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Neutral citation number: **[2022] EWFC 85**

IN THE FAMILY COURT SITTING AT READING

Date: 5 April 2022

Before:

DISTRICT JUDGE SOPHIE HARRISON

Between:

GF

Applicant
Father

- and -

GM

Respondent
Mother

Ms Bina Morjaria (counsel) appeared for the Applicant Father
Ms Jyoti Wood (counsel) appeared for the Respondent Mother

Hearing dates: 28 – 31 March 2022

Approved Judgment following a fact-finding hearing

District Judge Sophie Harrison:

Introduction

1. I hand down this judgment following a 4-day fact-finding hearing. I heard evidence and submissions on days 1-3 and prepared most of this judgment on the 4th day. I have elected to prepare a written judgment, rather than deliver it orally, to ensure that the parents and also any professionals who will now report to the court or assist the parents with the arrangements for their children within these proceedings can have swift and comprehensive access to the court's decisions and the reasons for those decisions.
2. This hearing has taken place as an attended hearing with the parents and their barristers present in court. Ms Morjaria represented the father and Ms Wood the mother. I heard oral evidence from both parents. A social worker from Local Authority B, 'Social Worker B', also attended the court building to give her evidence. Two witnesses attended remotely by CVP link: Mr C (a friend of the mother) and 'Social Worker A' (a social worker with the Local Authority A). By agreement, I read a witness statement from Mr D, a religious minister, and neither parent sought to call him to court to answer questions.
3. I have read a bundle of documents comprising 350 pages and including witness statements, social work assessments and police disclosure. I have listened to 3 short audio recordings and received substantially agreed transcripts of those recordings, prepared by the mother. I also requested the minutes of an Initial Child Protection Conference on 30 April 2020 and have added these to my bundle.
4. On day 1 of the hearing I enquired of counsel whether either parent sought special measures to help them to participate fully in the proceedings and give their best evidence, bearing in mind the ongoing duty on the court pursuant to FPR 3A, PD3AA and section 63 of the Domestic Abuse Act 2021. Neither parent sought any such special measures.
5. At the centre of these proceedings are two children whom I will call Xavier and Yasmin (not their real names). Xavier is 8 (DOB April 2014) and Yasmin is 6 (DOB February 2016). The children's father, GF last spent time with them on 10 August 2019. Since 11 August 2019 their mother, GM, and the children have lived away from the family home, initially in a refuge in the area of Local Authority A and then in a refuge in the area of Local Authority B.
6. This hearing is a fact-finding hearing; it is one step along the road of these court proceedings. The ultimate purpose of the court proceedings is for us all to work together to try and find a way forward for the children in the arrangements they have with their parents and in particular whether and how they should spend time with their father.
7. This finding of fact hearing has been for the court to hear evidence and decide whether allegations made by the mother against the father have been proved. These decisions then underpin and inform the court's decision-making going forwards when conducting the welfare analysis about the best interests of the children, which will be the next step

in our journey. The court makes ‘binary’ decisions at this fact-finding stage. Either a fact is found to be proved or it is found not to be proved on the evidence put before the court. If it is proved, the fact will inform the welfare decision-making stage and if it is not proved, the allegation will be disregarded. It is for the party making an allegation to prove that allegation on the evidence properly placed before the court. The judge in this English jurisdiction does not act as an investigator contacting witnesses or making enquiries herself. The main purpose of this fact-finding process is to provide a basis for the assessment of risk. The court’s consideration should be limited to those issues which are relevant to an assessment of risk and the children’s welfare. It is neither possible nor desirable for the court process to be used as an exercise in vindicating or condemning one or other parent for their conduct in a relationship or for apportioning blame at the end of a relationship. The focus must be on providing a basis for the accurate assessment of risk for the children’s future relationships with their parents.

A short history of the litigation

8. The father’s application in form C100 supported by form C1A - for a child arrangements order ‘specifying how long the children will live with each parent’ and a prohibited steps order to prevent the removal of the children from the jurisdiction – was issued in his local Family Court on 12 December 2019.
9. The case was transferred to the Central Family Court on 3 January 2020.
10. The Mother had filed a C1A dated 7 February 2020, raising issues of abuse and in particular a risk of ‘sexual abuse of the children’.
11. A First Hearing Dispute Resolution Appointment (FHDRA) was heard before magistrates on 18 February 2020. The court had received safeguarding information from Cafcass (pp311 -325). The Cafcass letter dated 14 February 2020 recommended a *Local Authority* section 7 report, informed by the previous social work assessment, which had included an investigation of the allegations of sexual abuse. The magistrates ordered indirect contact and a *Cafcass* section 7 report (pp86-90). The mother gave an undertaking, still in place, not to remove the children from the jurisdiction save for a holiday over Easter 2020 (p91).
12. On 4 March 2020 Cafcass wrote to the court requesting that a fact-finding hearing should be completed before Cafcass could make recommendations about child arrangements.
13. At the Dispute Resolution hearing on 12 May 2020 the magistrates decided to order a fact-finding hearing (the mother sought this; the father said it was unnecessary given the social work report already available from Local Authority B) and the case was re-allocated to the District bench in my area. Indirect contact was ordered to continue and a directions hearing was listed for 14 July 2020.
14. On 14 July 2020 the case was heard by a Recorder. Indirect contact was increased to include video messages from the father to the children and their face-to-face contact with the paternal grandparents, and specific directions were given to prepare for a 4-day

fact-finding hearing on the 'first available date after 28 September 2020'. It is sobering to record that this hearing started exactly 18 months after that date, 20 months after the directions were given and 2 ¼ years after the father made his application. A hearing listed in May 2021 was vacated due to a lack of any judge to hear the case. The delay in the listing of this hearing has been egregious. The long wait for court time must have caused both of these parents considerable added stress. The Children Act 1989 section 1(2) reminds the court that 'any delay in determining [the case] is likely to prejudice the welfare of the child'. I can only acknowledge the delay and the impact of this on the family and express my personal regret that they have had to wait so long.

