

<b>Neutral Citation No: [2024] NIFam 15</b>	<b>Ref:</b>	<b>FOW12686</b>
<i>Judgment: approved by the court for handing down (subject to editorial corrections)*</i>	<b>ICOS No:</b>	<b>13/054235/01/01</b>
	<b>Delivered:</b>	<b>26/07/2024</b>

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

---

**FAMILY DIVISION**  
**CHILDREN (NORTHERN IRELAND) ORDER 1995**


---

**Between:**

**MW**

**Applicant:**

**and**

**FR**

**Respondent:**

---

**Ms Adele O’Grady KC and Joanne Lavery (instructed by Phoenix Law, Solicitors) for the Applicant**

**Ms Melanie Rice (instructed by Miller McCall Wylie, Solicitors) for the Respondent**

---

**FOWLER J**

***Introduction***

[1] The names of the adult parties and the children in this judgment have been anonymised, having regard to the implications for the children of placing personal details and information in the public domain. The anonymity of the children and members of their family must be strictly preserved. Nothing may be publicised or disclosed which reveals the identity of the parents or children directly or indirectly.

***Background***

[2] The child with whom this court is concerned is a girl aged 15 and I will refer to her in this judgment as SR to protect her identity. The applicant MW is the father of SR. It is alleged by MW that this is a case of parental alienation by SR’s mother, which he claims is at the extreme end of the spectrum of such conduct. He has had no contact with his daughter from 2017. The respondent, FR is the mother of SR and rejects in their entirety the allegations of the father. The mother alleges physical and sexual abuse of SR by the father as a result of which her daughter refuses to have

any form of contact with her father. In turn these allegations are denied in their entirety by the father.

[3] At present the father is 36 years old and lives with his partner CDS. They have three children JW, Z and M aged 11, 5 and 1 respectively. The mother is aged 33 and married to R. They have two young children to that marriage, both of whom are younger than SR who as noted above is 15 years old. SR is the oldest of all the children, she is a very intelligent and articulate teenager and is excelling in all her chosen subjects at school.

[4] SR's parents were never married, however, were in a relationship from 2006 and lived together for a period of time from in or about 2009 eventually separating in February 2012 when SR was approximately three years. The resulting private and public law proceedings arising out of this case have had a convoluted and protracted history. From relatively shortly after the parties separated it is alleged that the mother refused and resisted contact between SR and her father. This resistance to contact appears to have arisen as a result of three main allegations each of which progressed to be more serious in nature with the case being that they always arose at a time when there were issues over contact. These can be conveniently summarised as follows:

- (i) 2013 allegations made against the father that he slapped and pinned SR against a wall.
- (ii) 2017 allegations made against the father that he more seriously assaulted JW his son and SR.
- (iii) 2019 allegations made against the father and his partner CDS that they committed serious sexual assaults on SR while in their care.

[5] The second two sets of allegations resulted in protracted public law proceedings and investigations by police. While no prosecutions followed there was a very significant and detrimental impact on the father's contact with SR, and his family life with CDS, JW and Z.

[6] In relation to the 2013 allegations this resulted in social services involvement and eventually a Joint Residence Order being granted on 21 October 2013 with a defined shared care arrangement providing the father with overnight contact with SR every Tuesday, Thursday and Friday.

[7] The emergence of the 2017 allegations also resulted in social services and police investigations. These allegations did not result in any criminal proceedings and social services discontinued their investigation. Again, while these allegations were formally investigated contact between MW and the children was seriously impacted. Contact between the father and SR stopped at this time (December 2017) and has never been recommenced. Then in January 2019 after the case involving

alleged physical abuse of JW and SR is closed, the father re-engaged with proceedings to pursue his application for contact with SR and a hearing was listed in August 2019. However, on 20 June 2019 an anonymous report was received by SR's schoolteacher alleging that SR had disclosed to another child that her father had been sexually abusing her. On 17 July FR reported to police that SR had disclosed to her allegations of historical sexual abuse. This resulted in further police and social services investigations being initiated. In January 2021 the Trust withdrew the public law proceedings taken against the father and the police directed no prosecution. The father then issued proceedings against the Trust for their failure to carry out a proper investigation resulting in his family being separated from 2019 to 2021.

[8] He has now brought proceedings seeking the court to make findings of fact about the validity of the allegations against the father and if satisfied that the allegations raised by FR are false then to direct what further steps are required.

[9] During this fact finding hearing this court had the benefit of hearing and seeing both the mother and the father give evidence. They were each represented by highly experienced counsel, who each provided the court with invaluable assistance. The court is grateful for how they presented the parties' cases and for their thorough preparation, cross-examinations and submissions.

[10] The court has considered the oral evidence of the father, mother and expert witnesses together with the material comprising eight trial bundles and Achieving Best Evidence video material. I have considered all the evidence provided to the court, whether referred to specifically in this judgment or not, and take it into account in coming to my decision in this case. I have applied anxious scrutiny to all the evidence and arguments laid before the court by counsel in coming to an articulation of the reasons for my decision in this case.

### *Legal framework*

[11] The following legal principles are to be applied when a court is required to make findings of fact in a difficult case such as this. First, the burden of proof rests with the party making the allegation, in this case the father. The standard of proof required to establish the facts as asserted is the civil standard. That is, proof on the balance of probabilities that the facts complained of must be proved to have been more probably than not. This is a universal standard not impacted by the seriousness or otherwise of the allegation or the consequences. If the court finds something more likely than not that it did not take place, then it is treated as not having taken place. In *Re B (Children) (Care Proceedings: Standard of Proof)* (CAFCASS intervening) [2008] UKHL 35, Lord Hoffman observed that where a fact is required to be proved (a fact in issue), the court must decide whether or not it happened. There is no room for a finding that it might have happened, as a fact it either happened or it did not. The law in this regard is binary. If a judge is left in doubt, that doubt is resolved by the rule that the party asserting the fact carries the burden of proof and

if they fail to discharge it, then the fact is treated as not having happened. If he does discharge the burden of proof then it is treated as having happened.

