have described in an effort to ensure that he was not the subject of a wrongful conviction that would lead to him being incarcerated for an extended period in appalling conditions.
82. It was, ultimately, somewhat unclear how the mother put her case in respect of the finding she seeks that the father bribed officials in Zambia. Ms Allman advanced several formulations during her cross-examination of the father and in her closing submissions. I am, however, satisfied that the evidence does not support the finding sought in the mother's schedule, namely that the father engaged in bribery of officials in Zambia for the purposes of seeking to prevent the case against him proceeding.
83. The evidence does show that the father paid a significant amount of money to an individual in Zambia and did so in different amounts on an irregular basis. The father concedes that he did so for the reasons set out in his statement. It is further the case that the father has not produced records or reports from Mr Kayombo detailing the work he did in Zambia. That, however, is as far as the evidence goes.
84. In particular, it is not clear the extent to which it is normal practice in the jurisdiction of Zambia for parties to employ others make representations in the context of a criminal investigation, as both parties sought to do in the case. Further, whilst the father paid significant sums of money to Mr Y, there is no evidence before the court

that the father intended that money to be used to bribe officials in Zambia or that Mr Y made corrupt payments to such officials. In the circumstances, whilst Ms Allman sought in her written and oral submissions to make links between the fact money had been paid and certain actions on the part of the Zambian authorities, there is likewise no evidence that a particular action taken by a police officer or official in Zambia was the result of a payment made by the father either directly or through Mr Y. It is the case that the father did not reveal the payments made to Mr Y voluntarily nor the extent of the meetings with officials that were conducted on his behalf. However, I remind myself that the mother too did not reveal the matters set out above regarding her efforts in respect of the police investigation until they began to be revealed during cross-examination at the hearing in February 2024. In the same way that the mother's actions in relation to the investigation are consistent both with a concerned parent wanting a thorough investigation and a malicious parent making a false allegation, so are the father's actions consistent both with a guilty man seeking to avoid investigation and an innocent man terrified of being wrongly convicted in a foreign jurisdiction.

85. In the foregoing circumstances, and in the absence of any specific allegations, any finding of bribery would rely solely on inferring such conduct from the fact that the father has paid a large sum of money to an individual in Zambia. That is not a sufficient foundation for the finding of bribery sought by the mother. Nor, for the same reasons, is the evidence sufficient to conclude that the father has turned a blind eye to bribery being undertaken by Mr Y using the money the father paid to him.
86. I am further satisfied that the matters set out above mean that the court must be extremely cautious when considering the weight to be attached to the material arising from the police investigation in Zambia. For the reasons I shall come to, this includes the medical evidence on which the mother relies in support of a finding that the father sexually abused A.

Allegations of Inappropriate Sexual Boundaries and Behaviour

87. Before I turn to the findings sought by the mother that the father sexually abused A, it is convenient first to deal with the findings the mother seeks that the father lacks appropriate sexual boundaries and has exploitative sexual interests which present a risk of harm to A and that the applicant was sexually aroused during the changing of A's nappy. I will also deal in this section of the judgment with finding sought by the father that the mother has repeatedly lied on oath and within sworn affidavits in these proceedings and within the proceedings in Zambia.
88. Before turning to the findings themselves it is important to note that, as Ms Allman submits, save for the final two statements provided by each parent the statements in this case have been provided to the court in the context of the question of whether A should be returned to the jurisdiction of England and Wales. Ms Allman submits that this must be taken into account when considering the forensic significance of any omissions in the mother's earlier statements. Whilst there is some force in that point, it is also the case that the question of whether A should be returned to the jurisdiction was a welfare question, the father's application having been brought under the inherent jurisdiction. Further, each of the statements filed and served by the parties deals with matters that provided the opportunity for the mother to raise the serious

allegations on which she now relies. Finally, and importantly, as noted above the mother commenced proceedings in Zambia for a protection order in which the sexual risk allegedly presented by the father was the central issue before the court, in circumstances where the mother contends those proceedings were brought because of the allegation of sexual abuse against the father.