A short history of the family background

15. The father is from a region of the UK and the mother originates from Country P and has also lived in Country Q. They met via a website in 2009 and the mother moved from Country Q to the UK in 2011. They married in September 2011, having not cohabited prior to the wedding. Both are well-educated and articulate. The mother gave evidence in excellent English, and has made no request for a translator.
16. The family lived in the father's local area in the UK from 2016. The father was the breadwinner, working in fraud prevention in a role that required travel within the UK. The mother assumed a role as the main carer for the children, earning only limited sums of 'pin-money', for example baby-sitting for a friend.
17. The marriage ran into trouble and the parents separated in April 2019, when the father moved from the family home to live in his parents' home nearby. A reconciliation was attempted in the summer of 2019, but by late July the parents had separated again, with the mother and children remaining in the family home and the father visiting very frequently, by agreement. On 10 August 2019 the mother recorded Yasmin making an allegation of inappropriate sexual touching by her father. The police and Local Authority A became involved. The mother and children left for a refuge and the father has not seen the children since.

The allegations

18. The schedule of allegations on which the mother seeks findings is comprised of 5 sections. Section 1 is the allegation of sexual touching of Yasmin on 10 August 2019, the catalyst for the final separation of the family. Section 2 comprises allegations of discrete incidents of emotional abuse of each child. Sections 3-5 are allegations of coercive control and harassment of the mother.
19. The father denies all the allegations. He does not seek any specific findings of fact himself.

The law

20. I remind myself of the legal framework within which I must consider the evidence and the factual allegations.
21. I must decide this case by considering each allegation individually, whilst also surveying the broad canvas of the evidence. It is for the mother to prove that her allegations are probably true.
22. The allegations in the schedule have formed the core of my deliberations, but I have also borne in mind the Court of Appeal decision in *re H-N and Others (children) (domestic abuse: finding of fact hearings)* [2021] EWCA Civ 448. Directions were given in this case, and statements prepared well before the decision in *re H-N*. The evidence and submissions focussed largely on the schedule and the allegation of sexual touching has been, in my judgement, the central issue requiring determination. However, the remainder of the allegations have widened the court's focus to the parents' and the children's broader experience of family life, and I have tried also to step back to consider the parents' relationship as a whole.
23. I can consider drawing appropriate inferences, but I must not confuse speculation and suspicion for evidence. I can consider the inherent probabilities of what is alleged, whilst also bearing in mind that improbable things do happen.
24. I should consider the consistency of the allegations, whilst bearing in mind that genuine accounts are not always wholly consistent over time and, indeed, marked consistency can sometimes suggest a fabricated account.
25. I must consider what, if any, corroboration exists for the allegations from external sources or contemporaneous documentation, whilst also bearing in mind that sometimes parents may cynically 'build a case' by reporting to the authorities (for example police and social workers) or by creating recordings or messages. I remind myself that many incidents of domestic abuse are not reported to the authorities at the time they occur.
26. I can consider the parties' demeanour as they gave oral evidence before the court, yet I must be cautious as I do so. Different people respond to the stresses of court proceedings in different ways. I must also be mindful that the court assesses a witness over a short period of a few hours in court, when parties are simultaneously under great pressure but also usually trying to show themselves in their best light. This can create an artificial impression.
27. I can take account of what third parties say or write who are not attending court to give evidence, but I must exercise appropriate caution in giving weight to hearsay evidence not challenged in cross-examination. In this case the written police evidence has the status of hearsay evidence, from sources who are not involved in this litigation, recording their observations and impressions at or near the time of events.
28. I have borne in mind the legal definitions of coercive and controlling behaviour. As defined in the current version of Practice Direction 12J, at paragraph 3, "coercive behaviour" means an act or a pattern of acts of assault, threats, humiliation and

intimidation or other abuse that is used to harm, punish, or frighten the victim. “Controlling behaviour” means an act or pattern of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.

29. In this case the mother relies on 3 audio recordings she made of Yasmin, including one recording, covertly made, of Yasmin’s interaction with Social Worker B. Individuals do not need the consent of professionals to record a meeting, as the information is personal to them and exempt from the data protection principles under the Data Protection Act 2018. Recording the social worker’s meeting was not illegal. It is, however, generally good practice and good manners to inform all those involved in a meeting if it to be recorded. The court has the power to control the evidence placed before it under FPR 22.1 and the test is one of relevance. The recordings made by the mother were clearly relevant to the issues in the case, and the father through his counsel made no challenge to the admissibility of the recordings. Transcripts prepared by the mother were, helpfully, very largely agreed between counsel and put before the court without opposition. It is then for the court to consider the weight to be given to the recordings and the light they shed on the issues in the case.

Some general observations on the evidence of the parents

30. Both parents were measured and dignified in the way they gave their evidence. They answered the questions put to them in a constructive way and each listened to the evidence of the other in silence. The conduct of each of them within the court room was exemplary.
31. I also record my finding, having listened to the evidence over three days and considered it carefully on the fourth, that each of them loves their children very much and is seeking to achieve the best outcome for the children in these proceedings.