[12] In the decision *Re A (A child) (Fact Finding Hearing: Speculation)* [2011] EWCA Civ 12, Munby LJ identified that findings must not be based on suspicion or speculation but decided on evidence. With the available evidence being carefully scrutinised holistically and in context. That any failure to establish a fact proved on the balance of probabilities is not a fact in law. That the effect of the binary system of proof is that if a negative is to be proved, that has to be proved with cogent evidence, just as if the positive is to be proved. It is not a correct proposition of law that a rejection of evidence mandates a judge to find that something is false as per *Re M (Children)* [2013] EWCA Civ 388.

[13] The evidence of the parents in the present case is of crucial importance and to this end the court must make a focused assessment of their credibility and reliability. The court will place considerable weight on the evidence and the impression it forms of the parents. When coming to an assessment of the evidence and any weight to be attached to the impression which the court may form of the parents, the judge when evaluating them, particularly in the emotionally charged atmosphere of a contested factfinding dispute, should self-direct against an assessment solely by virtue of their presentation in the witness box and indicate that they have done so. The only objective and reliable approach is to concentrate on the content of the evidence and to consider whether it is consistent with and/ or corroborated by other evidence, including evidence of what the witness has said on other occasions and any exposed inconsistencies, contradictions or implausibility.

[14] In principle, the approach in private family proceedings between parents should be the same as the approach in care proceedings. However, there are specific risks to which the court must be alive. Allegations of abuse are not being made by a neutral and expert local authority which has nothing to gain by making them, but by a parent who is seeking to gain an advantage in a contest against the other parent. This does not necessarily mean that the core of the allegations made are false, but it does increase the risk of misinterpretation, exaggeration or fabrication.

[15] The decision about whether or not a parent has alienated a child is a question of fact for the court to resolve and not a diagnosis that can or should be offered by a psychologist. "Parental alienation" is not a syndrome capable of being diagnosed, but a process of manipulation of children perpetrated by one parent against the other through, what are termed as, "alienating behaviours." It is, fundamentally, a question of fact. What is important, is the particular behaviour that is found to have taken place within the individual family before the court, and the impact that that behaviour may have had on the relationship of a child with either or both of her parents. In this regard, the identification of 'alienating behaviour' should be the court's focus, rather than any quest to determine whether the label 'parental alienation' can or should be applied.

[16] If the court concludes that a witness has lied about a matter, it does not follow that he or she has lied about everything. If a witness lies in the course of the investigation or the hearing, the witness may have lied for many reasons, for example, out of misplaced loyalty, panic, fear, distress, confusion or emotional pressure. Accordingly, it is important to self-direct that witnesses in cases such as the present may exaggerate, fabricate and/or lie for many and varied reason. To this end, I remind myself of the Lucas Direction often given in criminal proceedings.

[17] In terms of expert evidence received from Dr McCartan and Fiona Armstrong in the present case, their evidence is only part of the overall picture and as such must be considered in the context of all the other available evidence. That of the parents and the volume of documentary evidence which has been placed before the court. The roles of the court and the experts are distinct. It is the court that makes the final determinations with the expert evidence being part of a wider canvas upon which decisions are made.

[18] Having discussed the relevant legal principles the court will consider the father's evidence and that of the mother. It will then look at this evidence in light of the expert reports and other evidence in the case. The court will also consider the evidence contained in the available trial papers and the video evidence of SR's ABE and how it impacts on the oral evidence.

### *The father's case*

[19] The father gave evidence that he met FR in 2006 when they were both young and SR was born in 2008. He had been working at the start of their relationship but lost his job as a result of the recession. He reflected that he could have done a lot more with SR when she was a baby but he was in his early 20's and FR's mother had retired and wanted to spend time with SR. The time he did spend with SR he enjoyed and thought he did a good job. He denied he was ever involved in domestic violence within the relationship. This is corroborated by an entry within a referral form to the Courts Children's Officer ("CCO") completed by both the father and mother in 2018 confirming there were no allegations of domestic violence by either father or mother made prior to this date.

[20] He described that when they separated between the end of 2011 and early 2012, he did have contact with SR. However, he claimed that when FR started her new relationship with her now husband it was then problems over contact began. The mother started to refuse contact on the basis that SR did not want to see her father. This was at a point in time when SR was only four years old. He claimed that this prompted him to issue contact proceedings in the Family Proceedings Court in early 2013. During the currency of those proceedings the mother claimed SR did not want to see her father. The father gave evidence that in May 2013 before any hearing of the Contact/Residence Order proceedings the mother made a complaint to the nursery that SR had been slapped by her father. The nursery reported this allegation to social services.

### *2013 allegations*

[21] In relation to this incident the father gave evidence that he did not slap SR but tapped her on the shoulder when she was in his car outside Tesco and was playing up (acting as if she was crying and spitting). The father denied any allegation that he had slapped SR on the face and confirmed there was no prosecution arising out of the allegation. He said that when the nursery group allowed him to pick up his daughter, FR removed SR out of the nursery school and would not let him have contact with her. MW said social services closed their investigation concluding that he did not pose a risk to SR. However, FR continued to refuse him contact with his daughter.