89. I am satisfied that the mother has in her final statement changed her account of how the parties met. In each statement prior to her final statement, in describing how the parties met the mother has stated that this was through a dating website. At no point did the mother suggest that she was working as an escort or that the parents' relationship commenced in that context. She did not make such an assertion in the proceedings in Zambia for a protection order. Whilst I accept that it might be difficult for someone to acknowledge working as an escort, I am not satisfied in this case that that is the explanation for the mother's change of account. Whilst the mother plainly had an opportunity in her earlier statements that deal with how the parties met to give an accurate account, it is only in the context of her statement that deals with her allegation that the father lacks appropriate sexual boundaries, which allegation itself has not been levelled before, that the mother changed her account.
90. The father has consistently contended they met on dating site, whilst conceding the transactional element inherent in a site designed to match wealthy men with women. The mother's previously anodyne version of how the parents met changes to imply a nefarious context only at the point the court comes to consider the mother's allegation that the father has inappropriate sexual boundaries, an allegation that itself only appears in her recent statement. I am satisfied that the mother's change of account is a deliberate mischaracterisation of how the parents met. I am further satisfied that the father's continued use of the dating website in question to form relationships does not support the mother's allegation that the father is paying young women to perform sexual acts via escort agency websites.
91. The father did not seek to deny that he used pornography and concedes that the OnlyFans payments seen in his bank statements were made to access pornographic material. Likewise with the use of social media. In support of her allegation that the father masturbated to photographs on Instagram of women "in their late teens or early twenties", the mother exhibits photographs of the father's phone showing the web addresses of the Instagram pages in question, rather than the pages themselves. The father exhibits to his statements examples of the Instagram pages themselves, depicting the photographs from the Instagram pages listed by the mother. All of the women in the photographs are clothed, the photographs generally depicting women engaging in a wealthy lifestyle in fashionable evening, sports and leisure wear or interacting with friends and relatives. The mother made no previous mention of her concerns regarding the father viewing pornography or social media either in these proceedings, as a reason that it would not be in A's best interests to return to this jurisdiction or as a reason for caution with respect to contact, or in the protection order proceedings in Zambia, as justification for a protection order.
92. Whatever moral position is taken on pornography and social media, and the detrimental effect of the objectification of women, the use of legal pornography and social media is not unlawful. Contrary to the assertion now made by the mother, there is no evidence before the court that the father is addicted to pornography. I am satisfied that by producing only the web addresses of the Instagram pages on the

father's phone rather than the pages themselves and then seeking to characterise those pages picturing women "in their late teens or early twenties" without any further qualification, the mother deliberately sought to mischaracterise the Instagram pages being viewed by the father. Once the pages themselves are seen, the mother's mischaracterisation becomes clear. In this context, I likewise reject as untrue the mother's evidence that the father told her that he had been looking at Instagram to get in the mood ahead of masturbating to pornographic material. Having regard to the evidence before the court, I decline to make a finding that the father masturbated to Instagram videos posted by young women who appeared to be in their late teens or early twenties. I am satisfied that the mother has sought deliberately to mischaracterise the father's use of pornography and social media.