The allegations and my analysis of the evidence

Allegation 1

32. I begin with allegation 1, where the mother seeks a finding that the father touched Yasmin in her genital area on 10 August 2019, causing redness. This is the central allegation in the case, of magnetic importance to the analysis of risk. It is the issue that caused the collapse of the cooperative model of parenting between these parents in the early days of their separation and it is the catalyst that caused the mother to leave the family home with the children to live in a refuge. It is, and has always been, strongly denied by the father.
33. Yasmin and her family refer to the female genital area as the ‘foof’. Both parents agree that on 10 August 2019, a Saturday, the father had spent the day at the family home, although he no longer lived there, interacting with the children. The mother, although

in the house, had kept largely out of the father's way. In the late afternoon, whilst Xavier slept on the sofa, Yasmin, then aged 3 ½, and her father were together in the living room, playing. The mother had been in another room at the back of the house and then went upstairs to take a phone call. The father called up the stairs to say he was leaving, somewhat earlier than anticipated. He had arranged to meet a friend that evening and in fact met them an hour or so earlier than originally planned. It is common ground that the father had not bathed or showered Yasmin and that she needed only limited help with her toileting and the only toilet in the house was upstairs. There is no suggestion that Yasmin and her father had been playing rough, physical games. Her father spoke of playing with some Lego.

34. After the father had left, it is the mother's case that she was helping Yasmin in the toilet about an hour later when she observed that Yasmin's 'foof' looked red. The mother asked Yasmin about this and Yasmin said "because Daddy touched it too strong". The mother then used her phone to record a 3-minute conversation between herself and Yasmin, in which Yasmin answered the question "why did you say your foof is red?" with "Daddy touched it", going on to say, in answer to further questions from the mother "with his hand" and "too hard", "so strong". The mother records Yasmin as having demonstrated a 'tickling' motion with her fingers.
35. Once Yasmin was in bed, the mother telephoned Childline. She was advised to contact the NSPCC, which she did the following morning, a Sunday, once their phone line opened. The NSPCC advised the mother to leave for a friend's house and referred the case to the Local Authority Emergency Duty Team (EDT), who involved the police.
36. The police disclosure (p 339 onwards) records 2 officers attending the mother at her friend's home on that Sunday afternoon, 11 August 2019. The officers listened to the recording, and the 'Investigation Update' recorded by one of the officers, Police Constable R, includes the comments 'there is no context in any of the answers' and 'the questions are very leading and [the mother] does tend to repeat the questions also'. Detective Constable W and Police Constable R spoke with Yasmin alone. The short report at p339-340 records they established a rapport, asked some general questions about Yasmin and her Daddy and then asked specific questions "has Daddy done anything to hurt you?" and "are you hurting anywhere?", to which Yasmin replied "no". Yasmin made no allegations about her father (or anyone else) to the officers.
37. A Child Protection medical took place but not until 5 days later, 15 August 2019. I accept the mother's consistent account, which is supported by information in the police and Local Authority disclosure, that the delay was not of her making. On Sunday 11 August the police and EDT staff advised her that a medical would be intrusive and that a GP examination would be preferable. An appointment was arranged, but the GP was unwilling to do the examination given the context of possible abuse and referred the matter to the local hospital, who declined the referral due to a lack of child protection expertise. The examination was eventually done by doctors at a city hospital on 15 August, after the mother had contacted social services on 13 August 2019 to progress the arrangements. I have not seen the notes from the examination itself, but it is referred to in the Local Authority A documents at p 210 and in the Local Authority B assessment at p 282 (para 22). It is common ground that no injuries or marks or redness were recorded in Yasmin's genital area. There was no evidence found of any

sexual abuse. However, the medical examination could not, of course, rule out the possibility that touching had taken place. The mother insisted that Xavier, then aged 5, should also be intimately examined, although he had made no disclosures save to say he had a sore bottom.

38. On 20 August 2019 a different police officer, Detective Constable E, spoke with Yasmin. The officer records (p341-342) asking Yasmin whether she had been hurt, including the question “what about where your wee-wee comes from?”. Yasmin is recorded as putting her hand on her groin and saying she rubs it better if it hurts. When asked if anyone had hurt her there she said “no”. She was asked if family members had hurt her, including her father, and said “no”. Yasmin made no allegations against her father (or anyone else) during the conversation. DC E concluded; ‘no offences have been disclosed. Yasmin has been spoken to at length by two different police officers and no disclosures of any sexual offences have been made. Mother is satisfied that there is no further police action and GF will not be spoken to’ (p342).
39. No ‘Achieving Best Evidence’ (ABE) interview with Yasmin therefore took place. The father was never questioned by officers. The police investigation concluded with no crime having been recorded and no disclosures having been made. It appears DC E also listened to the audio recording the mother had made, commenting in notes at p341 ‘the questions asked are leading and there is no context about what is being said’.
40. I should also record that the events recorded in the police disclosure from 11 August 2019 are not the only time the mother had spoken with police. On 8 August 2019, just 2 days before the events of 10 August, the mother had contacted the police to record that she felt isolated, harassed and controlled by the father. The police records at pp 329-336 record the mother ‘not wish[ing] to make a complaint or give a statement and does not want GF spoken to. She wanted her concerns logged as she is unsure what accusation GF will make against her’ (p336). The police logged the risk as ‘standard’.
41. Local Authority A conducted a Child and Family Assessment of Xavier and Yasmin between 12 August and 8 November 2019, and this is in the bundle at pp 205-230. The report writer, Social Worker A, attended court by video link to answer questions. The outcome of the assessment was a recommendation for Xavier and Yasmin to remain open to the Local Authority on Child in Need plans. Social Worker A concluded that ‘there is little evidence to suggest Yasmin has been sexually abused by GF as she has not made any allegations to the involved professionals with the only ones she has made to [her mother] ...the child protection medical concluded there was no evidence to suggest the children had been sexually abused, although it could not conclusively rule out the possibility of touching. Moreover, Yasmin does not continuously display sexualised behaviour which could be indicative of sexual abuse... [the mother] is persistent in wanting answers but this may never be achieved given Yasmin’s age; I feel it is imperative for the children’s emotional well-being that...she makes attempts to promote safe contact between the children and [their father]’ (p223). Social Worker A recommended starting supervised contact to form part of a social services’ assessment. She also recorded ‘I would consider initiating the child protection process in the event [the mother] is seen to be asking Yasmin further leading questions about the allegations [of sexual abuse] as this could lead to further emotional harm’ (p223).