[22] It was MW's evidence that on 21 January 2013 after a contested hearing a joint Residence Order was made at Newtownards FPC with a shared care arrangement put in place by the District Judge. It appears that this arrangement worked tolerably well, however, it was the father's case that from what SR was telling him she was aware of the acrimony and hostility her mother was expressing towards the father, in the home she now shared with her mother and her mother's new husband. He said he was aware SR was stuck in a difficult position between both of her parents and he saw her 'having things put into her head about him.' He gave evidence that SR articulated this to Ms Moonan a CCO who recorded her as saying that "I can't talk to mummy about daddy as mummy doesn't like daddy, but I can talk to daddy about mummy because daddy likes mummy." It is recorded in trial bundle three at page 188 that social workers were concerned that SR was being emotionally impacted by her parents' acrimonious relationship and that this may have been manifesting itself in behavioural problems. Absent a solution, they were of the view that SR would continue to be emotionally impacted and that the issue of contact needed to be resolved and stabilised to minimise any future emotional impact on SR.

### *2017 allegations*

[23] In the period between 2013–2017 the father had contact with SR and he said it was of good quality and he was proactive in doing things with her. That she was very bright and intelligent, loved reading and playing with JW, her cousins, and her paternal family. However, on 30 November 2017 MW described how another Social Services investigation was opened in respect of him as a result of allegations made by JW on 28 November 2017 at his nursery school. A nursery worker VT reported that on Tuesday 28 November 2017 the nurse was preparing to get ready for a visit from the PSNI and she was telling the children about a previous visit by police and the different things the children got to do in the police car. When she mentioned the big speakers the police have in the boot of their car, JW is alleged to have said he didn't want to get into the car because it was scary. That his dad had put him in the

boot and it was scary and dark. She also alleged that she had observed bruising on JW's hand which he said was caused by his dad hitting him with a wooden spoon. She also alleged that CDS had on a previous occasion told her that she had put JW in a cold shower but had not recorded or reported this disclosure.

[24] MW explained the circumstances and context surrounding this incident concerning JW being put in the boot of car. It occurred about three months previous to the complaint at a family event. There was a group of extended family members present when MW and the children were playing a game. It was a police action type of a game in which he was a policeman chasing the children and putting them in the boot of the car but the boot lid remained open. He was joking and saying to the others to say goodbye to the children. He denied hitting JW with a wooden spoon or that he had ever been put into a cold shower. That CDS worked in the nursery and the person making the complaint was a disgruntled employee who CDS had previously disciplined. That the suggestion of bruising evident on JW being left unreported or recorded in some fashion was simply not credible. Particularly given the number of staff in the nursery and the safeguarding protocols in place. He also made the observation that this witness refused to sign her statement or even be spoken to by police, further undermining her credibility. However, he accepted that the matter had to be investigated. Police called at their home and spoke to JW and SR separately away from CDS and MW. FR was not present in the property when the children were spoken to and could only have become aware of the allegation if told to her by SR. On initially being spoken to by Social Services in a Pre Interview Assessment (PIA), SR made no disclosures at all. It is recorded in trial bundle six page 21 that while SR was in MW's care she was spoken to in respect of JW's disclosure, but she raised no concerns, worries or fears about her father. This was discussed with FR who expressed concerns should SR be left in her father's care.

[25] The following day MW received a card from social services saying that FR was unhappy that SR would remain with her father and wanted her returned home. On 1 December 2017, the father stated SR was returned to her mother and she remained with her mother for the following six days before her mother requested SR do a PIA in which she did a complete turn around and made allegations of physical abuse against her father. She then went on to make numerous allegations against her father in her ABE of 12 December 2017.

[26] A protracted police investigation ensued, and JW was placed on the child protection register. For over six months MW was not permitted to have unsupervised contact with JW. MW denied all the allegation and FR refused any contact between SR and her father and significantly also between SR and JW from 1 December 2017.

[27] MW stated in evidence that in April 2018 there was again a direction not to prosecute him for any offences arising out of these further complaints. JW's name was eventually removed from the Child Protection Register in August 2018, however, he was not allowed to have contact with SR and was again forced to issue proceedings in September 2018.

[28] At a review hearing in October 2018 the case was listed for hearing in 2019 and the District Judge indicated that the joint Residence Order remained in place, however, FR continued to refuse any form of contact between father and daughter. MW's legal advisors informed him that it was their view that the contact arrangements remained in place and that because it was his day for contact and he should go to the school in case no one was there to pick up SR. He did this and approached the principal who contacted FR and was informed that she continued to object to contact because social services were still involved. Accordingly, MW continued to pursue his application for contact and the case was listed for hearing in August 2019.

### *2019 allegations*

[29] On 17 June 2019 the mother filed her position paper in the upcoming contact proceedings, alleging that it was not in SR's best interests to have contact with her father. However, on 20 June 2019 an anonymous report was received by a teacher at SR's school apparently from a parent alleging that another child had been told by SR that she did not have contact with her father because he had tried to have sex with her. MW then told the court that there was very little by way of documentary evidence or other record of this allegation forthcoming from the school. The father said in evidence that he was told by Mr Smyth Social Worker that this report was not actioned because when told about it FR replied to the teacher that she already knew about it because SR had disclosed it to a counsellor. MW explained he did not believe this to be true because had a counsellor or therapist been told of this allegation they would have been obliged to report it.

[30] The court then was told by MW that subsequently on 13 July, FR contacted the police to report this allegation made by SR concerning her father sexually abusing her and his partner CDS being involved in the alleged offending. It was alleged that the abuse was historical in the sense that it is alleged to have occurred two or so years ago when SR had just turned eight years, in or about January 2017. Once again police and social services became involved, and the father's children were removed from their home again and he was unable to pursue his application for contact with SR.