93. In the foregoing circumstances, I decline to make a finding that the father lacks appropriate sexual boundaries and has exploitative sexual interests, which present a risk of harm to A.
94. I am further satisfied that the mother is not telling the truth when she claims that, following A's birth, the father became sexually aroused around A. Whilst, as I have noted, the father concedes that the mother levelled this allegation at him on one occasion the mother's allegation, which now refers to multiple occasions, appeared for the first time in her statement for the finding of fact hearing. Whilst, once again, I note Ms Allman's submission regarding the purpose of earlier statements, the mother has made no previous mention of this extremely serious matter in her previous statements in these proceedings as a reason that it would not be in A's best interests to return to this jurisdiction or as a reason for caution with respect to contact. The mother conceded in cross-examination that she had not mentioned the fact that, on her case, the father was becoming sexually aroused around A to any safeguarding agency, the GP, the police or to members of her family. The mother was unable to provide any dates of specific incidents. Whilst the mother claimed to have raised these matters with the police in Zambia during the investigation she was unable to provide any specifics and couched her answers in terms of what she "would have" done, not what she did do, notwithstanding her other extensive and documented efforts concerning the investigation. There is no mention of the mother having raised such concerns in the Zambian documents available to this court. Once again, notwithstanding that the sexual risk allegedly presented by the father was the central issue before the Zambian courts, the mother made no mention of her concerns in proceedings in Zambia for a protection order.
95. Notwithstanding that the mother now alleges that the father became regularly sexually aroused around A, the mother continued to allow the father to care for A whilst the parents' relationship subsisted and thereafter permitted regular unsupervised contact with A. In her statement of 22 October 2022, made after she had raised the allegation of sexual abuse in Zambia against the father, the mother recalled that "when he travelled in June 2022 for a 1 week visit, I offered my home as a place of accommodation which would enable him to spend an unlimited amount of time with A around her routine but [the father] declined". As I have noted, on 9 August 2022 the mother sent an email to the father outlining proposals with respect to the future. At the outset of the email, the mother referred to the father's contact with A and stated that "It was good seeing you and A really enjoyed father daughter time". The email further states that the father "would be welcome to stay at the house during your

visits” and, as noted above, ended by referring to “the beautiful bond” shared by A and her father. The mother permitted the father further unsupervised contact in Zambia on occasions in August 2022 and again on 11 September 2022. The allegation that the father became sexually aroused around A was not mentioned in the mother’s statement dated 1 March 2024 dealing with interim contact arrangements for the father following return of A to the jurisdiction of England and Wales. Finally, the “open offer” made by the mother in these proceedings dated 25 June 2024 proposed to drop all allegations against the father and proceed immediately to unsupervised contact and, ultimately, to shared care.

96. Having regard to the forgoing matters, I am satisfied that the mother is being untruthful when she asserts in her statement of 19 June 2024 that the father frequently became sexually aroused around A. In the circumstances, I decline to make a finding that the father was sexually aroused during the changing of A’s nappy.
97. Finally, contrary to her admission under oath in these proceedings at the hearing in November 2023 and the admissions made ahead of this hearing, in a sworn affidavit dated 20 January 2023 filed in civil proceedings issued by the mother in Zambia for a protection order, the mother had denied the father’s allegations of domestic abuse. I am satisfied that, in light of the matters now admitted by the mother before this court, the mother lied in her affidavit to the Zambian court in denying the allegations of domestic abuse against the father.
98. As noted above, the court must bear in mind that people lie for many reasons, such as shame, misplaced loyalty, panic, fear and distress, and that the fact that a witness has lied about some matters does not mean that he or she has lied about everything. On the evidence before the court in his case however, I am satisfied that the lies and mischaracterisations by the mother that I have detailed above were deliberate and plainly relate to a material issue. Having regard to the matters set out above, and the context in which those matters arise, I am satisfied that the mother’s motive in seeking to mislead the court has been to bolster her allegation of sexual abuse against the father by seeking to demonstrate that he lacks appropriate sexual boundaries. I am satisfied on the basis of the conclusions set out above that the mother has engaged in a number of mischaracterisations and lies in an effort to make good that assertion and to support her allegation that the father sexually abused A. I pause to note that the roots of this conduct can be seen in the mother’s letter of complaint to the Permanent Secretary on 10 May 2023, in which she mischaracterises the conclusions of Dr M’s view (“strong reason to suspect sexual abuse”) and Dr G’s view (“A had suffered some form of sexual abuse”) when compared with their reports and asserted that police had “gathered new evidence which supports the notion that this was a serious crime committed against a young innocent child”. During cross-examination the mother conceded she had not seen that evidence and therefore could not say in what way it supported the conclusion that a serious crime had been committed.