42. Social Worker A conceded in her oral evidence that she could not recall listening to the recording made on 10 August 2019 and that the questions asked by the mother in that recording were not suggesting answers to Yasmin, but rather building on responses Yasmin had already given. However, it is also clear from Social Worker A's written report that Social Worker A viewed 2 videos the mother had made of the mother questioning Yasmin on 30 September 2019. Social Worker A records two specific examples on p 215 of the mother's questioning influencing Yasmin to change her answers and notes 'this raises concerns that [the mother] was influencing Yasmin to create a narrative'. I have not seen these two videos. They have not been put before this court by the mother and they are not mentioned in the mother's statements.
43. Social Worker A records that she regarded herself as having built up a rapport with Yasmin and that during her direct work with Yasmin and Xavier, which included work about safe touch, no allegations were made by either child (p217). Social Worker A contacted Yasmin's nursery who confirmed Yasmin did not display sexualised behaviour and had made no disclosures to staff (p213). Social Worker A recorded concerns raised by the mother about Yasmin talking about and showing her private parts, but Social Worker A's view, having considered NSPCC guidance and discussed it with the health visitor, was that this was not out of the ordinary for a child of Yasmin's age (p212).
44. The mother relies on a further audio recording of her talking to Yasmin. It is a 5-minute recording made after the mother and children had left the area where the family had lived before the separation and moved to a refuge many miles away. It was not therefore a recording that existed when Social Worker A was involved with the family. I do not know the exact date the mother left the area, but Cafcass records show she was living in the new area by the time of the safeguarding interview on 27 January 2020 (p317), which puts the move soon after the Local Authority A assessment concluded with a recommendation for a Child in Need plan. At p244 a date of December 2019 is mentioned for the move, in a social services' document. In this recording, Yasmin states "when Xavier was sleeping and you were upstairs daddy just took my pants off and he tickled it fast and then when you came down". The mother asked "why didn't you tell to [Social Worker A] when she asked you about daddy?" and Yasmin replies "because I am scared [of]...doing it on my own". Her mother asks "what are you scared of?" and Yasmin answers "from going out of our room and telling [Social Worker A]: daddy... when mummy was upstairs when Xavier was sleeping daddy took my pants off and then he tickled it and then he popped my pants on and my trousers on and that's it".
45. It is not disputed that the mother told her health visitor of this conversation and this led to a further referral to Local Authority B and to the Single Assessment prepared by Social Worker B, in the bundle at pp 241-290. This assessment concluded with an Initial Child Protection Conference (ICPC) on 30 April 2020 when the children were made the subject of a Child Protection Plan under the category of emotional abuse. The conference recognised that ongoing court proceedings would involve a fact-finding process about the allegations of sexual abuse and that the children were not seeing their father and it was a period of uncertainty and upheaval for them.

46. As part of her single assessment, Social Worker B spoke with both children, including a lengthy session with Yasmin which the mother covertly recorded. I have not listened to the whole of the recording, but only to a 5 ½ minute clip at about 20 minutes in. Social Worker B's report of the session was that Yasmin had made no 'disclosures'. She did record that 'at some point during the session...Yasmin stood up and sat in the chair and started saying something about her mother and father...I stopped Y talking about her mother and father randomly and said to her we will talk about it later as I did not want her to interrupt the flow of the exercise by bringing in something she might have memorised' (p 277).
47. This report is somewhat at odds with the recording itself. After a question from Social Worker B "do you know what tickling is?" Yasmin says twice "I want to tell you something" and when Social Worker B responds "OK, tell me" Yasmin says "Uhm... when my mum was upstairs, my daddy brought me to when Xavier was sleeping on the sofa he took my pants off and tickled it". Social Worker B then says "OK, we will talk about that later, right?".
48. Social Worker B conceded in her oral evidence that she had missed this as an allegation, explaining that she was trying to engage with a busy young child in a structured way. Social Worker B explained she had a plan for this part of the meeting which involved working through an educational book about good and bad touch, before asking questions about Yasmin's own experiences once the concepts had been clearly explained. This explanation did not quite fit with another part of Social Worker B's oral evidence when she explained that she had deliberately introduced the concept of 'tickling' at this point of the conversation, as a subtle introduction which may have acted to prompt Yasmin. The mother has always maintained a concern that the conversation about tickling being a 'good' feeling that may make you laugh was a poor choice of an example to discuss in Yasmin's case, given that her conversations with her mother had referred to her father's alleged abuse as a form of 'tickling'.
49. Social Worker B conceded in her oral evidence that she had missed Yasmin's 'disclosure' to her. She accepted she had not listened herself to the recording from 10 August 2019, but relied on the police reports of it. She also conceded that she had been overly harsh in categorising the mother as selfishly obsessed with questioning Yasmin to establish sexual abuse in a 'toxic' approach to parenting. Social Worker B was obviously unhappy with the covert recording and with the volume and nature of contacts she had had to field from the mother. Their working relationship broke down, although Social Worker B was required by her manager to finish her report and then took the case to the ICPC for a discussion with all relevant professionals.
50. Having listened to the recording clips during the hearing, it remained Social Worker B's firm view that she was concerned at the mother's continued focus on allegations of sexual abuse that had already been fully explored by Local Authority A. Social Worker B was also clear, and it is not disputed, that Yasmin made no allegations of abusive touch when asked at the end of the 'good touch/bad touch' exercise or at any other time in her work with the children. The ICPC minutes record the nursery as having no concerns about Yasmin, who had made no disclosures to them.