[31] The father in evidence suggested to the court how, as the investigation proceeded, it became more and more evident the account of FR and SR was in his view inconsistent, made up and false. Attention was drawn to the suggestion by FR that SR had previously told a counsellor of the sexual abuse but no note had been made of this by the counsellor, nor had it been reported by them and ultimately the counsellor stated this had not been disclosed to her. He stated that if SR had reported to her grandmother and mother that she had been sexually abused by her father they would have immediately reported it. If she had disclosed she was in bed with her father when he was naked, let alone been digitally penetrated repeatedly by her father while she was held by his partner it is inconceivable, he said, they would

not have reported this immediately to police. The fact CDS was able to confirm her shift patterns and the times JW was in after school club undermined the narrative of the complaint and there was no time SR would have been in the house when JW would not have been there. The account of SR screaming and the neighbour hearing her and reporting it to police was contradicted. The implausibility of the letter allegedly written by SR because she was so upset, was claimed to be in stark contrast to her demeanour in her ABE and the concern that it was written by someone else trying to influence and/or shape the complaint to be made to police. MW was of the view that it was unsurprising if not inevitable the allegations would go nowhere as he considered them to be so obviously false. It was just inconceivable it took the police and social services so long to properly investigate it and discontinue their investigations and allow him to return to his family.

[32] MW explained to the court that it was not just refusal to permit him contact with SR that was damaging to her, it was also damaging that SR and JW were missing out on a significant and enduring sibling relationship and for no good reason. SR initially wanted to see JW and it was positively promoted by Social Workers with no risk of harm to either child. CDS was keen to see if it could be facilitated but it was firmly rejected by FR. A clear indicator, MW said of her engaging in behaviour to in general impact SR adversely and to lead to a refusal to engage in a relationship with any member of her paternal extended family. It is MW's case that FR was influencing SR with behaviours designed to paint him in as poor a light as possible in SR's eyes and erode any familial bond they have or had.

[33] Towards the end of his evidence MW emotionally acknowledged that given SR's age, that it will be difficult if not impossible to ever have a relationship with his daughter, but he wants her to know that he never stopped trying.

### *Cross-examination of father*

[34] In cross-examination it was suggested that there was a history of his mother and sister encouraging CDS to leave MW because of his behaviour. This was denied and he explained that because of the history of being subjected to social services involvement, he claimed as a result of FR's actions and his trying to pursue contact with SR this was having a heavy toll on CDS and the children, particularly with him being removed from the family home and not having contact. It was put to him he was an angry and aggressive man. That he had been angry and aggressive to his mother (trial bundle three page 163) when she suggested he could no longer stay with her. He denied this and explained that due to him pursuing contact with SR and the false complaints made against him, his children were required to be looked after by his mother for a period and he was frustrated at the situation, not angry with his mother. It was suggested to him he had a temper, and he was referred to trial bundle four page 245 where a social worker sought police to accompany her to his address when she was seeking to ask him to leave the home and she believed he might be volatile.

[35] It was raised in cross-examination that there was a history of domestic violence towards FR during their relationship, that in May 2013 FR had told social services MW had been physically and emotionally abusive towards her but that she never felt that SR would be at risk. MW accepted that there had been arguments during the relationship but denied that he had ever been abusive noting that these allegations came in 2013 a considerable time after they had separated in 2011. It was also suggested that he has been physically abusive to CDS which he denied.

[36] He was pressed in cross-examination concerning the incident with SR and the allegation of her being slapped in his car at Tesco. It was put to him that a social work report records him as saying he slapped SR, however he denied saying the word slapped and stated that what he had said was that he “tapped” her on the shoulder when she was playing up in front of her friend pretending to cry and spit. He was asked had the social worker recorded this inaccurately and he said they had. He said this account was contained in a subsequent report and there was no contemporaneous record of what he said at the time, and he was satisfied that he had not slapped SR and had not said he had slapped her.

[37] Cross-examination continued in relation to an incident in 2018 when MW called at the school after a FPC appearance seeking to have contact with SR. He gave a consistent account of this incident with his previous account in evidence in chief. He made it clear in cross-examination that he did not make a scene at the school, and it was not an impulsive attendance at the school. Rather he had been advised to go to the school by his counsel since the District Judge appears to have indicated that the original Residence Order remained in force. There was a concern that SR might not be picked up from school as it was his day to pick her up under the court order. It was put to him that during the period of the joint residence order between 2013 and 2017 there had been no difficulties with contact and FR had not obstructed it in any way. He denied this was the position and indicated that he had on three occasions to call social services regarding FR’s behaviour. It was suggested that there were no records to substantiate this claim made by him.

[38] It was suggested to MW that subsequent to JW’s allegations against his father in November 2017 that SR had remained in his care and that she had not been under her mother’s influence before she made her allegations of abuse against her father similar to those made by JW. MW was insistent that SR had made no disclosure to social services or police until after she had returned to her mother’s care. It was MW’s case in evidence in chief and repeated in cross-examination that the first time SR made any such complaint against her father was not until six days after returning home when her mother took her for a PIA.

[39] It was then put in cross-examination that JW retracted his allegations two months later, the suggestion being that this was due to MW and CDS influence. This was denied and MW was adamant that JW never withdrew his allegation concerning the boot incident and what had clearly happened was a misinterpretation of a game they were playing which was exaggerated by nursery staff. That a member of the

staff also made unfounded allegations of bruises and cold showers which were never stood over. He was consistent and measured in his rejection of these allegations. He observed that the reports upon which much of the cross-examination was based are from social work reports containing portions of what JW is reported to have said to social workers with little contemporaneous verification from original notes.

[40] The next subject of cross-examination was the 2019 allegation of sexual abuse of SR arising from what is claimed to have been an anonymous complaint from a parent that SR was being sexually abused. MW was clear that he did not believe there was an anonymous parent but rather was an allegation made to cement in the no contact situation which was becoming more and more entrenched. MW's denial of any sexual impropriety with SR was complete and consistent with his after-caution interview with police. Furthermore, he challenged how the account of the alleged abuse written by SR came to be made.