Allegation of Sexual Abuse

99. I consider next the mother’s allegation that A sustained the genital injuries particularised by Dr G on 14 September 2022 and that the father caused those injuries by sexually abusing A. The father emphatically denies sexually abusing A. Whilst I am satisfied that A was seen to have changes to her genitals on 13 and 14 September

2022 that can be, but are not inevitably, consistent with having been sexually abused, I am *not* satisfied that the father caused those changes by sexually abusing A.

100. Had the only account of changes to A's genitals been given solely by the mother, I would have treated them with significant caution in light of the conclusions set out above. However, it is clear that the changes were seen not only by the mother, but also by the maternal grandmother, the maternal aunt and, thereafter, Dr K, Dr M and Dr G. There is, however, some difficulty with the accounts of the changes in that those accounts differ in some respects as to what was seen.
101. [...]
102. [...]
103. In the foregoing circumstances, the various accounts of what changes were seen to A's genitals on 13 and 14 September 2022 are not entirely consistent. Given the evidential limitations caused by the relevant medical witnesses not being available to give evidence, it has not been possible to clarify these inconsistencies.
104. No party has sought to rely on expert evidence to interpret the findings set out above. Ms Allman submits that the RCPCH guidance for best practice states that bruising found on the genitalia is usually a sign of trauma in the absence of other medical causes and, in the absence of a history of accidental trauma, consensual sexual activity or other medical causes, sexual abuse should always be considered. Whilst Dr G states she noted bruising, Dr M did not note such bruising. Whilst Ms Allman submits that there is no history of accidental trauma in this case, the mother's own evidence is that the bruising noted to A's left thigh by Dr G had been sustained during play. The precise location of that bruise is not noted in Dr G's notes or report. Ms Allman further points to the fact that the RCPCH guidance notes in particular that [the features seen on A] have not been reported in girls selected for non-abuse in studies and have been reported in pre-pubertal girls with a history of penetration. Both Dr M and Dr G state that they saw [those features], as did the maternal grandmother.
105. As I note above when dealing with the RCPCH guidance and the enquiries and report that came before it (and as it would appear that Dr G was aware in light of her conclusion that sexual abuse could not be ruled out based on the physical signs she saw but that there was a need to await the laboratory results), in considering physical signs in the context of a suspicion of sexual abuse, no physical sign can be regarded as being uniquely diagnostic of child sexual abuse and abnormal physical signs are rarely unequivocally diagnostic, with the exception of the presence of semen or blood of a different group to that of the child.
106. In this case, there is said to have been a positive test for semen as the result of testing of the swab or swabs taken by Dr G. Ordinarily, this would provide support for a clinical finding of sexual abuse, and the report of Dr G concludes that the "the clinical and laboratory evidence [is] consistent with the alleged circumstances", albeit it does not state a positive clinical finding of sexual abuse. There are, however, real difficulties in relying on the test results in this case. Whilst I am, for obvious reasons, not able to place reliance on the hearsay evidence that the father's solicitor had been informed that the swab results had been falsified, difficulties nonetheless remain.