51. The evidence before this court in support of a finding of sexual touching by the father on 10 August 2019 can be summarised as follows:
- (i) The mother's observation of redness in Yasmin's genital area on 10 August 2019;
 - (ii) The recording of Yasmin's report to her mother on 10 August 2019, in response to a question "why is your foof red?" of her being touched by her father 'strongly' to cause the redness;
 - (iii) The recording of Yasmin after the move to a refuge, disclosing the 'tickling' to her mother and giving some detail as to the whereabouts of other members of the family;
 - (iv) The comments to Social Worker B at one point during her direct work with Yasmin;
 - (v) There is reference in the papers to Yasmin speaking to her mother of her genital area as a 'pavement' with 'people' (represented by fingers) walking on it - for example at p 244 and in paragraph 5 of the mother's second witness statement at p165.
52. The evidence undermining any finding of sexual touching can be summarised:
- (i) The Child Protection Medical found no evidence of injuries, marks or redness (although it did not take place until 5 days later and cannot shed light on whether there was touching, which would not necessarily lead to injury or marks);
 - (ii) Yasmin made no allegations of any kind in response to conversations 9 days apart with 2 different detective constables, in the period immediately following the alleged incident. The police did not undertake any ABE interview or question the father and closed the case having recorded no crime;
 - (iii) Yasmin made no disclosures at any point, including in the context of good touch/bad touch work, to Social Worker A before the move;
 - (iv) Yasmin has made no disclosures at nursery;
 - (v) No social work or teaching professionals are concerned about sexualised behaviour from Yasmin (or Xavier);
 - (vi) Although she made one comment to Social Worker B, Yasmin answered 'no' to all the questions about bad touch when specifically asked about this at the appropriate point in the exercise and made no other disclosure to her;
 - (vii) The father has consistently denied any inappropriate touch.

(viii) The children have consistently said to social workers that they love and miss their father and are happy when with him (for example p 217 - Yasmin likes Dad's cuddles and kisses and playing with him - and p271 – "A hero is a good person...my dad is a superhero").

53. The mother would perhaps add 2 further points to the list of supporting evidence at paragraph 51 above, namely (i) that the father engaged with her in consensual sexual role play where she acted the part of a teenager and (ii) that he left the house suddenly and thus suspiciously on 10 August 2019. I do not place any weight on these 2 potential factors. Role play in the context of a consenting adult sexual relationship does not, in my judgement, shed much light on a propensity to engage in actual abuse of preschool children. In any event the father does not accept the detail of the mother's assertion, claiming instead that the role play focussed on a student/professor type relationship, and I will never be able to resolve that factual conflict. The father explained why he left the house earlier than planned on 10 August 2019. He described it as a day of considerable tension. There is support for this account in the police disclosure, which shows that the mother had gone to the police in order for her complaints against the father to be logged only 2 days before. Leaving the house early because of the atmosphere and stress is very plausible in the circumstances. For the avoidance of doubt, I place no weight at all on the father being bisexual (this point having been raised by the mother with police on 8 August 2019 - p355 - but I take judicial notice that there is no correlation at all between bisexuality and paedophilia).
54. There are, as Social Worker A mentioned in her evidence, different reasons why a young child's genital area may become sore and red, for example as they transition to using the toilet themselves. The evidence of sexual abuse therefore relies on Yasmin's own voice, in the three recordings before the court and the reported 'pavement' conversation.
55. Yasmin was aged only 3 in August 2019. Children as young as 3 can and do give evidence of their experiences and it is important that their voices are heard. However, young children do not use, process or understand language in the same way as adults (see, for example, The Advocate's Gateway guidance on planning to question a child or young person). Their concepts of time and of their own bodies are not the same as adult conceptions. Children are suggestible, they can be imaginative and they pick up language from those around them. Questioning children who may have been abused requires a careful and tailored approach. The official Ministry of Justice guidance 'Achieving Best Evidence in Criminal Proceedings' runs to 246 pages and The Advocate's Gateway toolkit on questioning a child or young person consists of 40 pages. Both social workers told me about the specialist tools and careful approach they used in talking to Yasmin, to include establishing an understanding of types of touch and using body maps and booklets. Yasmin made no allegations in response to these structured approaches (her one comment to Social Worker B was at an earlier stage of the booklet process). It is Social Worker B's evidence that a social worker should be careful to follow the process, to guard against children giving rehearsed answers.
56. Yasmin herself suggest one reason why she did not say anything to Social Worker A. Responding to her mother's question as to why she did not say anything to [Social Worker A], in the recording made after the move to the refuge, Yasmin says she was

“scared”. She did not give any further information about what she was scared of, answering this question by repeating the allegation and saying simply she was “too scared of to tell”. Social Worker A gave evidence that she felt she had a good rapport with Yasmin. At p217, Social Worker A records some of the detail of her direct work with Yasmin using Bear Cards, with Y choosing a happy card for herself and describing a happy relationship with her father. Her mother was present in the room for this exercise.