[41] Finally, he was pressed closely on why he was continuing to pursue contact when SR was so adamant she wanted no relationship with him. He was thoughtful and emotional when dealing with this line of questioning. He recognised the upset and harm this could cause but he felt that the harm being inflicted by FR was enormous and continuing. That it was likely to have an even greater impact on SR as she grew into adulthood. He came across as genuinely concerned and conflicted in this regard and hoped that SR could be saved from this escalating situation.

### *The mother's case*

[42] The mother gave evidence that she is 34 years old and worked in a clinic in Belfast. She married her husband R in May of 2016, they had been in a relationship for three years before they married and have two girls together aged nine and six. She is the mother of SR. There has never been any social services involvement in relation to her two younger children.

[43] It was agreed that in 2006 she began a relationship with MW and SR was born in 2018. They separated in 2012. In evidence she alleged physical, verbal and emotional abuse, however she said she never thought that SR would be at risk in her father's care. During the relationship things were difficult, they were young, MW lost his job and she was working full-time and her mother looked after SR. She went on to describe that MW was aggressive during the relationship and gave evidence of two examples. The first was an occasion when she was in the bathroom getting ready to go out and was applying cream to her body when she claims MW came into the bathroom and said she was not going out and grabbed her by the throat, took her out to the stairs and said he was going to throw her out into the street naked. She was unable to recall the year it happened and of significance this was never put to MW in cross-examination. Another incident which was related to the court but not put to MW in cross-examination, was an incident the day before SR's birthday when they were arguing and he went to hit her and punched the door damaging it.

Neither of these incidents were reported at the time of happening. In evidence she agreed MW could have done more with SR when she was a baby.

[44] After their separation contact between MW and SR was flexible and appeared to work satisfactorily until she met her future husband. Contact she explained became more rigid and MW was less consistent. Then in 2013 he was told not to pick SR up from nursery. The reason for that she explained was that SR came home from nursery and said that her father had slapped her to the face and that it had been red. She said the nurse were told not to allow MW to collect SR but they ignored her request. She told them why she didn't want him collecting SR and they reported the incident to social services. It was agreed that she removed the child from the nursery and stopped contact which did not resume until the Joint Residence order was made on the 21 October 2013. It was FR's case that SR did not want to see her father and was scared of him. After the order was granted it was the mother's evidence that contact continued for the next four years with little difficulty. The issues raised were that when either party would call SR when they were in the care of the other parent an issue arose where she alleged that MW would prolong his calls with SR but when she phoned SR on the days she was with MW he would often not answer the phone and this was a cause of some irritation.

[45] However, the phone calls continued even when she was on honeymoon in 2016 and she allowed MW to have face time calls with SR when they were in Florida. It was also around this time that she said CDS and JW came on the scene, she was happy that there was another woman to keep SR company. She was not however aware that JW was MW's son and SR's half brother, she says she was unaware of this until she received the papers in this case and SR is still unaware of this.

[46] The mother stated that in the weeks leading up to Tuesday 28 November SR seemed a bit more anxious. She said JW made disclosure of physical abuse by MW on Tuesday 28 November but she was unaware of this until the evening of Thursday 30 November. However, she did say that on the Wednesday evening she noticed SR had got quite upset and she had said that her dad had got very cross with her and JW, had shouted at them and it was to do with them spilling paint in a room. She said that MW had put them out the door and put them in the dark and JW was very upset and frightened. SR said she was really upset about it and FR was very concerned about what she was hearing. On the evening of the Wednesday FR said SW made disclosures about what had been happening at the time with her father which she said really shocked her and she told SR that they were going to have to speak to someone else about this at which SR became really distressed and did not want to do so.

[47] On 1 December, she recalled going to a meeting in James Street Social Services where she said she was met by Mr Smyth social worker who asked her to leave because MW was present and he was not very happy. SR was returned to the car and she was taken home. It was FR's evidence that she subsequently took SR to the police station to make an ABE video. It was FR's evidence that it was the allegations

of physical abuse by JW which was the catalyst for Social Services to again become involved in SR's life and contact stopping. It was further her case that from 2013 to 2017 and JW's complaint, she had not been engaging in any behaviours to undermine SR's relationship with her father.

[48] FR next described SR's disclosure of abuse by her father in 2019. It was described to court that SR is alleged to have first told her grandmother about the abuse on 11 July 2019 and that she had left it to SR to tell her mother in her own time. That SR could not tell her mother what had happened but rather she wrote it down on a piece of paper which she identified as SR's handwriting. When asked by Ms Rice where her mother was standing when SR wrote this, she said she believed she was standing beside her. She was asked when she had previously become aware she had told her grandmother and she replied after SR had told her grandmother.

[49] At this point FR described how SR's behaviour had become increasingly frantic and very worrying. On 11 July, she was cutting lumps out of her hair, and she did not want to tell anyone about the abuse. FR described how she contacted police on 13 July and believes that they and social services attended with them in or about 15 July.

[50] On police and social services being involved no contact took place. However, a 14<sup>th</sup> birthday card was sent by the father and FR said that she encouraged SR to take it but she refused, and it was put in a box if she ever decides to open it.

[51] FR gave evidence concerning SR's reaction to being interviewed by Dr McCartan. She said she took SR to the interview and waited for her. When she went in SR was nervous but when she came out, she was very distressed and emotional. She said Dr McCartan would not let her leave until she calmed down. It appears she was distressed because she claimed that Dr McCartan had said to her in emphatic terms that she would be seeing her father at the next interview. It was also stated that SR had said that Dr McCartan had told her she had interviewed people who had their arms or legs amputated who were not as distressed as she was.