107. Save for the evidence of the mother, which must be treated with caution, there is no indication from where on A the swab or swabs were taken, beyond the entry in Dr G's report being made adjacent to the words "Vaginal (Swab)". Of more concern, the mother's statement states that once taken the swabs were placed in front of a fan to dry. As I have noted, the court does not have before it expert evidence. Again, the mother's evidence must be treated with caution. However, I consider that I am entitled to take judicial notice of the fact that placing a swab in front of a fan risks the sample being contaminated by other material in the vicinity. There are no details before the court as to how the samples were thereafter transported to the testing laboratory, and in particular no details of the steps that were taken to maintain the chain of custody. The report stating that the samples tested positive for semen is one sentence long. It provides no details of the type of testing carried out, the circumstances in which the test were undertaken or the data that is said to constitute the positive result. In the foregoing context, I am not satisfied that I can rely on the evidence that there was a positive result for semen from the swabs taken from A.
108. Absent reliable evidence being before the court regarding the swab or swabs taken by Dr G, and in circumstances where A is too young to be able to give her own account, on the question of whether A suffered sexual abuse the court is left with the physical changes seen by Dr M and Dr G. They each record different findings with respect to [some features] but appear to agree with respect to [other features]. As the RCPCH guidance notes, [the latter features] have not been reported in girls selected for non-abuse and have been reported in pre-pubertal girls with a history of penetration. As the RCPCH guidance also makes clear no physical sign can be regarded as being uniquely diagnostic of child sexual abuse and abnormal physical signs are rarely unequivocally diagnostic. In the circumstances, I am satisfied that the furthest the court is able to go on the evidence with respect to the question of whether A was subjected to sexual abuse is that on 13 September 2022 A was seen to have injuries to her genitals that can be, but are not inevitably, consistent with having been sexually abused.
109. I am not satisfied that that the father caused the injuries to A's genitals noted by Dr M and Dr G by sexually abusing A. Through Ms Allman, the mother made clear that she alleges that the father sexually abused A during the 96 minutes he had contact with her at his hotel on 13 September 2022, after flying to Zambia to have contact with her during the course of his application for an order requiring the return of A to the jurisdiction of England and Wales.
110. In determining whether the father caused the injuries to A's genitals noted by Dr M and Dr G by sexually abusing A, the inherent probability or improbability of that course of action remains a matter to be considered, to whatever extent appropriate, when weighing the probabilities and deciding whether, on balance, it occurred. By the findings she seeks, the mother's allegation amounts to the father having sexually abused A by penetrating her during the course of a one and a half hour contact visit in Zambia. In this context, in evaluating the evidence relevant to determining whether the father caused the changes to A's genitals by sexually abusing her, I have taken account of the inherent improbability of a father, in respect of whom there are no forensic risk factors or prior concerns and who is engaged in proceedings in this jurisdiction to secure the return of child to England, travelling to a foreign jurisdiction for contact and, between taking videos depicting her presentation and demeanour to

send back to his family, sexually abusing that child during contact before returning the child to her mother who is seeking to ensure she remains in her care in that foreign jurisdiction.

111. During her submissions, and relying on the *dicta* of Baroness Hale in *Re B* [2008] UKHL 35 at [73], Ms Allman sought to argue that once it is established that A had injuries to her genitals, the inherent improbability of the father sexually abusing A during contact ceases to be relevant to the evaluation of the evidence before the court. That submission, however, relies on two logical fallacies. First, that because A had injuries to her genitals, *ergo* she was sexually abused. As I have noted however, the furthest the court can go in this case is that A was seen to have injuries to her genitals that can be, but are not inevitably, consistent with having been sexually abused. Second, that because A was discovered on 13 September 2022 to have injuries consistent of sexual abuse and the father had contact with A for an hour and a half on 13 September 2022, *ergo* the injuries must have been caused by the father and no one else.
112. It is the danger presented by such logical fallacies that makes it all the more important that, as the authorities require, the question of perpetrator is examined separately from the question of sexual abuse *per se* and on the basis of the evidence before the court including, as made clear by Baroness Hale in the passage at [73] in *Re B*, the relevant time at which the alleged abuse is said to have taken place. The question for this court, on the mother's case, is whether evidence demonstrates on the balance of probabilities the father caused the injuries to A's genitals by sexually abusing A in his hotel room between 1544 hrs and 1720hrs on 13 September 2022, the inherent improbability of that event being a factor to be taken into account when evaluating the evidence for the reasons I have set out.
113. There is no clear evidence before the court as to the likely timing of the injuries to A's genitals. The medical evidence does not deal with the dating of the injuries observed. Whilst Ms Allman relies on the RCPCH guidance on the persistence of spermatozoa, as I have noted, this court is not able safely to rely on the evidence that there was a positive result in respect of swabs taken from A. Further, having regard to the date and time of Dr G's examination, those timescales [in the RCPCH guidance] in any event extend back to 12 September 2022.
114. Whilst the mother contends that A was not left unsupervised with any other male person except the father, the court must consider that evidence in the context of the significant concerns the court has regarding the mother's credibility. There is no other evidence to corroborate the mother's assertion. In any event, even on the mother's own evidence it is clear that A was left with at least one non-family member, described only as a "trusted female housekeeper", for "about an hour" on 12 September 2022.
115. As Peter Jackson J (as he then was) made clear in *Re BR* at [19], of itself the presence or absence of a particular risk or protective factor proves nothing and children can be well cared for in disadvantaged homes and abused in otherwise fortunate ones. As such, considerable caution must be exercised where a given risk factor has not been formally quantified. However, in considering the question of whether the father caused the injuries to A's genitals by sexually abusing A, I do consider it relevant that, for the reasons set out above, I am not satisfied that the father has demonstrated