57. Police officers had listened to the recording from 10 August 2019 and described the questions as ‘leading’ and the answers as lacking ‘context’. It seems neither social worker listened to this recording, instead quoting the police assessment. I am mindful that, whilst the police often work jointly with social services, the roles of the two organisations are different, in that the police are looking to assess whether there is evidence to meet a threshold for prosecution. I am also mindful to guard against a situation whereby an initial view of a piece of evidence is taken up by others and becomes the established ‘group-think’ without an independent assessment by subsequent professionals of the underlying information. Social Worker A accepted in her oral evidence that a categorisation of the mother’s questions to Yasmin on 10 August 2019 as ‘leading’ was not fair. The mother builds on answers from Y and sometimes seeks for Yasmin to repeat her information, but the mother does not suggest the answers in the first place.
58. ‘Context’ is given by Yasmin in the recording made in the refuge when Yasmin repeats the allegation of ‘tickling’ but with more detail as to the circumstances, including some accurate detail to who was where in the house just before her father left (Xavier on the sofa asleep, her mother upstairs). The ‘context’ in the first recording is limited to a time of day which is not entirely accurate (it could not have been dark, given the time the father left the house on 10 August).
59. What I cannot know is what was said before or after the recordings. They are snapshots. The recording in the refuge was made some months after the alleged event.
60. I have recorded at paragraph 52(v) that no social work or teaching professionals are concerned about sexualised behaviour from Yasmin (or Xavier). I phrased this carefully, as there are mentions of sexualised behaviour in the papers. The mother raised concerns with Social Worker A, which were specifically considered with the health visitor, and the social worker was satisfied, having considered NSPCC guidance, that the behaviour was normal behaviour typical of Yasmin’s age and stage (pp214-215). Refuge staff reported to Social Worker B concerns that Yasmin had been kissing another child and some concerns about Xavier’s behaviour, but no concerns had been noted by the nursery or school (as confirmed in the ICPC minutes) and again the information was viewed as being within a range of normal behaviour and not indicative of abuse. The mother has raised the ‘pavement’ comments and her counsel, Ms Wood, suggested to Social Worker B that this concept could have been suggested to Yasmin by an abuser, as it is outside the range of concepts expected from a 3-year-old, but this is speculation. I come back to the point that no teaching or social work professional has raised concerns that these children have displayed sexualised behaviour. It is also, in my judgement, speculation to read much into Yasmin’s choice of the word ‘wash’ in referring to her mummy touching her private parts at p276, and the word ‘touch’ when

she refers to her daddy. In both instances Yasmin recorded it as ‘good touch’, as she worked through the exercises on types of touch.

61. Social Worker B concedes she missed Yasmin’s comment about being ‘tickled’ by her father with her pants off. I can quite understand why this omission has caused the mother such concern. However, it remains the case that Social Worker B had properly planned a piece of direct work with Yasmin to find out about ‘bad touch’ in a way that would guard against a rehearsed answer from a child. When specifically asked about ‘bad touch’, having worked through the booklet, Yasmin did not make any disclosure. The same is true of Social Worker A’s direct work with Yasmin. In my judgement this is important. It is also important, in my judgement, that Yasmin made no disclosures to the police officers. All those trained in questioning children about abuse have received no allegations from Yasmin *as part of their structured work*.
62. The court is therefore left with Y’s voice on 3 occasions (plus the report of the ‘pavement’ comment and the videos that Social Worker A saw and that the mother has not relied on at this hearing). I have conducted my own evaluation of the evidence, having listened to the recordings, and do not rely on the fact that the police and two different Local Authorities have investigated and taken no further action. It is important that I look at all the evidence to reach my own conclusion. Ms Wood did a first-rate job on the mother’s behalf of challenging and scrutinising the evidence in her cross-examination and submissions and I have thought carefully about the points she made.
63. I have concluded that I cannot place sufficient weight on Yasmin’s recorded comments to find that the mother has proved the allegation of sexual touching by the father on 10 August 2019. The recordings are not the result of a transparent and professional process. The weight of the evidence, in my judgement, falls against making the finding the mother seeks. Yasmin was only 3. She has not displayed sexualised behaviour that concerns those professionals who interact with her most often, in her educational settings. She has not made allegations in response to detailed police and social work processes on 4 different occasions. The social work evidence as a whole shows children who report a warm and loving relationship with their father with appropriate physical affection.
64. The father does not ask the court to make any formal findings of fact against the mother. However, I have considered whether the evidence overall shows a mother who has either inappropriately questioned Yasmin to keep the allegations alive when they had been fully investigated already or who has deliberately manipulated Yasmin into making allegations and alienated the children from their father.
65. Both social workers were concerned that the mother would not let the issue rest and was continuing to probe and record Yasmin. These concerns were at least part of the reasons that the children were placed on a Child in Need plan initially and a Child Protection Plan in the second Local Authority area. Social Worker B accepted in her oral evidence that her categorisation of the mother’s parenting as potentially ‘toxic’ in her written report was probably overly harsh, and I concur with that assessment. The children have not been heard to speak anything other than positively about their father and they show none of the traits commonly exhibited by children who have been

manipulated or alienated (such as having nothing positive to say about and no happy memories of the 'absent' parent). I cannot know whether Yasmin's comment to Social Worker B during the recorded direct work was 'rehearsed' or not. Social Worker B herself has muddied the waters on that, suggesting in her evidence two alternative and broadly incompatible scenarios: that her use of the word 'tickle' had been deliberate to prompt Yasmin subtly at that intermediate point of the process and also that she was careful to go through the booklet methodically to guard against any rehearsed statements before asking about Yasmin's experience at the end of the exercise.