[52] In terms of her interview with Dr McCartan, FR said she was stressed and frustrated by the interview. However, she denied being angry or aggressive. She was at pains to say she did not refuse to consent to Dr McCartan receiving her medical notes and records. When asked about Dr McCartan's proposed ways forward FR insisted SR did not want to meet her father and she could not force her to do so and she was respecting her wishes and feelings.

### *Cross-examination of mother*

[53] FR was cross-examined concerning the 2013 allegations that MW had slapped SR on the face. She agreed that she stopped contact when SR told her that her father had slapped her, and she was afraid of him. It was suggested to her that it was a significant contradiction that while she was concerned enough to stop contact, she

was not sufficiently concerned to report the matter to police. This is particularly so against her later allegations that there had been earlier domestic abuse, but she did not think SR was at risk from her father. While she conceded she should have reported the matter she did not consider there was any contradiction in her actions. She was confronted with the evidence of Ms McVeigh who described SR and her father as being close with SR hugging and kissing her father, showing no signs of fear or distress, yet FR insisted SR was afraid of her father in the face of this independent evidence. She confirmed she gave evidence at a contested contact/residence hearing when these allegations were dismissed. Further, the police investigation, which had been commenced under safeguarding protocols, was discontinued. It was her response that there was simply not enough evidence provided and maintained her case that SR was afraid of her father.

[54] It was suggested that even from this very early stage she had a very negative view of MW and was making it clear she wanted to stop contact. Further that her negative feelings were being made known to SR. It was put that SR took on board this hostility as was given expression in her comments that she was unable to talk to mummy about daddy because mummy dislikes daddy. FR responded by saying that MW had told her not to discuss him. It was suggested in cross-examination that when the nursery refused to prevent contact and made positive remarks about contact between MW and SR her immediate reaction was to remove SR from the nursery.

[55] FR was cross-examined in relation to the 2017 allegations made by JW. It was put to her that on the allegations being made, SR was interviewed by social services and police and made no disclosures of physical abuse, yet after being in FR's care for five days only then did SR makes numerous allegations of physical abuse including being "kicked so hard she flew out of the room." It was suggested that she had put SR up to making these false allegations to prevent any further contact with MW. It was confirmed that despite the forceful kick alleged, that SR told police she had no injuries. FR accepted that if what had been described had happened, she would have expected injuries. It was suggested that what SR had told police was untrue and that she had coached her into saying she had been assaulted.

[56] Cross examination then dealt with a letter FR wrote to her GP alleging that SR was distressed and had disclosed to FR and her mother, father and husband that MW had again physically assaulted and hit SR on the head. It was highlighted that while FR took the time to write to her GP she did not contact police. Asked why she did not contact police she did not give a reason rather simply said she did "nothing to her shame." It was put to her that just as in 2013 when SR complained of assault by her father and now in 2018 when SR claimed again to be assaulted by her father, she did not go to police. It was suggested FR was putting her daughter up to making these allegations. Significantly, failure to report to police or to take SR to the GP resulted in no examination for physical signs of injury.

[57] The events of 2018 were cross-examined upon and it was accepted that proceedings had been issued in the FPC by the father and were given a date for hearing. It was put to FR that just weeks before the hearing she reported to police that SR had made allegations of sexual abuse against her father. The circumstances surrounding SR's disclosure were the subject of close scrutiny in cross-examination. FR was asked about SR disclosing the sexual abuse to her. She said SR was so upset she could not tell her what had happened and had to write it down. The clear impression had been that she and SR were alone when this occurred. She described SR as being in a corner really upset and crying inconsolably with her knees up and FR had to comfort her. It was then put to FR that this description was completely at odds with SR's presentation as seen in the ABE recording of the complaints. She agreed that she would have expected SR to be upset in the ABE given her presentation on the day she disclosed sexual abuse to her. SR was asked had she made the sexual abuse allegations up for SR to stop the prospect of contact recommencing, she denied this.

[58] The detail of the allegations raised in the ABE were examined and it was suggested there were three elements to the allegations which were concerning. First, SR alleged that CDS was present during the abuse, but CDS was able to establish to the satisfaction of the police that she had been at work. Second, SR claimed the JW was never there when she was sexually abused, he was at after school club. Again, it was established that JW was always at home when SR was there, he did not attend after school club at the material times. Third, neighbours heard her being abused and contacted the police, which was a line of enquiry followed up by police and dismissed. At this point FR was asked did she have any seed of doubt about the allegations made by SR and she repeated a number of times she was not there when the abuse took place and did not answer the questions she was asked.

[59] A social services report dated 22 July 2019 was put to FR where it is recorded that when the school spoke to FR about the anonymised report of sexual abuse that she had said she was already aware of it as SR had told her counsellor about it earlier. She was asked about why she did not report that to police, she said what SR had said was that she had been in bed with her father when he was naked, and she thought it was inappropriate but the allegations of sex abuse by MW on SR really shocked her. She insisted that SR had reported abuse to the counsellor however when this was eventually checked in 2020 with the counsellor it transpired, they had made no note of this and had no recollection of it being said. Again, she was asked if there was a seed of doubt in her mind about the allegations and her reply was that she accepted and respected the PPS decision not to prosecute and the social services withdrawal of proceedings.

[60] FR was then questioned about social services reports concerning the circumstances surrounding the letter alleged to have been written outlining SR's disclosure of sexual abuse. The report expressed the concern that the letter may have been influenced by an adult given the content and connotations of the letter. She was asked who could have influenced the writing or assisted in the writing of

the letter and she said the letter was written by SR and she saw her write it in front of her. However, it transpired that FR's mother was also present when SR wrote the letter.