inappropriate sexual boundaries and have rejected as untrue the mother's assertion that the father became sexually aroused in the presence of A. Further, there is no suggestion that the father exhibits other forensic factors that increase the risk of him perpetrating sexual abuse, such as alcohol or drug abuse, depression or other mental health issues, a history of physical or sexual abuse as a child, past physical or sexual abuse of a child, poverty and other socioeconomic disadvantage or a poor parent-child relationship.

116. Once again, through Ms Allman, the mother made clear that she alleges that the father sexually abused A during the 96 minutes he had contact with her on 13 September 2022. Within this context, the court also has a large amount of contemporaneous video evidence and CCTV footage covering the 96 minute contact during which the mother alleges the father sexually abused A.
117. Whilst I accept Ms Allman's submission that caution must be exercised in circumstances where the video clips only provide brief insights into the events, I note that the video and CCTV footage is spread out at relatively regular intervals that cover the entirety of the contact, footage being timed at 1553hrs, 1607hrs, approximately 1630hrs, 1642hrs, 1706hrs and 1722hrs. The timing of the video and CCTV footage means that no more than 15 minutes or so would have passed following the alleged sexual abuse before A's demeanour and presentation would have been next caught on that footage. Whilst less clear on the CCTV footage, it is clear across each of the video clips that A is happy and comfortable in her father's presence and seeks out contact with him, including A moving to take the father's hand in the final CCTV footage as they leave the hotel and A appearing happy and entirely at ease in the father's care as she approaches her mother in the final video clip. There is no evidence of wariness, upset or discomfort on A's part on any of the video or CCTV footage.
118. Ms Allman submits that the conduct of the father in relation to the police investigation in Zambia is probative of him having sexually abused A during contact on 13 September 2022. Whilst I have declined to make a finding that the father bribed officials in Zambia for the reasons set out above, the mother also places reliance on what she contends is his other interference with the police investigation, his alleged refusal to submit to DNA testing by the Zambian police and his decision to leave Zambia during the course of the criminal investigation whilst subject to a bond. In circumstances where the father concedes he took the steps set out above with respect to the police investigation, that he has not submitted to DNA testing in Zambia and did leave that jurisdiction whilst under investigation, the central question for the court is the father's motivation for taking these steps.
119. I have dealt above with the question of interference, being satisfied that both parents sought to interfere with the police investigation in Zambia. As I noted, it is not clear the extent to which it is normal practice in the jurisdiction of Zambia for parties to employ others to make representations in the context of a criminal investigation, as both parties sought to do in the case. With respect to the father's actions of not attending to provide a DNA sample and leaving Zambia during the course of the police investigation, I am not satisfied that this is evidence of the father having sexually abused A. Ms Allman submits that the father has refused to take any steps which would enable the sample taken from A to be analysed against his DNA in "a safe manner" and that his failure to agree to such a course is evidence of his having