66. I note that the second investigation after the move to the refuge was not prompted by the mother contacting social workers or the police, but by Yasmin's health visitor after the mother had told her Yasmin had spoken again about 'tickling like Daddy does' when touching her private parts (p244). The first Local Authority investigation was prompted by the NSPCC after the mother had been recommended to call them by Childline. In her oral evidence before this court the mother presented as genuinely concerned for her children and anxious to listen to her daughter's voice. Social Worker B did miss a comment by Yasmin and now accepts that her assessment of the mother was harsh. The mother has not been entirely fairly treated by the second Local Authority, who did not in fact arrange the meeting with her as required in the ICPC minutes. I repeat that these children have not been taught to speak negatively of their father, but speak warmly of him and miss him, and that is an important point.
67. The mother has not been cooperative with the attempts of social workers in the two Local Authority areas to encourage and arrange some supervised contact, being concerned that this would lead inexorably to unsupervised contact at a time when she felt Yasmin's repeated comments had still not been investigated fully. It is not, of course, either parents' fault that this fact-finding court process has taken such a long time. It was the conclusion of the ICPC that clarity and progression would only be achieved once the court had considered the evidence and made (or declined to make) findings, and the court itself has considered that a fact-finding hearing is necessary to form the basis for an assessment of risk.
68. Balancing all this, I conclude that I should not make any findings that the mother has emotionally abused the children by persisting with these allegations or by using the allegations to thwart the children's relationship with their father

Allegation 2

69. This allegation is in 2 parts: that the father allowed Xavier to play an unsuitable video game and that the father made a comment to Yasmin including reference to a 'new mummy'. The mother asserts that the father has mentally abused his children through these incidents.
70. The allegation about the video game is that this happened 'once' (M's first statement para 22, p 155). The father accepts that Xavier played a game involving the unsuitable killing of animals, but says he had taken steps to put age-inappropriate games away and that Xavier must have found this one. I note that the mother was in the house when the game was played and it must also be her responsibility to supervise Xavier. In my

judgement there is no evidential link shown between Xavier's behaviour at school in lacking empathy and this one occasion of exposure to an unsuitable game. Whilst Xavier himself reports his father as being more permissive in allowing him to play video games (describing this positively at p246), there is no evidence that could possibly support a conclusion that the father's approach to Xavier's gaming could amount to 'mental abuse'.

71. The mother was not present when anything was said to Yasmin about a 'new mummy' and so can only report Yasmin's own comments to her. The father denies having said any such thing or having shown Y any picture of a 'new mummy'. The question for me to determine is not whether Yasmin said something to her mother about having a new mummy and the old one going to the police station, but whether the father said something to Yasmin that should be construed as emotional abuse.
72. This father moved out of the house when the parents' relationship broke down, to enable the children and their mother to remain there. He has patiently cooperated with the court process in the more than 2 years it has taken for his application to get this far, not seeking to disturb the children's arrangements with their mother. He denies making the comments and the mother was not present to hear them. I do not find the allegation proved.

Allegation 3

73. This allegation is one of coercive and controlling behaviour of the mother by the father. The mother alleges 'gaslighting', usually defined as psychological manipulation designed to undermine a person and make them doubt their sanity. The mother alleges the father sent a Valentine's Day card to himself and lied about it; told her he was planning suicide simply to alarm her; shouted at her and slammed doors; and told her she was paranoid and narcissistic (her first statement paragraphs 11-13 p153). She says the stress of all of this is what prompted her to go to the police on 8 August 2019. The mother also asserts that she was the victim of financial control (para 4-7 p151-2), with the motivation being to manipulate and undermine her.
74. In its judgment in *Re H-N*, the Court of Appeal said, at paragraph 32: *'It is equally important to be clear that not all directive, assertive, stubborn or selfish behaviour, will be 'abuse' in the context of proceedings concerning the welfare of a child; much will turn on the intention of the perpetrator of the alleged abuse and on the harmful impact of the behaviour. We would endorse the approach taken by Peter Jackson LJ in Re L (Relocation: Second Appeal) [2017] EWCA Civ 2121 (paragraph 61): "Few relationships lack instances of bad behaviour on the part of one or both parties at some time and it is a rare family case that does not contain complaints by one party against the other, and often complaints are made by both. Yet not all such behaviour will amount to 'domestic abuse', where 'coercive behaviour' is defined as behaviour that is 'used to harm, punish, or frighten the victim...' and 'controlling behaviour' as behaviour 'designed to make a person subordinate...' In cases where the alleged behaviour does not have this character it is likely to be unnecessary and disproportionate for detailed findings of fact to be made about the complaints; indeed,*

in such cases it will not be in the interests of the child or of justice for the court to allow itself to become another battleground for adult conflict’.