[61] The content of the ABE was raised with FR, and she agreed it was horrific abuse that was alleged and if perpetrated may have caused injury. However, she refused a request that SR be medically examined. She was of the view that it would be too traumatic for SR and unlikely to produce any relevant evidence.

[62] The history of SR's anxiety, hoarding food and cutting her hair etc was raised in cross-examination and FR said she was extremely concerned about these behaviours and sought help for SR. However, it was highlighted that despite the graphic description of the presentation of SR at home this presentation was not replicated at school, quite the reverse she was noted to be intelligent, confident and engaged well with peers. It was put that there were no records of FR telling the school of the difficulties SR was having at home. FR suggested she didn't tell the school because she believed the primary school would have provided this information when SR transferred and that it was private information SR would not want disclosed.

[63] Finally, FR was questioned closely on SR's referral to counselling at the Child Care Centre. It was established that there was no history given of social services, and police involvement or the outcome of these investigations. There was no history from the father in relation to the background context. As such the Child Care Centre did not have all the evidence upon which to deliver appropriate counselling. They proceeded it appears on the assumption that SR was sexually abused and absent the full background and competing narratives.

[64] It was suggested to FR that she had a fixed view that SR has been physically and sexually abused. She is totally opposed to contact in any form and that she can see no benefit to SR of a relationship with her father or her half-siblings.

### *Expert evidence*

#### *Dr Denise McCartan*

[65] Dr Denise McCartan, clinical psychologist was instructed in this case and gave evidence. She found that SR viewed her father and his extended family negatively. In interview SR exhibited high levels of anxiety and was low in mood with low self-esteem and moderately angry. She was found to present as very unhappy. This is very much a reflection of her mother who Dr McCartan found emits significant anger and distress when talking about MW. She did not appear to have anything positive to say about MW and spent a lot of time in describing him negatively.

[66] At assessment Dr McCartan found SR to present as very vulnerable and disturbed. Yet in contradiction her school reports say she is doing well, has a peer group of friends and does not appear to present as anxious. Ms McTaggart senior practitioner at the Child Care Centre also assessed SR as distressed which is also contrary to her presentation at school. It is suggested by Dr McCartan, that her state may well be 'situational' dependent on her environment and circumstances. Dr McCartan is concerned that SR has been manipulated by her mother and is learning to manipulate others.

[67] Regrettably, Dr McCartan regards SR as having suffered significant levels of emotional harm from FR with her levels of anxiety, depression, anger and self-esteem out of kilter with those of her peers.

[68] Dr McCartan posited three alternative outcomes for SR:

- (i) she remains in the care of her mother;
- (ii) She is transferred to the care of her father; and
- (iii) She is transferred to another care environment.

### *Ms Fiona Armstrong*

[69] Ms Fiona Armstrong, a highly experienced independent social worker gave oral evidence to the court. On interview she assessed the father to be reflective, concerned about his daughter in the absence of a relationship with her since contact stopped in 2017. She found him to be consistent in what he accounted to her against the trial documents, reports interviews and interventions over the years. Her impression was a man honestly acknowledging various aspects of the earlier relationship with his partner. His primary concern was with SR and her welfare and the impact on her of being denied a relationship with him and the wider paternal family. Despite the almost continuous involvement with police and social services since 2017 his desire is that he wants SR to know that he has not and will not give up on her.

[70] In her interview with FR, Ms Armstrong considered her to be generally negative in relation to MW. That SR was of the view that there was little benefit to be had from any relationship with her father and she didn't want it. Dr Armstrong also found FR's rejection of any possibility for a relationship between SR and her half siblings as unusual. The children had been close and brought up in a sibling relationship, but FR refused to entertain any possible benefit to be garnered from the potential of such an enduring relationship. This was particularly so when SR was obviously fond of JW when they were together.

[71] Ms Armstrong expressed concern at FR's lack of ability to grasp the fact that in essence she is abdicating her responsibility as a parent by simply casting the

burden, of making decisions, of whether SR has a relationship with her father, siblings or paternal extended family, on SR. Ms Armstrong opined that FR cannot consider any other explanation for SR's anxiety other than her father and is oblivious to the fact she may well be anxious because she is afraid of losing her relationship with her mother if she seeks to build a relationship with her father.

[72] Ms Armstrong was concerned that FR sought out counselling with the Child Care Centre but failed to give them the full background and history of events and in particular Social Services input. The Child Care Centre in this case was heavily reliant on FR's version of events.

[73] In her assessment of CDS she stated that she found her to be an open thoughtful person who was clearly impacted by the removal of SR from their family unit. Ms Armstrong described the absence of SR from the father's family as almost tangible, there were photos of SR in the home and JW became upset and cried when talking about SR who he clearly missed. Ms Armstrong described how this brought home to her the impact of not just the loss of relationship between father and daughter but also between SR and CDS and JW.

[74] When giving evidence about her interview with SR, Ms Armstrong believes that SR has been so impacted that the only way she is able at this stage of her life to deal with her mother's influence is to cut the paternal family out of her life completely - she has to reject it in total. In interview SR said that she didn't believe her father values women, when challenged she was not able to elaborate or give explanations for her views. A view no doubt espoused by her mother and in all probability unconsciously absorbed. Ms Armstrong concluded her evidence by opining FRs serious behaviours have been designed to disrupt and undermine the father's relationship with SR. They have been denied a relationship and SR has absorbed her mother's attitude that MW and his family are irrelevant.

[75] In reaching its conclusions, the court has taken into consideration the overarching contextual evidence provided by the expert witnesses in this case.

### *Consideration*

[76] The father in this case has had no contact with his daughter from 2017. He has been pursuing a relationship with SR since 2012 and continues to do so. I am of the view there has been an escalation in seriousness of the allegations from relatively minor assault in 2013 to serious sexual assault in 2019.