perpetrated sexual abuse. However, it is very difficult to see how such an outcome could be achieved in circumstances where the comparator for any DNA test would be the swab taken from A, with all the difficulties set out above including the risk of contamination, the lack of evidence as to how the swab was processed and the complete absence of evidence of a robust chain of custody. With respect to the father leaving the country during the course of the investigation, as I have noted that course of action is consistent both with an innocent man terrified of being wrongly convicted in a foreign jurisdiction and a guilty man seeking to avoid investigation. Having regard to the totality of the evidence before the court, I am satisfied that the father's motivation is likely to have been the former rather than the latter. Whilst the mother also relies on what she contends is the father mischaracterising the reasons the criminal proceedings were discontinued, I am not persuaded that acts to change my conclusions.

120. Adopting the discipline articulated by King LJ in *Re A (Children)*, standing back from the case to consider the whole evidential picture and asking myself the ultimate question of whether the father sexually abusing A during contact on 13 September 2022 is more likely than not to be true, I am satisfied that the answer is no. In the circumstances, I decline to make a finding that the father sexually abused A.

Allegation of Bad Faith

121. Finally, I deal with the father's allegation that the mother made the allegation of sexual abuse against the father in bad faith to support her case within these proceedings not to return to England with A. This issue has given me some pause.
122. There is evidence that supports such a finding. In particular, the allegation made by the mother that the father had sexually abused A was made in the context of private law proceedings in which the father was seeking the return of A to this jurisdiction and the mother was resisting that outcome. The allegation was made within a short time of the mother's proposals contained in her email of 9 August 2022 not having resolved matters. On the mother's case, she did not immediately contact the police following the father's contact with A on 13 September 2022, but rather sought to secure evidence from medical practitioners. As I have already noted, the mother involved herself in, and interfered with, the police investigation on multiple occasions, including seeking to influence the course of DNA testing. As I have found, ahead of this hearing the mother sought to mischaracterise aspects of the father's behaviour in an effort to demonstrate he had inappropriate boundaries and lied about him becoming sexually aroused in the presence of A. Finally, and notwithstanding the gravity of her allegation, the mother caused an "open offer" to be made in these proceedings, dated 25 June 2024, in which she proposed to drop all allegations against the father and proceed immediately to unsupervised contact, leading to shared care.
123. Against these matters, however, it is clear that upon the mother raising concerns with the maternal grandmother and the maternal aunt, both saw what they considered to be changes to A's genitals. In such circumstances, it was reasonable for the mother to seek further advice. As I have recounted, both Dr M and Dr G saw what they considered to be injuries to A's genitals. Again, in the circumstances, it was reasonable thereafter for the mother to follow the advice of Dr G to involve the police. In these circumstances, and whilst I am satisfied that the mother jumped immediately

to the conclusion that the father had sexually abused A without considering any other possibility, and whilst I am entirely satisfied on the evidence that latterly, and in particular in her statement of 19 June 2024, the mother has sought to exaggerate and mislead in an effort to bolster her allegation of sexual abuse, I do not consider that she acted in bad faith in taking A to medical professionals on 13 and 14 September 2022 and thereafter reporting the matter to the police.

124. With respect to the father's allegation that repeatedly lied on oath and within sworn affidavits in these proceedings, the matters on which the father relies are dealt with in the judgment of Arbuthnot J. In the circumstances, I do not consider it necessary or appropriate for this court to make findings in relation to those matters.