75. The father’s behaviour in commissioning a Valentine’s card to be sent to himself from a stranger, in which the stranger referred to the father as ‘hubby’ is odd behaviour and the father accepts he lied to the mother about it and that she found the card. The father accepts that there were arguments and that he expressed concerns about the mother’s mental health (p124).
76. The medical letter from the father’s GP (p115-116) confirms the father consulted his GP suffering from low mood in May 2019. The mother describes the stress at home as making her physically sick (para 13 p153). The breakup of their marriage over the course of 2019 was obviously acutely stressful for both parties.
77. The mother also asserts financial control. It is common ground that the family were short of money and the father had significant debts which he was attempting to repay - the mother mentions this to the police on 8 August 2019 (p 334). The father was the breadwinner and the mother’s income was limited to *ad hoc* payments, for example for babysitting. The father seems to have paid the family’s bills using a combination of his income and the tax credits, and the mother was left with her limited earnings and the child benefit to pay her phone bills and anything else she wanted to buy.
78. In my judgement the behaviour complained of by the mother at allegation 3 does not amount to behaviour that the court should categorise as coercive and/or controlling behaviour amounting to domestic abuse. The mother did not have access to much money, but money was obviously very tight and needed for housing costs, utility bills and essentials for the family. I do not find that the father kept the mother short of money to harm or punish her or to make her subordinate. The Valentine’s card, distress and arguments were obviously upsetting, but do not in my judgement have the character of coercive and/or controlling abuse. It is unnecessary and disproportionate for the court to engage in further enquiry as to these allegations: it would not be relevant to decision-making for the children going forwards.

Allegation 4

79. This is an allegation that the father had ‘unhealthy sexual fantasies and encouraged the mother to commit an act of infidelity’.
80. Both parents agree they engaged in sexual role play and fantasies. These were consensual acts between two adults. The mother’s extra-marital liaison in London in 2018 was also an act/s between consenting adults. The father was not in London and was not involved in commissioning or arranging the affair. Messages exchanged between the parties in June 2018 and exhibited to the mother’s statement show the father apparently encouraging her to liaise with other men (p 174, 179 and p181). The messages at pp 184-187, also sent in June 2018 appear to show that the parents were not in fact ‘on the same page’ about what was going on.

81. I have already found, at paragraph 53 above, that I cannot unravel the events of the marital sexual role play to determine whether the father's fantasies were 'unhealthy' or not. I decline to categorise the mother's choice to engage in a consensual sexual liaison in London, after some encouragement from the father, as domestic abuse. The evidence does not support a conclusion that the messages were designed to make the mother subordinate or used to harm, punish or frighten her. It is unnecessary and disproportionate for detailed findings of fact to be made about these complaints and I do not consider them relevant to a risk assessment and decision-making for the children going forwards.

Allegation 5

82. The mother alleges the father 'stalked her and accessed her private communications'.
83. The stalking allegation arises from an incident on 27 June 2019 when the mother met her friend Mr C on a beach with the children for a picnic and then went back to Mr C's nearby apartment. The father accepts that he went to the beach but did not reveal his presence, instead taking some photos using a zoom (pp197-198) and then sending a message to Mr C a few days later: "did you have a nice time at the beach with my wife and kids?" (p200). The father said he had been feeling unwell at home after an operation, but had then felt better and had decided to surprise his family by joining them at the beach. He was disconcerted to find Mr C with them, as he believed his wife to harbour romantic feelings for Mr C (who is mentioned in text messages between them in the context of the mother dressing sexily, for example pp174 and 176).
84. The mother has not mentioned any other incidents of 'stalking'. I accept her account and Mr C's account of an innocent afternoon, where the children were present throughout. I also accept the father's evidence that he went to the beach to surprise his family but was instead surprised to see Mr C with his family. The father's message to Mr C may be regarded as 'passive-aggressive' but the father took no action to follow this up with any further communication. The taking of 3 photos before going home and the sending of one message, after one unexpected event does not, in my judgement amount to abusive stalking behaviour. The court has not been told of any other incidents where the father has followed the mother or taken pictures of her without her knowledge.
85. The father accepts reviewing messages on the mother's devices in 2012 (para 9 p 122) and 2018 (para 8 p121). He accepts sending one message to the pastor at his mother-in-law's church raising concerns about the mother's communications with members of the congregation. I do not condone this behaviour, but in my judgement the evidence does not support a conclusion that the father's actions were designed to make the mother subordinate or used to harm, punish or frighten her. It is unnecessary and disproportionate for detailed findings of fact to be made about these complaints and I do not consider them relevant to a risk assessment and decision-making for the children going forwards.

Conclusions

86. The court makes no findings on the mother's allegations.
87. The mother, with the able assistance of her barrister, has put all her evidence before the court and has challenged the evidence of the father and the social workers. An independent person - myself as the judge - has reviewed the broad canvas of the evidence and the detail of the allegations. I have found that the father probably did not abuse Yasmin sexually on 10 August 2019. I have declined to find any of the other allegations proved, for the reasons I have given.
88. The children are entitled to have a full relationship with both their parents, provided this is safe and in their welfare interests. The focus must now shift to a welfare analysis. I am ordering a report under section 7 of the Children Act, with instructions to Cafcass to consider how to reintroduce direct contact between the children and their father, whom they have not seen for over 2 ½ years.

District Judge Sophie Harrison

5 April 2022

Addendum:

Cafcass recommended a stepped approach to the reintroduction of contact between the children and their father and both parents agreed with this approach. A consent order was approved at the Dispute Resolution Appointment on 21 July 2022 to conclude the proceedings.