[77] In relation to the 2013 allegations the court conducting an anxious scrutiny of the evidence has considered the evidence in chief and cross examination of the father. I find that he was a measured and credible witness. He stated that he tapped SR on her back/shoulder when she was making goat noises, spitting and dribbling. He denied having slapped SR across the face. On being told of the slap to the face FR did not note any redness or discolouration to the child's face. She did not report

the incident to the police rather simply to the nursery which in my view was designed specifically to disrupt contact and begin to erode SR and her father's relationship. It was accepted by the mother that she should, if this had occurred the way it has been described by her, have reported it to the police. The claim that she was not thinking does not in my view bear scrutiny. When the nurse facilitated contact and it was positive she removed SR from the nursery for a period. It was accepted by the mother that at this time there had been issues arising concerning contact. FR's emerging hostile attitude towards contact was shortly thereafter demonstrated by her fully contesting the subsequent joint residence order on 21.10.13.

[78] On an overall assessment of the totality of the available evidence the court finds as a fact that the father has proved on the balance of probabilities that he did not assault SR by slapping her to the face.

[79] Concerning the allegations of 2017 with regard to both JW and SR the court has anxiously scrutinised the evidence in relation to these allegations. The allegations in respect of JW were recorded and reported by an employee of a nursery where the mother of JW was in a relative position of authority and is recorded as having disciplined this person. If it were that alone this would be unlikely to have been determinative. However, this person refused to sign the statement prepared by her containing the allegations and refused to communicate or cooperate with police after having made her statement of complaint. She also proceeded to refer to previous alleged bruises observed a significant period of time earlier which she did not photograph, record in written form or report as required by safeguarding protocols. The same general point is relevant to the allegation that CDS put JW into a cold shower, it was never recorded contemporaneously or the subject of prompt safeguarding protocols.

[80] The overall context of the disclosure, when a police car was attending the school and a conversation with JW about the boot of the police car, is relevant. The game played at home when JW was placed into the boot of a car was a police type game. However, the boot lid was left open as per the evidence of MW and confirmed by a witness ID, who did provide a written signed statement of evidence and was prepared to stand over it. Having said that both JW and SR made PIAs and ABEs which represent their evidence in chief. However, the timing of the disclosure by SR and the inconsistencies between her account initially to police and social services where she made no disclosures gives cause for concern. It was conceded in cross-examination by FR that SR made no disclosures when spoken to by police and social services but within five to six days of being in her mother's company she was making similar allegations.

[81] This is compounded by the existence of a letter written to SR's GP outlining that SR had disclosed to her family that she had been assaulted prior to JW's disclosure. It was further disclosed that FR had also allowed SR to return to her father's care after she had made these disclosures to her maternal family. Had FR

believed she had been assaulted in the way described it is inconceivable she would have allowed SR to return to her father's care given the history of proceeding. The response that she did this 'to her shame' is unconvincing in the extreme. The suggestion that SR was being put up to this by someone in the family certainly gains more traction. Further, the allegations contained in the ABE are inconsistent. SR alleged she had been kicked to the backside with force, so hard that she flew out of the room. The court having had the opportunity to see the size of the father, it was suggested to the mother that had he done so it would be expected that the child would have likely sustained some injuries. The mother denied putting the allegation into SR's head. It is also of note that had SR made her disclosure on 29 November then FR had been in contact with the out of hours doctor concerning SR's chest cough yet failed to mention this relevant disclosure to the doctor and seek an examination of SR. The police investigations and public law proceedings were unsurprisingly discontinued.

[82] Having considered these specific issues in the evidence I have also considered the evidence in context against the overall backdrop to the totality of the evidence, including that of the experts. Having done so, I conclude that on a consideration of all the evidence the court finds as a fact that the father has proved on the balance of probabilities that he did not assault JW and SR as alleged.

### *2019 allegations*

[83] In August 2019 the contact proceedings in respect of SR were again listed for hearing before the court which had previously granted joint residence. As described above, in July just weeks before the contact hearing an anonymous report was received by the school from a parent alleging that MW had tried to have sex with SR.

[84] I have in relation to the 2019 allegations conducted an anxious scrutiny of the evidence and have considered the evidence in chief and cross examination of the mother on this aspect of the case together with the evidence of the father. I am satisfied of the following facts: that the mother claimed to the school that she had knowledge of the purported allegations of abuse before she reported it to police or social services. A Social Worker note indicates that she told the school that she was aware of this allegation because SR had a week or two previously reported it to her therapist, yet the mother did not consider it important enough to report it to the police. The narrative given in the ABE was undermined by the father and CDS being able to prove to the satisfaction of the police and ultimately the court that SR could never have been in the house when JW would not have been there. That the grandmother knew of the abuse on 11 July and did not immediately tell her daughter or call the police stretches credulity in this particular case. The idea that SR could not tell her mother about the abuse but was able to give a composed account in her ABE is concerning. Moreover, the account of the letter being written by SR is also worrying. It now appears and I find as a fact that both the mother and grandmother were present when SR is alleged to have written the note. Certainly, the Trust were right to have concerns that there was every possibility that SR may

well have had assistance with the note (if not the allegations themselves). I likewise have grave concerns in this regard. Both the Trust and the prosecution had sufficient unease to discontinue their respective investigations.

[85] On an overall assessment of the totality of the available evidence the court finds as a fact that the father has proved on the balance of probabilities that he did not sexually assault his daughter.

[86] I am further satisfied on the balance of probabilities and find that the father has proven the mother has influence over SR to the extent that she does not want to see the father.

[87] Having made these findings, the court has a proper factual matrix upon which to proceed to consider welfare determinations.

[88] The matter requires a further listing when the court will give consideration to further directions leading to final welfare determinations for SR and determine any application for costs.