CONCLUSION

125. In the foregoing circumstances, I make the findings set out in the schedule of findings appended to this judgment.
126. I further make clear in circumstances where this matter is now the subject of a joint investigation by the local authority and the police pursuant to s.47 of the Children Act 1989, that I have *not* made a finding that the father has engaged in bribery of officials in Zambia, that I have *not* made a finding the father was sexually aroused during the changing of A's nappy, that I have *not* made a finding that the father lacks appropriate sexual boundaries and has exploitative sexual interests, that I have *not* made a finding that the father sexually abused A in such a way as to leave his semen on A and that I have *not* made a finding that the mother made the allegation of sexual abuse against the father in bad faith.
127. In light of the findings of serious physical and verbal domestic abuse perpetrated by the mother against the father, having regard to the contents of FPR PD12J, there will now need to be a careful and comprehensive risk assessment of the mother. I also consider that it is likely to be necessary for the court to have a psychological assessment of the mother given the nature and extent of, and the context of, the findings of domestic abuse and the mother's apparent lack of insight into the fact that she perpetrated serial domestic abuse on the father, but I will hear further submissions on this at the directions hearing that is to follow the handing down of this judgment.
128. In the foregoing circumstances, I also consider that this is a case in which consideration will now need to be given to A being joined as a party to proceedings and for her to have the services of her own solicitor and a Children's Guardian. Again, I will hear further submissions on this issue at the forthcoming directions hearing.
129. I give permission for a copy of this judgment to be disclosed to the local authority, the police and to the Cafcass Family Court Adviser.

SCHEDULE OF FINDINGS

1. The mother perpetrated serious physical domestic abuse towards the father throughout the parent's relationship, including whilst she was pregnant and whilst holding A in

her arms. Specifically:

- i) On 6 April 2017 the mother attacked the father in the street, hitting and clawing his face with her nails, resulting in the father requiring medical treatment from paramedics.
 - ii) On or around 10 September 2017 the mother attacked the father in a hotel room in Dubai, hitting him several times around the head, causing him pain but no visible injuries.
 - iii) On or around 1 January 2018 the mother physically assaulted the father by hitting him hard around the head a number of times during an argument.
 - iv) On 9 March 2018 in Zambia the mother lunged at the father to strike him whilst holding a wine glass. The glass smashed, resulting in a deep cut to the father's hand requiring 5-6 stitches and a puncture to his shoulder that required treatment.
 - v) On or around 8 April 2018 at the father's flat in Hackney the mother hit the father several times and clawed his face, causing him visible injuries. The following day the mother applied her make up to the father's face in an attempt to lessen the visibility of the injuries.
 - vi) On 15 August 2018 the mother attacked the father at his houseboat by slapping him open handed around the head and face causing cuts to his nose and giving him a bloody nose. The mother threw the father's wallet into the Thames.
 - vii) On 13 April 2020 the mother threatened to kill the father with a large kitchen knife she was holding during an argument, resulting in a stand-off that lasted 90 minutes. A re-occurrence occurred later in the same week on 15 April 2020, resulting in the mother being arrested.
 - viii) In February 2021, whilst the parties were residing in Soho shortly before A was born, the mother hit the father hard around the head after he made a suggestion she disagreed with. There was no visible injury.
 - ix) In or around May 2021, following an argument at the family home, the mother followed the father and punched him to the head whilst he was holding A in his arms.
2. The mother has previously threatened to harm and kill herself and these threats have been made in the presence of A. Specifically:
- i) In late 2017 the mother took a large knife out of the kitchen draw and brandished at the father whilst shouting at him. The father retreated outside and the mother repeatedly threatened to harm herself before going to bed and taking the knife with her.
 - ii) On 16 January 2022 the mother took a knife from the drawer in the kitchen and held it against herself whilst threatening to end her life whilst the father was present holding A, who was crying uncontrollably.

3. Both parents sought to influence the police investigation in Zambia into the allegation made against the father in Zambia in an effort to influence the outcome of that investigation.
4. The mother lied in the sworn affidavit in the protection order proceedings in Zambia in denying that she had perpetrated domestic abuse against the father.